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

3049

2011-2012 Regular Sessions

I N S E N A T E

February 7, 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 availability for sale of advertised merchandise

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 section 397-b to read as follows:

S 397-B. AVAILABILITY FOR SALE OF ADVERTISED MERCHANDISE. 1. A RETAILER WHO ADVERTISES AN ARTICLE OF MERCHANDISE FOR SALE AT A PRICE WHICH IS REDUCED, IN GOOD FAITH, TO A PRICE BELOW THE PRICE SUCH ARTICLES ARE USUALLY SOLD OR OFFERED FOR SALE FOR IN THE STORE, AND DOES NOT HAVE SUCH ARTICLE AVAILABLE THROUGHOUT THE ADVERTISED PERIOD SHALL, ON THE REQUEST OF A PURCHASER OF SUCH ARTICLE, OFFER TO ISSUE A RAINCHECK UNLESS ONE OR MORE OF THE FOLLOWING SITUATIONS EXISTS:

(A) THE ADVERTISEMENT IS MADE IN RELATION TO MAIL ORDER MERCHANDISE AS REGULATED BY SECTION THREE HUNDRED NINETY-SIX-M OF THIS ARTICLE.

(B) THE ADVERTISEMENT IS OF AN ARTICLE THAT IS ONE OF A KIND AND THE ADVERTISEMENT CLEARLY AND CONSPICUOUSLY STATES SUCH FACT.

(C) THE ADVERTISEMENT CLEARLY AND CONSPICUOUSLY STATES THE SPECIFIC QUANTITY OF THE ARTICLE AVAILABLE AT THE OUTSET OF THE SALE.

(D) THE ADVERTISEMENT CLEARLY AND CONSPICUOUSLY STATES THAT A RAINCHECK IS NOT AVAILABLE. THIS EXCLUSION MAY ONLY BE USED IF THE ARTICLE WILL NOT BE OFFERED FOR SALE FOR AT LEAST ONE HUNDRED TWENTY DAYS FROM THE EXPIRATION DATE OF THE ADVERTISEMENT.

2. A RAINCHECK ISSUED PURSUANT TO SUBDIVISION ONE OF THIS SECTION SHALL ENTITLE THE HOLDER TO PURCHASE, AT THE STORE ISSUING SUCH RAINCHECK, THE ADVERTISED ARTICLE AT THE ADVERTISED PRICE WITHIN SIXTY DAYS FROM THE DATE OF ISSUANCE OR FOR A PERIOD OF TEN BUSINESS DAYS FROM THE FIRST DATE OF AVAILABILITY OF THE ARTICLE, WHICHEVER SHALL BE LATER.

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

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THE ISSUANCE OF SUCH RAINCHECK SHALL CONSTITUTE AN AGREEMENT ON THE PART OF THE SELLER TO SUPPLY SUCH ARTICLE AT SUCH PRICE. NOTHING CONTAINED HEREIN SHALL PROHIBIT A SELLER FROM OFFERING A SIMILAR ARTICLE OF EQUAL OR GREATER VALUE EITHER DURING THE PERIOD COVERED BY SUCH ADVERTISEMENT OF THE ARTICLE OR WITHIN SIXTY DAYS FROM THE DATE OF ISSUANCE OF THE RAINCHECK, OR THE SELLER AND PURCHASER FROM AGREEING TO LENGTHEN THE REDEMPTION PERIOD OF SUCH RAINCHECK. IF THE PURCHASER ACCEPTS SUBSTITUTION, SUCH SUBSTITUTION SHALL CONSTITUTE COMPLIANCE WITH THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION.

3. THE RAINCHECK SHALL INCLUDE AT LEAST THE FOLLOWING INFORMATION:

(A) NAME, ADDRESS AND TELEPHONE NUMBER OF THE ISSUER.

(B) DATE OF ISSUANCE.

(C) LAST DATE THAT THE RAINCHECK CAN BE REDEEMED.

(D) NAME, DESCRIPTION AND QUANTITY DESIRED OF THE ARTICLE.

(E) THE ADVERTISED PRICE.

4. THE RAINCHECK SHALL CONTAIN THE FOLLOWING NOTICE:

YOU MAY REDEEM THIS RAINCHECK FOR THE ADVERTISED ITEM DESCRIBED ON THE OTHER SIDE WITHIN SIXTY DAYS OF ISSUANCE OR FOR A PERIOD OF TEN BUSINESS DAYS FROM THE FIRST DATE OF AVAILABILITY OF THE ITEM, WHICHEVER SHALL BE LATER.

YOU WILL PAY ONLY THE ADVERTISED PRICE FOR THE ITEM.

YOU ARE UNDER NO OBLIGATION TO BUY THE ITEM.

5. EVERY RETAILER WHO ADVERTISES SUCH AN ARTICLE OF MERCHANDISE FOR SALE, WHICH IS NOT AVAILABLE, SHALL NOTIFY THE PURCHASER NO LATER THAN FIFTEEN DAYS AFTER THE RECEIPT OF SUCH MERCHANDISE BY THE SELLER THAT THE MERCHANDISE IS NOW AVAILABLE FOR PURCHASE.

6. THERE SHALL BE, WITHIN EACH RETAIL ESTABLISHMENT THAT ADVERTISES ITEMS FOR SALE AT A PRICE BELOW THE USUAL SELLING PRICE, A CLEAR AND CONSPICUOUSLY POSTED SIGN, POSTER OR PLACARD INDICATING WHERE A RAINCHECK CAN BE OBTAINED.

7. IT SHALL BE AN AFFIRMATIVE DEFENSE TO AN ALLEGED VIOLATION OF THIS SECTION THAT THE SELLER WAS UNABLE TO HONOR A RAINCHECK WITHIN THE REDEMPTION PERIOD BECAUSE SUCH SELLER DID NOT RECEIVE A REORDER OF THE ADVERTISED ARTICLE FROM A SUPPLIER THROUGH NO FAULT OF THE SELLER PROVIDED, HOWEVER, THAT THE SELLER MUST MAINTAIN RECORDS SUFFICIENT TO SHOW THAT THE ADVERTISED SALE ITEMS WERE REORDERED IN ADEQUATE TIME FOR DELIVERY AND IN SUFFICIENT QUANTITY TO FULFILL RAINCHECK OBLIGATIONS.

8. THIS SECTION SHALL NOT APPLY TO A PURCHASE FOR RESALE.

9. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO RELIEVE THE SELLER FROM ANY OTHER PROVISION OF LAW PROHIBITING THE ADVERTISING OF GOODS OR SERVICES WITH THE INTENT NOT TO MEET REASONABLY EXPECTED DEMAND.

10. NO PURCHASER SHALL BE REQUIRED TO PREPAY THE PURCHASE PRICE OR ANY PART THEREOF IN ORDER TO OBTAIN A RAINCHECK.

11. A PERSON WHO VIOLATES ANY PROVISION OF THIS SECTION IS GUILTY OF A FALSE AND MISLEADING ADVERTISING PRACTICE AND SUBJECT TO THE PROVISIONS OF ARTICLE TWENTY-TWO-A OF THIS CHAPTER.

12. NOTHING HEREIN SHALL BE CONSTRUED TO RESTRICT THE POWER OF ANY COUNTY, CITY, TOWN OR VILLAGE TO ADOPT AND ENFORCE ADDITIONAL LOCAL LAWS, ORDINANCES, OR REGULATIONS WHICH EXCEED THE MINIMUM APPLICABLE STANDARDS IN THIS SECTION.

S 2. This act shall take effect on the sixtieth day after it shall have become a law.