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

4042

2011-2012 Regular Sessions

I N  S E N A T E

March 15, 2011

Introduced by Sens. SEWARD, DeFRANCISCO -- 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 requiring the deposit, into an escrow account, of certain advance payments for the restoration of an historical vehicle

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 37-B to read as follows:

ARTICLE 37-B

RESTORATION OF HISTORICAL VEHICLES

SECTION 806. DEFINITIONS.

807. RESTORATION OF HISTORICAL VEHICLES; ESCROW REQUIRED FOR ADVANCE PAYMENTS.

808. REMEDIES.

S 806. DEFINITIONS. AS USED IN THIS ARTICLE:

1. "BOAT" MEANS A RESIDENTIAL VESSEL OR PLEASURE VESSEL AS DEFINED IN SUBDIVISION SIX OF SECTION TWO OF THE NAVIGATION LAW.

2. "CONSUMER" MEANS A NATURAL PERSON WHO CONTRACTS FOR THE RESTORATION OF AN HISTORICAL VEHICLE TO ITS ORIGINAL CONDITION AND MANNER OF OPERATION OR TO A CONDITION THAT REASONABLY APPEARS TO BE SUCH VEHICLE'S ORIGINAL CONDITION AND MANNER OF OPERATION.

3. "HISTORICAL VEHICLE" MEANS A BOAT, MOTOR VEHICLE OR MOTORCYCLE THAT WAS MANUFACTURED MORE THAN TWENTY-FIVE YEARS PRIOR TO THE CURRENT CALENDAR YEAR, AND ANY OTHER MODEL, YEAR AND TYPE OF BOAT, MOTOR VEHICLE OR MOTORCYCLE WHICH HAS UNIQUE CHARACTERISTICS AND WHICH IS DETERMINED BY THE COMMISSIONER OF MOTOR VEHICLES TO BE OF HISTORICAL, CLASSIC OR EXHIBITION VALUE.

4. "MOTORCYCLE" SHALL HAVE THE SAME MEANING AS IS ASCRIBED TO SUCH TERM BY SECTION ONE HUNDRED TWENTY-THREE OF THE VEHICLE AND TRAFFIC LAW.

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

LBD10010-01-1

5. "MOTOR VEHICLE" SHALL HAVE THE SAME MEANING AS IS ASCRIBED TO SUCH TERM BY SECTION ONE HUNDRED TWENTY-FIVE OF THE VEHICLE AND TRAFFIC LAW.

S 807. RESTORATION OF HISTORICAL VEHICLES; ESCROW REQUIRED FOR ADVANCE PAYMENTS. 1. ALL MONIES PAID BY A CONSUMER TO ANY PERSON OR ENTITY ENGAGED IN THE BUSINESS OF THE RESTORATION OF HISTORICAL MOTOR VEHICLES SHALL BE TRUST FUNDS IN POSSESSION OF SUCH PERSON OR ENTITY AND SHALL BE DEPOSITED BY IT, WITHIN FIVE DAYS OF RECEIPT THEREOF, IN AN ACCOUNT IN A BANKING ORGANIZATION IN THIS STATE WHEN:

(A) SUCH MONIES ARE RECEIVED BY THE HISTORICAL VEHICLE RESTORATION BUSINESS MORE THAN FIVE DAYS BEFORE THE RESTORATION WORK ON THE CONSUMER'S HISTORICAL VEHICLE IS TO BE COMPLETED AND SUCH VEHICLE IS READY FOR DELIVERY TO THE CONSUMER; AND

(B)(I) THE TOTAL AMOUNT TO BE PAID FOR THE RESTORATION OF THE HISTORICAL VEHICLE OF THE CONSUMER IS EQUAL TO OR GREATER THAN TEN THOUSAND DOLLARS; OR

(II) THE TOTAL GROSS ANNUAL RECEIPTS OF THE PERSON OR ENTITY ENGAGED IN THE RESTORATION OF HISTORICAL VEHICLES EQUALS OR EXCEEDS ONE HUNDRED THOUSAND DOLLARS.

2. THE HISTORICAL VEHICLE RESTORATION BUSINESS SHALL, UPON DEPOSITING SUCH MONIES IN A BANKING ORGANIZATION, NOTIFY THE CONSUMER IN WRITING OF THE NAME AND ADDRESS OF THE BANKING ORGANIZATION AND THE AMOUNT DEPOSITED.

3. ALL MONIES DEPOSITED PURSUANT TO THIS SECTION SHALL REMAIN ON DEPOSIT UNTIL FULLY APPLIED TO THE CONTRACT PRICE FOR THE RESTORATION OF THE CONSUMER'S HISTORICAL VEHICLE UPON COMPLETION OF SUCH RESTORATION, UNLESS SOONER REPAID TO THE CONSUMER.

S 808. REMEDIES. 1. A CONSUMER INJURED BY A VIOLATION OF THIS ARTICLE MAY BRING AN ACTION TO RECOVER DAMAGES. JUDGMENT MAY BE ENTERED FOR UP TO THREE TIMES THE ACTUAL DAMAGES SUFFERED BY A CONSUMER, OR TWO HUNDRED DOLLARS, WHICHEVER IS GREATER. THE COURT MAY ALSO AWARD REASONABLE ATTORNEY'S FEES TO A PREVAILING CONSUMER.

2. UPON ANY VIOLATION OF THIS ARTICLE, AN APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE STATE TO A COURT OR JUSTICE HAVING JURISDICTION TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE RESPONDENT OF NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF THE VIOLATION. IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE RESPONDENT HAS VIOLATED ANY PROVISION OF THIS ARTICLE, AN INJUNCTION MAY BE ISSUED BY THE COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS ARTICLE HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN TWO THOUSAND DOLLARS FOR EACH VIOLATION.

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