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

443

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 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 39-DDD to read as follows:

ARTICLE 39-DDD

HONEST USE OF REFUND AND REBATE FORMS ACT

SECTION 898. SHORT TITLE.

898-A. DEFINITIONS.

898-B. DISPLAY OF EXPIRED MANUFACTURER'S REFUND AND REBATE FORMS PROHIBITED.

898-C. AVAILABILITY OF MANUFACTURER'S REFUND OR REBATE FORMS.

898-D. PENALTIES.

898-E. AFFIRMATIVE DEFENSES.

S 898. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "HONEST USE OF REFUND AND REBATE FORMS ACT".

S 898-A. 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 SPECIFIC 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 898-B. DISPLAY OF EXPIRED MANUFACTURER'S REFUND AND REBATE FORMS PROHIBITED. (A) IT SHALL BE UNLAWFUL FOR ANY PERSON, FIRM, PARTNERSHIP,

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

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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 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 FORMS POSTED ON A BULLETIN BOARD NEAR A STORE ENTRANCE, PROVIDED THAT SUCH PERSON, FIRM, PARTNERSHIP, CORPORATION OR ASSOCIATION CONSPICUOUSLY POSTS AND MAINTAINS A PROMINENT SIGN ADJACENT TO THE BULLETIN BOARD, CONTAINING THE FOLLOWING LEGEND IN CAPITAL LETTERS IN BOLD PRINT WITH A CONTRASTING BACKGROUND OF AT LEAST EIGHT-POINT TYPE: "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 ALL REFUND OR REBATE OFFERS POSTED ON SUCH A BULLETIN BOARD.

(C) THE PROVISIONS OF SUBDIVISION (A) OF THIS SECTION SHALL NOT APPLY TO REFUND OR REBATE FORMS WHICH 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, PROVIDED THAT THE AVAILABILITY OF A REFUND OR REBATE FORM IS NOT OTHERWISE ADVERTISED ON THE PACKAGE. IF THE AVAILABILITY OF A REFUND OR REBATE FORM IS OTHERWISE ADVERTISED ON THE PACKAGE, THE PROVISIONS OF SUBDIVISION (A) OF THIS SECTION SHALL APPLY; PROVIDED, HOWEVER, THAT WHEN THE REFUND OR REBATE FORMS PRINTED ON OR CONTAINED WHOLLY WITHIN PACKAGES HAVE EXPIRED, A RETAILER MAY POST A SHELF SIGN OR SIGNS AS CLOSE AS POSSIBLE TO THE ITEM OR ITEMS INDICATING THAT SUCH REFUND OR REBATE FORMS HAVE EXPIRED. SUCH RETAILER SHALL NOT BE HELD LIABLE FOR THE PENALTIES PRESCRIBED IN SECTION EIGHT HUNDRED NINETY-EIGHT-D OF THIS ARTICLE IF SUCH SIGN OR SIGNS HAVE BEEN POSTED IN CONFORMANCE WITH THIS SECTION.

S 898-C. 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) THE SELLER MAY, AT ITS DISCRETION, OFFER A SUBSTITUTE TO THE PURCHASER EXCEPT THAT THE SUBSTITUTE SHALL NOT BE A SUBSTITUTE REFUND OR REBATE FORM UNLESS THE USE OF SUCH FORMS IS AUTHORIZED BY THE MANUFACTURER. IF THE SUBSTITUTE IS SATISFACTORY TO THE PURCHASER, THE SELLER'S OBLIGATIONS PURSUANT TO THE PROVISIONS OF THIS ARTICLE SHALL BE DEEMED TO BE FULFILLED.

S 898-D. PENALTIES. (A) ANY VIOLATION OF A PROVISION OF SECTION EIGHT HUNDRED NINETY-EIGHT-B OR EIGHT HUNDRED NINETY-EIGHT-C 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 BUT A SINGLE VIOLATION, AND THE UNLAWFUL DISPLAY OF DIFFERENT GROUPS OF IDENTICAL REFUND OR REBATE FORMS SHALL CONSTITUTE A SEPARATE VIOLATION FOR EACH GROUP SO DISPLAYED.

S 898-E. AFFIRMATIVE DEFENSES. IT SHALL BE AN AFFIRMATIVE DEFENSE TO A VIOLATION OF SECTION EIGHT HUNDRED NINETY-EIGHT-C OF THIS ARTICLE IF: (A) 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 (B) 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.