S T A T E O F N E W Y O R K

1558

2009-2010 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 7, 2009

Introduced by M. of A. GIANARIS, PHEFFER, ROBINSON, DINOWITZ, GABRYSZAK, ROSENTHAL, SCHIMEL, CLARK, SCHROEDER -- Multi-Sponsored by -- M. of A. ALFANO, BOYLAND, BRENNAN, CROUCH, DIAZ, EDDINGTON, ERRIGO, FIELDS, GALEF, GIGLIO, GLICK, GOTTFRIED, GREENE, GUNTHER, HYER-SPENCER, KELLNER, KOON, LATIMER, V. LOPEZ, MAGEE, MAISEL, McDONOUGH, McKEVITT, MILLMAN, REILLY, J. RIVERA, SALADINO, SWEENEY, WEISENBERG, WRIGHT -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to establishing an energy service company consumers bill of rights

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 349-d to read as follows:

S 349-D. ENERGY 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) "CUSTOMER" SHALL MEAN ANY PERSON WHO IS SOLD OR OFFERED AN ENERGY SERVICES CONTRACT BY AN ESCO (I) FOR RESIDENTIAL UTILITY SERVICE, OR (II) THROUGH DOOR-TO-DOOR SALES; AND

(D) "DOOR-TO-DOOR SALES" SHALL MEAN THE SALE OF ENERGY SERVICES IN WHICH THE ESCO OR THE ESCO'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 AND CONSUMMATED ENTIRELY BY MAIL, TELEPHONE OR OTHER ELECTRONIC MEANS.

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

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2. NO PERSON WHO SELLS OR OFFERS FOR SALE ANY ENERGY SERVICES FOR OR ON BEHALF OF AN ESCO SHALL (A) FAIL TO PROPERLY IDENTIFY HIMSELF OR HERSELF AND THE ENERGY SERVICES COMPANY OR COMPANIES WHICH HE OR SHE REPRESENTS, AND TO EXPLAIN THAT HE OR SHE DOES NOT REPRESENT A DISTRIBUTION UTILITY; (B) ENGAGE IN ANY DECEPTIVE ACTS OR PRACTICES IN THE MARKETING OF ENERGY SERVICES; OR (C) FAIL TO PROVIDE EACH PROSPECTIVE CUSTOMER WITH A COPY OF THE "ESCO CONSUMERS BILL OF RIGHTS" DEVELOPED BY THE PUBLIC SERVICE COMMISSION AND THE LONG ISLAND POWER AUTHORITY.

3. NO CONTRACT FOR PROVISION OF ENERGY SERVICES BY AN ESCO SHALL PROVIDE FOR ANY CUSTOMER PREPAYMENT FOR ENERGY SERVICES.

4. NO CONTRACT FOR PROVISION OF ENERGY SERVICES BY AN ESCO SHALL REQUIRE THE CUSTOMER TO PAY ANY FEE FOR TERMINATION OR EARLY CANCELLATION OF A CONTRACT IN EXCESS OF (A) ONE HUNDRED DOLLARS; OR (B) TWICE THE ESTIMATED BILL FOR ENERGY SERVICES FOR AN AVERAGE MONTH. TO CHARGE A FEE GREATER THAN ONE HUNDRED DOLLARS, AN ESCO MUST HAVE PROVIDED THE CUSTOMER, AT THE TIME THAT THE CONTRACT IS OFFERED, WITH AN ESTIMATE OF THE AVERAGE MONTHLY BILL THAT CUSTOMER WOULD BE CHARGED FOR ENERGY SERVICES.

5. NO MATERIAL CHANGE SHALL BE MADE IN THE TERMS OR DURATION OF ANY CONTRACT FOR THE PROVISION OF ENERGY SERVICES BY AN ESCO WITHOUT THE EXPRESS CONSENT OF THE CUSTOMER.

6. IN EVERY CONTRACT FOR ENERGY SERVICES AND ALL MATERIALS USED TO MARKET SUCH CONTRACTS, ALL VARIABLE CHARGES SHALL BE CLEARLY AND CONSPICUOUSLY IDENTIFIED.

7. ANY CONTRACT FOR ENERGY SERVICES WHICH DOES NOT COMPLY WITH THE APPLICABLE PROVISIONS OF THIS SECTION SHALL BE VOID AND UNENFORCEABLE AS CONTRARY TO PUBLIC POLICY. ANY WAIVER BY A BUYER OF ENERGY SERVICES OF THE PROVISIONS OF THIS SECTION SHALL BE DEEMED VOID AND UNENFORCEABLE BY THE ESCO AS CONTRARY TO PUBLIC POLICY.

8. THE ATTORNEY GENERAL, UPON HIS OR HER OWN MOTION OR UPON REFERRAL FROM THE PUBLIC SERVICE COMMISSION OR THE LONG ISLAND POWER AUTHORITY, MAY BRING A CIVIL ACTION AGAINST ANY ENERGY 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.

9. IN ADDITION TO THE RIGHT OF ACTION GRANTED TO THE ATTORNEY GENERAL 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 TWO 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 ONE 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.

S 2. The public service commission shall amend its rules and regulations governing energy service to residential customers at part 11 of title 16 of the New York state codes, rules and regulations and its rules and regulations governing energy service to nonresidential customers at part 13 of title 16 of the New York state codes, rules and regulations to implement the provisions of section one of this act. The Long Island power authority shall amend its regulations adopted pursuant to section 1020-f of the public authorities law to implement the provisions of section one of this act.

S 3. Nothing in this act shall limit the existing authority of the public service commission or the Long Island power authority to limit, suspend or revoke the eligibility of an energy services company to sell or offer for sale any energy services for violations of any statute, rule, regulation or policy enforceable by such commission or authority.

S 4. The public service commission and the Long Island power authority, in conjunction with the consumer protection board and the department of law, shall develop a short, plain language statement of an "ESCO consumers bill of rights" which shall summarize the protections afforded to consumers of energy services pursuant to section 349-d of the general business law and other applicable laws.

S 5. If any clause, sentence, paragraph, section or part of this act be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder hereof but shall be applied in its operation to the clause, sentence, paragraph, section or part hereof directly involved in the controversy in which such judgment shall have been rendered.

S 6. This act shall take effect on the one hundred fiftieth day after it shall have become a law and shall apply to all energy services sold or offered for sale on or after such date; provided, however, that the public service commission and the Long Island power authority are immediately authorized and directed to take any and all actions, including but not limited to the promulgation of any necessary rules and regulations, necessary to implement the provisions of this act on its effective date.