S T A T E O F N E W Y O R K

10561

I N A S S E M B L Y

April 7, 2010

Introduced by M. of A. GALEF -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to the honest use of refund and rebate forms act

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The general business law is amended by adding a new article 32-A to read as follows:

ARTICLE 32-A

HONEST USE OF REFUND AND REBATE FORMS ACT

SECTION 676. SHORT TITLE.
677. DEFINITIONS.
678. DISPLAY OF EXPIRED MANUFACTURER'S REFUND AND REBATE FORMS PROHIBITED.
679. AVAILABILITY OF MANUFACTURER'S REFUND OR REBATE FORMS.
679-A. PENALTIES.
679-B. AFFIRMATIVE DEFENSES.

S 676. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "HONEST USE OF REFUND AND REBATE FORMS ACT".

S 677. DEFINITIONS. WHENEVER USED IN THIS ARTICLE:

(A) "MANUFACTURER'S REFUND" SHALL MEAN A RETURN OF THE TOTAL PURCHASE PRICE BY A MANUFACTURER TO A PURCHASER OF AN ITEM.

(B) "MANUFACTURER'S REBATE" SHALL MEAN A RETURN BY A MANUFACTURER TO A PURCHASER OF AN ITEM OF ANY PORTION OF THE SALES PRICE OR OF A SPECIFIED MONETARY AMOUNT.

(C) "FORM" SHALL MEAN THE AUTHORIZED FORM REQUIRED TO BE COMPLETED BY THE PURCHASER OF AN ITEM AS A PREREQUISITE TO A MANUFACTURER'S REFUND OR REBATE.

S 678. DISPLAY OF EXPIRED MANUFACTURER'S REFUND AND REBATE FORMS PROHIBITED. (A) IT SHALL BE UNLAWFUL FOR ANY PERSON, FIRM, PARTNERSHIP, CORPORATION OR ASSOCIATION: (I) TO CAUSE TO BE ADVERTISED BY MEANS OF A NEWSPAPER ADVERTISEMENT, CIRCULAR, TELEVISION OR RADIO ANNOUNCEMENT, OFF-THE-PREMISES PROMOTION OR OTHERWISE, THE AVAILABILITY OF; OR (II) TO DISPLAY, PROMOTE OR DISTRIBUTE WITHIN THE PREMISES OF A RETAIL STORE OR

EXPLANATION--Matter in ITALICS (underscored) is new; matter in brackets [ ] is old law to be omitted.

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OTHERWISE MAKE AVAILABLE THEREIN ANY MANUFACTURER'S REFUND OR REBATE FORM WHICH HAS EXPIRED AND WHICH WILL NOT BE HONORED BY THE MANUFACTURER AS A RESULT OF SUCH EXPIRATION.

(B) THE PROVISIONS OF SUBDIVISION (A) OF THIS SECTION SHALL NOT APPLY TO PERSONS, FIRMS, CORPORATIONS OR ASSOCIATIONS WHICH POST MANUFACTURER'S REFUND OR REBATE FORMS ON A BULLETIN BOARD NEAR A STORE ENTRANCE, PROVIDED THAT SUCH BULLETIN BOARD IS MAINTAINED WITH A PROMINENT SIGN CONSPICUOUSLY POSTED ON OR ADJACENT TO THE BULLETIN BOARD, CONTAINING SUBSTANTIALLY THE FOLLOWING LEGEND IN CLEAR AND CONSPICUOUS PRINT: "PLEASE NOTE: THIS STORE IS NOT RESPONSIBLE FOR EXPIRED REFUND OR REBATE OFFERS POSTED HERE. PLEASE CHECK THE EXPIRATION DATE ON YOUR FORM." IN THE ABSENCE OF THE REQUIRED SIGN, THE PROVISIONS OF SUBDIVISION (A) OF THIS SECTION SHALL APPLY TO ANY PERSON, FIRM, CORPORATION OR ASSOCIATION WHICH MAINTAINS SUCH A BULLETIN BOARD.

(C) PERSONS, FIRMS, CORPORATIONS OR ASSOCIATIONS SHALL NOT BE HELD TO THE PROVISIONS OF SUBDIVISION (A) OF THIS SECTION WHEN MANUFACTURER'S REFUNDS OR REBATES ARE PRINTED ON OR CONTAINED WHOLLY WITHIN PACKAGES, OR WHICH ARE CONTAINED ON THE INSIDE OF PRODUCT LABELS OR OTHERWISE ARE NOT READILY VISIBLE TO THE CONSUMER.

S 679. AVAILABILITY OF MANUFACTURER'S REFUND OR REBATE FORMS. (A) ANY PERSON, FIRM, PARTNERSHIP, CORPORATION OR ASSOCIATION: (I) WHICH CAUSES TO BE ADVERTISED BY MEANS OF A NEWSPAPER ADVERTISEMENT, CIRCULAR, TELEVISION OR RADIO ANNOUNCEMENT OR OFF-THE-PREMISES PROMOTION OR OTHERWISE, THE AVAILABILITY OF; OR (II) WHICH DISPLAYS, PROMOTES OR DISTRIBUTES WITHIN THE PREMISES OF A RETAIL STORE OR OTHERWISE MAKES AVAILABLE THEREIN A MANUFACTURER'S REFUND OR REBATE FORM SHALL MAKE AVAILABLE THE APPROPRIATE MANUFACTURER'S REFUND OR REBATE FORM TO THE PURCHASER AT THE TIME OF SALE.

(B) A SELLER MAY, AT ITS DISCRETION, OFFER A SUBSTITUTE TO A MANUFACTURER'S REFUND OR REBATE TO THE PURCHASER. IN SUCH A CASE, SUCH A SUBSTITUTE OFFER SHALL BE DEEMED A SUBSTITUTE REFUND OR REBATE IN FULL SATISFACTION OF THE PROVISIONS OF THIS ARTICLE: (I) WHEN AUTHORIZED BY THE MANUFACTURER, OR (II) IF ACCEPTED BY THE PURCHASER.

S 679-A. PENALTIES. (A) ANY PERSON, FIRM, CORPORATION OR ASSOCIATION VIOLATING A PROVISION OF SECTION SIX HUNDRED SEVENTY-EIGHT OR SIX HUNDRED SEVENTY-NINE OF THIS ARTICLE SHALL BE SUBJECT TO A CIVIL PENALTY OF NOT LESS THAN ONE HUNDRED DOLLARS AND NOT MORE THAN ONE THOUSAND DOLLARS.

(B) FOR THE PURPOSES OF THIS SECTION, THE UNLAWFUL DISPLAY OF A GROUP OF IDENTICAL REFUND OR REBATE FORMS SHALL CONSTITUTE A SINGLE VIOLATION, AND THE UNLAWFUL DISPLAY OF DIFFERENT GROUPS OF IDENTICAL REFUND OR REBATE FORMS SHALL CONSTITUTE SEPARATE VIOLATIONS FOR EACH GROUP SO DISPLAYED.

S 679-B. AFFIRMATIVE DEFENSES. IT SHALL BE AN AFFIRMATIVE DEFENSE TO A VIOLATION OF SECTION SIX HUNDRED SEVENTY-NINE OF THIS ARTICLE IF: (I) THE SELLER CAN DEMONSTRATE THAT HE OR SHE HAD AN ADEQUATE NUMBER OF REFUND OR REBATE FORMS SUFFICIENT TO MEET REASONABLY ANTICIPATED NEEDS FOR SUCH FORMS DURING THE PARTICULAR OFFER; OR (II) THE MANUFACTURER CAN DEMONSTRATE THAT AN ADEQUATE NUMBER OF REFUND OR REBATE FORMS SUFFICIENT TO MEET REASONABLY ANTICIPATED NEEDS FOR SUCH FORMS DURING THE PARTICULAR OFFER WAS MADE AVAILABLE TO SELLERS PARTICIPATING IN SUCH OFFER.

S 2. This act shall take effect on the sixtieth day after it shall have become a law.