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

1835--A

Cal. No. 482

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. GALEF, ROSENTHAL, ENGLEBRIGHT, WEPRIN -- read once and referred to the Committee on Consumer Affairs and Protection -- recommitted to the Committee on Consumer Affairs and Protection in accordance with Assembly Rule 3, sec. 2 -- reported and referred to the Committee on Codes -- reported from committee, advanced to a third reading, amended and ordered reprinted, retaining its place on the order of third reading

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.

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

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(E) PRODUCTS DEFINED IN SUBDIVISION THREE OF SECTION TWO OF THE AGRICULTURE AND MARKETS LAW SHALL BE EXCLUDED FROM THE PROVISIONS OF THIS SECTION, PROVIDED, HOWEVER, THAT ANY RETAILER OFFERING FOR SALE OR SELLING SUCH PRODUCTS MAY ISSUE RAINCHECKS PURSUANT TO THIS SECTION.

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.

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. 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.

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

7. 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.

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

9. NOTHING IN THIS SECTION 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 one hundred eightieth day after it shall have become a law.