

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:

1 Section 1. The general business law is amended by adding a new section
2 218-b to read as follows:

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

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

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

22 4. IF SUCH RETAIL MERCANTILE ESTABLISHMENT IS UNABLE TO PERFORM THE
23 TERMS OF SUCH CONTRACT OR AGREEMENT BECAUSE OF BANKRUPTCY OR INSOLVENCY
24 OR FOR ANY OTHER REASON, OR IF IT IS DETERMINED THAT SUCH ESTABLISHMENT
25 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.

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

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

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

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