

6501

2009-2010 Regular Sessions

I N A S S E M B L Y

March 6, 2009

Introduced by M. of A. *ORTIZ, ESPAILLAT, BOYLAND, GREENE, WRIGHT* --
Multi-Sponsored by -- M. of A. *BENJAMIN, GOTTFRIED, LAVINE, MAYER-*
SOHN, McENENY, NOLAN, J. RIVERA, WEISENBERG -- read once and referred
to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to creating the
cell phone users' bill of rights

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEM-
BLY, 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. CELL PHONE USERS' BILL OF RIGHTS. 1. ANY PERSON, FIRM, CORPO-
4 RATION, OR OTHER ENTITY THAT OFFERS CELLULAR PHONES AND CELLULAR PHONE
5 SERVICES TO THE PUBLIC SHALL PROVIDE EACH CUSTOMER WITH A THIRTY-DAY
6 TRIAL PERIOD. IF A CUSTOMER RETURNS A PHONE OR CANCELS SERVICE WITHIN
7 THAT THIRTY-DAY PERIOD, HE OR SHE SHALL NOT BE SUBJECT TO ANY TERMI-
8 NATION FEES.

9 A. WHEN A NEW PHONE IS PURCHASED, THE THIRTY-DAY PERIOD SHALL COMMENCE
10 WHEN THE CUSTOMER PHYSICALLY RECEIVES THE PHONE.

11 B. WHEN A PERSON APPLIES FOR NEW SERVICE, THE THIRTY-DAY PERIOD SHALL
12 COMMENCE WHEN THE CUSTOMER'S ACCOUNT IS ACTIVATED.

13 2. WHENEVER A PERSON RETURNS A PHONE OR CANCELS A SERVICE WITHIN THE
14 THIRTY-DAY TRIAL PERIOD REQUIRED PURSUANT TO SUBDIVISION ONE OF THIS
15 SECTION, SUCH PERSON SHALL BE RESPONSIBLE FOR THE MONTHLY ACCESS FEE,
16 PRO RATA, AND SHALL ALSO BE RESPONSIBLE FOR THE COSTS OF ANY CALLS MADE
17 BY SUCH PERSON IF THEY ARE NOT INCLUDED WITHIN THE MONTHLY ACCESS FEE.

18 3. A. ANY PERSON, FIRM, CORPORATION, OR OTHER ENTITY THAT PROVIDES
19 CELLULAR PHONE SERVICES TO A CUSTOMER FOR A FEE, SUCH FEE SHALL ONLY
20 INCLUDE THOSE SERVICES AUTHORIZED BY THE CUSTOMER. NO PERSON, FIRM,
21 CORPORATION, OR OTHER ENTITY SHALL CHARGE A CUSTOMER FOR ANY SERVICE
22 SUCH CUSTOMER DID NOT REQUEST OR AUTHORIZE.

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

LBD10000-01-9

1 B. ANY PERSON, FIRM, CORPORATION, OR OTHER ENTITY THAT PROVIDES CELLU-
2 LAR PHONE SERVICES TO A CUSTOMER FOR A FEE SHALL INCLUDE ON ITS MONTHLY
3 STATEMENT A CLEAR AND CONCISE BREAKDOWN OF ALL FEES, COSTS, AND TAXES.
4 SUCH BREAKDOWN SHALL FURTHER SPECIFY WHICH FEES, TAXES, OR SURCHARGES
5 ARE MANDATED BY THE GOVERNMENT, AND WHICH FEES, TAXES, OR SURCHARGES ARE
6 IMPOSED BY THE COMPANY. SUCH MONTHLY STATEMENT SHALL ALSO INCLUDE THE
7 RATES AND TERMS OF THE CUSTOMER'S SERVICE AGREEMENT.

8 4. A CUSTOMER SHALL NOT BE LIABLE FOR ANY CHARGES TO HIS OR HER
9 ACCOUNT IF SUCH CHARGES ARE THE RESULT OF CALLS OR MESSAGES PLACED FROM
10 A PHONE OTHER THAN ONE OWNED BY THE CUSTOMER. IT SHALL BE THE RESPONSI-
11 BILITY OF THE PERSON, FIRM, CORPORATION, OR OTHER ENTITY TO ENSURE THAT
12 ALL SERVICES ARE USED SOLELY BY THE PHONE REGISTERED TO THE PERSON
13 AUTHORIZED UNDER THE SERVICE AGREEMENT. A CUSTOMER SHALL NOT BE LIABLE
14 FOR ANY CHARGES RESULTING FROM THE THEFT OF THE CUSTOMER'S CELLULAR
15 PHONE IDENTIFICATION OR SIGNAL.

16 5. ANY PERSON, FIRM, CORPORATION, OR OTHER ENTITY THAT VIOLATES THE
17 PROVISIONS OF THIS SECTION SHALL PAY A FINE OF NOT LESS THAN FIVE
18 HUNDRED DOLLARS NOR MORE THAN FIVE THOUSAND DOLLARS PER VIOLATION. SUCH
19 PERSON, FIRM, CORPORATION, OR OTHER ENTITY SHALL ALSO BE LIABLE TO THE
20 CUSTOMER FOR CIVIL DAMAGES IN AN AMOUNT OF TWO HUNDRED FIFTY DOLLARS OR
21 THE CUSTOMER'S ACTUAL EXPENSES, WHICHEVER IS GREATER. THE COURT SHALL
22 GRANT REASONABLE ATTORNEY'S FEES TO ANY CUSTOMER WHO IS SUCCESSFUL IN AN
23 ACTION BROUGHT PURSUANT TO THIS SUBDIVISION.

24 S 2. This act shall take effect on the one hundred twentieth day after
25 it shall have become a law.