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

3656

2009-2010 Regular Sessions

I N A S S E M B L Y

January 27, 2009

Introduced by M. of A. ROSENTHAL, LATIMER, ROBINSON, PAULIN, BENJAMIN, GREENE, SEMINERIO, CAHILL, REILLY, CARROZZA, MAISEL, DINOWITZ, MARKEY, FIELDS, CLARK, JAFFEE -- Multi-Sponsored by -- M. of A. BOYLAND, COLTON, ESPAILLAT, GABRYSZAK, GLICK, JEFFRIES, KOON, LANCMAN, MAYER-SOHN, WEISENBERG -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to prohibiting the sale of expired goods

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 section 349-d to read as follows:

S 349-D. PROHIBITIONS AGAINST THE SALE OF EXPIRED GOODS. 1. FOR THE PURPOSE OF THIS SECTION:

(A) "RETAIL" OR "RETAIL SALE" SHALL MEAN A SALE TO A CONSUMER OR TO ANY PERSON FOR ANY PURPOSE OTHER THAN FOR RESALE.

(B) "SELL" OR "OFFER TO SELL" SHALL MEAN THE ACT OF SELLING, DISPLAYING OR OFFERING GOODS FOR RETAIL SALE.

(C) "MERCHANT" SHALL MEAN A PERSON WHO DEALS IN GOODS OF THE KIND OR OTHERWISE BY HIS OR HER OCCUPATION HOLDS HIMSELF OR HERSELF OUT AS HAVING KNOWLEDGE OR SKILL PARTICULAR TO THE PRACTICES OR GOODS INVOLVED IN THE TRANSACTION OR TO WHOM SUCH KNOWLEDGE OR SKILL MAY BE ATTRIBUTED BY HIS OR HER EMPLOYMENT OF AN AGENT OR BROKER OR OTHER INTERMEDIARY WHO BY HIS OR HER OCCUPATION HOLDS HIMSELF OR HERSELF OUT AS HAVING SUCH KNOWLEDGE OR SKILL.

(D) "EXPIRATION DATE" SHALL MEAN THE DATE LISTED ON THE ITEM AFTER WHICH THE GOODS DECLINE IN QUALITY, FRESHNESS, EFFICACY OR UTILITY.

2. (A) NO MERCHANT SHALL OFFER GOODS FOR RETAIL SALE AFTER THEIR EXPIRATION DATE, UNLESS SUCH GOODS ARE SEGREGATED, CLEARLY AND CONSPICUOUSLY MARKED, AND OFFERED AT A REDUCTION FROM THE CUSTOMARY SELLING PRICE AT WHICH IDENTICAL UNEXPIRED GOODS ARE OFFERED FOR SALE.

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

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(B) OFFERING GOODS FOR SALE AFTER THEIR EXPIRATION DATE SHALL BE CONSIDERED A VIOLATION OF THE WARRANTY OF MERCHANTABILITY AND A MATERIALLY DECEPTIVE ACT, IN VIOLATION OF SECTION THREE HUNDRED FORTY-NINE OF THIS ARTICLE.

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