

10561

I N A S S E M B L Y

April 7, 2010

Introduced by M. of A. GALEF -- read once and referred to the Committee on Consumer Affairs and 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:

1 Section 1. The general business law is amended by adding a new article
2 32-A to read as follows:

3 ARTICLE 32-A

4 HONEST USE OF REFUND AND REBATE FORMS ACT

5 SECTION 676. SHORT TITLE.

6 677. DEFINITIONS.

7 678. DISPLAY OF EXPIRED MANUFACTURER'S REFUND AND REBATE FORMS
8 PROHIBITED.

9 679. AVAILABILITY OF MANUFACTURER'S REFUND OR REBATE FORMS.

10 679-A. PENALTIES.

11 679-B. AFFIRMATIVE DEFENSES.

12 S 676. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS
13 THE "HONEST USE OF REFUND AND REBATE FORMS ACT".

14 S 677. DEFINITIONS. WHENEVER USED IN THIS ARTICLE:

15 (A) "MANUFACTURER'S REFUND" SHALL MEAN A RETURN OF THE TOTAL PURCHASE
16 PRICE BY A MANUFACTURER TO A PURCHASER OF AN ITEM.

17 (B) "MANUFACTURER'S REBATE" SHALL MEAN A RETURN BY A MANUFACTURER TO A
18 PURCHASER OF AN ITEM OF ANY PORTION OF THE SALES PRICE OR OF A SPECIFIED
19 MONETARY AMOUNT.

20 (C) "FORM" SHALL MEAN THE AUTHORIZED FORM REQUIRED TO BE COMPLETED BY
21 THE PURCHASER OF AN ITEM AS A PREREQUISITE TO A MANUFACTURER'S REFUND OR
22 REBATE.

23 S 678. DISPLAY OF EXPIRED MANUFACTURER'S REFUND AND REBATE FORMS
24 PROHIBITED. (A) IT SHALL BE UNLAWFUL FOR ANY PERSON, FIRM, PARTNERSHIP,
25 CORPORATION OR ASSOCIATION: (I) TO CAUSE TO BE ADVERTISED BY MEANS OF A
26 NEWSPAPER ADVERTISEMENT, CIRCULAR, TELEVISION OR RADIO ANNOUNCEMENT,
27 OFF-THE-PREMISES PROMOTION OR OTHERWISE, THE AVAILABILITY OF; OR (II) TO
28 DISPLAY, PROMOTE OR DISTRIBUTE WITHIN THE PREMISES OF A RETAIL STORE OR

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

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1 OTHERWISE MAKE AVAILABLE THEREIN ANY MANUFACTURER'S REFUND OR REBATE
2 FORM WHICH HAS EXPIRED AND WHICH WILL NOT BE HONORED BY THE MANUFACTURER
3 AS A RESULT OF SUCH EXPIRATION.

4 (B) THE PROVISIONS OF SUBDIVISION (A) OF THIS SECTION SHALL NOT APPLY
5 TO PERSONS, FIRMS, CORPORATIONS OR ASSOCIATIONS WHICH POST MANUFACTUR-
6 ER'S REFUND OR REBATE FORMS ON A BULLETIN BOARD NEAR A STORE ENTRANCE,
7 PROVIDED THAT SUCH BULLETIN BOARD IS MAINTAINED WITH A PROMINENT SIGN
8 CONSPICUOUSLY POSTED ON OR ADJACENT TO THE BULLETIN BOARD, CONTAINING
9 SUBSTANTIALLY THE FOLLOWING LEGEND IN CLEAR AND CONSPICUOUS PRINT:
10 "PLEASE NOTE: THIS STORE IS NOT RESPONSIBLE FOR EXPIRED REFUND OR REBATE
11 OFFERS POSTED HERE. PLEASE CHECK THE EXPIRATION DATE ON YOUR FORM." IN
12 THE ABSENCE OF THE REQUIRED SIGN, THE PROVISIONS OF SUBDIVISION (A) OF
13 THIS SECTION SHALL APPLY TO ANY PERSON, FIRM, CORPORATION OR ASSOCIATION
14 WHICH MAINTAINS SUCH A BULLETIN BOARD.

15 (C) PERSONS, FIRMS, CORPORATIONS OR ASSOCIATIONS SHALL NOT BE HELD TO
16 THE PROVISIONS OF SUBDIVISION (A) OF THIS SECTION WHEN MANUFACTURER'S
17 REFUNDS OR REBATES ARE PRINTED ON OR CONTAINED WHOLLY WITHIN PACKAGES,
18 OR WHICH ARE CONTAINED ON THE INSIDE OF PRODUCT LABELS OR OTHERWISE ARE
19 NOT READILY VISIBLE TO THE CONSUMER.

20 S 679. AVAILABILITY OF MANUFACTURER'S REFUND OR REBATE FORMS. (A) ANY
21 PERSON, FIRM, PARTNERSHIP, CORPORATION OR ASSOCIATION: (I) WHICH CAUSES
22 TO BE ADVERTISED BY MEANS OF A NEWSPAPER ADVERTISEMENT, CIRCULAR, TELE-
23 VISION OR RADIO ANNOUNCEMENT OR OFF-THE-PREMISES PROMOTION OR OTHERWISE,
24 THE AVAILABILITY OF; OR (II) WHICH DISPLAYS, PROMOTES OR DISTRIBUTES
25 WITHIN THE PREMISES OF A RETAIL STORE OR OTHERWISE MAKES AVAILABLE THER-
26 EIN A MANUFACTURER'S REFUND OR REBATE FORM SHALL MAKE AVAILABLE THE
27 APPROPRIATE MANUFACTURER'S REFUND OR REBATE FORM TO THE PURCHASER AT THE
28 TIME OF SALE.

29 (B) A SELLER MAY, AT ITS DISCRETION, OFFER A SUBSTITUTE TO A MANUFAC-
30 Turer's REFUND OR REBATE TO THE PURCHASER. IN SUCH A CASE, SUCH A
31 SUBSTITUTE OFFER SHALL BE DEEMED A SUBSTITUTE REFUND OR REBATE IN FULL
32 SATISFACTION OF THE PROVISIONS OF THIS ARTICLE: (I) WHEN AUTHORIZED BY
33 THE MANUFACTURER, OR (II) IF ACCEPTED BY THE PURCHASER.

34 S 679-A. PENALTIES. (A) ANY PERSON, FIRM, CORPORATION OR ASSOCIATION
35 VIOLATING A PROVISION OF SECTION SIX HUNDRED SEVENTY-EIGHT OR SIX
36 HUNDRED SEVENTY-NINE OF THIS ARTICLE SHALL BE SUBJECT TO A CIVIL PENALTY
37 OF NOT LESS THAN ONE HUNDRED DOLLARS AND NOT MORE THAN ONE THOUSAND
38 DOLLARS.

39 (B) FOR THE PURPOSES OF THIS SECTION, THE UNLAWFUL DISPLAY OF A GROUP
40 OF IDENTICAL REFUND OR REBATE FORMS SHALL CONSTITUTE A SINGLE VIOLATION,
41 AND THE UNLAWFUL DISPLAY OF DIFFERENT GROUPS OF IDENTICAL REFUND OR
42 REBATE FORMS SHALL CONSTITUTE SEPARATE VIOLATIONS FOR EACH GROUP SO
43 DISPLAYED.

44 S 679-B. AFFIRMATIVE DEFENSES. IT SHALL BE AN AFFIRMATIVE DEFENSE TO A
45 VIOLATION OF SECTION SIX HUNDRED SEVENTY-NINE OF THIS ARTICLE IF: (I)
46 THE SELLER CAN DEMONSTRATE THAT HE OR SHE HAD AN ADEQUATE NUMBER OF
47 REFUND OR REBATE FORMS SUFFICIENT TO MEET REASONABLY ANTICIPATED NEEDS
48 FOR SUCH FORMS DURING THE PARTICULAR OFFER; OR (II) THE MANUFACTURER CAN
49 DEMONSTRATE THAT AN ADEQUATE NUMBER OF REFUND OR REBATE FORMS SUFFICIENT
50 TO MEET REASONABLY ANTICIPATED NEEDS FOR SUCH FORMS DURING THE PARTIC-
51 ULAR OFFER WAS MADE AVAILABLE TO SELLERS PARTICIPATING IN SUCH OFFER.

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