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

593--B

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. DINOWITZ -- read once and referred to the Committee on Consumer Affairs and Protection -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- 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 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

Section 1. The general business law is amended by adding a new article 30-B to read as follows:

ARTICLE 30-B

DISCOUNT BUYING CLUB CONSUMER PROTECTION ACT

SECTION 641. SHORT TITLE.
641-A. DEFINITIONS.
641-B. BUYER'S OR OTHER OBLIGOR'S RIGHT TO CANCEL.
641-C. FORM OF NOTICE; STATEMENT OF BUYER'S RIGHTS.
641-D. ENFORCEMENT; PENALTIES.

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

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

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

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

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

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

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

(B) ANY PERSON, FIRM OR CORPORATION THAT:

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

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

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

4. "SELLER" SHALL MEAN ANY PERSON, PARTNERSHIP, CORPORATION OR ASSOCIATION ENGAGED IN THE SALE OF DISCOUNT BUYING CLUB SERVICES.

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

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

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

S 641-C. FORM OF NOTICE; STATEMENT OF BUYER'S RIGHTS. 1. IN A DISCOUNT BUYING CLUB SERVICE SALE, THE SELLER SHALL FURNISH TO THE BUYER AT THE TIME THE BUYER SIGNS THE DISCOUNT BUYING CLUB AGREEMENT, A COMPLETED FORM IN DUPLICATE, CAPTIONED "NOTICE OF CANCELLATION", WHICH SHALL BE ATTACHED TO THE AGREEMENT AND EASILY DETACHABLE, AND WHICH SHALL CONTAIN IN NOT LESS THAN TEN-POINT TYPE THE FOLLOWING INFORMATION AND STATEMENTS IN THE SAME LANGUAGE, E.G. SPANISH, AS THAT USED IN THE AGREEMENT:

NOTICE OF CANCELLATION

(ENTER DATE OF TRANSACTION) _____

(DATE)

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

IF YOU CANCEL, ANY PROPERTY TRADED IN, ANY PAYMENTS MADE BY YOU UNDER THE CONTRACT OR SALE AND ANY NEGOTIABLE INSTRUMENT EXECUTED BY YOU WILL BE RETURNED WITHIN 10 BUSINESS DAYS FOLLOWING RECEIPT BY THE SELLER OF YOUR CANCELLATION NOTICE, AND ANY SECURITY INTEREST ARISING OUT OF THE TRANSACTION WILL BE CANCELLED. IF YOU CANCEL, YOU MUST MAKE AVAILABLE TO THE SELLER AT YOUR RESIDENCE IN SUBSTANTIALLY AS GOOD CONDITION AS WHEN RECEIVED, ANY GOODS DELIVERED TO YOU UNDER THIS CONTRACT OR SALE; OR YOU MAY IF YOU WISH, COMPLY WITH THE INSTRUCTIONS OF THE SELLER REGARDING THE RETURN SHIPMENT OF THE GOODS AT THE SELLER'S EXPENSE AND RISK. IF YOU DO MAKE THE GOODS AVAILABLE TO THE SELLER AND THE SELLER

DOES NOT PICK THEM UP WITHIN 20 DAYS OF THE DATE OF YOUR NOTICE OF CANCELLATION, YOU MAY RETAIN OR DISPOSE OF THE GOODS WITHOUT ANY FURTHER OBLIGATION. IF YOU FAIL TO MAKE THE GOODS AVAILABLE TO THE SELLER, OR IF YOU AGREE TO RETURN THE GOODS TO THE SELLER AND FAIL TO DO SO, THEN YOU REMAIN LIABLE FOR PERFORMANCE OF ALL OBLIGATIONS UNDER THE CONTRACT. TO CANCEL THIS TRANSACTION, MAIL OR DELIVER A SIGNED AND DATED COPY OF THIS CANCELLATION NOTICE OR ANY OTHER WRITTEN NOTICE TO

(NAME OF SELLER), AT (ADDRESS OF SELLER) _____

_____

(PLACE OF BUSINESS) NOT LATER THAN MIDNIGHT OF

_____ (DATE)

I HEREBY CANCEL THIS TRANSACTION.

_____ (DATE)

_____ (BUYER'S SIGNATURE)

THE SELLER SHALL COMPLETE BOTH COPIES BY ENTERING THE NAME OF THE SELLER, THE ADDRESS OF THE SELLER'S PLACE OF BUSINESS, THE DATE OF THE TRANSACTION, AND THE DATE, NOT EARLIER THAN THE THIRD BUSINESS DAY FOLLOWING THE DATE OF THE TRANSACTION, BY WHICH THE BUYER MAY GIVE NOTICE OF CANCELLATION.

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

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

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

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

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

(B) USE TERMS SUCH AS "FREE," OR ANY OTHER TERM OF SIMILAR IMPORT OR MEANING THAT WOULD LEAD A CONSUMER TO BELIEVE THAT HE OR SHE MAY RECEIVE SOMETHING OF VALUE ENTIRELY OR IN PART WITHOUT A REQUIREMENT OF COMPENSATION IN ANY FORM, UNLESS ALL MATERIAL TERMS, RESTRICTIONS AND LIMITATIONS OF THE OFFER ARE CLEARLY AND CONSPICUOUSLY DISCLOSED IN THE ADVERTISING;

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

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

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

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

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

(II) THE MANUFACTURER OF THE ORDERED MERCHANDISE DETERMINES THE REFUND AND CANCELLATION POLICY AND IS THE WARRANTOR OF SAID MERCHANDISE RATHER THAN THE SELLER.

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

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

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

S 3. This act shall take effect on the first of January next succeeding the date upon which it shall have become a law.