ARTICLE XXIV-A

FAIR TRADE LAW

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§ 369-a. Price-fixing prohibited. Any contract provision that purports to restrain a vendee of a commodity from reselling such commodity at less than the price stipulated by the vendor or producer shall not be enforceable or actionable at law.

§ 369-b. Manufacturer's warranty and guarantee.

A warranty or guarantee of merchandise may not be limited by a manufacturer doing business in this state solely for the reason that such merchandise is sold by a particular dealer or dealers, or that the dealer who sold the merchandise at retail has, since the date of sale, either gone out of business or no longer sells such merchandise. Any attempt to limit the manufacturer's warranty or guarantee for the aforesaid reason is void.

§ 369-c. Definitions. The following terms, as used in this article, are hereby defined as follows: "Producer" means grower, baker, maker, manufacturer or publisher. "Commodity" means any subject of commerce.

§ 369-d. Effect of partial invalidity. If any provision of this article is declared unconstitutional it is the intent of the legislature that the remaining portions thereof shall not be affected but that such

remaining portions remain in full force and effect.

§ 369-e. Use of games of chance in selling commodities. 1. Every person, firm or corporation proposing to engage in any game, contest or other promotion or advertising scheme or plan in connection with the promotion, advertising or sale of consumer products or services which offers the opportunity to receive gifts, prizes or gratutities, as determined by chance, without any consideration therefor, where the total announced value of the prizes offered is in excess of five thousand dollars shall file with the secretary of state, at least thirty days prior to the commencement of such game, contest or promotion upon a form that he shall provide, a statement setting forth: the minimum number of participating objects to be made available; the minimum number of prize-winning objects that will be included in such promotion or advertising scheme or plan; the proportionate opportunity of winning prizes; the minimum value of prizes to be made available; and the rules and regulations pertaining to such promotion or advertising scheme or plan, which shall include the period of time and the geographic area to be covered by the contest and such other information as the secretary of state may, from time to time, require. The non-refundable filing fee of one hundred dollars shall accompany each such statement.

Failure to file such statement shall be a class B misdemeanor.

2. Every person, firm or corporation, engaging in any promotion or advertising game or contest of the type set forth in subdivision one of this section, shall cause to be posted in a conspicuous and prominent location in every retail establishment offering the opportunity to participate in such game or contest and published in all advertising copy used in connection therewith, a statement showing the minimum number and value of prizes available to be won over a stated period of time and stated geographic area, and the rules and regulations pertaining to such promotion or advertising scheme or plan. Failure to cause such posting and publication shall be a class B misdemeanor.

3. Every person, firm or corporation who manipulates or rigs any

promotion or advertising scheme or plan of the type set forth in subdivision one of this section so that prize-winning objects are dispersed to predetermined individuals or retail establishments shall be guilty of a class B misdemeanor, provided, however, that this subdivision shall not prevent distribution of prize-winning objects of equal value to retail establishments in a uniform ratio to the number of participating objects distributed to those establishments.

4. Every person, firm or corporation engaging in any promotion or advertising game or contest of the type set forth in subdivision one of this section shall establish and maintain a special trust account in a branch of a national or state chartered banking institution with a balance sufficient to pay or purchase the total value of prizes offered. In lieu of establishing such trust account, said operator may furnish a bond, with sufficient sureties, in an amount equal to the total value of all prizes offered; such bond shall be in favor of the people of the state of New York. A copy of a certificate of deposit indicating the balance of said trust account or a copy of the surety bond shall be filed with the office of the secretary of state simultaneously with the filing of the statement required by subdivision one hereof. The monies so held in escrow or said surety bond shall at all times equal the total amount of prizes so offered. The monies may be withdrawn, from time to time, in order to pay, award or purchase prizes offered only upon certification to the secretary of state of the names and addresses of the winners and the amount or value of the respective prizes.

5. Every person, firm or corporation engaging in any promotion or advertising scheme or plan of the type set forth in subdivision one of this section shall within ninety days following the completion of said promotion or advertising scheme or plan, file with the secretary of state a listing of the name and address of each winner of every prize having a value of more than twenty-five dollars, the description of the prize won by each such person, and the date when such prize was delivered to each such person, and shall maintain complete records of such promotion or advertising scheme or plan for a period of six months thereafter. Failure to file such listing with the secretary of state or to maintain such records shall be a class B misdemeanor. A copy of such

listing shall be furnished, without charge, to any person who requests the same from said promoter. Nothing herein shall prohibit a requirement that such request must be accompanied by a stamped, self-addressed envelope provided such requirement shall be included in and made a part of the rules and regulations filed pursuant to subdivision one of this section.

6. Every person, firm or corporation who prints, publishes or circulates literature or advertising material, used in connection with any promotion or advertising scheme or plan of the type set forth in subdivision one of this section, which is false, deceptive or misleading, shall be guilty of a class B misdemeanor.

7. Every person, firm or corporation who coerces a retail dealer to participate in any promotion or advertising scheme or plan of the type set forth in subdivision one of this section shall be guilty of a class B misdemeanor. Such coercion includes, but is not limited to, circumstances in which a course of business conduct extending over a period of one year or longer between a supplier and a dealer is materially changed, for no legitimate business reason, coincident with a failure or refusal of the dealer to participate in such games.

8. Whenever the attorney general shall have reason to believe that any promotion or advertising scheme or plan of the type set forth in subdivision one of this section is being operated in violation of this section, he may bring an action in the supreme court, in the name and on behalf of the people of the state of New York to enjoin the continued operation of such promotion or advertising scheme or plan. An action for violation of this section may be instituted by the attorney general in the name of the people of the state of New York, and in any such action, the attorney general shall exercise all of the powers and perform all the duties which the district attorney would otherwise be authorized to exercise or to perform therein.

§ 369-ee. Prize award schemes. 1. Written disclosure. (a) Unless written disclosure is made as provided in paragraph (c) of this

subdivision, it shall be unlawful for any person, firm or corporation to offer a consumer a prize as part of any prize award scheme.

(b) For purposes of this section, "prize award scheme" shall mean a promotion, solicitation, or advertisement either oral, written, or otherwise for the purchase or lease of a product, real estate, an investment, services, a membership, or any other item: (i) in which the outcome depends in a material degree upon an element of chance, notwithstanding that skill or performance of the consumer may also be a factor therein; (ii) where the consumer is told that he has won or may win a prize or award, or is told that he or she is or may be the winner of a contest, or where similar language is used which would lead a consumer to believe that he or she has won or may win a prize or award; and (iii) which requires the consumer to do something (including, but not limited to, traveling to a location to accept the prize, listening to a sales presentation, submitting one's credit card account number, allowing a sales person into one's home or responding orally or in writing).

(c) Such written disclosure must be furnished to the consumer at the time he is notified of the prize and must be written or printed in a size equal to at least that type used for the standard text on the front of the first page of the offer. The written disclosure must clearly and conspicuously disclose all of the following: (i) a full description of the exact prize won by the consumer including a list price which does not appreciably exceed the highest price at which substantial sales are made in the offering area; (ii) all material terms and conditions attached to the prize; (iii) a statement, where applicable, that the consumer must submit to a sales presentation; (iv) a full description of the product, real estate, investment, services, membership or any other item to be offered for sale, including the price of the least expensive and the most expensive item or parcel; (v) a notice that if the consumer decides to purchase any item offered for sale he has three business days in which to cancel such sale; and (vi) the odds of winning each prize must be conspicuously disclosed in the same type face, size and boldness and adjacent to the most prominent listing of the prizes on the front of the first page of the offer, with the odds stated in arabic numbers and identify the total number of prizes to be given away and the total number of offerings to be distributed.

(d) It shall be unlawful to (i) represent that a person is a "winner" or has been "selected", or words of similar import when all or a substantial number of those solicited receive the same "prize" or "opportunity" or (ii) deliver, or cause to be delivered, a prize notice or offering, which simulates or falsely represents that it is a document authorized, issued or approved by any court, official, or agency of the United States or any state, lawyer, law firm, or insurance or brokerage company, or which creates a false impression as to its source, authorization, or approval; or (iii) deliver, or cause to be delivered, a prize notice or offering which is in the form of, or a prize notice or offering which includes, a document which simulates a bond, check or other negotiable instrument, whether or not that document contains a statement or some other indication which suggests that it is non-negotiable.

2. Right of cancellation. In addition to any other right to revoke an offer, the consumer may cancel a sale made as a result of a prize award solicitation until midnight of the third business day after the day on which he signed a sales agreement. Cancellation occurs when written notice of cancellation is given to the seller. Notice of cancellation, if given by mail, shall be deemed given when deposited in a mailbox properly addressed and postage pre-paid.

2-a. Prize claims by pay-per-call services. It shall be unlawful for any person, firm or corporation to offer a consumer a prize, if in order to claim the prize, the consumer must call a pay-per-call service where the charge for such pay-per-call service is greater than the service charge authorized by the appropriate regulatory commission. As used in this subdivision "pay-per-call service" means any telephone service for which the calling party is assessed, by virtue of completing the call, a charge for which the caller pays a per-call or per-time charge.

3. Form of notice. (a) In a sale consummated as a result of or made in association with a prize award scheme, the seller shall furnish to the buyer (i) a fully completed receipt or copy of any contract pertaining to such sale at the time of its execution, which is in the same language, e.g. Spanish, as that principally used in the oral sales

presentation and which shows the date of the transaction and contains the name and address of the seller, and in immediate proximity to the space reserved in the contract for the signature of the buyer or on the front page of the receipt if a contract is not used and in not less than ten-point bold face type, a statement in substantially the following form:

"YOU, THE BUYER, MAY CANCEL THIS TRANSACTION AT ANY TIME PRIOR TO MIDNIGHT OF THE THIRD BUSINESS DAY AFTER THE DATE OF THIS TRANSACTION. SEE THE ATTACHED NOTICE OF CANCELLATION FORM FOR AN EXPLANATION OF THIS RIGHT."; and

(ii) at the time the buyer signs the contract or otherwise agrees to buy consumer goods or services from the seller, a completed form in duplicate, captioned "NOTICE OF CANCELLATION", which shall be attached to the contract or receipt and easily detachable, and which shall contain in not less than ten-point bold face type the following information and statements in the same language, e.g. Spanish, as that used in the contract:

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 TWENTY 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, OR SEND A TELEGRAM, 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)

and 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.

(a-1) In a sale or lease to be consummated as a result of or made in association with a prize award scheme, the seller shall not employ a courier to pick up and deliver or a courier pick-up and delivery service to retrieve a buyer's deposit or payment unless the seller is otherwise authorized to do business in this state in accordance with the requirements of the business corporation law or the not-for-profit corporation law. If the seller fails to comply with this section, the buyer or any other person obligated for any part of the purchase price may cancel the contract or lease at any time by notifying the seller in any manner and by any means of his or her intention to cancel.

(b) In a sale consummated as a result of or made in association with a prize award scheme, the seller shall inform each buyer orally, at the time he signs the contract or purchases the goods or services, of his right to cancel. Until the seller has complied with this section, the buyer or any other person obligated for any part of the purchase price

may cancel the contract by notifying the seller in any manner and by any means of his intention to cancel. The period prescribed by this subdivision shall begin to run from the time the seller complies with this section.

(c) A prize award scheme contract 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 section including specifically his right to cancel the sale in accordance with the provisions of this article.

(d) This section shall not apply to the use of promotional materials, gifts or prizes distributed without charge or expense to any person, firm or corporation.

(e) This section shall not apply to the use of promotional materials, gifts, or prizes by a retail store primarily engaged in the retail sale of goods or services for which this type of promotion is incidental and which requires the customer only to travel to the merchant's regular place of business to receive the gift, prize or award.

(f) This section shall not apply to the solicitation or representations offering a consumer a prize in connection with: (i) the sale or purchase of books, recordings, videocassettes, periodicals, and similar goods through a membership group or club which is regulated by the federal trade commission pursuant to Code of Federal Regulations, title 16, part 425.1 concerning use of negative option plans by sellers in commerce; (ii) the sale or purchase of goods ordered through a contractual plan or arrangement such as a continuity plan, subscription arrangement, or a single sale or purchase series arrangement under which the seller ships goods to a consumer who has consented in advance to receive the goods and after receipt of the goods is given a reasonable opportunity to examine the goods and to receive a full refund of charges for the goods, upon return of the goods undamaged; or (iii) sales by a catalog seller. For purposes of this section, "catalog seller" shall mean any entity (and its subsidiaries) or person at least fifty percent of whose annual revenues are derived from the sale of products sold in connection with the distribution of catalogs of at least twenty-four pages, which contain written descriptions or illustrations and sale prices for each item of merchandise and which are distributed in more than one state with a total annual distribution of at least two hundred fifty thousand.

4. Violations. Upon any violation of this section, an application may be made by the attorney general in the name of the people of the state to a court or justice having jurisdiction to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of the violation. If it shall appear to the satisfaction of the court or justice that the defendant has violated this section, an injunction may be issued by the 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 a violation of this section has occurred, it may impose a civil penalty of not more than one thousand dollars for each violation. In connection with an application made under this subdivision, the attorney general is authorized to take proof and to make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

5. Effect of other laws. The obligations imposed by this section shall be in addition to and not in derogation of the requirements of any other law.

6. Applicability. The provisions of subdivisions two and three of this section shall not apply to membership campground operators as defined in section six hundred fifty-one of this chapter.

§ 369-eee. Telecommunication-related and energy-related prohibitions as to prize boxes. 1. No box or container used to collect entries for sweepstakes or a contest may, at the same time, be used to collect letters of authorization or other documents that constitute authorizations by consumers to change their primary long distance carriers or to receive or purchase natural gas, electric service, or any other telecommunication services.

2. Enforcement by attorney general. Whenever there shall be a violation of this article, 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 violation; 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 fact and to issue subpoenas in accordance with the civil practice law and rules.