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

6088

2011-2012 Regular Sessions

I N A S S E M B L Y

March 4, 2011

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

AN ACT to amend the general business law, in relation to enacting the discount buying club consumer protection act

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 article 30-B to read as follows:

ARTICLE 30-B

DISCOUNT BUYING CLUB CONSUMER PROTECTION ACT

SECTION 641. SHORT TITLE.
641-A. DEFINITIONS.
641-B. BUYER'S OR OTHER OBLIGOR'S RIGHT TO CANCEL.
641-C. FORM OF NOTICE; STATEMENT OF BUYER'S RIGHTS.
641-D. ENFORCEMENT; PENALTIES.

S 641. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS THE "DISCOUNT BUYING CLUB CONSUMER PROTECTION ACT".

S 641-A. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS SHALL MEAN:

1. "BUSINESS DAY" MEANS ANY CALENDAR DAY EXCEPT SUNDAY OR ANY LEGAL HOLIDAY.

2. "BUYER" AS USED IN THIS ARTICLE MEANS ANY INDIVIDUAL WHO ENTERS INTO AN AGREEMENT FOR SERVICES WITH A DISCOUNT BUYING CLUB.

3. "DISCOUNT BUYING CLUB" MEANS ANY PERSON, FIRM OR CORPORATION, WHICH, IN EXCHANGE FOR VALUABLE CONSIDERATION, OFFERS TO SELL OR TO ARRANGE THE SALE OF GOODS OR SERVICES TO ITS CUSTOMERS AT PRICES REPRESENTED TO BE LOWER THAN ARE GENERALLY AVAILABLE. SUCH TERM SHALL NOT INCLUDE:

A. ANY COOPERATIVE BUYING ASSOCIATION OR OTHER GROUP IN WHICH NO PERSON IS INTENDED TO PROFIT OR ACTUALLY PROFITS BEYOND THE BENEFIT THAT ALL MEMBERS RECEIVE FROM BUYING AT A DISCOUNT;

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

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B. ANY PERSON, FIRM OR CORPORATION THAT:

(I) FOR FIFTY DOLLARS OR LESS SELLS TICKETS OR COUPONS VALID FOR USE IN OBTAINING GOODS OR SERVICES FROM A RETAIL MERCHANT; OR

(II) AS A SERVICE COLLATERAL TO ITS PRINCIPAL BUSINESS, AND FOR NO ADDITIONAL CHARGE, ARRANGES FOR ITS MEMBERS OR CUSTOMERS TO PURCHASE OR LEASE DIRECTLY FROM PARTICULAR MERCHANTS AT A SPECIFIED DISCOUNT; OR

(III) CHARGES AN ADVANCE FEE FOR ACCESS TO SERVICE, OR MEMBER BENEFITS, AND ALLOWS THE BUYER TO TERMINATE MEMBERSHIP BY NOTIFYING THE PERSON, FIRM OR CORPORATION OF INTENT TO TERMINATE MEMBERSHIP WITHOUT FURTHER OBLIGATION TO MAKE ADDITIONAL PAYMENTS.

4. "SELLER" SHALL MEAN ANY PERSON, PARTNERSHIP, CORPORATION OR ASSOCIATION ENGAGED IN THE SALE OF DISCOUNT BUYING CLUB SERVICES.

S 641-B. BUYER'S OR OTHER OBLIGOR'S RIGHT TO CANCEL. 1. IN ADDITION TO ANY RIGHT OTHERWISE TO REVOKE AN OFFER, THE BUYER MAY CANCEL A DISCOUNT BUYING CLUB AGREEMENT UNTIL MIDNIGHT OF THE FIFTH BUSINESS DAY AFTER THE DAY ON WHICH THE BUYER HAS SIGNED THE AGREEMENT. SUCH AGREEMENT SHALL IMPOSE NO LIABILITY ON THE BUYER FOR SUCH CANCELLATION. THE SELLER SHALL PROVIDE A REFUND OF ANY FEE PAID BY THE BUYER NOT MORE THAN TEN DAYS AFTER SUCH CANCELLATION.

2. CANCELLATION OCCURS WHEN WRITTEN NOTICE OF CANCELLATION IS GIVEN TO THE SELLER.

3. NOTICE OF CANCELLATION, IF GIVEN BY MAIL, SHALL BE DEEMED GIVEN WHEN DEPOSITED IN A MAILBOX PROPERLY ADDRESSED AND POSTAGE PREPAID.

4. NOTICE OF CANCELLATION NEED NOT TAKE THE FORM PRESCRIBED AND SHALL BE SUFFICIENT IF IT INDICATES THE INTENTION OF THE BUYER NOT TO BE BOUND.

S 641-C. FORM OF NOTICE; STATEMENT OF BUYER'S RIGHTS. 1. IN A DISCOUNT BUYING CLUB SERVICE SALE, THE SELLER SHALL FURNISH TO THE BUYER:

(A) A FULLY COMPLETED RECEIPT OR COPY OF ANY AGREEMENT PERTAINING TO SUCH SALE AT THE TIME OF ITS EXECUTION, WHICH IS IN THE SAME LANGUAGE, E.G. SPANISH, AS THAT PRINCIPALLY USED IN THE ORAL SALES PRESENTATION AND WHICH SHOWS THE DATE OF THE TRANSACTION AND CONTAINS THE NAME AND ADDRESS OF THE SELLER, AND IN IMMEDIATE PROXIMITY TO THE SPACE RESERVED IN THE AGREEMENT FOR THE SIGNATURE OF THE BUYER AND IN NOT LESS THAN TWELVE-POINT BOLD FACE TYPE, A STATEMENT IN SUBSTANTIALLY THE FOLLOWING FORM:

"YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE FIFTH BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT."; AND

(B) AT THE TIME THE BUYER SIGNS THE DISCOUNT BUYING CLUB AGREEMENT, A COMPLETED FORM IN DUPLICATE, CAPTIONED "NOTICE OF CANCELLATION", WHICH SHALL BE ATTACHED TO THE AGREEMENT AND EASILY DETACHABLE, AND WHICH SHALL CONTAIN IN NOT LESS THAN TWELVE-POINT BOLD FACE TYPE THE FOLLOWING INFORMATION AND STATEMENTS IN THE SAME LANGUAGE, E.G. SPANISH, AS THAT USED IN THE AGREEMENT:

NOTICE OF CANCELLATION

(ENTER DATE OF TRANSACTION) _____

(DATE)

YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION, WITHIN FIVE BUSINESS DAYS FROM THE ABOVE DATE.

IF YOU CANCEL, ANY PAYMENTS MADE BY YOU UNDER THE AGREEMENT AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN TEN BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE

CANCELLED. TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE TO (NAME OF SELLER), AT (ADDRESS OF SELLER) _____

_____

(PLACE OF BUSINESS) NOT LATER THAN MIDNIGHT OF _____ (DATE)

I HEREBY CANCEL THIS TRANSACTION.

_____ (DATE)

_____ (BUYER'S SIGNATURE)

THE SELLER SHALL COMPLETE BOTH COPIES BY ENTERING THE NAME OF THE SELLER, THE ADDRESS OF THE SELLER'S PLACE OF BUSINESS, THE DATE OF THE TRANSACTION, AND THE DATE, NOT EARLIER THAN THE FIFTH BUSINESS DAY FOLLOWING THE DATE OF THE TRANSACTION, BY WHICH THE BUYER MAY GIVE NOTICE OF CANCELLATION.

2. THE SELLER SHALL INFORM EACH BUYER ORALLY AT THE TIME HE SIGNS THE AGREEMENT OF HIS OR HER RIGHT TO CANCEL.

3. A DISCOUNT BUYING CLUB AGREEMENT OR RECEIPT SHALL NOT INCLUDE ANY CONFESSION OF JUDGMENT OR ANY WAIVER OF ANY OF THE RIGHTS TO WHICH THE BUYER IS ENTITLED UNDER THIS ARTICLE INCLUDING SPECIFICALLY HIS RIGHT TO CANCEL THE SALE IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTICLE.

4. NO SELLER, OR ANY AGENT OR EMPLOYEE THEREOF, SHALL DIRECTLY OR INDIRECTLY REPRESENT IN ANY MANNER DURING A SALES PRESENTATION THAT A CONSUMER MUST SIGN AN AGREEMENT ON THE SAME DAY AS SUCH PRESENTATION IN ORDER TO AVOID A LIFETIME PROHIBITION ON PURCHASING DISCOUNT BUYING CLUB SERVICES FROM SUCH SELLER.

S 641-D. ENFORCEMENT; PENALTIES. 1. WHENEVER THERE SHALL BE A VIOLATION OF THE PROVISIONS OF THIS ARTICLE, AN APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH VIOLATIONS; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS ARTICLE, AN INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITUTION. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS ARTICLE HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN ONE THOUSAND DOLLARS FOR EACH VIOLATION. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES.

2. NOTHING IN THIS SECTION SHALL IN ANY WAY LIMIT RIGHTS OR REMEDIES WHICH ARE OTHERWISE AVAILABLE UNDER LAW TO THE ATTORNEY GENERAL.

S 2. If any provision of article 30-B of the general business law, as added by section one of this act, or the application of such provision in certain circumstances shall be held invalid, the validity of the remainder of such article and its applicability to other circumstances shall not be affected.

S 3. This act shall take effect on the first of January next succeeding the date upon which it shall have become a law.