

217

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. ROSENTHAL, ROBINSON, PAULIN, CAHILL, MAISEL,
DINOWITZ, MARKEY, CLARK, JAFFEE -- Multi-Sponsored by -- M. of A.
BOYLAND, COLTON, GABRYSZAK, GLICK, WEISENBERG -- read once and
referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to prohibiting the
sale of expired goods

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, DO ENACT AS FOLLOWS:

1 Section 1. The general business law is amended by adding a new section
2 349-e to read as follows:
3 S 349-E. PROHIBITIONS AGAINST THE SALE OF EXPIRED GOODS. 1. FOR THE
4 PURPOSE OF THIS SECTION:
5 (A) "RETAIL" OR "RETAIL SALE" SHALL MEAN A SALE TO A CONSUMER OR TO
6 ANY PERSON FOR ANY PURPOSE OTHER THAN FOR RESALE.
7 (B) "SELL" OR "OFFER TO SELL" SHALL MEAN THE ACT OF SELLING, DISPLAY-
8 ING OR OFFERING GOODS FOR RETAIL SALE.
9 (C) "MERCHANT" SHALL MEAN A PERSON WHO DEALS IN GOODS OF THE KIND OR
10 OTHERWISE BY HIS OR HER OCCUPATION HOLDS HIMSELF OR HERSELF OUT AS
11 HAVING KNOWLEDGE OR SKILL PARTICULAR TO THE PRACTICES OR GOODS INVOLVED
12 IN THE TRANSACTION OR TO WHOM SUCH KNOWLEDGE OR SKILL MAY BE ATTRIBUTED
13 BY HIS OR HER EMPLOYMENT OF AN AGENT OR BROKER OR OTHER INTERMEDIARY WHO
14 BY HIS OR HER OCCUPATION HOLDS HIMSELF OR HERSELF OUT AS HAVING SUCH
15 KNOWLEDGE OR SKILL.
16 (D) "EXPIRATION DATE" SHALL MEAN THE DATE LISTED ON THE ITEM AFTER
17 WHICH THE GOODS DECLINE IN QUALITY, FRESHNESS, EFFICACY OR UTILITY.
18 2. (A) NO MERCHANT SHALL OFFER GOODS FOR RETAIL SALE AFTER THEIR EXPI-
19 RATION DATE, UNLESS SUCH GOODS ARE SEGREGATED, CLEARLY AND CONSPICUOUSLY
20 MARKED, AND OFFERED AT A REDUCTION FROM THE CUSTOMARY SELLING PRICE AT
21 WHICH IDENTICAL UNEXPIRED GOODS ARE OFFERED FOR SALE.

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

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1 (B) OFFERING GOODS FOR SALE AFTER THEIR EXPIRATION DATE SHALL BE
2 CONSIDERED A VIOLATION OF THE WARRANTY OF MERCHANTABILITY AND A MATE-
3 RIALY DECEPTIVE ACT, IN VIOLATION OF SECTION THREE HUNDRED FORTY-NINE
4 OF THIS ARTICLE.

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