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

7459

2009-2010 Regular Sessions

I N A S S E M B L Y

April 9, 2009

Introduced by M. of A. O'DONNELL, BRODSKY, DelMONTE, GALEF, CYMBROWITZ, FIELDS, BRADLEY, ENGLEBRIGHT, GUNTHER, LIFTON, JOHN, BROOK-KRASNY, GORDON, LANCMAN, SPANO -- Multi-Sponsored by -- M. of A. ALFANO, BARRA, BENJAMIN, BING, BRENNAN, CHRISTENSEN, CLARK, COLTON, DESTITO, DIAZ, DINOWITZ, HEASTIE, JACOBS, KOON, V. LOPEZ, LUPARDO, MARKEY, McDONOUGH, McENENY, MILLMAN, O'MARA, PAULIN, REILLY, N. RIVERA, ROSENTHAL, SEMINERIO, SWEENEY, TITUS, WALKER, WEINSTEIN, WEISENBERG -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law and the public service law, in relation to the provision of residential wireless telephone service

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

Section 1. Short title. This act shall be known and may be cited as the "wireless telephone service consumer protection act".

S 2. Statement of legislative findings and purpose. The legislature finds that residential consumers in New York are offered the opportunity to purchase wireless telephone service from a variety of service providers and that the conduct of such providers in making and implementing these offers varies widely. In many instances, consumers are required to evaluate service offerings without receiving a full and fair disclosure of the terms of the service offering or an adequate means to evaluate the offering in practice. The purpose of this legislation is to provide a regulatory program for wireless telephone service provider conduct and for the terms and conditions of such service other than the entry of or the rates charged by any such provider.

S 3. The general business law is amended by adding a new section 398-e to read as follows:

S 398-E. DISCLOSURE, NOTIFICATION AND CONSUMER PROTECTION REQUIREMENTS IN WIRELESS TELECOMMUNICATIONS CONSUMER TRANSACTIONS. 1. DEFINITIONS. FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

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

LBD10901-01-9

(A) "AUTHORIZED RETAILER" MEANS A RETAILER AUTHORIZED BY A WIRELESS TELEPHONE SERVICE CARRIER, INCLUDING RESELLERS OF WIRELESS TELEPHONE SERVICE PROVIDED BY A WIRELESS TELEPHONE SERVICE CARRIER, TO BE AN AGENT OF SUCH WIRELESS TELEPHONE CARRIER OR RESELLER.

(B) "BOARD" MEANS THE CONSUMER PROTECTION BOARD.

(C) "DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF THE CONSUMER PROTECTION BOARD.

(D) "ENHANCED WIRELESS 911 SERVICE" MEANS THE SERVICE REQUIRED TO BE PROVIDED BY WIRELESS TELEPHONE SERVICE PROVIDERS PURSUANT TO THE FCC ORDER.

(E) "FCC ORDER" MEANS ALL ORDERS ISSUED BY THE FEDERAL COMMUNICATIONS COMMISSION PURSUANT TO THE PROCEEDING ENTITLED "REVISION OF THE COMMISSION'S RULE TO ENSURE COMPATIBILITY WITH ENHANCED 911 EMERGENCY CALLING SYSTEMS (CC DOCKET NO. 94-102; RM-8143) OR ANY SUCCESSOR PROCEEDING, REGARDING THE DELIVERY OF ANI AND ALI AS OF THE DATES AND ACCORDING TO THE OTHER CRITERIA ESTABLISHED THEREIN AND THE RULES ADOPTED BY THE FEDERAL COMMUNICATIONS COMMISSION IN ANY SUCH PROCEEDING, AS SUCH RULES MAY BE AMENDED FROM TIME TO TIME.

(F) "SERVICE PLAN" MEANS A CONTRACT ENTERED INTO BETWEEN A WIRELESS TELEPHONE SERVICE CARRIER AND A RETAIL CUSTOMER FOR THE PROVISION OF WIRELESS TELEPHONE SERVICE OVER A MUTUALLY AGREED UPON PERIOD OF TIME.

(G) "WIRELESS TELEPHONE SERVICE" MEANS A TWO-WAY REAL TIME VOICE TELECOMMUNICATIONS SERVICE THAT IS INTERCONNECTED TO A PUBLIC SWITCHED TELEPHONE NETWORK AND IS PROVIDED BY A COMMERCIAL MOBILE RADIO SERVICE, AS SUCH TERM IS DEFINED BY 47 C.F.R. SECTION 20.3; PROVIDED, HOWEVER, FOR THE PURPOSES OF THIS SECTION, THE TERM WIRELESS TELEPHONE SERVICE SHALL NOT INCLUDE A PREPAID CALLING SERVICE AS THAT TERM IS DEFINED IN SECTION NINETY-TWO-F OF THE PUBLIC SERVICE LAW.

(H) "WIRELESS TELEPHONE SERVICE CARRIER" MEANS A COMMERCIAL MOBILE RADIO SERVICE PROVIDER OF WIRELESS TELEPHONE SERVICE AS SUCH TERM IS DEFINED IN THE UNITED STATES CODE OF FEDERAL REGULATIONS 47 C.F.R. 20.3 OR A RESELLER OF WIRELESS TELEPHONE SERVICE PROVIDED BY A COMMERCIAL MOBILE RADIO SERVICE AS DEFINED BY SUCH 47 C.F.R 20.3.

2. DISCLOSURE REQUIREMENTS. (A) EVERY WIRELESS TELEPHONE SERVICE PROVIDER AND AUTHORIZED RETAILER SHALL MAKE AVAILABLE CLEAR, CONSPICUOUS, PLAIN LANGUAGE DISCLOSURES TO EACH CUSTOMER OR POTENTIAL CUSTOMER AT RETAIL SALES LOCATIONS OF SUCH WIRELESS TELEPHONE CARRIER OR AUTHORIZED RETAILER AND ON ANY INTERNET WEBSITE WHERE A WIRELESS TELEPHONE SERVICE PLAN CAN BE ENTERED INTO, OF THE FOLLOWING INFORMATION CONCERNING ANY PLAN OR PROPOSED PLAN OFFERED FOR THE PROVISION OF RESIDENTIAL WIRELESS TELEPHONE SERVICE TO SUCH CUSTOMER:

I. THE CALLING AREA FOR THE PLAN;

II. THE MONTHLY ACCESS FEE OR BASE CHARGE;

III. THE NUMBER OF AIRTIME MINUTES INCLUDED IN THE PLAN;

IV. ANY NIGHT AND WEEKEND MINUTES INCLUDED IN THE PLAN OR OTHER DIFFERING CHARGES FOR DIFFERENT TIME PERIODS AND THE TIME PERIODS WHEN NIGHT AND WEEKEND MINUTES OR OTHER CHARGES APPLY;

V. THE CHARGES FOR EXCESS OR ADDITIONAL MINUTES;

VI. WHETHER OR NOT, AND THE EXTENT TO WHICH, PER-MINUTE DOMESTIC OR INTERNATIONAL LONG DISTANCE CHARGES ARE INCLUDED IN OTHER RATES, AND, TO THE EXTENT NOT INCLUDED, THE APPLICABLE PER-MINUTE LONG DISTANCE RATES;

VII. PER-MINUTE ROAMING OR OFF-NETWORK CHARGES;

VIII. THE AMOUNT OF ANY ADDITIONAL TAXES, FEES, OR SURCHARGES THAT WILL BE COLLECTED OR RETAINED BY THE WIRELESS TELEPHONE SERVICE PROVIDER;

IX. IF THE PLAN REQUIRES A FIXED-TERM CONTRACT, THE DURATION OF SUCH CONTRACT;

X. THE AMOUNT OF ANY EARLY TERMINATION FEE AND THE CONDITIONS UNDER WHICH ANY SUCH EARLY TERMINATION FEE WOULD APPLY, INCLUDING THE LENGTH OF ANY TRIAL PERIOD DURING WHICH NO EARLY TERMINATION FEE WOULD APPLY;

XI. A STATEMENT NOTIFYING THE CUSTOMER THAT THE SERVICE INCLUDES BASIC WIRELESS 911 SERVICE;

XII. THE INFORMATION WHICH IS INCLUDED IN THE EDUCATIONAL PLAN FOR INFORMING THE PUBLIC ABOUT THE ENHANCED WIRELESS 911 SERVICE IN NEW YORK STATE REQUIRED BY SUBDIVISION EIGHT OF SECTION THREE HUNDRED TWENTY-EIGHT OF THE COUNTY LAW AND WHICH IS AN EXPLANATION OF THE ENHANCED WIRELESS 911 SYSTEM AND A PROGRESS REPORT ON THE COUNTY-BY-COUNTY IMPLEMENTATION OF THE STATEWIDE SYSTEM AND THE TOLL-FREE HOTLINE AND WEBSITE INFORMATION TO PERMIT THE CONSUMER TO ACCESS SUCH INFORMATION VIA THE INTERNET IN ACCORDANCE WITH SUBDIVISION EIGHT OF SECTION THREE HUNDRED TWENTY-EIGHT OF THE COUNTY LAW;

XIII. A COVERAGE MAP PREPARED BY THE PROVIDER USING GENERALLY ACCEPTED INDUSTRY METHODOLOGIES AND STANDARDS; AND

XIV. BASED UPON CUSTOMER SUPPLIED INFORMATION REGARDING ANTICIPATED USAGE PATTERNS, A GOOD FAITH ESTIMATE OF THE MONTHLY FIXED AND USAGE CHARGES AND ADDITIONAL TAXES, FEES, OR SURCHARGES AND OF THE ANTICIPATED TOTAL MONTHLY BILL FOR SUCH CUSTOMER UNDER SUCH PLAN, EXCEPT THAT THIS PROVISION SHALL NOT APPLY TO WIRELESS SERVICE THAT IS PRE-PAID PRIOR TO ACTIVATION OF SERVICE AND THAT IS NOT SUBJECT TO MONTHLY BILLING AFTER ACTIVATION OF SERVICE.

(B) AT THE TIME A CUSTOMER INITIATES A WIRELESS SERVICE PLAN, THE CARRIER SHALL, OR IF THE CUSTOMER INITIATES A WIRELESS SERVICE PLAN THROUGH AN AUTHORIZED RETAILER, THE AUTHORIZED RETAILER SHALL, PROVIDE OR CONFIRM IN WRITING ALL OF THE INFORMATION REQUIRED IN PARAGRAPH (A) OF THIS SUBDIVISION AS IT APPLIES TO THE SPECIFIC CONTRACT ENTERED INTO BY THE NEW CUSTOMER PRIOR TO THE FINALIZATION OF THE TRANSACTION, PROVIDED, HOWEVER WHEN AN EXISTING CUSTOMER OF A WIRELESS SERVICE CARRIER AGREES TO A CHANGE IN SERVICE WHICH RESULTS IN AN EXTENSION OF A CONTRACT BETWEEN THE CUSTOMER AND SUCH CARRIER, THE CARRIER SHALL PROVIDE OR CONFIRM SUCH CHANGE IN SERVICE.

3. BILLING. EXCEPT FOR WIRELESS SERVICE THAT IS PRE-PAID PRIOR TO ACTIVATION OF SERVICE AND THAT IS NOT SUBJECT TO MONTHLY BILLING AFTER ACTIVATION OF SERVICE, WIRELESS TELEPHONE SERVICE CARRIERS' BILLING STATEMENTS SHALL:

(A) BE CLEARLY ORGANIZED AND DESCRIBE IN PLAIN LANGUAGE THE PRODUCTS AND SERVICES FOR WHICH CHARGES ARE IMPOSED;

(B) DISTINGUISH CHARGES THAT ARE DIRECTLY RELATED TO SERVICE AND FEATURES RETAINED BY THE CARRIER FROM TAXES, FEES AND OTHER CHARGES THAT ARE COLLECTED AND REMITTED BY THE CARRIER TO ANY FEDERAL, STATE OR LOCAL GOVERNMENT ENTITY;

(C) NOT INCLUDE ANY CHARGES OR FEES FOR PRODUCTS AND SERVICES UNLESS AUTHORIZED BY THE CUSTOMER;

(D) ITEMIZE ROAMING CHARGES WITHIN SIXTY DAYS OF THE CALL BEING PLACED AND IDENTIFY THE DATE AND ORIGINATING LOCATION OF THE CALL;

(E) INCLUDE THE TOLL-FREE NUMBER MAINTAINED BY THE CONSUMER PROTECTION BOARD WHICH RECEIVES COMPLAINTS FROM WIRELESS TELEPHONE SERVICE CUSTOMERS RELATING TO THEIR WIRELESS SERVICE; AND

(F) FOR THE PURPOSES OF THIS SUBDIVISION, WIRELESS TELEPHONE SERVICE CARRIERS MAY NOT LABEL COST RECOVERY FEES OR CHARGES AS TAXES.

4. TRIAL PERIOD. THE TERMS ON WHICH WIRELESS TELEPHONE SERVICES ARE PROVIDED TO ANY CUSTOMER SHALL INCLUDE A TRIAL PERIOD WHICH SHALL END NO

EARLIER THAN FIFTEEN DAYS AFTER THE FIRST BILL IS RENDERED TO SUCH CUSTOMER FOLLOWING SERVICE ACTIVATION AND DURING WHICH PERIOD SUCH CUSTOMER MAY, AFTER PAYMENT FOR SERVICES USED, TERMINATE SUCH SERVICE WITHOUT INCURRING ANY TERMINATION FEES OR CHARGES OR ANY OTHER PENALTY OF ANY KIND, AND MAY, UPON RETURN OF ANY HANDSET BOUGHT OR LEASED IN CONNECTION WITH SUCH SERVICE, RECEIVE A PRO RATED REFUND OF ANY AMOUNTS PAID FOR SUCH A HANDSET.

5. CONSUMER COMPLAINTS; IMPLEMENTING REGULATIONS; PENALTIES FOR VIOLATIONS. (A) WIRELESS TELEPHONE SERVICE CUSTOMERS MAY FILE COMPLAINTS RELATED TO THEIR WIRELESS SERVICE WITH THE EXECUTIVE DIRECTOR OF THE CONSUMER PROTECTION BOARD, WHO IS AUTHORIZED TO RESOLVE SUCH COMPLAINTS. THE DIRECTOR OR HIS OR HER DESIGNEE IS AUTHORIZED TO CONDUCT SUCH INVESTIGATIONS AS MAY BE NECESSARY TO RESOLVE SUCH COMPLAINTS, TO ADMINISTER OATHS AND TAKE AFFIDAVITS IN RELATION TO ANY MATTER OR PROCEEDING IN THE EXERCISE OF POWERS AND DUTIES UNDER THIS SECTION, AND TO SUBPOENA AND REQUIRE THE ATTENDANCE OF WITNESSES AND THE PRODUCTION OF BOOKS, PAPERS, CONTRACTS AND ANY OTHER DOCUMENTS PERTAINING TO ANY INVESTIGATION CONDUCTED PURSUANT TO THIS SECTION. IF ANY PERSON REFUSES TO COMPLY WITH A SUBPOENA ISSUED UNDER THIS PARAGRAPH, THE DIRECTOR MAY PETITION A COURT OF COMPETENT JURISDICTION TO ENFORCE THE SUBPOENA AND FOR SUCH SANCTIONS AS THE COURT MAY ORDER.

(B) THE DIRECTOR SHALL PROMULGATE ANY RULES AND REGULATIONS NECESSARY TO IMPLEMENT THIS SECTION AND IS FURTHER AUTHORIZED TO ISSUE ANY ORDERS NECESSARY TO ENFORCE THIS SECTION AND SUCH RULES AND REGULATIONS. EXCEPT AS SHALL BE PRE-EMPTED BY FEDERAL LAW REGULATING WIRELESS TELEPHONE SERVICE PROVIDERS, SUCH RULES AND REGULATIONS SHALL BE CONSISTENT WITH FEDERAL LAW REGULATING WIRELESS TELEPHONE SERVICE OR PROVIDERS OF WIRELESS TELEPHONE SERVICE.

(C) THE DIRECTOR MAY ASSESS A CIVIL PENALTY NOT TO EXCEED TWO THOUSAND DOLLARS PER VIOLATION AGAINST ANY WIRELESS TELEPHONE SERVICE PROVIDER OR AUTHORIZED RETAILER THAT NEGLECTS OR KNOWINGLY FAILS TO COMPLY WITH ANY REQUIREMENT OF THIS SECTION, OF REGULATIONS PROMULGATED UNDER THIS SECTION, OR OF ANY ORDER OF THE DIRECTOR IMPLEMENTING OR ENFORCING THIS SECTION OR REGULATIONS PROMULGATED THEREUNDER. ALL MONEYS RECOVERED FROM ANY SUCH PENALTY SHALL BE PAID INTO THE STATE TREASURY TO THE CREDIT OF THE GENERAL FUND.

6. REPORTING. AT LEAST ANNUALLY THE BOARD SHALL REPORT CUSTOMER COMPLAINTS BY CARRIER REGARDING WIRELESS TELEPHONE SERVICE IN THE STATE. SUCH REPORT SHALL INCLUDE INFORMATION ON CARRIER CUSTOMER COMPLAINTS FILED WITH AND RESOLVED BY THE DIRECTOR. THE REPORT MAY INCLUDE AN ANALYSIS OF SUCH COMPLAINTS AND RECOMMENDATIONS, IF ANY, TO ADDRESS ANY ISSUES THAT ARE IDENTIFIED BY THE BOARD. THE REPORT REQUIRED BY THIS SUBDIVISION MAY BE INCLUDED IN THE REPORT PREPARED BY THE BOARD PURSUANT TO SECTION FIVE HUNDRED FIFTY-THREE OF THE EXECUTIVE LAW.

7. APPLICABILITY. FOR PURPOSES OF THIS SECTION, THE WIRELESS TELEPHONE SERVICE TO WHICH THE PROVISIONS OF THIS SECTION APPLY, IS BEING PROVIDED OR BEING PROPOSED TO BE PROVIDED TO A RESIDENTIAL CUSTOMER WHERE THE PLACE OF PRIMARY USE, AS THAT TERM IS USED IN SECTION ONE HUNDRED EIGHTY-SIX-E OF THE TAX LAW, IS LOCATED IN THIS STATE.

8. SEVERABILITY. THE PROVISIONS OF THIS SECTION ARE SEVERABLE, AND IF ANY PART OR PROVISION HEREOF, OR THE APPLICATION THEREOF TO ANY PERSON OR CIRCUMSTANCE, SHALL BE ADJUDGED BY ANY COURT OF COMPETENT JURISDICTION TO BE INVALID OR UNENFORCEABLE, SUCH JUDGEMENT SHALL NOT AFFECT, IMPAIR OR INVALIDATE THE REMAINING PROVISIONS OF THIS SECTION OR THE APPLICATION OF ANY SUCH REMAINING PROVISIONS TO ANY PERSON OR CIRCUMSTANCE, BUT SHALL BE CONFINED IN ITS OPERATION TO THE PROVISION, PERSON

OR CIRCUMSTANCE DIRECTLY INVOLVED IN THE CONTROVERSY IN WHICH SUCH JUDGMENT SHALL HAVE BEEN RENDERED.

S 4. Paragraph a of subdivision 6 of section 5 of the public service law, as added by chapter 684 of the laws of 1997, is amended to read as follows:

a. Application of the provisions of this chapter to cellular telephone services is suspended unless the commission, no sooner than one year after the effective date of this subdivision, makes a determination, after notice and hearing, that suspension of the application of the provisions of this chapter shall cease to the extent found necessary to protect the public interest; PROVIDED, HOWEVER, THAT NOTHING IN THIS PARAGRAPH SHALL SUSPEND OR LIMIT THE AUTHORITY PROVIDED TO THE CONSUMER PROTECTION BOARD IN SECTION FIVE HUNDRED FIFTY-THREE OF THE EXECUTIVE LAW AND SECTION THREE HUNDRED NINETY-EIGHT-E OF THE GENERAL BUSINESS LAW TO IMPLEMENT THE PROVISIONS OF LAW CONTAINED THEREIN OR TO PROMULGATE AND ENFORCE REGULATIONS TO AFFORD CONSUMER PROTECTIONS TO RESIDENTIAL CUSTOMERS OF CELLULAR OR WIRELESS TELEPHONE SERVICE PROVIDERS.

S 5. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided that the executive director of the consumer protection board is authorized, on or before such date, to promulgate any and all rules and regulations and to take any other measures necessary to implement this act on such effective date.