

STATE OF NEW YORK

4617

2017-2018 Regular Sessions

IN SENATE

February 22, 2017

Introduced by Sen. FELDER -- read twice and ordered printed, and when printed to be committed to the Committee on Cities

AN ACT to amend the general city law and the general business law, in relation to regulating the contracts of energy services companies and telecommunications services companies

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. The general city law is amended by adding a new article 9-A
2 to read as follows:

ARTICLE 9-A

ENFORCEMENT POWERS OF STATE LAWS CONCERNING SERVICES DISTRIBUTION COMPANIES

3 Section 135. Enforcement provisions of the energy and telecommunications
4 services company consumers bill of rights.

5 § 135. Enforcement of provisions of the energy and telecommunications
6 services company consumers bill of rights. 1. The corporation counsel or
7 city attorney of any city may, in accordance with subdivisions ten and
8 eleven of section three hundred forty-nine-d of the general business
9 law, bring a civil action to enforce the provisions of the energy and
10 telecommunications services company consumers bill of rights against any
11 services distribution company, its sales agent, and/or its third party
12 representative. Such action may be brought upon his or her own motion,
13 or upon referral from the attorney general, the public service commis-
14 sion, the Long Island power authority or the department of state.

15 2. The corporation counsel or city attorney of any city may further,
16 in lieu of bringing an action pursuant to subdivision one of this
17 section, request that a civil action be brought by the attorney general
18 to enforce the provisions of the energy and telecommunications services
19 company consumers bill of rights against a services distribution compa-
20 ny, its sales agent, and/or its third party representative.

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

23 LBD07695-01-7

§ 2. Section 349-d of the general business law, as added by chapter 416 of the laws of 2010, subdivision 9 as amended by section 34 of part A of chapter 62 of the laws of 2011, is amended to read as follows:

§ 349-d. Energy and telecommunications services company consumers bill of rights. 1. For the purpose of this section:

(a) "Energy services" shall mean electricity and/or natural gas;

(b) "Energy services company" or "ESCO" shall mean an entity eligible to sell energy services to end-use customers using the transmission or distribution system of a utility;

(c) "Telecommunications services" shall mean land line telephone services, including long distance land line telephone services;

(d) "Telecommunications services company" or "TSCO" shall mean an entity eligible to sell telecommunication services to end-use customers using a land line telephone network, including wires, switches and/or other telephone network services;

(e) "Services distribution company" or "SDCO" shall mean an ESCO and/or a TSCO;

(f) "Customer" shall mean any person who is sold or offered an energy services contract by an ~~[ESCO]~~ SDCO (i) for residential energy utility or telecommunication service, or (ii) through telephone sales, or (iii) through door-to-door sales; and

(g) "Telephone sales" shall mean the sale of energy or telecommunication services in which the SDCO or the SDCO's representative personally solicits the sale, and the buyer's agreement or offer to purchase is made over the telephone; provided that such term shall not include any sale which is conducted in writing and consummated entirely by mail, or in writing by other electronic means, or during a scheduled appointment at the premises of a buyer of nonresidential utility service, or through solicitations of commercial accounts at trade or business shows, conventions or expositions.

(h) "Door-to-door sales" shall mean the sale of energy or telecommunication services in which the ~~[ESCO]~~ SDCO or the ~~[ESCO's]~~ SDCO's representative personally solicits the sale, and the buyer's agreement or offer to purchase is made at a place other than the place of business of the seller; provided that such term shall not include any sale which is conducted in writing and consummated entirely by mail, telephone or in writing by other electronic means, or during a scheduled appointment at the premises of a buyer of nonresidential utility service, or through solicitations of commercial accounts at trade or business shows, conventions or expositions.

2. Any person who sells or offers for sale any energy services to a customer for or on behalf of an ~~[ESCO]~~ SDCO shall (a) properly identify himself or herself and the ~~[energy]~~ services distribution company or companies which he or she represents; (b) explain that he or she does not represent a distribution utility; (c) explain the purpose of the solicitation; (d) provide each prospective customer with a copy of the "~~[ESCO]~~ SDCO consumers bill of rights" developed by the public service commission, in consultation with the Long Island power authority, the state consumer protection board and the department of law; and (e) provide any written materials, including contracts and the "~~[ESCO]~~ SDCO consumers bill of rights", in the same language utilized to solicit the prospective customer.

3. No person who sells or offers for sale any energy or telecommunication services for, or on behalf of, an ~~[ESCO]~~ SDCO shall:

(a) engage in any deceptive acts or practices in the marketing of energy or telecommunications services[~~+~~] ;

1 (b) be retained or compensated on a commission basis, or be provided
2 remuneration for the number of contracts for the provision of energy or
3 telecommunication services sold by such person; or

4 (c) complete a telephone sale for the provision of energy or telecom-
5 munication services, without first obtaining on behalf of the SDCO, a
6 signed, written contract from the customer agreeing to such sale, and
7 acknowledging receipt of the SDCO consumers bill of rights required to
8 be provided pursuant to this section.

9 4. No contract for provision of energy services by an [~~ESCO~~] SDCO
10 shall require any customer prepayment for energy or telecommunication
11 services. However, an [~~ESCO~~] SDCO may offer a customer an option of
12 prepayment. Any contract providing for prepayment may be cancelled by
13 the customer, without any penalty or obligation, within ninety calendar
14 days. Any unused portion of the prepayment shall be returned to the
15 customer by the [~~ESCO~~] SDCO within thirty business days following
16 receipt of notice of cancellation.

17 5. No contract for provision of energy or telecommunication services
18 by an [~~ESCO~~] SDCO shall require the customer to pay any fee for termi-
19 nation or early cancellation of a contract in excess of either (a) one
20 hundred dollars for any contract with a remaining term of less than
21 twelve months; (b) two hundred dollars for any contract with a remaining
22 term of twelve months or more; or (c) twice the estimated bill for ener-
23 gy or telecommunication services for an average month. To charge a fee
24 based on the estimated bill for energy or telecommunications services
25 for an average month, an [~~ESCO~~] SDCO must have provided the customer, at
26 the time that the contract is offered, with an estimate of the average
27 monthly bill that customer would be charged for energy or telecommuni-
28 cation services and the fee that would be charged based on such esti-
29 mate.

30 6. No material change shall be made in the terms or duration of any
31 contract for the provision of energy or telecommunication services by an
32 [~~ESCO~~] SDCO without the express consent of the customer. This shall not
33 restrict an [~~ESCO~~] SDCO from renewing a contract by clearly informing
34 the customer in writing, not less than thirty days nor more than sixty
35 days prior to the renewal date, of the renewal terms and of his or her
36 option not to accept the renewal offer; provided, however, that no fee
37 pursuant to subdivision five of this section shall be charged to a
38 customer who objects to such renewal not later than three business days
39 after receiving the first billing statement from the [~~ESCO~~] SDCO under
40 the terms of the contract as renewed. The public service commission and
41 the Long Island power authority may adopt additional guidelines, prac-
42 tices, rules or regulations governing the renewal process.

43 7. In every contract for energy or telecommunication services and in
44 all marketing materials provided to prospective purchasers of such
45 contracts, all variable charges shall be clearly and conspicuously iden-
46 tified.

47 8. Any contract for energy or telecommunication services which does
48 not comply with the applicable provisions of this section shall be void
49 and unenforceable as contrary to public policy. Any waiver by a buyer of
50 energy or telecommunication services of the provisions of this section
51 shall be deemed void and unenforceable by the [~~ESCO~~] SDCO as contrary to
52 public policy.

53 9. The provisions of this section shall apply to all sales agents
54 and/or third party representatives of all SDCOs and the SDCO shall be
55 deemed responsible for all conduct and activities of such sales agents
56 and/or third party representatives.

10. The attorney general and/or the counsel for any city pursuant to article nine-A of the general city law, upon his or her own motion or upon referral from the public service commission, the Long Island power authority or the department of state, may bring a civil action against any energy services company, any telecommunications services company, or any sales agent and/or third party representative of any energy services company or telecommunications services company that violates any provision of this section and may recover (a) a civil penalty not to exceed one thousand dollars per violation; and (b) costs and reasonable attorney's fees. In any such proceeding the court may direct restitution.

~~[10]~~ 11. In addition to the right of action granted to the attorney general and/or the counsel for any city pursuant to this section, any person who has been injured by reason of any violation of this section may bring an action in his or her own name to enjoin such unlawful act or practice, an action to recover his or her actual damages or five hundred dollars, whichever is greater, or both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to ten thousand dollars, if the court finds the defendant willfully or knowingly violated this section. The court may award reasonable attorney's fees to a prevailing plaintiff.

~~[11]~~ 12. Nothing in this section shall be deemed to limit any authority of the public service commission or the Long Island power authority, which existed before the effective date of this section, to limit, suspend or revoke the eligibility of an energy services company or telecommunications services company to sell or offer for sale any energy services or telecommunications services for violation of any provision of law, rule, regulation or policy enforceable by such commission or authority.

~~[12]~~ 13. Nothing in this section shall be deemed to limit any authority of the public service commission or the Long Island power authority, which existed before the effective date of this section, to adopt additional guidelines, practices, policies, rules or regulations relating to the marketing practices of energy services companies or telecommunications services companies to residential and commercial customers, whether in person (including by telephone or by door to door), or by mail[, ~~telephone~~] or other electronic means, that are not inconsistent with the provisions of this section.

§ 3. This act shall take effect immediately.