

1832--A

2011-2012 Regular Sessions

I N S E N A T E

January 13, 2011

Introduced by Sen. FLANAGAN -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public service law and the general business law, in relation to consumer protections against cramming

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

1 Section 1. The opening paragraph of section 92-d of the public service
2 law, as separately amended by chapters 546 and 547 of the laws of 2000,
3 is amended to read as follows:
4 Each local exchange telephone company shall inform its customers of
5 the provisions of SECTION NINETY-TWO-G OF THIS ARTICLE, sections three
6 hundred ninety-nine-p [and], three hundred ninety-nine-z and three
7 hundred ninety-nine-pp of the general business law, and article ten-B of
8 the personal property law, as such provisions relate to the rights of
9 consumers with respect to CRAMMING, telemarketers, sellers, the no tele-
10 marketing sales call statewide registry and automatic dialing-announcing
11 devices, by means of:
12 S 2. The public service law is amended by adding a new section 92-g to
13 read as follows:
14 S 92-G. CRAMMING PROHIBITED. 1. FOR THE PURPOSES OF THIS SECTION,
15 "CRAMMING" MEANS THE INCLUSION AND IMPOSITION OF CHARGES ON THE INVOICE
16 OR BILL OF A CUSTOMER FROM A TELEPHONE CORPORATION AT THE REQUEST OF A
17 THIRD PARTY OR BILLING AGGREGATOR THAT (A) WERE NOT AUTHORIZED BY THE
18 CUSTOMER, OR (B) IF AUTHORIZED, WERE OBTAINED THROUGH MISLEADING OR
19 DECEPTIVE MEANS.
20 2. A CUSTOMER SHALL NOT BE LIABLE FOR CHARGES APPEARING ON THE INVOICE
21 OR BILL OF A TELEPHONE CORPORATION THAT ARE THE RESULT OF CRAMMING. NO
22 CHARGES FOR ANY PRODUCTS OR SERVICES, OTHER THAN THOSE PROVIDED BY THE
23 TELEPHONE CORPORATION, ITS AFFILIATES, A THIRD PARTY VIDEO PROVIDER WITH

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

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WHOM A TELEPHONE CORPORATION OR ITS AFFILIATE JOINTLY MARKET SERVICES, OR OTHERWISE PERMITTED BY LAW, SHALL BE INCLUDED ON ANY BILL OR INVOICE OF A CUSTOMER, UNLESS THE THIRD PARTY REQUESTING THE PAYMENT OF SUCH CHARGES RETAINS AND PROVIDES UPON REQUEST VALID PROOF THAT:

(A) THE CUSTOMER WAS PROVIDED WITH CLEAR AND CONSPICUOUS DISCLOSURE OF ALL MATERIAL TERMS AND CONDITIONS OF THE PRODUCT OR SERVICE BEING OFFERED, INCLUDING BUT NOT LIMITED TO ALL INITIAL AND RECURRING CHARGES AND THE FACT THAT SUCH CHARGES SHALL APPEAR ON THE CUSTOMER'S TELEPHONE BILL;

(B) AFTER RECEIVING CLEAR AND CONSPICUOUS DISCLOSURE AS PROVIDED IN PARAGRAPH (A) OF THIS SUBDIVISION, THE CUSTOMER EXPLICITLY CONSENTED TO THE NATURE AND AMOUNT OF SUCH CHARGES; AND

(C) THE THIRD PARTY OFFERING THE PRODUCT OR SERVICE OR AN AGENT OF SUCH THIRD PARTY PROVIDED THE CUSTOMER WITH A TOLL-FREE TELEPHONE NUMBER THE CUSTOMER MAY CALL AND AN ADDRESS TO WHICH THE CUSTOMER MAY WRITE TO RESOLVE ANY BILLING DISPUTE.

3. ANY CHARGES FOR THIRD PARTY PRODUCTS OR SERVICES THAT ARE INCLUDED ON A BILL OR INVOICE BY A TELEPHONE CORPORATION WITHOUT THE CONSENT OF THE CUSTOMER HAVING BEEN OBTAINED AS PROVIDED IN SUBDIVISION TWO OF THIS SECTION SHALL BE VOID AND UNENFORCEABLE, AND SHALL BE REMOVED FROM THE BILL OR INVOICE UPON NOTICE FROM SUCH CUSTOMER.

4. THE COMMISSION SHALL SUPERVISE AND ENSURE COMPLIANCE WITH THE PROVISIONS OF THIS SECTION, AND MAY PROMULGATE ANY RULES AND REGULATIONS IT DEEMS NECESSARY OR DESIRABLE TO ENSURE SUCH COMPLIANCE, INCLUDING BUT NOT LIMITED TO ANY ADDITIONAL REQUIREMENTS FOR VERIFICATION OF CUSTOMER ORDERS AND ANY ADDITIONAL STANDARDS THAT THIRD PARTIES OR AGENTS MUST MEET TO BE AUTHORIZED TO RECEIVE PAYMENT THROUGH THE INCLUSION OF CHARGES ON BILLS OR INVOICES OF TELEPHONE CORPORATIONS. ANY FAILURE BY A TELEPHONE CORPORATION TO COMPLY WITH THE PROVISIONS OF THIS SECTION MAY BE REDRESSED AS PROVIDED IN SUBDIVISION THREE OF SECTION NINETY-SIX OF THIS ARTICLE OR AS OTHERWISE AUTHORIZED BY LAW.

S 3. The general business law is amended by adding a new section 390-bb to read as follows:

S 390-BB. CRAMMING PROHIBITED. 1. FOR THE PURPOSES OF THIS SECTION, "CRAMMING" MEANS THE INCLUSION AND IMPOSITION OF CHARGES ON THE INVOICE OR BILL OF A CUSTOMER FROM A CABLE TELEVISION COMPANY, AS DEFINED IN SECTION TWO HUNDRED TWELVE OF THE PUBLIC SERVICE LAW, AND THEIR SUBSIDIARIES FURNISHING TELEPHONE SERVICE TO CUSTOMERS IN NEW YORK, AT THE REQUEST OF A THIRD PARTY OR BILLING AGGREGATOR THAT (A) WERE NOT AUTHORIZED BY THE CUSTOMER, OR (B) IF AUTHORIZED, WERE OBTAINED THROUGH MISLEADING OR DECEPTIVE MEANS.

2. A CUSTOMER SHALL NOT BE LIABLE FOR CHARGES APPEARING ON THE INVOICE OR BILL OF A CABLE TELEVISION COMPANY THAT ARE THE RESULT OF CRAMMING. NO CHARGES FOR ANY PRODUCTS OR SERVICES, OTHER THAN THOSE PROVIDED BY THE CABLE TELEVISION COMPANY, ITS AFFILIATES, A THIRD PARTY VIDEO PROVIDER WITH WHO A CABLE CORPORATION OR ITS AFFILIATE JOINTLY MARKET SERVICES, OR OTHERWISE PERMITTED BY LAW, SHALL BE INCLUDED ON ANY BILL OR INVOICE OF A CUSTOMER, UNLESS THE THIRD PARTY REQUESTING THE PAYMENT OF SUCH CHARGES RETAINS AND PROVIDES UPON REQUEST VALID PROOF THAT:

(A) THE CUSTOMER WAS PROVIDED WITH CLEAR AND CONSPICUOUS DISCLOSURE OF ALL MATERIAL TERMS AND CONDITIONS OF THE PRODUCT OR SERVICE BEING OFFERED, INCLUDING BUT NOT LIMITED TO ALL INITIAL AND RECURRING CHARGES AND THE FACT THAT SUCH CHARGES SHALL APPEAR ON THE CUSTOMER'S CABLE TELEVISION BILL;

1 (B) AFTER RECEIVING CLEAR AND CONSPICUOUS DISCLOSURE AS PROVIDED IN
2 PARAGRAPH (A) OF THIS SUBDIVISION, THE CUSTOMER EXPLICITLY CONSENTED TO
3 THE NATURE AND AMOUNT OF SUCH CHARGES; AND

4 (C) THE THIRD PARTY OFFERING THE PRODUCT OR SERVICE OR AN AGENT OF
5 SUCH THIRD PARTY PROVIDED THE CUSTOMER WITH A TOLL-FREE TELEPHONE NUMBER
6 THE CUSTOMER MAY CALL AND AN ADDRESS TO WHICH THE CUSTOMER MAY WRITE TO
7 RESOLVE ANY BILLING DISPUTE.

8 3. ANY CHARGES FOR THIRD PARTY PRODUCTS OR SERVICES THAT ARE INCLUDED
9 ON A BILL OR INVOICE BY A CABLE TELEVISION COMPANY WITHOUT THE CONSENT
10 OF THE CUSTOMER HAVING BEEN OBTAINED AS PROVIDED IN SUBDIVISION TWO OF
11 THIS SECTION SHALL BE VOID AND UNENFORCEABLE, AND SHALL BE REMOVED FROM
12 THE BILL OR INVOICE UPON NOTICE FROM SUCH CUSTOMER.

13 4. THE DEPARTMENT OF LAW SHALL SUPERVISE AND ENSURE COMPLIANCE WITH
14 THE PROVISIONS OF THIS SECTION, AND MAY PROMULGATE ANY RULES AND REGU-
15 LATIONS IT DEEMS NECESSARY OR DESIRABLE TO ENSURE SUCH COMPLIANCE,
16 INCLUDING BUT NOT LIMITED TO ANY ADDITIONAL REQUIREMENTS FOR VERIFICA-
17 TION OF CUSTOMER ORDERS AND ANY ADDITIONAL STANDARDS THAT THIRD PARTIES
18 OR AGENTS MUST MEET TO BE AUTHORIZED TO RECEIVE PAYMENT THROUGH THE
19 INCLUSION OF CHARGES ON BILLS OR INVOICES OF CABLE TELEVISION COMPANIES.
20 ANY FAILURE BY A CABLE TELEVISION COMPANY TO COMPLY WITH THE PROVISIONS
21 OF THIS SECTION MAY BE REDRESSED AS OTHERWISE AUTHORIZED BY LAW.

22 S 4. This act shall take effect on the one hundred eightieth day after
23 it shall have become a law.