

5632

2013-2014 Regular Sessions

I N S E N A T E

May 30, 2013

Introduced by Sen. GRISANTI -- 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 enacting the discount buying club consumer protection 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 30-B to read as follows:

3 ARTICLE 30-B

4 DISCOUNT BUYING CLUB CONSUMER PROTECTION ACT

5 SECTION 641. SHORT TITLE.

6 641-A. DEFINITIONS.

7 641-B. BUYER'S OR OTHER OBLIGOR'S RIGHT TO CANCEL.

8 641-C. FORM OF NOTICE; STATEMENT OF BUYER'S RIGHTS.

9 641-D. ENFORCEMENT; PENALTIES.

10 S 641. SHORT TITLE. THIS ARTICLE SHALL BE KNOWN AND MAY BE CITED AS
11 THE "DISCOUNT BUYING CLUB CONSUMER PROTECTION ACT".

12 S 641-A. DEFINITIONS. AS USED IN THIS ARTICLE, THE FOLLOWING TERMS
13 SHALL MEAN:

14 1. "BUSINESS DAY" SHALL EXCLUDE SATURDAYS, SUNDAYS, HOLIDAYS AND, IN
15 THE EVENT THAT THE BUYER PERSONALLY DELIVERS THE CANCELLATION NOTICE TO
16 THE CLUB, DAYS ON WHICH THE SELLER OF THE BUYER'S AGREEMENT IS CLOSED.

17 2. "BUYER" AS USED IN THIS ARTICLE MEANS ANY INDIVIDUAL WHO ENTERS
18 INTO AN AGREEMENT FOR SERVICES WITH A DISCOUNT BUYING CLUB.

19 3. "DISCOUNT BUYING CLUB" MEANS ANY PERSON, FIRM OR CORPORATION,
20 WHICH, IN EXCHANGE FOR VALUABLE CONSIDERATION, OFFERS TO SELL OR TO
21 ARRANGE THE SALE OF GOODS OR SERVICES TO ITS CUSTOMERS AT PRICES REPRESENTED TO BE LOWER THAN ARE GENERALLY AVAILABLE. SUCH TERM SHALL NOT
22 INCLUDE:
23

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

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1 (A) ANY COOPERATIVE BUYING ASSOCIATION OR OTHER GROUP IN WHICH NO
2 PERSON IS INTENDED TO PROFIT OR ACTUALLY PROFITS BEYOND THE BENEFIT THAT
3 ALL MEMBERS RECEIVE FROM BUYING AT A DISCOUNT;

4 (B) ANY PERSON, FIRM OR CORPORATION THAT:

5 (I) FOR FIFTY DOLLARS OR LESS SELLS TICKETS OR COUPONS VALID FOR USE
6 IN OBTAINING GOODS OR SERVICES FROM A RETAIL MERCHANT; OR

7 (II) AS A SERVICE COLLATERAL TO ITS PRINCIPAL BUSINESS, AND FOR NO
8 ADDITIONAL CHARGE, ARRANGES FOR ITS MEMBERS OR CUSTOMERS TO PURCHASE OR
9 LEASE DIRECTLY FROM PARTICULAR MERCHANTS AT A SPECIFIED DISCOUNT; OR

10 (III) CHARGES AN ADVANCE FEE FOR ACCESS TO SERVICE, OR MEMBER BENE-
11 FITS, AND ALLOWS THE BUYER TO TERMINATE MEMBERSHIP BY NOTIFYING THE
12 PERSON, FIRM OR CORPORATION OF INTENT TO TERMINATE MEMBERSHIP WITHOUT
13 FURTHER OBLIGATION TO MAKE ADDITIONAL PAYMENTS.

14 4. "SELLER" SHALL MEAN ANY PERSON, PARTNERSHIP, CORPORATION OR ASSOCI-
15 ATION ENGAGED IN THE SALE OF DISCOUNT BUYING CLUB SERVICES.

16 S 641-B. BUYER'S OR OTHER OBLIGOR'S RIGHT TO CANCEL. 1. IN ADDITION TO
17 ANY RIGHT OTHERWISE TO REVOKE AN OFFER, THE BUYER MAY CANCEL A DISCOUNT
18 BUYING CLUB AGREEMENT UNTIL MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE
19 DAY ON WHICH THE BUYER HAS SIGNED THE AGREEMENT. SUCH AGREEMENT SHALL
20 IMPOSE NO LIABILITY ON THE BUYER FOR SUCH CANCELLATION. THE SELLER SHALL
21 PROVIDE A REFUND OF ANY FEE PAID BY THE BUYER NOT MORE THAN TEN DAYS
22 AFTER SUCH CANCELLATION.

23 2. CANCELLATION OCCURS WHEN WRITTEN NOTICE OF CANCELLATION IS GIVEN TO
24 THE SELLER. NOTICE OF CANCELLATION NEED NOT TAKE A PARTICULAR FORM AND
25 IS SUFFICIENT IF IT INDICATES, BY ANY FORM OF WRITTEN EXPRESSION, THE
26 INTENTION OR DESIRE OF THE BUYER TO CANCEL THE DISCOUNT BUYING CLUB
27 AGREEMENT.

28 3. NOTICE OF CANCELLATION, IF GIVEN BY MAIL, SHALL BE DEEMED GIVEN
29 WHEN DEPOSITED IN A MAILBOX PROPERLY ADDRESSED AND POSTAGE PREPAID.

30 S 641-C. FORM OF NOTICE; STATEMENT OF BUYER'S RIGHTS. 1. IN A DISCOUNT
31 BUYING CLUB SERVICE SALE, THE SELLER SHALL FURNISH TO THE BUYER:

32 (A) A FULLY COMPLETED RECEIPT OR COPY OF ANY AGREEMENT PERTAINING TO
33 SUCH SALE AT THE TIME OF ITS EXECUTION, WHICH IS IN THE SAME LANGUAGE,
34 E.G. SPANISH, AS THAT PRINCIPALLY USED IN THE ORAL SALES PRESENTATION
35 AND WHICH SHOWS THE DATE OF THE TRANSACTION AND CONTAINS THE NAME AND
36 ADDRESS OF THE SELLER, AND IN IMMEDIATE PROXIMITY TO THE SPACE RESERVED
37 IN THE AGREEMENT FOR THE SIGNATURE OF THE BUYER AND IN NOT LESS THAN
38 TWELVE-POINT BOLD FACE TYPE, A STATEMENT IN SUBSTANTIALLY THE FOLLOWING
39 FORM:

40 "YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO
41 MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION.
42 SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS
43 RIGHT."; AND

44 (B) AT THE TIME THE BUYER SIGNS THE DISCOUNT BUYING CLUB AGREEMENT, A
45 COMPLETED FORM IN DUPLICATE, CAPTIONED "NOTICE OF CANCELLATION", WHICH
46 SHALL BE ATTACHED TO THE AGREEMENT AND EASILY DETACHABLE, AND WHICH
47 SHALL CONTAIN IN NOT LESS THAN TWELVE-POINT BOLD FACE TYPE THE FOLLOWING
48 INFORMATION AND STATEMENTS IN THE SAME LANGUAGE, E.G. SPANISH, AS THAT
49 USED IN THE AGREEMENT:

50 NOTICE OF CANCELLATION

51 (ENTER DATE OF TRANSACTION) _____

52 (DATE)

53 YOU MAY CANCEL THIS TRANSACTION, WITHOUT ANY PENALTY OR OBLIGATION,
54 WITHIN THREE BUSINESS DAYS FROM THE ABOVE DATE.

55 IF YOU CANCEL, ANY PAYMENTS MADE BY YOU UNDER THE AGREEMENT AND ANY
56 NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN TEN BUSI-

1 NESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE,
 2 AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE
 3 CANCELLED. TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND
 4 DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE TO
 5 (NAME OF SELLER), AT (ADDRESS OF SELLER)

6 _____
 7 _____
 8 (PLACE OF BUSINESS) NOT LATER THAN MIDNIGHT OF
 9 _____ (DATE)

10 I HEREBY CANCEL THIS TRANSACTION.
 11 _____ (DATE)

12 _____ (BUYER'S SIGNATURE)

13 THE SELLER SHALL COMPLETE BOTH COPIES BY ENTERING THE NAME OF THE SELL-
 14 ER, THE ADDRESS OF THE SELLER'S PLACE OF BUSINESS, THE DATE OF THE TRAN-
 15 SACTION, AND THE DATE, NOT EARLIER THAN THE THIRD BUSINESS DAY FOLLOWING
 16 THE DATE OF THE TRANSACTION, BY WHICH THE BUYER MAY GIVE NOTICE OF
 17 CANCELLATION.

18 2. THE SELLER SHALL INFORM EACH BUYER ORALLY AT THE TIME HE OR SHE
 19 SIGNS THE AGREEMENT OF HIS OR HER RIGHT TO CANCEL.

20 3. THE SELLER SHALL INFORM EACH BUYER IN A CLEAR AND CONSPICUOUS
 21 MANNER PRIOR TO A CONSUMER SIGNING A CONTRACT FOR A DISCOUNT BUYING CLUB
 22 AGREEMENT, THE RANGE OF COSTS OF SUCH AGREEMENT.

23 4. A DISCOUNT BUYING CLUB AGREEMENT OR RECEIPT SHALL NOT INCLUDE ANY
 24 CONFESSION OF JUDGMENT OR ANY WAIVER OF ANY OF THE RIGHTS TO WHICH THE
 25 BUYER IS ENTITLED UNDER THIS ARTICLE INCLUDING SPECIFICALLY HIS OR HER
 26 RIGHT TO CANCEL THE SALE IN ACCORDANCE WITH THE PROVISIONS OF THIS ARTI-
 27 CLE.

28 5. NO SELLER, OR ANY AGENT OR EMPLOYEE THEREOF, SHALL:

29 (A) DIRECTLY OR INDIRECTLY REPRESENT IN ANY MANNER DURING A SALES
 30 PRESENTATION THAT A CONSUMER MUST SIGN AN AGREEMENT ON THE SAME DAY AS
 31 SUCH PRESENTATION IN ORDER TO AVOID A LIFETIME PROHIBITION ON PURCHASING
 32 DISCOUNT BUYING CLUB SERVICES FROM SUCH SELLER;

33 (B) USE TERMS SUCH AS "FREE," OR ANY OTHER TERM OF SIMILAR IMPORT OR
 34 MEANING THAT WOULD LEAD A CONSUMER TO BELIEVE THAT HE OR SHE MAY RECEIVE
 35 SOMETHING OF VALUE ENTIRELY OR IN PART WITHOUT A REQUIREMENT OF COMPEN-
 36 SATION IN ANY FORM, UNLESS ALL MATERIAL TERMS, RESTRICTIONS AND LIMITA-
 37 TIONS OF THE OFFER ARE CLEARLY AND CONSPICUOUSLY DISCLOSED IN THE ADVER-
 38 TISING;

39 (C) OFFER ANY GIFTS, SWEEPSTAKES OR PRIZES AS A SOLICITATION TO ATTEND
 40 A SALES PRESENTATION OPEN TO THE PUBLIC OR TO SIGN A DISCOUNT BUYING
 41 CLUB AGREEMENT UNLESS THE SELLER HONORS THE GIFT, PROMOTION OR PARTIC-
 42 IPATION IN THE SWEEPSTAKES IN ACCORDANCE WITH THE TERMS OF ITS PROMISE;

43 (D) OFFER FREE TRIAL MEMBERSHIPS WITHOUT CLEARLY AND CONSPICUOUSLY
 44 DISCLOSING MATERIAL RESTRICTIONS, LIMITATIONS AND CONDITIONS, INCLUDING
 45 ANY RESTRICTIONS ON THE BRANDS AND AMOUNT OF MERCHANDISE THAT CAN BE
 46 PURCHASED;

47 (E) FAIL TO CLEARLY AND CONSPICUOUSLY DISCLOSE PRIOR TO THE SALE OF A
 48 CLUB MEMBERSHIP ANY COSTS AND FEES ADDED TO THE PRICE OF MERCHANDISE
 49 INCLUDING, BUT NOT LIMITED TO, FREIGHT AND SHIPPING COSTS, HANDLING FEES
 50 AND POTENTIAL MANUFACTURER OR SUPPLIER PRICE INCREASES;

51 (F) IF APPLICABLE, FAIL TO CLEARLY AND CONSPICUOUSLY DISCLOSE PRIOR TO
 52 THE SALE OF A CLUB MEMBERSHIP THAT:

53 (I) THE FULL PRICE OF THE MERCHANDISE, PLUS APPLICABLE CHARGES, WOULD
 54 BE REQUIRED AT THE TIME OF PLACEMENT OF THE ORDER; AND

1 (II) THE MANUFACTURER OF THE ORDERED MERCHANDISE DETERMINES THE REFUND
2 AND CANCELLATION POLICY AND IS THE WARRANTOR OF SAID MERCHANDISE RATHER
3 THAN THE SELLER; OR

4 (G) SEEK TO ENFORCE IN ANY LEGAL ACTION AND REFER OR REPORT TO ANY
5 CONSUMER REPORTING AGENCY, AS SUCH TERM IS DEFINED IN SECTION THREE
6 HUNDRED EIGHTY-A OF THIS CHAPTER, A BUYER'S FAILURE TO MAKE PAYMENT
7 UNDER ANY RETAIL INSTALLMENT CONTRACT, OBLIGATION OR CREDIT AGREEMENT
8 PURCHASED OR ACQUIRED AND CURRENTLY MAINTAINED BY A SALES FINANCE COMPA-
9 NY THAT IS NOT LICENSED IN THE STATE IN COMPLIANCE WITH ARTICLE ELEVEN-B
10 OF THE BANKING LAW.

11 S 641-D. ENFORCEMENT; PENALTIES. 1. WHENEVER THERE SHALL BE A
12 VIOLATION OF THE PROVISIONS OF THIS ARTICLE, AN APPLICATION MAY BE MADE
13 BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF NEW
14 YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL PROCEEDING
15 TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF NOT LESS
16 THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH
17 VIOLATIONS; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR
18 JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS ARTICLE, AN
19 INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE, ENJOINING AND
20 RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY
21 PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH
22 PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS
23 PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE
24 HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITU-
25 TION. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS ARTI-
26 CLE HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN
27 ONE THOUSAND DOLLARS FOR EACH VIOLATION. IN CONNECTION WITH ANY SUCH
28 PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF
29 AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE SUBPOENAS IN
30 ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES.

31 2. NOTHING IN THIS SECTION SHALL IN ANY WAY LIMIT RIGHTS OR REMEDIES
32 WHICH ARE OTHERWISE AVAILABLE UNDER LAW TO THE ATTORNEY GENERAL.

33 S 2. If any provision of article 30-B of the general business law, as
34 added by section one of this act, or the application of such provision
35 in certain circumstances shall be held invalid, the validity of the
36 remainder of such article and its applicability to other circumstances
37 shall not be affected.

38 S 3. This act shall take effect on the first of January next succeed-
39 ing the date upon which it shall have become a law.