

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

7082--B

I N S E N A T E

March 11, 2010

Introduced by Sens. FLANAGAN, ALESI, DeFRANCISCO, FUSCHILLO, GOLDEN, O. JOHNSON, LARKIN, LAVALLE, MAZIARZ, PADAVAN, RANZENHOFER, VOLKER, WINNER -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications -- reported favorably from said committee and committed to the Committee on Finance -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public service 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

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

LBD16253-05-0

1 CHARGES FOR ANY PRODUCTS OR SERVICES, OTHER THAN THOSE PROVIDED BY THE
2 TELEPHONE CORPORATION, ITS AFFILIATES, A THIRD PARTY VIDEO PROVIDER WITH
3 WHO A TELEPHONE CORPORATION OR ITS AFFILIATE JOINTLY MARKET SERVICES, OR
4 OTHERWISE PERMITTED BY LAW, SHALL BE INCLUDED ON ANY BILL OR INVOICE OF
5 A CUSTOMER, UNLESS THE THIRD PARTY REQUESTING THE PAYMENT OF SUCH CHARG-
6 ES RETAINS AND PROVIDES UPON REQUEST VALID PROOF THAT:

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

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

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

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

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

34 S 3. This act shall take effect on the one hundred eightieth day after
35 it shall have become a law.