

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:

1 Section 1. The general business law is amended by adding a new section
2 394-f to read as follows:

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

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

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

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

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

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

22 2. WITHIN THIRTY DAYS OF A SELLER'S RECEIVING NOTIFICATION OF A RECALL
23 OR NOTICE OF A DEFECTIVE OR HAZARDOUS PRODUCT FROM A MANUFACTURER,
24 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.

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

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

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

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

35 6. WHENEVER THERE SHALL BE A VIOLATION OF THIS SECTION, APPLICATION
36 MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE
37 STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL
38 PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF
39 NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH
40 VIOLATIONS; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR
41 JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS SECTION, THE
42 INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE, ENJOINING AND
43 RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY
44 PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH
45 PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS
46 PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE
47 HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITU-
48 TION. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS
49 SECTION HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE
50 THAN FIVE HUNDRED DOLLARS FOR EACH VIOLATION. THE COURT MAY IMPOSE A
51 CIVIL PENALTY OF NOT MORE THAN ONE THOUSAND DOLLARS FOR EACH VIOLATION
52 IF THE VIOLATION IS KNOWING AND WILLFUL. IN CONNECTION WITH ANY SUCH
53 PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF
54 AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE SUBPOENAS IN
55 ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES.

1 7. ANY PERSON WHO HAS BEEN INJURED BY REASON OF ANY VIOLATION OF THIS
2 SECTION MAY BRING AN ACTION IN HIS OR HER OWN NAME TO RECOVER HIS OR HER
3 ACTUAL DAMAGES OR ONE HUNDRED FIFTY DOLLARS, WHICHEVER IS GREATER. THE
4 COURT MAY, IN ITS DISCRETION, INCREASE THE AWARD OF DAMAGES TO AN AMOUNT
5 NOT TO EXCEED THREE TIMES THE ACTUAL DAMAGES UP TO ONE THOUSAND DOLLARS,
6 IF THE COURT FINDS THE DEFENDANT WILLFULLY OR KNOWINGLY VIOLATED THIS
7 SECTION. THE COURT MAY AWARD REASONABLE ATTORNEYS FEES TO A PREVAILING
8 PLAINTIFF.
9 S 2. This act shall take effect on the ninetieth day after it shall
10 have become a law.