STATE OF NEW YORK

4620--A

Cal. No. 128

2023-2024 Regular Sessions

IN ASSEMBLY

February 17, 2023

Introduced by M. of A. ALVAREZ -- read once and referred to the Committee on Consumer Affairs and Protection -- ordered 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 disclosure of raincheck policies for certain 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-c to read as follows:

§ 397-c. Disclosure of raincheck policy. 1. For the purposes of this section, the term "raincheck" shall mean a written statement issued by a retailer allowing the purchase of designated merchandise at a previously advertised price.

2. A retailer who has adopted as a policy the issuance of rainchecks to consumers for sale of advertised merchandise not available throughout the advertised period shall, clearly and conspicuously post its raincheck policy:

(a) in close proximity to the cash register or so situated as to be clearly visible to the buyer at the point of sale;

(b) on its website; and

(c) in any online or printed advertisements.

3. Any raincheck policy adopted and posted by a retailer shall include, but not be limited to, the following information:

(a) name, address, and telephone number of the retailer;

(b) retailer's website and e-mail address;

(c) a statement that reads "any raincheck issued for an advertised item will be honored for sixty days after issuance".

4. Any raincheck issued under a policy adopted by a retailer shall include at least the following information:

(a) name, address, and telephone number of the issuer;

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

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(b) date of issuance;
(c) last date that the raincheck can be redeemed;
(d) name, description and quantity desired of the article; and
(e) the advertised price.
5. The raincheck issued shall contain the following notice:
"You may redeem this raincheck for the advertised item described on the other side within sixty days of issuance.
You will pay only the advertised price for the item.
You are under no obligation to buy the item."
6. It shall be unlawful for any retailer who provides a raincheck for any advertised merchandise which is not available for immediate purchase to fail to:
(a) clearly and conspicuously post its raincheck policy in accordance with the requirements of subdivision two of this section;
(b) honor or satisfy the raincheck within sixty days from the date of issuance, provided that after a good faith effort a retailer cannot procure the advertised merchandise within the sixty day period, the retailer may offer the holder a substantially similar article of the same kind, quality, and price of the original advertised merchandise; or
(c) give written notice via mail or e-mail or notice by phone to the holder of any raincheck when the merchandise is available and inform the holder of the raincheck that the advertised merchandise will be held for a period of no less than ten days from the date of notification, or to the end of the sixty day period for which the raincheck is valid, whichever is longer.
7. 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.
8. A violation of this section shall be punishable by a civil penalty not to exceed two hundred fifty dollars.
9. This section shall not apply to a purchase for resale.
10. 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.
11. No purchaser shall be required to prepay the purchase price or any part thereof in order to obtain a raincheck.
12. 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.

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