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

7707

2009-2010 Regular Sessions

I N A S S E M B L Y

April 22, 2009

Introduced by M. of A. P. RIVERA, V. LOPEZ, COLTON -- Multi-Sponsored by -- M. of A. DINOWITZ, GOTTFRIED, WEINSTEIN -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to warranties on consumer products

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 399-ff to read as follows:

S 399-FF. WARRANTIES ON CONSUMER PRODUCTS. 1. AS USED IN THIS SECTION:

(A) "PRODUCT" MEANS ANY GOODS SOLD OR LEASED WHERE THE BUYER OR LESSEE IS A NATURAL PERSON AND THE GOODS ARE PURCHASED OR LEASED PRIMARILY FOR PERSONAL, FAMILY OR HOUSEHOLD PURPOSES, BUT SHALL NOT INCLUDE ANY NEW OR USED MOTOR VEHICLE SUBJECT TO THE PROVISIONS OF SECTION ONE HUNDRED NINETY-EIGHT-A OR ONE HUNDRED NINETY-EIGHT-B OF THIS CHAPTER.

(B) "LEASE" MEANS A LEASE OF GOODS WHICH IS FOR A TERM EXCEEDING FOUR MONTHS.

2. IF A NEW PRODUCT DOES NOT CONFORM TO ALL APPLICABLE EXPRESS WARRANTIES, AND THE CONSUMER REPORTS THE NONCONFORMITY TO THE SELLER, MANUFACTURER OR ITS AUTHORIZED DEALER DURING THE TERM OF SUCH EXPRESS WARRANTIES, THE SELLER, MANUFACTURER OR ITS AUTHORIZED DEALER SHALL MAKE SUCH REPAIRS AS ARE NECESSARY TO CONFORM THE PRODUCT TO SUCH EXPRESS WARRANTIES, NOTWITHSTANDING THE FACT THAT SUCH REPAIRS ARE MADE AFTER THE EXPIRATION OF SUCH TERM.

3. IF THE SELLER, MANUFACTURER OR AUTHORIZED DEALERS ARE UNABLE TO CONFORM THE PRODUCT TO ANY APPLICABLE EXPRESS WARRANTY BY REPAIRING OR CORRECTING ANY DEFECT OR CONDITION WHICH SUBSTANTIALLY IMPAIRS THE USE AND VALUE OF THE PRODUCT TO THE CONSUMER AFTER A REASONABLE NUMBER OF ATTEMPTS, THE SELLER AT THE OPTION OF THE CONSUMER, SHALL REPLACE THE PRODUCT WITH A NEW PRODUCT OR ACCEPT RETURN OF THE PRODUCT FROM THE CONSUMER AND REFUND TO THE CONSUMER THE FULL PURCHASE PRICE INCLUDING

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

LBD10687-01-9

ALL COLLATERAL CHARGES. REFUNDS SHALL BE MADE TO THE CONSUMER, AND THE LIENHOLDER IF ANY, AS THEIR INTERESTS MAY APPEAR. IT SHALL BE AN AFFIRMATIVE DEFENSE TO ANY CLAIM UNDER THIS SECTION (A) THAT THE ALLEGED NONCONFORMITY DOES NOT SUBSTANTIALLY IMPAIR SUCH USE AND VALUE OR (B) THAT THE NONCONFORMITY IS THE RESULT OF ABUSE, NEGLECT OR UNAUTHORIZED MODIFICATIONS OR ALTERATIONS OF A PRODUCT BY A CONSUMER.

4. IT SHALL BE PRESUMED THAT A REASONABLE NUMBER OF ATTEMPTS HAVE BEEN UNDERTAKEN TO CONFORM A PRODUCT TO THE APPLICABLE EXPRESS WARRANTIES, IF (A) THE SAME NONCONFORMITY HAS BEEN SUBJECT TO REPAIR FOUR OR MORE TIMES BY THE SELLER, MANUFACTURER OR AUTHORIZED DEALERS WITHIN THE EXPRESS WARRANTY TERM, BUT SUCH NONCONFORMITY CONTINUES TO EXIST OR (B) THE PRODUCT IS OUT OF SERVICE BY REASON OF REPAIR FOR A CUMULATIVE TOTAL OF THIRTY OR MORE CALENDAR DAYS DURING SUCH TERM. THE TERM OF AN EXPRESS WARRANTY, AND SUCH THIRTY-DAY PERIOD SHALL BE EXTENDED BY ANY PERIOD OF TIME DURING WHICH REPAIR SERVICES ARE NOT AVAILABLE TO THE CONSUMER BECAUSE OF WAR, INVASION, STRIKE, FIRE, FLOOD OR OTHER NATURAL DISASTER.

5. NOTWITHSTANDING ANY OTHER PROVISION OF LAW, WITH RESPECT TO ANY CONSUMER TRANSACTION INVOLVING THE SALE OR LEASE OF NEW GOODS COSTING MORE THAN TWO HUNDRED FIFTY DOLLARS, NO MANUFACTURER, SELLER OR LESSOR SHALL:

(A) EXCLUDE, MODIFY OR OTHERWISE LIMIT ANY IMPLIED WARRANTY OF MERCHANTABILITY, AS DEFINED IN SECTION 2-314 OF THE UNIFORM COMMERCIAL CODE, OR FITNESS FOR A PARTICULAR PURPOSE, AS DEFINED IN SECTION 2-315 OF SUCH CODE; OR

(B) EXCLUDE, MODIFY OR OTHERWISE LIMIT ANY REMEDY PROVIDED BY LAW, INCLUDING THE MEASURE OF DAMAGES AVAILABLE, FOR A BREACH OF ANY SUCH IMPLIED WARRANTY.

6. ANY DISCLAIMER OR LIMITATION IN VIOLATION OF THIS SECTION SHALL BE DEEMED CONTRARY TO PUBLIC POLICY AND SHALL BE UNENFORCEABLE AND VOID.

7. NOTWITHSTANDING THE OTHER PROVISIONS OF THIS SECTION, WHERE THE GOODS TO BE SOLD ARE CONSPICUOUSLY IDENTIFIED AS "DAMAGED", "SECONDS", "IRREGULAR", "FLOOR MODELS", "DEMONSTRATORS" OR WORDS TO THAT EFFECT, AND ARE OFFERED FOR SALE AT A REDUCTION FROM THEIR BONA FIDE SELLING PRICE, A MANUFACTURER, SELLER OR LESSOR MAY:

(A) SELL THE GOODS "AS IS", WITH NO WARRANTIES EXPRESS OR IMPLIED; OR

(B) SELL THE GOODS WITH AN EXPRESS WARRANTY BUT LIMIT THE IMPLIED WARRANTY WITH RESPECT TO THE PARTICULAR IDENTIFIED DEFECT OR DEFECTS.

8. THE PURCHASER OF GOODS IN A CONSUMER TRANSACTION, AND ANY SUBSEQUENT TRANSFEREE, MAY BRING AN ACTION FOR BREACH OF WARRANTY AGAINST THE MANUFACTURER, DISTRIBUTOR, SELLER OR LESSOR OF THE GOODS. LACK OF PRIVITY BETWEEN THE CONSUMER AND THE PARTY AGAINST WHOM THE ACTION IS BROUGHT SHALL NOT BE A DEFENSE TO SUCH ACTION.

9. IN THE EVENT AN ACTION IS BROUGHT AGAINST A RETAIL SELLER, THAT SELLER MAY IMPLEAD THE DISTRIBUTOR AND/OR MANUFACTURER IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES, AND THE IMPLEADED PARTY SHALL BEAR SUCH LIABILITY AS THE COURT MAY FIND.

10. IF A CONSUMER PREVAILS IN AN ACTION BASED UPON BREACH OF WARRANTY, EXCEPT FOR PERSONAL INJURY ACTIONS, HE OR SHE MAY BE ALLOWED BY THE COURT IN ITS DISCRETION TO RECOVER AS PART OF THE JUDGMENT A SUM EQUAL TO THE AGGREGATE AMOUNT OF COST AND EXPENSES INCLUDING REASONABLE ATTORNEYS' FEES.

11. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO LIMIT OR ABRIDGE ANY STATUTORY OR OTHER RIGHT OR REMEDY OF A CONSUMER AT LAW OR IN EQUITY.

12. WHENEVER THERE SHALL BE A VIOLATION OF THIS SECTION, AN APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION TO ISSUE

AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH VIOLATIONS; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS SECTION, AN INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITUTION. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES.

13. IF A SELLER HAS ESTABLISHED OR IS A PARTICIPANT IN AN INFORMAL DISPUTE SETTLEMENT PROCEDURE WHICH COMPLIES IN ALL RESPECTS WITH THE PROVISIONS OF PART SEVEN HUNDRED THREE OF TITLE SIXTEEN OF THE CODE OF FEDERAL REGULATIONS THE PROVISIONS OF SUBDIVISION THREE OF THIS SECTION CONCERNING REFUNDS OR REPLACEMENT SHALL NOT APPLY TO ANY CONSUMER WHO HAS NOT FIRST RESORTED TO SUCH PROCEDURE.

14. A SELLER, MANUFACTURER OR ITS AUTHORIZED DEALER SHALL CAUSE A NOTICE TO BE GIVEN TO THE ORIGINAL PURCHASER OF A NEW PRODUCT OUTLINING THE PROVISIONS OF THIS SECTION AND THE RIGHTS AND REMEDIES PROVIDED THEREUNDER.

S 2. This act shall take effect on the one hundred twentieth day after it shall have become a law, and shall apply to all products sold on or after such date.