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

205

2009-2010 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2009

Introduced by Sen. KRUGER -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to notification of recalled 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 394-f to read as follows:

S 394-F. RECALLED PRODUCTS. 1. FOR PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THESE MEANINGS:

(A) "SELLER" MEANS A PERSON, FIRM, CORPORATION, OR OTHER LEGAL ENTITY ENGAGED IN THE SALE, DISPLAY OR OFFERING FOR SALE, OF PRODUCTS OR MERCHANDISE AT RETAIL, INCLUDING MAIL ORDER BUSINESSES AS DEFINED IN SECTION THREE HUNDRED NINETY-SIX-M OF THIS ARTICLE AND TELEPHONE SALES BUSINESSES, AS DEFINED IN SECTION FOUR HUNDRED FORTY-ONE OF THE PERSONAL PROPERTY LAW.

(B) "MANUFACTURER" MEANS A PERSON, FIRM OR CORPORATION ENGAGED IN MANUFACTURING, CONVERTING, PROCESSING, ALTERING, REPAIRING, FINISHING, OR PREPARING FOR SALE, OR IMPORTING FOR DISTRIBUTION ANY PRODUCT IN THIS STATE.

(C) "DISTRIBUTOR" MEANS A PERSON, FIRM, CORPORATION, OR OTHER LEGAL ENTITY THAT SELLS OR DISTRIBUTES ANY PRODUCT IN THIS STATE.

(D) "CONSUMER" MEANS ANY NATURAL PERSON WHO PURCHASES A PRODUCT THAT HAS BEEN RECALLED.

(E) "RECALL OR RECALLED" SHALL MEAN A CORRECTIVE OR REMEDIAL ACTION INVOLVING THE REPAIR OR REPLACEMENT OF A PRODUCT OR THE REFUND OF THE PURCHASE PRICE OF A PRODUCT SOLD BY A MANUFACTURER.

2. WITHIN THIRTY DAYS OF A SELLER'S RECEIVING NOTIFICATION OF A RECALL OR NOTICE OF A DEFECTIVE OR HAZARDOUS PRODUCT FROM A MANUFACTURER, DISTRIBUTOR, OR BY A FEDERAL OR STATE AGENCY, SUCH SELLER SHALL PROMI-

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

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NENTLY AND CONSPICUOUSLY DISPLAY SUCH NOTIFICATION IN AN AREA READILY ACCESSIBLE TO THE PUBLIC, ADJACENT TO THE MAIN OR MAJOR ENTRANCE OF SUCH SELLER'S PREMISES, FOR AT LEAST NINETY DAYS AFTER RECEIPT THEREOF. SUCH DISPLAY SHALL ALSO BE REQUIRED WITH RESPECT TO ANY RECALL NOTICE, OR NOTICE OF DEFECTS OR HAZARDS, VOLUNTARILY INITIATED OR ISSUED BY SUCH SELLER.

3. SUCH NOTIFICATION AS REQUIRED BY SUBDIVISION TWO OF THIS SECTION SHALL INCLUDE INFORMATION IDENTIFYING THE RECALLED PRODUCT INCLUDING, BUT NOT LIMITED TO, ANY SERIAL, MODEL, LOT OR CODE NUMBER OF THE PRODUCT, INFORMATION DESCRIBING THE NATURE OF THE PROBLEM TO WARRANT THE RECALL AND INFORMATION CONCERNING REDEMPTION.

4. IN ADDITION TO THE REQUIREMENTS DESCRIBED IN SUBDIVISIONS TWO AND THREE OF THIS SECTION, WITHIN THIRTY DAYS OF A MANUFACTURER'S OR DISTRIBUTOR'S RECEIVING OR DETERMINING THAT NOTIFICATION OF A RECALL OR NOTICE OF A DEFECTIVE OR HAZARDOUS PRODUCT MUST BE MADE, SUCH NOTICE SHALL BE MAILED BY SUCH MANUFACTURER OR DISTRIBUTOR TO ALL CONSUMERS OF SUCH RECALLED PRODUCT OF WHOM THE MANUFACTURER OR DISTRIBUTOR IS AWARE. THOSE WHOM THE MANUFACTURER OR DISTRIBUTOR IS AWARE OF SHALL INCLUDE THOSE CONSUMERS WHO EITHER FILED A WARRANTY REGISTRATION CARD, OWNER'S REGISTRATION CARD, OR OTHER SIMILAR FORM. THE NOTICE SHALL BE SENT BY FIRST CLASS MAIL AND SHALL HAVE "SAFETY RECALL NOTICE" PRINTED IN BOLD TYPE ON THE OUTSIDE OF THE ENVELOPE.

5. AFTER RECEIPT OF A RECALL NOTICE OR NOTICE OF A DEFECTIVE OR HAZARDOUS PRODUCT FROM A MANUFACTURER OR DISTRIBUTOR OR FROM A FEDERAL OR STATE AGENCY, A MAIL ORDER BUSINESS AS DEFINED IN SECTION THREE HUNDRED NINETY-SIX-M OF THIS ARTICLE, SHALL, IN BOLD TYPE, PROMINENTLY DISCLOSE THE SAME TO CONSUMERS IN AT LEAST TWO SUBSEQUENT ADVERTISEMENTS, CATALOGS, CIRCULARS OR PROMOTIONAL MATERIALS. A TELEPHONE SALES BUSINESS AS DEFINED IN SECTION FOUR HUNDRED FORTY-ONE OF THE PERSONAL PROPERTY LAW SHALL, WITHIN THIRTY DAYS AFTER RECEIPT OF A RECALL NOTICE OR NOTICE OF A DEFECTIVE OR HAZARDOUS PRODUCT, NOTIFY THE CONSUMER OF THE SAME BY FIRST CLASS MAIL. SUCH NOTICE MAY BE COMBINED WITH ANY OTHER COMMUNICATION PROVIDED THAT THE NOTICE IS PROMINENT AND CONSPICUOUS AND IS HEADED WITH "SAFETY RECALL NOTICE" IN BOLD TYPE.

6. WHENEVER THERE SHALL BE A VIOLATION OF THIS SECTION, 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 BY A SPECIAL PROCEEDING 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, THE 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. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS SECTION HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN FIVE HUNDRED DOLLARS FOR EACH VIOLATION. THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN ONE THOUSAND DOLLARS FOR EACH VIOLATION IF THE VIOLATION IS KNOWING AND WILLFUL. 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.

7. ANY PERSON WHO HAS BEEN INJURED BY REASON OF ANY VIOLATION OF THIS SECTION MAY BRING AN ACTION IN HIS OR HER OWN NAME TO RECOVER HIS OR HER ACTUAL DAMAGES OR ONE HUNDRED FIFTY DOLLARS, WHICHEVER IS GREATER. THE COURT MAY, IN ITS DISCRETION, INCREASE THE AWARD OF DAMAGES TO AN AMOUNT NOT TO EXCEED THREE TIMES THE ACTUAL DAMAGES UP TO ONE THOUSAND DOLLARS, IF THE COURT FINDS THE DEFENDANT WILLFULLY OR KNOWINGLY VIOLATED THIS SECTION. THE COURT MAY AWARD REASONABLE ATTORNEYS FEES TO A PREVAILING PLAINTIFF.

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