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

222

2009-2010 Regular Sessions

I N S E N A T E

(PREFILED)

January 7, 2009

Introduced by Sen. KRUGER -- 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 restricting the distribution of information pertaining to customers which a gas corporation, electric corporation, steam corporation or water-works corporation may disclose

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

Section 1. The public service law is amended by adding a new section 119-d to read as follows:

S 119-D. RESTRICTION ON AVAILABILITY OF INFORMATION; WRITTEN CONSENT; TYPES OF INFORMATION. 1. FOR PURPOSES OF THIS SECTION THE TERM "CORPORATION" SHALL MEAN A GAS CORPORATION, ELECTRIC CORPORATION, STEAM CORPORATION OR WATER-WORKS CORPORATION.

2. NO CORPORATION SHALL SELL, DISCLOSE OR OTHERWISE MAKE AVAILABLE TO ANY OTHER PERSON, FIRM, PARTNERSHIP, CORPORATION OR ASSOCIATION OR ANY AGENT OR EMPLOYEE THEREOF ANY SUBSCRIBER INFORMATION OR MARKETING LIST CONTAINING RESIDENTIAL CUSTOMER OR SUBSCRIBER INFORMATION WITHOUT THE PRIOR APPROVAL OF THE COMMISSION. NO SUCH INFORMATION OR MARKETING LIST MAY INCLUDE THE FOLLOWING:

(A) THE RESIDENTIAL CUSTOMER'S OR SUBSCRIBER'S SERVICE USAGE PATTERNS, INCLUDING ANY ENERGY AUDIT INFORMATION;

(B) THE RESIDENTIAL CUSTOMER'S OR SUBSCRIBER'S SOCIAL SECURITY NUMBER, CREDIT RATING OR OTHER PERSONAL FINANCIAL INFORMATION;

(C) SERVICES OBTAINED FROM THE CORPORATION;

(D) DEMOGRAPHIC INFORMATION ABOUT THE RESIDENTIAL CUSTOMER OR SUBSCRIBER, EITHER AS AN INDIVIDUAL OR IN THE AGGREGATE; AND

(E) SUCH OTHER INFORMATION AS DETERMINED BY THE COMMISSION.

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

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3. THE PROVISIONS OF THIS SECTION SHALL NOT PROHIBIT THE REPORTING BY A CORPORATION OF THE INFORMATION ABOUT A RESIDENTIAL CUSTOMER'S OR SUBSCRIBER'S PAYMENT RECORD OF THE SERVICES PROVIDED BY THE CORPORATION TO CONSUMER REPORTING AGENCIES FOR USE BY SUCH AGENCY, IN COMPLIANCE WITH THE PROVISIONS OF THE FEDERAL FAIR CREDIT REPORTING ACT (15 U.S.C. SECTION 1681 ET SEQ.), ARTICLE TWENTY-FIVE OF THE GENERAL BUSINESS LAW AND ANY REGULATIONS PROMULGATED THEREUNDER, AS THEY MAY BE FROM TIME TO TIME AMENDED.

4. EVERY CORPORATION, PRIOR TO SELLING, DISCLOSING OR OTHERWISE MAKING AVAILABLE SUBSCRIBER INFORMATION OR MARKETING LISTS CONTAINING RESIDENTIAL CUSTOMER OR SUBSCRIBER INFORMATION, SHALL PROVIDE WRITTEN NOTIFICATION TO ALL OF ITS RESIDENTIAL CUSTOMERS AND SUBSCRIBERS AND INCLUDE SUCH NOTIFICATION WITHIN THE CUSTOMER OR SUBSCRIBER SERVICE BILL. SUCH WRITTEN NOTIFICATION SHALL DISCLOSE CLEARLY AND CONSPICUOUSLY THE CORPORATION'S INTENTION. SUCH NOTICE SHALL PROVIDE A CHECK-OFF MECHANISM WHEREBY RESIDENTIAL CUSTOMERS AND SUBSCRIBERS MAY REFUSE PERMISSION FOR INCLUSION OF THEIR NAME ON SUCH INFORMATION OR MARKETING LIST.

5. THE COMMISSION IS HEREBY DIRECTED TO REVIEW ALL MATERIALS TO BE USED FOR RESIDENTIAL CUSTOMER OR SUBSCRIBER NOTIFICATION TO ENSURE COMPLIANCE WITH THE PROVISIONS OF THIS SECTION. NOTHING CONTAINED IN THIS SECTION SHALL BE DEEMED TO PREEMPT THE COMMISSION FROM REQUIRING ADDITIONAL NOTIFICATION OR OTHER CONDITIONS ON THE SALE OF RESIDENTIAL CUSTOMER OR SUBSCRIBER NAMES AND ADDRESSES WHICH PROVIDE EQUAL OR GREATER PROTECTION TO RESIDENTIAL CUSTOMERS OR SUBSCRIBERS.

6. ANY PERSON WHO HAS BEEN INJURED BY REASON OF A VIOLATION OF THIS SECTION MAY BRING AN ACTION IN HIS OR HER OWN NAME TO ENJOIN SUCH VIOLATION; AN ACTION TO RECOVER HIS OR HER ACTUAL DAMAGES OR FIVE HUNDRED DOLLARS, WHICHEVER IS GREATER; OR BOTH SUCH ACTIONS. THE COURT MAY, IN ITS DISCRETION, INCREASE THE AWARD OF DAMAGES TO AN AMOUNT NOT TO EXCEED THREE TIMES THE ACTUAL DAMAGES, IF THE COURT FINDS THE DEFENDANT WILLFULLY OR KNOWINGLY VIOLATED ANY PROVISION OF THIS SECTION. THE COURT MAY AWARD REASONABLE ATTORNEY'S FEES TO A PREVAILING PLAINTIFF.

7. IN ADDITION TO THE OTHER REMEDIES PROVIDED FOR IN THIS SECTION, ANY CORPORATION WHICH VIOLATES ANY PROVISION OF THIS SECTION SHALL BE LIABLE FOR A CIVIL PENALTY NOT TO EXCEED FIVE HUNDRED DOLLARS FOR EACH VIOLATION. IN THE CASE OF A VIOLATION THROUGH CONTINUING FAILURE TO COMPLY WITH ANY PROVISION OF THIS SECTION, EACH DAY OF THE CONTINUANCE OF SUCH FAILURE SHALL BE TREATED AS A SEPARATE VIOLATION.

8. THE COMMISSION MAY PROMULGATE NECESSARY REGULATIONS TO IMPLEMENT THE PROVISIONS OF THIS SECTION.

9. THE PROVISIONS OF THIS SECTION SHALL NOT BE CONSTRUED TO LIMIT OR PREEMPT THE AUTHORITY OF ANY COURT, DEPARTMENT OR AGENCY OF THE STATE TO REGULATE THE PRACTICES OF CORPORATIONS DOING BUSINESS IN THIS STATE AS OTHERWISE PROVIDED BY LAW.

S 2. This act shall take effect on the one hundred eightieth day after it shall have become a law; provided, however, that effective immediately, all actions and procedures with respect to the proposed adoption, amendment, suspension or repeal of any rule or regulation necessary for the timely implementation of this act are directed and authorized.