

4142

2009-2010 Regular Sessions

I N S E N A T E

April 14, 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 protecting the purchasers of defective computer equipment

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 16-A to read as follows:

3 ARTICLE 16-A
4 COMPUTER LEMON LAW

5 SECTION 266. SHORT TITLE.

6 267. DEFINITIONS.

7 268. NOTICE TO PURCHASER.

8 269. COVERAGE AND COVERAGE PERIOD.

9 269-A. RECORDS.

10 269-B. CIVIL ACTIONS.

11 269-C. ATTORNEY FEES.

12 269-D. PROHIBITED DEFENSES.

13 269-E. EXPERT WITNESS.

14 269-F. APPLICATION.

15 269-G. RIGHTS PRESERVED.

16 269-H. NON-WAIVER.

17 269-I. APPLICABILITY.

18 S 266. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS
19 THE "COMPUTER LEMON LAW".

20 S 267. DEFINITIONS. AS USED IN THIS ARTICLE:

21 (A) "BRAND NEW COMPUTER" MEANS A COMPUTER DEVICE WHICH HAS BEEN
22 RECENTLY ASSEMBLED, IS UNUSED, AND CONTAINS NO RECONDITIONED PARTS.

23 (B) "COMPUTER DEVICE" MEANS A CENTRAL PROCESSING UNIT OR TERMINAL
24 DISPLAY SCREEN, INCLUDING ALL CIRCUITRY AND CONNECTIVE DEVICES; A PRINT-
25 ER; A MODEM; A SCANNER; OR ANY OTHER DEVICE USED WITH A COMPUTER OR ANY

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

LBD11133-01-9

1 PROGRAMMING FOR A COMPUTER, WHETHER PREINSTALLED OR PURCHASED SEPARATE-
2 LY.

3 (C) "DATE OF SALE OR LEASE" MEANS THE DATE WHEN A COMPUTER DEVICE IS
4 FIRST DELIVERED TO A PURCHASER.

5 (D) "MANUFACTURER" MEANS A PERSON OR FOR-PROFIT ENTITY ENGAGED IN THE
6 BUSINESS OF MANUFACTURING OR ASSEMBLING COMPUTERS OR COMPUTER SOFTWARE
7 OR ACCESSORIES.

8 (E) "NONCONFORMITY" MEANS A DEFECT, CONDITION, OR MALFUNCTION THAT
9 IMPAIRS THE USE OF A COMPUTER DEVICE OR CAUSES IT TO OPERATE IN A MANNER
10 NOT INTENDED.

11 (F) "NOTICE" MEANS THE METHOD BY WHICH A PURCHASER ADVISES A MANUFAC-
12 Turer OF A NONCONFORMITY. NOTICE MAY BE TRANSMITTED BY ANY OF THE
13 FOLLOWING MEANS: BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT
14 REQUESTED; BY FACSIMILE TRANSMISSION; ELECTRONICALLY; BY E-MAIL; OR BY
15 ANY MEANS PROVIDED FOR IN THE MANUFACTURER'S WARRANTY OR SERVICE MATERI-
16 ALS.

17 (G) "PURCHASER" MEANS A PERSON WHO IS A RESIDENT OR TEMPORARY RESIDENT
18 OF THE STATE OF NEW YORK OR A BUSINESS ENTITY THAT HAS FEWER THAN THIRTY
19 PERSONAL COMPUTERS ACTING EITHER IN CONCERT WITH A NETWORK OR AS STAND-
20 ALONE MACHINES AND WHO OBTAINS A COMPUTER DEVICE BY LEASE, RETAIL SALE,
21 INTERNET SALE, GIFT, SPECIAL CONTRACT, OR OTHER TRANSACTION, WHETHER
22 DELIVERED OR CURRENTLY LOCATED IN THIS STATE.

23 S 268. NOTICE TO PURCHASER. (A) AT THE TIME OF SALE OR LEASE OF A
24 COMPUTER DEVICE, A PURCHASER MUST BE PROVIDED AN ACCURATE WRITTEN STATE-
25 MENT OF THE PURCHASER'S RIGHTS ESTABLISHED BY THIS ARTICLE. THE STATE-
26 MENT MUST BE PRINTED IN FOURTEEN-POINT BOLDFACE TYPE. THE MANUFACTURER
27 MUST SECURE FROM THE PURCHASER A SIGNED ACKNOWLEDGMENT THAT THE MANUFAC-
28 Turer HAS EXPLAINED TO THE PURCHASER HIS OR HER RIGHTS AND THAT THE
29 PURCHASER UNDERSTANDS THOSE RIGHTS. UNLESS A SIGNED ACKNOWLEDGMENT OF
30 RIGHTS IS SECURED, THE TIME LIMITS SPECIFIED IN SECTION TWO HUNDRED
31 SIXTY-NINE OF THIS ARTICLE MUST BE TOLLED.

32 (B) AT THE TIME OF SALE OF A COMPUTER DEVICE, THE MANUFACTURER MUST
33 CONSPICUOUSLY DISCLOSE THE NAME AND VERSION NUMBER OF ALL SOFTWARE
34 PROGRAMS OR COMBINATIONS OF PROGRAMS THAT WILL OR MAY BE LIKELY TO CAUSE
35 OPERATING PROBLEMS WITH THE COMPUTER DEVICE. IN ANY ACTION BROUGHT UNDER
36 THIS ARTICLE, WHEN THERE IS A CLAIM THAT SUCH A DISCLOSURE WAS NOT MADE,
37 THE BURDEN IS ON THE MANUFACTURER TO PROVE THAT SUCH A DISCLOSURE WAS
38 MADE.

39 S 269. COVERAGE AND COVERAGE PERIOD. (A) A PURCHASER OF A COMPUTER
40 DEVICE IS ENTITLED TO EFFECTIVE REPAIRS BY THE MANUFACTURER FOR ANY
41 NONCONFORMITY THAT ARISES DURING THE FIRST TWENTY-FOUR MONTHS OF USE, AT
42 NO COST TO THE PURCHASER. HOWEVER, IF THE MANUFACTURER HAS ISSUED A
43 WARRANTY OR SERVICE CONTRACT, THE COVERAGE PERIOD MUST BE THE GREATER OF
44 THE TERM SPECIFIED IN THE WARRANTY OR SERVICE CONTRACT OR TWENTY-FOUR
45 MONTHS FROM THE DATE OF PURCHASE.

46 (B) WITHIN FIVE BUSINESS DAYS AFTER RECEIVING NOTICE FROM A PURCHASER
47 OF A NONCONFORMITY, PLUS REASONABLE TIME FOR SHIPPING OF NOT MORE THAN
48 THREE BUSINESS DAYS, THE MANUFACTURER MUST REPAIR ANY COMPUTER DEVICE
49 AND RETURN IT TO THE PURCHASER SUBJECT TO THE FOLLOWING CONDITIONS:

50 (1) IF ON-SITE SERVICE IS PROVIDED FOR IN THE WARRANTY, REPAIRS MUST
51 BE MADE AT THE PURCHASER'S LOCATION WITHOUT CHARGE.

52 (2) IF ON-SITE SERVICE IS NOT PROVIDED FOR IN THE WARRANTY, THE
53 MANUFACTURER MUST ARRANGE AND PAY FOR THE COST OF SHIPPING FROM THE
54 PURCHASER'S LOCATION.

55 (3) IF ON-SITE SERVICE IS CONDUCTED BY THE PURCHASER, WHO, AT THE
56 MANUFACTURER'S DIRECTION, PERFORMS DIAGNOSTIC TESTS OR TROUBLESHOOTING

1 PROCEDURES OR ATTEMPTS REPAIRS, INCLUDING BUT NOT LIMITED TO PARTIAL
2 DISASSEMBLY, THE SERVICE IS CONSIDERED TO BE CONDUCTED BY THE MANUFAC-
3 Turer.

4 (4) ALL REPAIRS MUST BE GUARANTEED BY THE MANUFACTURER FOR A TERM OF
5 TWO YEARS.

6 (C) IF THE REPAIR IS INEFFECTIVE, THE MANUFACTURER MUST HAVE, UPON
7 NOTICE FROM THE PURCHASER, A SECOND OPPORTUNITY TO MAKE AN EFFECTIVE
8 REPAIR AT THE PURCHASER'S PHYSICAL LOCATION, PROVIDED THAT THE REPAIR IS
9 COMPLETED WITHIN THREE BUSINESS DAYS. THE MANUFACTURER MAY NOT REQUIRE
10 THE PURCHASER TO SHIP THE UNIT BACK TO THE MANUFACTURER FOR THE FINAL
11 REPAIR OPPORTUNITY REGARDLESS OF THE MANUFACTURER'S WILLINGNESS TO PAY
12 FOR SHIPPING COSTS.

13 (D) IF THE SECOND REPAIR IS INEFFECTIVE OR IF THE MANUFACTURER FAILS
14 TO TIMELY RESPOND TO THE PURCHASER AS REQUIRED UNDER THIS SECTION, THE
15 PURCHASER MAY ELECT TO DO EITHER OF THE FOLLOWING:

16 (1) RECEIVE FROM THE MANUFACTURER A REFUND OF THE FULL PURCHASE PRICE
17 PAID AT THE TIME OF SALE OR THE FULL VALUE OF THE LEASE, AS THE CASE MAY
18 BE, PLUS FINANCE AND COLLATERAL CHARGES.

19 (2) RECEIVE FROM THE MANUFACTURER DELIVERY OF A BRAND NEW COMPUTER
20 DEVICE OF EQUAL OR GREATER VALUE THAN THE ORIGINAL PRICE PAID AT THE
21 TIME OF ACQUISITION, WITHOUT CHARGE OR OFFSET FOR USE.

22 IF MORE THAN ONE NONCONFORMITY HAS BEEN SUBJECT TO REPAIR, NO SECOND
23 REPAIR ATTEMPT IS REQUIRED BEFORE THE PURCHASER MAY SEEK THE REMEDIES
24 PROVIDED IN THIS ARTICLE.

25 (E) A MANUFACTURER MAY, AT ITS DISCRETION, REQUEST RETURN OF THE UNRE-
26 PAIRED COMPUTER DEVICE AT COST, IF THE MANUFACTURER HAS REPLACED THE
27 UNIT OR REFUNDED THE PURCHASE PRICE.

28 (F) NO COMPUTER DEVICE RETURNED IN ACCORDANCE WITH THIS SECTION MAY BE
29 RESOLD IN THIS STATE. A VIOLATION OF THIS SUBDIVISION IS A VIOLATION OF
30 ARTICLE TWENTY-TWO-A OF THIS CHAPTER, AND IN ADDITION TO REMEDIES
31 PROVIDED BY SUCH ARTICLE, ANY SUBSEQUENT PURCHASER IS ENTITLED TO
32 DAMAGES IN THE AMOUNT OF TREBLE THE PURCHASE PRICE PAID BY THAT PURCHAS-
33 ER FOR THE DEVICE.

34 (G) NOTWITHSTANDING SUBDIVISIONS (E) AND (F) OF THIS SECTION, A
35 MANUFACTURER WHO REFUSES TO HONOR THE TERMS OF ANY WARRANTY BOOKLET OR
36 MATERIALS DELIVERED TO THE PURCHASER AT, PRIOR TO, OR AFTER THE DELIVERY
37 OF THE COMPUTER DEVICE IS IN VIOLATION OF ARTICLE TWENTY-TWO-A OF THIS
38 CHAPTER, AND IN ADDITION TO REMEDIES PROVIDED BY SUCH ARTICLE, THE
39 ORIGINAL PURCHASER IS ENTITLED TO DAMAGES IN THE AMOUNT OF TREBLE THE
40 PURCHASE PRICE PAID BY THAT PURCHASER FOR THE DEVICE.

41 S 269-A. RECORDS. A MANUFACTURER MUST RETAIN RECORDS OF ALL CONTACTS,
42 COMMUNICATIONS, NOTICE TRANSMISSIONS, OR CUSTOMER SERVICE DIALOGUES
43 BETWEEN ITSELF AND A PURCHASER AND MUST MAINTAIN A LIST, BY SERIAL
44 NUMBER, OF ALL REFUNDS OR REPLACEMENTS MADE UNDER THIS ARTICLE. COPIES
45 MUST BE MADE AVAILABLE TO THE PURCHASER UPON DEMAND, REGARDLESS OF
46 WHETHER THE MANUFACTURER USES THE SERVICES OF A THIRD PARTY TO MANAGE
47 PURCHASER CLAIMS. FAILURE TO COMPLY WITH THIS SECTION IS A VIOLATION OF
48 ARTICLE TWENTY-TWO-A OF THIS CHAPTER, AND IN ADDITION TO REMEDIES
49 PROVIDED BY SUCH ARTICLE, THE ORIGINAL PURCHASER IS ENTITLED TO DAMAGES
50 IN THE AMOUNT OF TREBLE THE PURCHASE PRICE PAID BY THAT PURCHASER FOR
51 THE DEVICE.

52 S 269-B. CIVIL ACTIONS. (A) IF THE MANUFACTURER OF A COMPUTER DEVICE
53 VIOLATES ANY PROVISION OF THIS ARTICLE, THE PURCHASER MAY INITIATE A
54 CIVIL ACTION TO RECOVER AS DAMAGES ANY AND ALL REMEDIES SPECIFIED IN
55 THIS ARTICLE.

1 (B) IN ADDITION TO REFUND OR REPLACEMENT OF THE COMPUTER DEVICE UNDER
2 SECTION TWO HUNDRED SIXTY-NINE OF THIS ARTICLE, A PREVAILING PURCHASER
3 IS ENTITLED TO AN ADDITIONAL AWARD OF SIX THOUSAND DOLLARS.

4 (C) IF A PURCHASER INITIATES AN ACTION IN THIS STATE FOR A VIOLATION
5 OF THIS ARTICLE, THE MANUFACTURER MUST PRODUCE AT EACH AND EVERY COURT
6 PROCEEDING IN THAT ACTION A CORPORATE REPRESENTATIVE WHO IS FULLY AWARE
7 OF THE FACTS AND CIRCUMSTANCES OF THE CASE AND HAS AVAILABLE FOR THE
8 COURT'S REVIEW A COPY OF ALL RECORDS REQUIRED BY SECTION TWO HUNDRED
9 SIXTY-NINE-A OF THIS ARTICLE.

10 S 269-C. ATTORNEY FEES. IF A PURCHASER PREVAILS IN A CLAIM UNDER THIS
11 ARTICLE, THE MANUFACTURER MUST PAY THE PURCHASER'S REASONABLE ATTORNEY
12 FEES, COSTS, AND EXPERT EXPENSES IN RESOLVING AND, IF NECESSARY, LITI-
13 GATING AN ACTION UNDER SECTION TWO HUNDRED SIXTY-NINE-B OF THIS ARTICLE,
14 REGARDLESS OF THE COST OF THE COMPUTER DEVICE.

15 S 269-D. PROHIBITED DEFENSES. IT IS NOT A DEFENSE UNDER THIS ARTICLE
16 THAT A NONCONFORMITY WAS CAUSED BY A SOFTWARE PROGRAMMING PROBLEM UNDER
17 THE FOLLOWING CONDITIONS:

18 (A) IF THE SOFTWARE WAS PRE-INSTALLED BY THE MANUFACTURER.

19 (B) UNLESS THE MANUFACTURER PRODUCES AN EXPERT WITNESS AT THE
20 PROCEEDINGS WHO EXAMINED THE COMPUTER DEVICE AND CAN SPECIFY THE EXACT
21 CAUSE AND CORRECTION OF THE PROBLEM.

22 (C) UNLESS THE MANUFACTURER HAS STRICTLY COMPLIED WITH THE NOTICE
23 PROVISIONS OF SUBDIVISION (B) OF SECTION TWO HUNDRED SIXTY-EIGHT OF THIS
24 ARTICLE.

25 S 269-E. EXPERT WITNESS. A PURCHASER WHO SEEKS RELIEF UNDER THIS ARTI-
26 CLE MUST NOT UNDER ANY CIRCUMSTANCES BE REQUIRED TO RETAIN THE OPINION
27 OF AN EXPERT TO PREVAIL AGAINST A MANUFACTURER.

28 S 269-F. APPLICATION. A VIOLATION OF ANY PROVISION OF THIS ARTICLE IS
29 ALSO A VIOLATION OF ARTICLE TWENTY-TWO-A OF THIS CHAPTER.

30 S 269-G. RIGHTS PRESERVED. NOTHING IN THIS ARTICLE LIMITS THE PURCHAS-
31 ER FROM PURSUING ANY OTHER RIGHTS OR REMEDIES UNDER ANY OTHER LAW,
32 CONTRACT, OR WARRANTY.

33 S 269-H. NON-WAIVER. THE PROVISIONS OF THIS ARTICLE MAY NOT BE WAIVED
34 BY A PURCHASER.

35 S 269-I. APPLICABILITY. THIS ARTICLE APPLIES TO ALL COMPUTER DEVICES
36 PURCHASED, LEASED, OR DELIVERED TO A PURCHASER ON OR AFTER THE EFFECTIVE
37 DATE OF THIS ARTICLE.

38 S 2. This act shall take effect on the first of January next succeed-
39 ing the date on which it shall have become a law.