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

899

2009-2010 Regular Sessions

I N S E N A T E

January 21, 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 regulating service contracts issued by mercantile establishments

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 218-b to read as follows:

S 218-B. SERVICE CONTRACTS. 1. NO RETAIL MERCANTILE ESTABLISHMENT SHALL SELL OR OFFER FOR SALE LIFETIME SERVICE CONTRACTS ON ANY GOODS, WARES OR MERCHANDISE OFFERED TO THE PUBLIC EXCEPT AS AUTHORIZED IN THIS SECTION.

2. FOR ANY SERVICE CONTRACT OFFERED BY A RETAIL MERCANTILE ESTABLISHMENT ON ANY PRODUCT SOLD, PROPER INSURANCE SHALL BE PURCHASED FOR THE CORRESPONDING LENGTH OF SAID CONTRACT TO ASSURE THE PURCHASER THAT THE TERMS OF SAID SERVICE CONTRACT SHALL BE CARRIED OUT IN THE CASE THAT THE RETAIL MERCANTILE ESTABLISHMENT DECLARES BANKRUPTCY OR INSOLVENCY OR IS UNABLE TO PERFORM THE TERMS OF SUCH CONTRACT DUE TO ANY OTHER REASON. IF, HOWEVER, INSURANCE IS NOT AVAILABLE TO THE RETAIL MERCANTILE ESTABLISHMENT AT A REASONABLE BUSINESS RATE, SAID ESTABLISHMENT SHALL HAVE THE OPTION TO ESTABLISH INTEREST BEARING ESCROW ACCOUNTS IN WHICH MONEY PAID BY THE PURCHASER FOR SERVICE CONTRACTS SHALL BE DEPOSITED.

3. THE RETAIL MERCANTILE ESTABLISHMENT MAY WITHDRAW TEN PERCENT OF THE MONEY DEPOSITED FOR EACH SUCH CONTRACT EACH YEAR WHICH SHALL BECOME THE PROPERTY OF THE ESTABLISHMENT. AT THE TIME WHEN SUCH ESTABLISHMENT IS ENTITLED TO THE FINAL TEN PERCENT OF THE MONEY PAID ON SUCH CONTRACT OR AGREEMENT, IT MAY ALSO WITHDRAW THE INTEREST EARNED ON SUCH MONEY.

4. IF SUCH RETAIL MERCANTILE ESTABLISHMENT IS UNABLE TO PERFORM THE TERMS OF SUCH CONTRACT OR AGREEMENT BECAUSE OF BANKRUPTCY OR INSOLVENCY OR FOR ANY OTHER REASON, OR IF IT IS DETERMINED THAT SUCH ESTABLISHMENT HAS BREACHED THE TERMS OF SUCH CONTRACT OR AGREEMENT, THE PURCHASER OF

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

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THE PRODUCT WHO HAS DEPOSITED THE MONEY PURSUANT TO SUCH CONTRACT OR AGREEMENT SHALL BE ENTITLED TO THE BALANCE OF HIS OR HER DEPOSIT PLUS ACCUMULATED INTEREST THEREON IN THE ESCROW ACCOUNT, PROVIDED, HOWEVER, THIS PROVISION SHALL NOT LIMIT ANY RECOVERY IN A CLAIM OR ACTION BY THE PURCHASER AGAINST SUCH ESTABLISHMENT BASED ON THE BREACH OF THE TERMS OF THE CONTRACT OR AGREEMENT BY SUCH ESTABLISHMENT.

5. THE SERVICE CONTRACT SHALL INCLUDE WITHIN ITS PROVISIONS LANGUAGE NOTIFYING THE PURCHASER THAT PROPER INSURANCE HAS BEEN PURCHASED OR THAT AN ESCROW ACCOUNT HAS BEEN ESTABLISHED PURSUANT TO THIS SECTION.

6. THE RETAIL MERCANTILE ESTABLISHMENT SHALL DEPOSIT ANY MONEY PAID AS A DOWN PAYMENT AGAINST THE FUTURE DELIVERY OF A PRODUCT INTO AN ESCROW ACCOUNT. WHENEVER SUCH RETAIL MERCANTILE ESTABLISHMENT IS UNABLE TO DELIVER SUCH PRODUCT TO THE PURCHASER BECAUSE OF ITS BANKRUPTCY OR INSOLVENCY OR FOR ANY OTHER REASON, THE PURCHASER OF THE PRODUCT WHO HAS DEPOSITED THE MONEY SHALL BE ENTITLED TO THE BALANCE OF HIS OR HER DEPOSIT PLUS ACCUMULATED INTEREST THEREON PROVIDED, HOWEVER, THIS PROVISION SHALL NOT LIMIT ANY RECOVERY IN A CLAIM OR ACTION BY THE PURCHASER AGAINST SUCH ESTABLISHMENT BASED ON THE BREACH OF THE TERMS OF THIS SECTION. THE RETAIL MERCANTILE ESTABLISHMENT SHALL WITHDRAW FUNDS IN THE AMOUNT EQUAL TO THE DOWN PAYMENT FROM THE ESCROW ACCOUNT AT THE TIME THE PRODUCT IS DELIVERED TO THE PURCHASER. THE RETAIL MERCANTILE ESTABLISHMENT SHALL INFORM THE PURCHASER IN WRITING THAT AN ESCROW ACCOUNT HAS BEEN ESTABLISHED.

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