

9177

2009-2010 Regular Sessions

I N A S S E M B L Y

October 13, 2009

Introduced by M. of A. BENEDETTO -- read once and referred to the
Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to the disclosure
of early termination fees

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
2 390-d to read as follows:
3 S 390-D. EARLY TERMINATION FEE DISCLOSURE. 1. FOR PURPOSES OF THIS
4 SECTION:
5 (A) "EARLY TERMINATION FEE" MEANS ANY CHARGE OR FEE THAT IS PROVIDED
6 FOR IN A CONTRACT OR AGREEMENT, INCLUDING ANY CONTRACT RENEWAL OR EXTENSION,
7 THAT INCLUDES THE PROVISION OF VIDEO PROGRAMMING AND IS ASSESSED
8 AGAINST A SUBSCRIBER WHEN A SUBSCRIBER TERMINATES FOR ANY REASON VIDEO
9 PROGRAMMING SERVICE PRIOR TO THE END OF THE CONTRACT OR AGREEMENT.
10 (B) "CONDITIONAL SALES PRICE" MEANS ANY PRICE FOR A SERVICE THAT
11 INCLUDES VIDEO PROGRAMMING AND WHICH IS AVAILABLE PURSUANT TO AN AGREEMENT
12 THAT INCLUDES AN EARLY TERMINATION FEE.
13 (C) "MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTOR" SHALL HAVE THE MEANING
14 AS SET FORTH IN 47 U.S.C. SECTION 522 (13).
15 (D) "VIDEO PROGRAMMING" SHALL HAVE THE MEANING AS SET FORTH IN 47
16 U.S.C. SECTION 522 (20).
17 2. NO MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTOR THAT PROMOTES A
18 CONDITIONAL SALES PRICE FOR SERVICES THAT INCLUDE VIDEO PROGRAMMING
19 SHALL, IN CONNECTION WITH SUCH PRICE, REQUIRE THAT A SUBSCRIBER BE
20 SUBJECT TO AN EARLY TERMINATION FEE UNLESS SUCH FEE AND THE TERMS UNDER
21 WHICH IT IS TO APPLY ARE DISCLOSED IN A CLEAR AND CONSPICUOUS MANNER AS
22 FOLLOWS:
23 (A) IN ANY MEDIUM USED BY THE MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTOR
24 TO PROMOTE A CONDITIONAL SALES PRICE, THE EXISTENCE AND AMOUNT OF
25 ANY EARLY TERMINATION FEE AND THE TERMS UNDER WHICH IT IS TO APPLY SHALL

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

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1 BE DISCLOSED WITH THE SAME PROMINENCE AND IN THE SAME LOCATION AS THE
2 CONDITIONAL SALES PRICE.

3 (B) IN ANY SOLICITATION THAT MAY RESULT IN AN ORDER FOR VIDEO PROGRAM-
4 MING SUBJECT TO A CONDITIONAL SALES PRICE, WHICH FOR THE PURPOSES OF
5 THIS SUBDIVISION SHALL INCLUDE THE DESCRIPTION OF SERVICES, THE MULTI-
6 CHANNEL VIDEO PROGRAMMING DISTRIBUTOR SHALL INFORM POTENTIAL CUSTOMERS
7 OF ANY EARLY TERMINATION FEE AND ITS AMOUNT AND THE TERMS UNDER WHICH IT
8 IS TO APPLY PRIOR TO SALE.

9 3. ANY EARLY TERMINATION FEE THAT IS ASSESSED IN CONNECTION WITH THE
10 TERMINATION OF A SERVICE SUBJECT TO A CONDITIONAL SALES PRICE MAY NOT BE
11 GREATER THAN THE PRO RATA SHARE OF SUCH FEE UNDER AN AGREEMENT OR
12 CONTRACT CALCULATED AS FOLLOWS: THE FRACTIONAL EQUIVALENT TO THE NUMBER
13 OF MONTHS IN THE AGREEMENT TERM THAT HAVE ELAPSED DIVIDED BY THE TOTAL
14 NUMBER OF MONTHS IN THE AGREEMENT TERM, MULTIPLIED BY THE AMOUNT OF THE
15 EARLY TERMINATION FEE DISCLOSED PURSUANT TO SUBDIVISION TWO OF THIS
16 SECTION.

17 4. A MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTOR THAT FAILS TO PROVIDE
18 NOTICE AS REQUIRED IN SUBDIVISION TWO OF THIS SECTION OR FAILS TO ASSESS
19 AN EARLY TERMINATION FEE IN ACCORDANCE WITH SUBDIVISION THREE OF THIS
20 SECTION SHALL BE PROHIBITED FROM ENFORCING AN EARLY TERMINATION FEE IN
21 CONNECTION WITH THE TERMINATION OF SERVICE SUBJECT TO A CONDITIONAL
22 SALES PRICE. FOR THE PURPOSES OF THIS SUBDIVISION, "ENFORCEMENT" SHALL
23 INCLUDE ANY REFERENCE, WHETHER WRITTEN OR VERBAL AND IN ANY MEDIUM, TO
24 AN EARLY TERMINATION FEE WITH REGARD TO IMPOSING, NEGOTIATING OR WAIVING
25 AN EARLY TERMINATION FEE, AS AN INDUCEMENT TO RENEW, EXTEND OR ENTER
26 INTO AN AGREEMENT, OR RESOLVE ANY DISPUTE BETWEEN A CONSUMER AND A
27 MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTOR, ITS AGENTS, OR ANY PERSON
28 ATTEMPTING TO RESOLVE A DEBT BASED UPON AN EARLY TERMINATION FEE UNDER
29 THIS SUBDIVISION.

30 5. ANY VIOLATION OF THIS SECTION SHALL BE DEEMED A DECEPTIVE ACT OR
31 PRACTICE PURSUANT TO SECTION THREE HUNDRED FORTY-NINE OF THIS CHAPTER.
32 NOTHING IN THIS SECTION SHALL IN ANY WAY LIMIT THE RIGHTS OR REMEDIES
33 THAT ARE OTHERWISE AVAILABLE TO A CONSUMER OR PURCHASER UNDER ANY OTHER
34 LAW.

35 S 2. This act shall take effect immediately.