

2574

2011-2012 Regular Sessions

I N S E N A T E

January 26, 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 the honest use of refund and rebate forms act

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 39-DDD to read as follows:

3 ARTICLE 39-DDD

4 HONEST USE OF REFUND AND REBATE FORMS ACT

5 SECTION 898. SHORT TITLE.

6 898-A. DEFINITIONS.

7 898-B. DISPLAY OF EXPIRED MANUFACTURER'S REFUND AND REBATE FORMS
8 PROHIBITED.

9 898-C. AVAILABILITY OF MANUFACTURER'S REFUND OR REBATE FORMS.

10 898-D. PENALTIES.

11 898-E. AFFIRMATIVE DEFENSES.

12 S 898. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS
13 THE "HONEST USE OF REFUND AND REBATE FORMS ACT".

14 S 898-A. DEFINITIONS. WHENEVER USED IN THIS ARTICLE:

15 (A) "MANUFACTURER'S REFUND" SHALL MEAN A RETURN OF THE TOTAL PURCHASE
16 PRICE BY A MANUFACTURER TO A PURCHASER OF AN ITEM.

17 (B) "MANUFACTURER'S REBATE" SHALL MEAN A RETURN BY A MANUFACTURER TO A
18 PURCHASER OF AN ITEM OF ANY PORTION OF THE SALES PRICE OR OF A SPECIFIC
19 MONETARY AMOUNT.

20 (C) "FORM" SHALL MEAN THE AUTHORIZED FORM REQUIRED TO BE COMPLETED BY
21 THE PURCHASER OF AN ITEM AS A PREREQUISITE TO A MANUFACTURER'S REFUND OR
22 REBATE.

23 S 898-B. DISPLAY OF EXPIRED MANUFACTURER'S REFUND AND REBATE FORMS
24 PROHIBITED. (A) IT SHALL BE UNLAWFUL FOR ANY PERSON, FIRM, PARTNERSHIP,
25 CORPORATION OR ASSOCIATION: (I) TO CAUSE TO BE ADVERTISED BY MEANS OF A

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

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1 NEWSPAPER ADVERTISEMENT, CIRCULAR, TELEVISION OR RADIO ANNOUNCEMENT,
2 OFF-THE-PREMISES PROMOTION OR OTHERWISE, THE AVAILABILITY OF; OR (II) TO
3 DISPLAY, PROMOTE OR DISTRIBUTE WITHIN THE PREMISES OF A RETAIL STORE OR
4 OTHERWISE MAKE AVAILABLE THEREIN; ANY MANUFACTURER'S REFUND OR REBATE
5 FORM WHICH HAS EXPIRED AND WHICH WILL NOT BE HONORED BY THE MANUFACTURER
6 AS A RESULT OF SUCH EXPIRATION.

7 (B) THE PROVISIONS OF SUBDIVISION (A) OF THIS SECTION SHALL NOT APPLY
8 TO FORMS POSTED ON A BULLETIN BOARD NEAR A STORE ENTRANCE, PROVIDED THAT
9 SUCH PERSON, FIRM, PARTNERSHIP, CORPORATION OR ASSOCIATION CONSPICUOUSLY
10 POSTS AND MAINTAINS A PROMINENT SIGN ADJACENT TO THE BULLETIN BOARD,
11 CONTAINING THE FOLLOWING LEGEND IN CAPITAL LETTERS IN BOLD PRINT WITH A
12 CONTRASTING BACKGROUND OF AT LEAST EIGHT-POINT TYPE: "PLEASE NOTE: THIS
13 STORE IS NOT RESPONSIBLE FOR EXPIRED REFUND OR REBATE OFFERS POSTED
14 HERE. PLEASE CHECK THE EXPIRATION DATE ON YOUR FORM." IN THE ABSENCE OF
15 THE REQUIRED SIGN, THE PROVISIONS OF SUBDIVISION (A) OF THIS SECTION
16 SHALL APPLY TO ALL REFUND OR REBATE OFFERS POSTED ON SUCH A BULLETIN
17 BOARD.

18 (C) THE PROVISIONS OF SUBDIVISION (A) OF THIS SECTION SHALL NOT APPLY
19 TO REFUND OR REBATE FORMS WHICH ARE PRINTED ON OR CONTAINED WHOLLY WITH-
20 IN PACKAGES, OR WHICH ARE CONTAINED ON THE INSIDE OF PRODUCT LABELS OR
21 OTHERWISE ARE NOT READILY VISIBLE TO THE CONSUMER, PROVIDED THAT THE
22 AVAILABILITY OF A REFUND OR REBATE FORM IS NOT OTHERWISE ADVERTISED ON
23 THE PACKAGE. IF THE AVAILABILITY OF A REFUND OR REBATE FORM IS OTHERWISE
24 ADVERTISED ON THE PACKAGE, THE PROVISIONS OF SUBDIVISION (A) OF THIS
25 SECTION SHALL APPLY; PROVIDED, HOWEVER, THAT WHEN THE REFUND OR REBATE
26 FORMS PRINTED ON OR CONTAINED WHOLLY WITHIN PACKAGES HAVE EXPIRED, A
27 RETAILER MAY POST A SHELF SIGN OR SIGNS AS CLOSE AS POSSIBLE TO THE ITEM
28 OR ITEMS INDICATING THAT SUCH REFUND OR REBATE FORMS HAVE EXPIRED. SUCH
29 RETAILER SHALL NOT BE HELD LIABLE FOR THE PENALTIES PRESCRIBED IN
30 SECTION EIGHT HUNDRED NINETY-EIGHT-D OF THIS ARTICLE IF SUCH SIGN OR
31 SIGNS HAVE BEEN POSTED IN CONFORMANCE WITH THIS SECTION.

32 S 898-C. AVAILABILITY OF MANUFACTURER'S REFUND OR REBATE FORMS. (A)
33 ANY PERSON, FIRM, PARTNERSHIP, CORPORATION OR ASSOCIATION: (I) WHICH
34 CAUSES TO BE ADVERTISED BY MEANS OF A NEWSPAPER ADVERTISEMENT, CIRCULAR,
35 TELEVISION OR RADIO ANNOUNCEMENT OR OFF-THE-PREMISES PROMOTION OR OTHER-
36 WISE, THE AVAILABILITY OF; OR (II) WHICH DISPLAYS, PROMOTES OR DISTRIB-
37 UTES WITHIN THE PREMISES OF A RETAIL STORE OR OTHERWISE MAKES AVAILABLE
38 THEREIN; A MANUFACTURER'S REFUND OR REBATE FORM SHALL MAKE AVAILABLE THE
39 APPROPRIATE MANUFACTURER'S REFUND OR REBATE FORM TO THE PURCHASER AT THE
40 TIME OF SALE.

41 (B) THE SELLER MAY, AT ITS DISCRETION, OFFER A SUBSTITUTE TO THE
42 PURCHASER EXCEPT THAT THE SUBSTITUTE SHALL NOT BE A SUBSTITUTE REFUND OR
43 REBATE FORM UNLESS THE USE OF SUCH FORMS IS AUTHORIZED BY THE MANUFAC-
44 Turer. IF THE SUBSTITUTE IS SATISFACTORY TO THE PURCHASER, THE SELLER'S
45 OBLIGATIONS PURSUANT TO THE PROVISIONS OF THIS ARTICLE SHALL BE DEEMED
46 TO BE FULFILLED.

47 S 898-D. PENALTIES. (A) ANY VIOLATION OF A PROVISION OF SECTION EIGHT
48 HUNDRED NINETY-EIGHT-B OR EIGHT HUNDRED NINETY-EIGHT-C OF THIS ARTICLE
49 SHALL BE SUBJECT TO A CIVIL PENALTY OF NOT LESS THAN ONE HUNDRED DOLLARS
50 AND NOT MORE THAN ONE THOUSAND DOLLARS.

51 (B) FOR THE PURPOSES OF THIS SECTION, THE UNLAWFUL DISPLAY OF A GROUP
52 OF IDENTICAL REFUND OR REBATE FORMS SHALL CONSTITUTE BUT A SINGLE
53 VIOLATION, AND THE UNLAWFUL DISPLAY OF DIFFERENT GROUPS OF IDENTICAL
54 REFUND OR REBATE FORMS SHALL CONSTITUTE A SEPARATE VIOLATION FOR EACH
55 GROUP SO DISPLAYED.

1 S 898-E. AFFIRMATIVE DEFENSES. IT SHALL BE AN AFFIRMATIVE DEFENSE TO A
2 VIOLATION OF SECTION EIGHT HUNDRED NINETY-EIGHT-C OF THIS ARTICLE IF:
3 (A) THE SELLER CAN DEMONSTRATE THAT HE OR SHE HAD AN ADEQUATE NUMBER OF
4 REFUND OR REBATE FORMS SUFFICIENT TO MEET REASONABLY ANTICIPATED NEEDS
5 FOR SUCH FORMS DURING THE PARTICULAR OFFER; OR (B) THE MANUFACTURER CAN
6 DEMONSTRATE THAT AN ADEQUATE NUMBER OF REFUND OR REBATE FORMS SUFFICIENT
7 TO MEET REASONABLY ANTICIPATED NEEDS FOR SUCH FORMS DURING THE PARTIC-
8 ULAR OFFER WAS MADE AVAILABLE TO SELLERS PARTICIPATING IN SUCH OFFER.
9 S 2. This act shall take effect on the sixtieth day after it shall
10 have become a law.