

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:

1 Section 1. The general business law is amended by adding a new section
2 397-c to read as follows:

3 § 397-c. Disclosure of raincheck policy. 1. For the purposes of this
4 section, the term "raincheck" shall mean a written statement issued by a
5 retailer allowing the purchase of designated merchandise at a previously
6 advertised price.

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

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

13 (b) on its website; and

14 (c) in any online or printed advertisements.

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

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

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

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

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

23 (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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- 1 (b) date of issuance;
- 2 (c) last date that the raincheck can be redeemed;
- 3 (d) name, description and quantity desired of the article; and
- 4 (e) the advertised price.

5 5. The raincheck issued shall contain the following notice:

6 "You may redeem this raincheck for the advertised item described on
7 the other side within sixty days of issuance.

8 You will pay only the advertised price for the item.

9 You are under no obligation to buy the item."

10 6. It shall be unlawful for any retailer who provides a raincheck for
11 any advertised merchandise which is not available for immediate purchase
12 to fail to:

13 (a) clearly and conspicuously post its raincheck policy in accordance
14 with the requirements of subdivision two of this section;

15 (b) honor or satisfy the raincheck within sixty days from the date of
16 issuance, provided that after a good faith effort a retailer cannot
17 procure the advertised merchandise within the sixty day period, the
18 retailer may offer the holder a substantially similar article of the
19 same kind, quality, and price of the original advertised merchandise; or

20 (c) give written notice via mail or e-mail or notice by phone to the
21 holder of any raincheck when the merchandise is available and inform the
22 holder of the raincheck that the advertised merchandise will be held for
23 a period of no less than ten days from the date of notification, or to
24 the end of the sixty day period for which the raincheck is valid, which-
25 ever is longer.

26 7. 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 8. A violation of this section shall be punishable by a civil penalty
34 not to exceed two hundred fifty dollars.

35 9. This section shall not apply to a purchase for resale.

36 10. Nothing in this section shall be construed to relieve the seller
37 from any other provision of law prohibiting the advertising of goods or
38 services with the intent not to meet reasonably expected demand.

39 11. No purchaser shall be required to prepay the purchase price or any
40 part thereof in order to obtain a raincheck.

41 12. Nothing in this section shall be construed to restrict the power
42 of any county, city, town or village to adopt and enforce additional
43 local laws, ordinances, or regulations which exceed the minimum applica-
44 ble standards in this section.

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