

5710

2015-2016 Regular Sessions

I N A S S E M B L Y

March 3, 2015

Introduced by M. of A. GALEF, ROSENTHAL, ENGLEBRIGHT, WEPRIN -- read
once and referred to the Committee on Consumer Affairs and Protection

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 ASSEM-
BLY, DO ENACT AS FOLLOWS:

- 1 Section 1. The general business law is amended by adding a new section
2 397-b to read as follows:
3 S 397-B. AVAILABILITY FOR SALE OF ADVERTISED MERCHANDISE. 1. A
4 RETAILER WHO ADVERTISES AN ARTICLE OF MERCHANDISE FOR SALE AT A PRICE
5 WHICH IS REDUCED, IN GOOD FAITH, TO A PRICE BELOW THE PRICE SUCH ARTI-
6 CLES ARE USUALLY SOLD OR OFFERED FOR SALE FOR IN THE STORE, AND DOES NOT
7 HAVE SUCH ARTICLE AVAILABLE THROUGHOUT THE ADVERTISED PERIOD SHALL, ON
8 THE REQUEST OF A PURCHASER OF SUCH ARTICLE, OFFER TO ISSUE A RAINCHECK
9 UNLESS ONE OR MORE OF THE FOLLOWING SITUATIONS EXISTS:
10 (A) THE ADVERTISEMENT IS MADE IN RELATION TO MAIL ORDER MERCHANDISE
11 AS REGULATED BY SECTION THREE HUNDRED NINETY-SIX-M OF THIS ARTICLE.
12 (B) THE ADVERTISEMENT IS OF AN ARTICLE THAT IS ONE OF A KIND AND THE
13 ADVERTISEMENT CLEARLY AND CONSPICUOUSLY STATES SUCH FACT.
14 (C) THE ADVERTISEMENT CLEARLY AND CONSPICUOUSLY STATES THE SPECIFIC
15 QUANTITY OF THE ARTICLE AVAILABLE AT THE OUTSET OF THE SALE.
16 (D) THE ADVERTISEMENT CLEARLY AND CONSPICUOUSLY STATES THAT A RAIN-
17 CHECK IS NOT AVAILABLE. THIS EXCLUSION MAY ONLY BE USED IF THE ARTICLE
18 WILL NOT BE OFFERED FOR SALE FOR AT LEAST ONE HUNDRED TWENTY DAYS FROM
19 THE EXPIRATION DATE OF THE ADVERTISEMENT.
20 (E) PRODUCTS DEFINED IN SUBDIVISION THREE OF SECTION TWO OF THE AGRI-
21 CULTURE AND MARKETS LAW SHALL BE EXCLUDED FROM THE PROVISIONS OF THIS
22 SECTION, PROVIDED, HOWEVER, THAT ANY RETAILER OFFERING FOR SALE OR SELL-
23 ING SUCH PRODUCTS MAY ISSUE RAINCHECKS PURSUANT TO THIS SECTION.
24 2. A RAINCHECK ISSUED PURSUANT TO SUBDIVISION ONE OF THIS SECTION
25 SHALL ENTITLE THE HOLDER TO PURCHASE, AT THE STORE ISSUING SUCH RAIN-

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

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1 CHECK, THE ADVERTISED ARTICLE AT THE ADVERTISED PRICE WITHIN SIXTY DAYS
2 FROM THE DATE OF ISSUANCE OR FOR A PERIOD OF TEN BUSINESS DAYS FROM THE
3 FIRST DATE OF AVAILABILITY OF THE ARTICLE, WHICHEVER SHALL BE LATER.
4 THE ISSUANCE OF SUCH RAINCHECK SHALL CONSTITUTE AN AGREEMENT ON THE
5 PART OF THE SELLER TO SUPPLY SUCH ARTICLE AT SUCH PRICE. NOTHING
6 CONTAINED HEREIN SHALL PROHIBIT A SELLER FROM OFFERING A SIMILAR ARTICLE
7 OF EQUAL OR GREATER VALUE EITHER DURING THE PERIOD COVERED BY SUCH
8 ADVERTISEMENT OF THE ARTICLE OR WITHIN SIXTY DAYS FROM THE DATE OF ISSU-
9 ANCE OF THE RAINCHECK, OR THE SELLER AND PURCHASER FROM AGREEING TO
10 LENGTHEN THE REDEMPTION PERIOD OF SUCH RAINCHECK. IF THE PURCHASER
11 ACCEPTS SUBSTITUTION, SUCH SUBSTITUTION SHALL CONSTITUTE COMPLIANCE WITH
12 THE PROVISIONS OF SUBDIVISION ONE OF THIS SECTION.

13 3. THE RAINCHECK SHALL INCLUDE AT LEAST THE FOLLOWING INFORMATION:
14 (A) NAME, ADDRESS AND TELEPHONE NUMBER OF THE ISSUER.
15 (B) DATE OF ISSUANCE.
16 (C) LAST DATE THAT THE RAINCHECK CAN BE REDEEMED.
17 (D) NAME, DESCRIPTION AND QUANTITY DESIRED OF THE ARTICLE.
18 (E) THE ADVERTISED PRICE.

19 4. THE RAINCHECK SHALL CONTAIN THE FOLLOWING NOTICE:
20 YOU MAY REDEEM THIS RAINCHECK FOR THE ADVERTISED ITEM DESCRIBED ON THE
21 OTHER SIDE WITHIN SIXTY DAYS OF ISSUANCE OR FOR A PERIOD OF TEN BUSINESS
22 DAYS FROM THE FIRST DATE OF AVAILABILITY OF THE ITEM, WHICHEVER SHALL BE
23 LATER.
24 YOU WILL PAY ONLY THE ADVERTISED PRICE FOR THE ITEM.
25 YOU ARE UNDER NO OBLIGATION TO BUY THE ITEM.

26 5. IT SHALL BE AN AFFIRMATIVE DEFENSE TO AN ALLEGED VIOLATION OF THIS
27 SECTION THAT THE SELLER WAS UNABLE TO HONOR A RAINCHECK WITHIN THE
28 REDEMPTION PERIOD BECAUSE SUCH SELLER DID NOT RECEIVE A REORDER OF THE
29 ADVERTISED ARTICLE FROM A SUPPLIER THROUGH NO FAULT OF THE SELLER
30 PROVIDED, HOWEVER, THAT THE SELLER MUST MAINTAIN RECORDS SUFFICIENT TO
31 SHOW THAT THE ADVERTISED SALE ITEMS WERE REORDERED IN ADEQUATE TIME FOR
32 DELIVERY AND IN SUFFICIENT QUANTITY TO FULFILL RAINCHECK OBLIGATIONS.

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

34 7. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO RELIEVE THE SELLER
35 FROM ANY OTHER PROVISION OF LAW PROHIBITING THE ADVERTISING OF GOODS OR
36 SERVICES WITH THE INTENT NOT TO MEET REASONABLY EXPECTED DEMAND.

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

39 9. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO RESTRICT THE POWER OF
40 ANY COUNTY, CITY, TOWN OR VILLAGE TO ADOPT AND ENFORCE ADDITIONAL LOCAL
41 LAWS, ORDINANCES, OR REGULATIONS WHICH EXCEED THE MINIMUM APPLICABLE
42 STANDARDS IN THIS SECTION.

43 S 2. This act shall take effect on the one hundred eightieth day after
44 it shall have become a law.