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

2124

2011-2012 Regular Sessions

I N  S E N A T E

January 18, 2011

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:

Section 1. The general business law is amended by adding a new article 16-A to read as follows:

ARTICLE 16-A
COMPUTER LEMON LAW

SECTION 266. SHORT TITLE.
267. DEFINITIONS.
268. NOTICE TO PURCHASER.
269. COVERAGE AND COVERAGE PERIOD.
269-A. RECORDS.
269-B. CIVIL ACTIONS.
269-C. ATTORNEY FEES.
269-D. PROHIBITED DEFENSES.
269-E. EXPERT WITNESS.
269-F. APPLICATION.
269-G. RIGHTS PRESERVED.
269-H. NON-WAIVER.
269-I. APPLICABILITY.

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

S 267. DEFINITIONS. AS USED IN THIS ARTICLE:

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

(B) "COMPUTER DEVICE" MEANS A CENTRAL PROCESSING UNIT OR TERMINAL DISPLAY SCREEN, INCLUDING ALL CIRCUITRY AND CONNECTIVE DEVICES; A PRINTER; 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.

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PROGRAMMING FOR A COMPUTER, WHETHER PREINSTALLED OR PURCHASED SEPARATELY.

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

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

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

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

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

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

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

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

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

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

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

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

PROCEDURES OR ATTEMPTS REPAIRS, INCLUDING BUT NOT LIMITED TO PARTIAL DISASSEMBLY, THE SERVICE IS CONSIDERED TO BE CONDUCTED BY THE MANUFACTURER.

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

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

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

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

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

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

(E) A MANUFACTURER MAY, AT ITS DISCRETION, REQUEST RETURN OF THE UNREPAIRED COMPUTER DEVICE AT COST, IF THE MANUFACTURER HAS REPLACED THE UNIT OR REFUNDED THE PURCHASE PRICE.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

S 2. This act shall take effect on the first of January next succeeding the date on which it shall have become a law.