

1882

2009-2010 Regular Sessions

I N S E N A T E

February 9, 2009

Introduced by Sen. KLEIN -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the public service law, in relation to prohibiting discrimination by cable television companies against video programming vendors

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

1 Section 1. Section 212 of the public service law is amended by adding
2 a new subdivision 15 to read as follows:
3 15. "VIDEO PROGRAMMING VENDOR" SHALL MEAN A PERSON ENGAGED IN THE
4 PRODUCTION, CREATION, OR WHOLESALE DISTRIBUTION OF VIDEO PROGRAMMING FOR
5 SALE.
6 S 2. The public service law is amended by adding a new section 231 to
7 read as follows:
8 S 231. PROHIBITION AGAINST DISCRIMINATION IN CABLE PROGRAMMING. 1. IT
9 SHALL BE UNLAWFUL FOR A CABLE TELEVISION COMPANY TO DISCRIMINATE IN THE
10 SELECTION, TERMS, OR CONDITIONS FOR CARRIAGE OF VIDEO PROGRAMMING ON THE
11 BASIS OF AFFILIATION OR NON-AFFILIATION OF VIDEO PROGRAMMING VENDORS.
12 2. ANY PERSON WHO HAS BEEN INJURED BY REASON OF ANY VIOLATION OF THIS
13 SECTION MAY BRING, IN ANY COURT OF COMPETENT JURISDICTION IN ITS OWN
14 NAME, (A) AN ACTION TO ENJOIN SUCH UNLAWFUL ACT OR PRACTICE, (B) AN
15 ACTION TO RECOVER ITS ACTUAL DAMAGES, OR (C) BOTH SUCH ACTIONS REFERRED
16 TO IN PARAGRAPHS (A) AND (B) OF THIS SUBDIVISION. IF IT SHALL APPEAR TO
17 THE SATISFACTION OF THE COURT THAT THE DEFENDANT CABLE TELEVISION COMPA-
18 NY HAS VIOLATED THIS SECTION, AN INJUNCTION SHALL BE ISSUED BY THE COURT
19 ENJOINING AND RESTRAINING ANY FURTHER VIOLATIONS, AND REQUIRING SUCH
20 DEFENDANT TO CARRY THE VIDEO PROGRAMMING OF THE UNAFFILIATED VIDEO
21 PROGRAMMING VENDOR UPON SUCH TERMS AND CONDITIONS AS THE COURT MAY
22 DETERMINE FOLLOWING THE PRESENTATION AND CONSIDERATION OF APPROPRIATE
23 EVIDENCE, INCLUDING EVIDENCE AS TO THE TERMS AND CONDITIONS OF CARRIAGE

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

LBD05280-01-9

1 FOR DEFENDANT CABLE TELEVISION COMPANY'S AFFILIATED VIDEO PROGRAMMING ON
2 DISTRIBUTION SYSTEMS OPERATED BY SUCH COMPANY AND BY AFFILIATED AND
3 NON-AFFILIATED CABLE TELEVISION COMPANIES. THE COURT MAY, IN ITS
4 DISCRETION, INCREASE THE AWARD OF DAMAGES IN AN AMOUNT NOT TO EXCEED
5 THREE TIMES THE ACTUAL DAMAGES, IF THE COURT FINDS THAT THE DEFENDANT IN
6 SUCH ACTION WILLFULLY AND KNOWINGLY VIOLATED THIS SECTION. THE COURT MAY
7 AWARD REASONABLE ATTORNEYS' FEES TO A PREVAILING PLAINTIFF.

8 3.(A) UPON REQUEST BY A VIDEO PROGRAMMING VENDOR OR A CABLE TELEVISION
9 COMPANY, THE ATTORNEY GENERAL SHALL REVIEW ANY CONTRACT OF SUCH VIDEO
10 PROGRAMMING VENDOR OR SUCH CABLE TELEVISION COMPANY FOR THE PURPOSE OF
11 ADVISING SUCH REQUESTER OF SUCH CONTRACT'S SATISFACTION OF THE
12 PROVISIONS OF THIS SECTION, AS MAY BE POSSIBLE.

13 (B) WITHIN THIRTY DAYS AFTER ANY CONTRACT IS AGREED UPON BETWEEN A
14 VIDEO PROGRAMMING VENDOR AND A CABLE TELEVISION COMPANY PURSUANT TO THIS
15 SECTION, BUT BEFORE SUCH CONTRACT TAKES EFFECT, THE ATTORNEY GENERAL
16 SHALL CERTIFY THAT SUCH CONTRACT WAS REVIEWED BY THE ATTORNEY GENERAL.
17 THE ATTORNEY GENERAL SHALL FURTHER CERTIFY THAT, IN THE OPINION OF THE
18 ATTORNEY GENERAL, SUCH CONTRACT CONFORMS TO THE PROVISIONS OF THIS
19 SECTION AND IS IN THE BEST INTEREST OF THE PUBLIC.

20 (C) IF THE ATTORNEY GENERAL DETERMINES THAT SUCH CONTRACT DOES NOT
21 SATISFY THE PROVISIONS OF THIS SECTION OR IS NOT IN THE BEST INTEREST OF
22 THE PUBLIC, THE ATTORNEY GENERAL SHALL NOT CERTIFY SUCH CONTRACT AND
23 SUCH CONTRACT SHALL BE VOID AND UNENFORCEABLE.

24 4. WHENEVER THERE SHALL APPEAR TO BE A VIOLATION OF THIS SECTION, AN
25 APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE
26 PEOPLE OF THE STATE OF NEW YORK TO A COURT OF COMPETENT JURISDICTION FOR
27 A SPECIAL PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE
28 DEFENDANT CABLE TELEVISION COMPANY OF NOT LESS THAN FIVE DAYS, TO ENJOIN
29 AND RESTRAIN THE CONTINUANCE OF SUCH VIOLATION, AND IF IT SHALL APPEAR
30 TO THE SATISFACTION OF THE COURT THAT THE DEFENDANT HAS VIOLATED THIS
31 SECTION, AN INJUNCTION MAY BE ISSUED BY THE COURT:

32 (A) ENJOINING AND RESTRAINING ANY FURTHER VIOLATIONS, WITHOUT REQUIR-
33 ING PROOF THAT ANY PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY;
34 AND

35 (B) REQUIRING THE DEFENDANT CABLE TELEVISION COMPANY TO CARRY THE
36 VIDEO PROGRAMMING OF THE VIDEO PROGRAMMING VENDOR UPON SUCH TERMS AND
37 CONDITIONS AS THE COURT MAY DETERMINE FOLLOWING THE PRESENTATION OF
38 APPROPRIATE EVIDENCE, INCLUDING EVIDENCE AS TO THE TERMS AND CONDITIONS
39 OF CARRIAGE FOR DEFENDANT'S CABLE TELEVISION COMPANY'S AFFILIATED VIDEO
40 PROGRAMMING ON DISTRIBUTION SYSTEMS OPERATED BY SUCH COMPANY AND BY
41 AFFILIATED AND NON-AFFILIATED CABLE TELEVISION COMPANIES.

42 S 3. Severability. If any provision of this act or the application of
43 such provision in certain circumstances shall be held invalid, the
44 validity of the remainder of this act and its applicability to other
45 circumstances shall not be affected.

46 S 4. This act shall take effect on the thirtieth day after it shall
47 have become a law and shall apply to contracts issued, renewed, altered
48 or modified on or after such effective date.