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

4412

2011-2012 Regular Sessions

I N A S S E M B L Y

February 3, 2011

Introduced by M. of A. P. RIVERA -- Multi-Sponsored by -- M. of A. JAFFEE -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the public service law, the abandoned property law and the general business law, in relation to prepaid telephone calling cards and services; and to repeal section 92-f of the public service law relating to prepaid telephone calling card consumer protections

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

Section 1. Section 92-f of the public service law is REPEALED.

S 2. The public service law is amended by adding a new article 5-A to read as follows:

ARTICLE 5-A

PREPAID TELEPHONE CALLING CARDS

SECTION 103. DEFINITIONS.
103-A. CERTIFICATION.
103-B. DISCLOSURE REQUIREMENTS.
103-C. CUSTOMER SERVICE.
103-D. ENFORCEMENT.

S 103. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE, UNLESS THE CONTEXT OR SUBJECT MATTER OTHERWISE REQUIRES, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "ADVERTISEMENT" MEANS THE ATTEMPT, DIRECTLY OR INDIRECTLY, BY PUBLICATION, DISSEMINATION, SOLICITATION, ENDORSEMENT OR CIRCULATION, OR IN ANY OTHER WAY, TO INDUCE DIRECTLY OR INDIRECTLY ANY PERSON TO PURCHASE A PREPAID CARD OR PREPAID SERVICE, WHETHER APPEARING IN ANY NEWSPAPER, MAGAZINE, PERIODICAL, CIRCULAR, IN-STORE OR OUT-OF-STORE SIGN, OR OTHER WRITTEN MATTER PLACED BEFORE THE CONSUMING PUBLIC, OR IN ANY RADIO BROADCAST, TELEVISION BROADCAST, ELECTRONIC MEDIUM, OR DELIVERED TO OR THROUGH ANY COMPUTER.

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

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2. "PERSON" MEANS AND INCLUDES ANY CORPORATION, COMPANY, ASSOCIATION, FIRM, ENTITY, PARTNERSHIP OR INDIVIDUAL.

3. "PREPAID CARD" MEANS ANY OBJECT OR RIGHT OF USE PURCHASED FOR A SUM CERTAIN THAT ENABLES A CONSUMER TO USE A PREPAID SERVICE. SUCH RIGHTS OF USE MAY BE EMBODIED ON A CARD OR OTHER PHYSICAL OBJECT OR MAY BE PURCHASED BY AN ELECTRONIC OR TELEPHONIC MEANS WITHOUT A PHYSICAL OBJECT. THE TERM "PREPAID CARD" SHALL NOT INCLUDE:

(A) PREPAID CARDS THAT ARE PROVIDED FOR FREE OR AT NO ADDITIONAL CHARGE AS A PROMOTIONAL ITEM ACCOMPANYING ANOTHER PRODUCT OR SERVICE PURCHASED BY A CONSUMER;

(B) PREPAID CARDS PROVIDED PURSUANT TO AN AWARDS, LOYALTY OR REBATE PROGRAM WITHOUT ANY SEPARATE MONETARY CONSIDERATION BEING GIVEN BY THE CONSUMER FOR THE PREPAID CARD; OR

(C) AN OBJECT OR RIGHT OF USE THAT PROVIDES ACCESS TO A WIRELESS TELE-COMMUNICATIONS SERVICE (WHETHER PRE OR POST PAID).

4. "PREPAID DISTRIBUTOR" MEANS (A) ANY PERSON THAT PURCHASES OR RECEIVES PREPAID CARDS OR PREPAID SERVICE FROM A PREPAID PROVIDER, A TELECOMMUNICATIONS CARRIER OR OTHER PREPAID DISTRIBUTOR, AND SELLS OR DISTRIBUTES THE PREPAID CARDS AND/OR PREPAID SERVICE TO ONE OR MORE PREPAID DISTRIBUTORS OR TO ONE OR MORE PREPAID RETAILERS; AND (B) ANY PERSON THAT OTHERWISE ACTIVELY ENGAGES IN THE PROMOTION, ADVERTISING OR DISSEMINATION OF PREPAID CARDS OR PREPAID SERVICE AND IS NOT A PREPAID PROVIDER. SUCH TERM SHALL NOT INCLUDE ANY PREPAID RETAILER ENGAGED EXCLUSIVELY IN POINT-OF-SALE TRANSACTIONS WITH CONSUMERS.

5. "PREPAID PROVIDER" MEANS ANY PERSON THAT IS ENGAGED IN PROVIDING PREPAID SERVICE TO THE PUBLIC USING ITS OWN, A RESOLD TELECOMMUNICATIONS NETWORK, OR VOICE OVER INTERNET TECHNOLOGY.

6. "PREPAID RETAILER" MEANS ANY PERSON THAT SELLS OR OFFERS TO SELL PREPAID CARDS OR PREPAID SERVICE DIRECTLY TO ONE OR MORE CONSUMERS.

7. "PREPAID SERVICE" MEANS ANY TELECOMMUNICATIONS SERVICE THAT (A) MUST BE PAID FOR IN ADVANCE BY A CONSUMER AND (B) ENABLES THE CONSUMER TO ORIGINATE TELEPHONE CALLS BY USING AN ACCESS NUMBER AND AN AUTHORI-ZATION CODE, WHETHER MANUALLY OR ELECTRONICALLY DIALED. THE TERM "PREPAID SERVICE" SHALL NOT INCLUDE ANY SERVICE THAT PROVIDES ACCESS TO A WIRELESS TELECOMMUNICATIONS SERVICE (WHETHER PRE OR POST PAID).

8. "PROVIDER CERTIFICATE" MEANS A PROVIDER CERTIFICATE ISSUED BY THE COMMISSION TO A PREPAID PROVIDER PURSUANT TO SUBDIVISION ONE OF SECTION ONE HUNDRED THREE-A OF THIS ARTICLE.

S 103-A. CERTIFICATION. 1. PREPAID PROVIDERS. (A) GENERAL. IT SHALL BE UNLAWFUL FOR ANY PREPAID PROVIDER TO OFFER, PROVIDE OR SEEK TO OFFER OR PROVIDE PREPAID SERVICE IN THIS STATE UNLESS THE PREPAID PROVIDER HAS APPLIED FOR AND RECEIVED A PROVIDER CERTIFICATE FROM THE COMMISSION.

(B) APPLICATION. APPLICATION FOR A PROVIDER CERTIFICATE SHALL BE ON A FORM PROVIDED BY THE COMMISSION IN ACCORDANCE WITH THIS SUBDIVISION AND SHALL BE ACCOMPANIED BY A FEE IN THE AMOUNT OF FIVE HUNDRED DOLLARS. THE APPLICATION FOR A PROVIDER CERTIFICATE SHALL CONTAIN ANY INFORMATION THE COMMISSION MAY REQUIRE, BUT SHALL INCLUDE AT A MINIMUM:

(I) THE NAME, ADDRESS AND TITLE OF EACH OFFICER, DIRECTOR, EXECUTIVE AND PARTNER OF THE PREPAID PROVIDER;

(II) A DESCRIPTION OF THE PREPAID SERVICES AND PREPAID CARDS THAT THE PREPAID PROVIDER INTENDS TO OFFER;

(III) THE PREPAID PROVIDER'S TWENTY-FOUR HOUR CUSTOMER SERVICE TELE-PHONE NUMBER FOR CONSUMERS WITHIN THIS STATE; AND

(IV) THE NAME AND ADDRESS OF THE PREPAID PROVIDER'S REGISTERED AGENT FOR SERVICE OF PROCESS IN THIS STATE.

(C) APPROVAL BY COMMISSION. THE COMMISSION SHALL APPROVE AN APPLICATION FOR A PROVIDER CERTIFICATE UPON A SHOWING BY THE APPLICANT AND A FINDING BY THE COMMISSION THAT THE APPLICANT POSSESSES SUFFICIENT TECHNICAL, FINANCIAL AND MANAGERIAL RESOURCES AND ABILITIES TO PROVIDE PREPAID SERVICE. THE COMMISSION SHALL APPROVE AN APPLICATION FOR A PROVIDER CERTIFICATE UPON A SHOWING BY AN APPLICANT THAT THE COMMISSION HAS ISSUED AN APPROPRIATE CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY TO THE APPLICANT OR THE TELECOMMUNICATIONS SERVICE CARRIER WHOSE SERVICE THE APPLICANT IS SEEKING TO RESELL, PROVIDED THAT THE APPLICANT OR TELECOMMUNICATIONS SERVICE CARRIER (AS THE CASE MAY BE) REMAINS IN GOOD STANDING WITH THE COMMISSION. THE COMMISSION SHALL ALSO REQUIRE AS A CONDITION OF APPROVAL THE PROCUREMENT OF A SURETY BOND, OR OTHER AUTHORIZED SECURITY, FROM THE PREPAID PROVIDER IN THE MINIMUM AMOUNT OF FIFTY THOUSAND DOLLARS. THE COMMISSION MAY REQUIRE A LARGER SURETY BOND IF IT DETERMINES THAT A PREPAID PROVIDER HAS ENGAGED IN A PATTERN OF CONDUCT RESULTING IN BONA FIDE CONSUMER COMPLAINTS OF MISCONDUCT AND THAT SUCH INCREASED BOND IS NECESSARY FOR THE PROTECTION OF CONSUMERS. EACH APPROVED PREPAID PROVIDER SHALL RECEIVE A CERTIFICATE NUMBER FROM THE COMMISSION.

(D) POSTING BY COMMISSION. THE COMMISSION SHALL POST ON THE COMMISSION'S WEBSITE, ON A LINK SOLELY DEDICATED TO PREPAID PROVIDERS, A LIST THAT CONTAINS THE FULL LEGAL NAME OF EACH PREPAID PROVIDER THAT HAS RECEIVED A PROVIDER CERTIFICATE AND THE CUSTOMER SERVICE NUMBER FOR EACH SUCH PREPAID PROVIDER.

(E) NOTIFICATION TO PREPAID DISTRIBUTORS. PREPAID PROVIDERS SHALL SUPPLY PROOF OF THEIR PROVIDER CERTIFICATE TO EACH PREPAID DISTRIBUTOR IN THIS STATE TO WHOM THE PREPAID PROVIDER PROVIDES PREPAID SERVICE AND/OR PREPAID CARDS.

2. PREPAID DISTRIBUTORS. (A) GENERAL. IT SHALL BE UNLAWFUL FOR ANY PREPAID DISTRIBUTOR TO DISTRIBUTE, SELL OR RESELL PREPAID CARDS AND/OR PREPAID SERVICE IN THIS STATE UNLESS IT IS REGISTERED WITH THE COMMISSION IN ACCORDANCE WITH THE PROVISIONS OF THIS SUBDIVISION.

(B) APPLICATION. APPLICATION FOR A PREPAID DISTRIBUTOR SHALL BE ON A FORM PROVIDED BY THE COMMISSION IN ACCORDANCE WITH THIS SUBDIVISION AND SHALL BE ACCOMPANIED BY A FEE IN THE AMOUNT OF THREE HUNDRED DOLLARS. THE APPLICATION SHALL CONTAIN ANY INFORMATION THE COMMISSION MAY REQUIRE, BUT SHALL INCLUDE AT A MINIMUM:

(I) THE NAME, ADDRESS AND TITLE OF EACH OFFICER, DIRECTOR, EXECUTIVE AND PARTNER OF THE PREPAID DISTRIBUTOR;

(II) A DESCRIPTION OF THE PREPAID SERVICES AND PREPAID CARDS THAT THE PREPAID DISTRIBUTOR INTENDS TO DISTRIBUTE, SELL, RESELL OR OFFER; AND

(III) THE NAME AND ADDRESS OF THE PREPAID DISTRIBUTOR'S REGISTERED AGENT FOR SERVICE OF PROCESS IN THIS STATE.

(C) APPROVAL BY COMMISSION. THE COMMISSION SHALL APPROVE AN APPLICATION OF A PREPAID DISTRIBUTOR UPON A SHOWING BY THE APPLICANT AND A FINDING BY THE COMMISSION THAT THE APPLICANT POSSESSES SUFFICIENT TECHNICAL, FINANCIAL, AND MANAGERIAL RESOURCES AND ABILITIES TO DISTRIBUTE PREPAID CARDS AND/OR PREPAID SERVICE. THE COMMISSION SHALL ALSO REQUIRE AS A CONDITION OF APPROVAL THE PROCUREMENT OF A SURETY BOND, OR OTHER AUTHORIZED SECURITY, FROM THE PREPAID DISTRIBUTOR IN THE MINIMUM AMOUNT OF TEN THOUSAND DOLLARS. IF THE ANNUAL SALES OF THE PREPAID DISTRIBUTOR IN THIS STATE EXCEED ONE MILLION DOLLARS, THE MINIMUM AMOUNT OF THE SURETY BOND, OR OTHER AUTHORIZED SECURITY, SHALL BE TWENTY-FIVE THOUSAND DOLLARS. EACH APPROVED PREPAID DISTRIBUTOR SHALL RECEIVE A REGISTRATION NUMBER FROM THE COMMISSION.

(D) NOTIFICATION. PREPAID DISTRIBUTORS SHALL SUPPLY PROOF OF THEIR REGISTRATION WITH THE COMMISSION TO EACH PREPAID RETAILER OR OTHER PREPAID DISTRIBUTOR IN THIS STATE TO WHOM THE PREPAID DISTRIBUTOR SELLS, PROVIDES OR DISTRIBUTES PREPAID CARDS. PREPAID DISTRIBUTORS SHALL FORWARD THE PROOF SUPPLIED BY EACH PREPAID PROVIDER OF SUCH PREPAID PROVIDER'S CERTIFICATION WITH THE COMMISSION TO EACH PREPAID RETAILER OR OTHER PREPAID DISTRIBUTOR IN THIS STATE TO WHOM THE PREPAID DISTRIBUTOR SELLS, PROVIDES OR DISTRIBUTES PREPAID CARDS.

3. PREPAID RETAILERS. (A) IT SHALL BE UNLAWFUL FOR ANY PREPAID RETAILER TO SELL OR OFFER TO SELL PREPAID CARDS OR PREPAID SERVICE TO ANY CONSUMER IN THIS STATE UNLESS THE PREPAID RETAILER HAS RECEIVED PROOF OF THE PROVIDER CERTIFICATE FOR EACH APPLICABLE PREPAID CARD AND PREPAID SERVICE OFFERED BY THE PREPAID RETAILER.

(B) IT SHALL BE UNLAWFUL FOR ANY PREPAID RETAILER TO PURCHASE OR OFFER TO PURCHASE PREPAID CARDS OR PREPAID SERVICE FROM ANY PREPAID DISTRIBUTOR UNLESS THE PREPAID RETAILER HAS RECEIVED PROOF OF THE PREPAID DISTRIBUTOR'S REGISTRATION WITH THE COMMISSION.

(C) PREPAID RETAILERS SHALL NOT SELL OR OFFER FOR SALE ANY PREPAID CARD THAT THE PREPAID RETAILER KNOWS PROVIDES FEWER MINUTES THAN THE NUMBER OF MINUTES PROMOTED OR ADVERTISED FOR SUCH PREPAID CARD, INCLUDING THE NUMBER OF MINUTES LISTED ON THE PREPAID CARD, ANY ADVERTISING OR POINT-OF-SALE MATERIAL RELATED TO THE PREPAID CARD OR ANY VOICE PROMPT ANNOUNCING THE NUMBER OF MINUTES AVAILABLE FOR A CALL WITH THE PREPAID CARD.

(D) PREPAID RETAILERS SHALL POST THE COMMISSION'S TOLL-FREE HOTLINE TELEPHONE NUMBER IN A CONSPICUOUS LOCATION WITHIN EACH STORE.

4. AMENDMENTS. EACH PREPAID PROVIDER AND PREPAID DISTRIBUTOR SHALL FILE AN AMENDED APPLICATION WITHIN TWENTY DAYS AFTER ANY CHANGE IN THE INFORMATION CONTAINED IN THEIR APPLICATION. NO FEE SHALL BE REQUIRED FOR THE FILING OF AN AMENDMENT.

5. REVOCATION. THE COMMISSION MAY, IN ITS DISCRETION, CANCEL, REVOKE OR SUSPEND THE CERTIFICATE AND/OR REGISTRATION OF ANY PREPAID PROVIDER OR PREPAID DISTRIBUTOR UPON ANY OF THE FOLLOWING GROUNDS:

(A) THE PREPAID PROVIDER OR PREPAID DISTRIBUTOR DOES NOT PROVIDE OR UPDATE THE INFORMATION REQUIRED BY THIS SECTION;

(B) THE PREPAID PROVIDER OR PREPAID DISTRIBUTOR FAILS TO PROVIDE OR MAINTAIN THE REQUIRED SURETY BOND OR OTHER AUTHORIZED SECURITY;

(C) THE PREPAID PROVIDER OR PREPAID DISTRIBUTOR VIOLATES ANY ORDER, DECISION, RULE, REGULATION OR REQUIREMENT ESTABLISHED OR ADOPTED BY THE COMMISSION PURSUANT TO THIS ARTICLE;

(D) THE PREPAID PROVIDER OR PREPAID DISTRIBUTOR FILES A FALSE STATEMENT WITH THE COMMISSION; OR

(E) THE PREPAID PROVIDER OR PREPAID DISTRIBUTOR VIOLATES ANY PROVISION OF LAW.

6. OTHER REGISTRATIONS. THE CERTIFICATION AND REGISTRATION REQUIREMENTS OF THIS SECTION SHALL BE IN ADDITION TO, AND DO NOT OBVIATE, ANY CERTIFICATION, AUTHORIZATION, REGISTRATION OR OTHER REGULATORY REQUIREMENTS IMPOSED ON INTRASTATE TELECOMMUNICATIONS CARRIERS BY THE STATE.

S 103-B. DISCLOSURE REQUIREMENTS. 1. PREPAID CARDS. PREPAID PROVIDERS AND PREPAID DISTRIBUTORS SHALL CLEARLY AND CONSPICUOUSLY DISCLOSE THE FOLLOWING INFORMATION ON ALL PREPAID CARDS:

(A) THE NAME OF THE PREPAID PROVIDER AS CERTIFICATED BY THE COMMISSION;

(B) THE PREPAID PROVIDER'S TWENTY-FOUR-HOUR CUSTOMER SERVICE TELEPHONE NUMBER;

(C) AN ACCESS NUMBER, IF REQUIRED TO ACCESS THE PREPAID SERVICE;

(D) AN AUTHORIZATION CODE, IF REQUIRED TO ACCESS THE PREPAID SERVICE; AND

(E) ANY EXPIRATION DATE OR POLICY.

2. PREPAID CARDS OR PACKAGING. PREPAID PROVIDERS AND PREPAID DISTRIBUTORS SHALL CLEARLY AND CONSPICUOUSLY DISCLOSE ALL MATERIAL TERMS AND CONDITIONS FOR USE OF A PREPAID CARD OR PREPAID SERVICE EITHER ON THE PREPAID CARD OR ITS PACKAGING, WHICH TERMS AND CONDITIONS SHALL BE VISIBLE TO THE CONSUMER PRIOR TO PURCHASE AT THE POINT OF SALE, INCLUDING WITHOUT LIMITATION THE FOLLOWING ITEMS:

(A) THE MAXIMUM AMOUNT AND FREQUENCY OF ANY CHARGE, FEE, TAX OR SURCHARGE (EXCLUDING THE APPLICABLE PER MINUTE RATE) THAT MAY BE APPLICABLE TO THE USE OF THE PREPAID CARD OR PREPAID SERVICE FOR CALLS ORIGINATING WITHIN THE UNITED STATES;

(B) NOTICE THAT ADDITIONAL OR DIFFERENT PER MINUTE RATES, CHARGES, FEES, TAXES OR SURCHARGES MAY APPLY TO USE OF THE PREPAID CARD OR PREPAID SERVICE FOR CALLS ORIGINATING OUTSIDE THE UNITED STATES AND/OR FOR CALLS TO INTERNATIONAL CELLULAR AND WIRELESS TELEPHONE NUMBERS;

(C) NOTICE THAT PER MINUTE RATES MAY BE HIGHER FOR CALLS MADE VIA TOLL-FREE ACCESS NUMBERS;

(D) THE VALUE OF THE PREPAID CARD OR PREPAID SERVICE, IN DOLLARS OR MINUTES;

(E) ANY MINIMUM CHARGE PER CALL; AND

(F) ANY APPLICABLE POLICIES RELATING TO REFUND, RECHARGE, DECREMENT AND EXPIRATION.

3. POINT-OF-SALE MATERIALS (OTHER THAN PREPAID CARDS AND PACKAGING). PREPAID PROVIDERS AND PREPAID DISTRIBUTORS SHALL CLEARLY AND CONSPICUOUSLY DISCLOSE THE INFORMATION REQUIRED BY SUBDIVISIONS ONE AND TWO OF THIS SECTION ON ALL POINT-OF-SALE MATERIALS (WHICH TERM SHALL NOT INCLUDE THE PREPAID CARDS THEMSELVES AND THEIR PACKAGING) REGARDING A PREPAID SERVICE. ALL POINT-OF-SALE MATERIALS (WHICH TERM SHALL NOT INCLUDE THE PREPAID CARDS THEMSELVES AND THEIR PACKAGING) REGARDING A PREPAID SERVICE SHALL CLEARLY AND CONSPICUOUSLY DISPLAY THE COMMISSION'S TOLL-FREE HOTLINE TELEPHONE NUMBER.

4. ADVERTISEMENTS (OTHER THAN POINT-OF-SALE MATERIALS). PREPAID PROVIDERS AND PREPAID DISTRIBUTORS SHALL CLEARLY AND CONSPICUOUSLY DISCLOSE THE FOLLOWING INFORMATION ON ALL ADVERTISEMENTS FOR A PREPAID CARD OR PREPAID SERVICE (OTHER THAN POINT-OF-SALE MATERIALS):

(A) THE NAME OF THE PREPAID PROVIDER AS CERTIFICATED BY THE COMMISSION;

(B) THE PREPAID PROVIDER'S TWENTY-FOUR-HOUR CUSTOMER SERVICE TELEPHONE NUMBER; AND

(C) ANY EXPIRATION DATE OR POLICY.

5. ADVERTISEMENTS OF MINUTES AND/OR RATES. ALL MINUTES AND/OR RATES PROMOTED OR ADVERTISED ON A PREPAID CARD, ANY POINT-OF-SALE MATERIAL RELATING TO THAT PREPAID CARD, ANY ADVERTISEMENT REGARDING A PREPAID SERVICE, OR OTHERWISE RELATING TO ANY PREPAID SERVICE, SHALL BE AVAILABLE AND ACHIEVABLE BY THE CONSUMER, AND THERE SHALL BE NO LIMITATIONS ON THE PERIOD OF TIME FOR WHICH THE PROMOTED OR ADVERTISED MINUTES AND/OR RATES WILL BE AVAILABLE TO THE CONSUMER UNLESS THOSE LIMITATIONS ARE CLEARLY AND CONSPICUOUSLY DISCLOSED IN THE SAME LOCATION WHERE THE MINUTES AND/OR RATES ARE LISTED.

6. VOICE PROMPTS. ALL MINUTES ANNOUNCED ON ANY VOICE PROMPT GIVEN TO A CONSUMER AT THE TIME THE CONSUMER PLACES A CALL WITH A PREPAID SERVICE SHALL BE IMMEDIATELY AVAILABLE AND ACHIEVABLE BY THE CONSUMER ON THAT CALL. ALL PREPAID PROVIDERS SHALL GIVE A VOICE PROMPT TO A CONSUMER AT THE TIME THE CONSUMER PLACES A CALL WITH A PREPAID SERVICE THAT

ANNOUNCES THE NUMBER OF MINUTES AVAILABLE FOR THAT CALL, WHICH NUMBER OF MINUTES SHALL BE INCLUSIVE OF THE APPLICABLE PER MINUTE RATE AND ALL APPLICABLE CHARGES, FEES, TAXES OR SURCHARGES.

7. PERMITTED CHARGES. A PREPAID PROVIDER SHALL NOT CHARGE, APPLY OR DEDUCT FROM A PREPAID CARD'S BALANCE ANY CHARGES, FEES, TAXES, SURCHARGES OR OTHER AMOUNTS FOR USE OF THE PREPAID SERVICE EXCEPT:

(A) THE PER MINUTE RATE FOR EACH PARTICULAR DESTINATION CALLED BY THE CONSUMER;

(B) CHARGES, FEES, TAXES AND SURCHARGES THAT ARE PROPERLY DISCLOSED PURSUANT TO THIS SECTION; AND

(C) ANY PER MINUTE RATE, CHARGE, FEE, TAX OR SURCHARGE PERMITTED PURSUANT TO PARAGRAPHS (B) AND (C) OF SUBDIVISION TWO OF THIS SECTION. A CONSUMER SHALL NOT BE CHARGED FOR ANY BUSY SIGNAL OR UNANSWERED CALL. A PREPAID PROVIDER SHALL NOT IMPOSE ANY FEE OR SURCHARGE THAT IS NOT DISCLOSED AS REQUIRED BY THIS SECTION OR THAT EXCEEDS THE AMOUNT DISCLOSED. THE AMOUNT OF ANY CHARGE, FEE, TAX OR SURCHARGE THAT IS IMPOSED, ASSESSED OR DEDUCTED FROM A PREPAID CARD'S VALUE OR BALANCE SHALL BE EXPRESSED AND DISCLOSED IN THE SAME FORMAT, EITHER DOLLARS OR MINUTES, AS THE VALUE OF THE PREPAID CARD.

8. FOREIGN LANGUAGE. IF A PREPAID CARD OR ANY POINT-OF-SALE MATERIAL FOR A PREPAID CARD OR PREPAID SERVICE IS PREDOMINANTLY WRITTEN IN A LANGUAGE OTHER THAN ENGLISH, THEN THE DISCLOSURES REQUIRED BY THIS SECTION SHALL BE DISCLOSED IN THAT OTHER LANGUAGE ON THE APPLICABLE PREPAID CARD OR POINT-OF-SALE MATERIAL.

9. PAYPHONE SURCHARGE. A PREPAID PROVIDER MAY PROVIDE A VOICE PROMPT NOTIFICATION OF ANY APPLICABLE PAYPHONE SURCHARGE FOR USE OF A PREPAID SERVICE FROM A PAYPHONE IN LIEU OF PROVIDING NOTICE OF SUCH SURCHARGE AS REQUIRED BY THIS SECTION.

10. INTERNET SALES. NOTWITHSTANDING ANY OTHER PROVISION OF THIS SECTION, IN THE CASE OF A PREPAID CARD THAT CONSUMERS PURCHASE VIA THE INTERNET, THE DISCLOSURES REQUIRED BY SUBDIVISIONS ONE AND TWO OF THIS SECTION SHALL BE DISCLOSED CLEARLY AND CONSPICUOUSLY ON THE INTERNET SITE THAT THE CONSUMER MUST ACCESS PRIOR TO PURCHASING THE PREPAID CARD.

S 103-C. CUSTOMER SERVICE. 1. GENERAL REQUIREMENTS. ALL PREPAID PROVIDERS SHALL ESTABLISH AND MAINTAIN A TOLL-FREE CUSTOMER SERVICE TELEPHONE NUMBER. PREPAID PROVIDERS SHALL PROVIDE CUSTOMER SERVICE TWENTY-FOUR HOURS A DAY, SEVEN DAYS A WEEK. CUSTOMER SERVICE MAY BE PROVIDED BY A COMBINATION OF LIVE OPERATOR, INTERACTIVE VOICE RESPONSE, AND ELECTRONIC VOICE RECORDING OF CUSTOMER INQUIRIES AND COMPLAINTS. LIVE OPERATOR SERVICE SHALL BE AVAILABLE AT A MINIMUM FROM 9:00 A.M. TO 9:00 P.M. IF AN ELECTRONIC VOICE RECORDER IS USED, THE PREPAID PROVIDER SHALL ATTEMPT TO CONTACT THE CONSUMER NO LATER THAN THE NEXT DAY FOLLOWING THE DATE OF THE RECORDING.

2. SPECIFIC REQUIREMENTS. CUSTOMER SERVICE MUST ENABLE A CONSUMER TO ACCURATELY AND CLEARLY OBTAIN ALL APPLICABLE INFORMATION REGARDING A PREPAID CARD OR PREPAID SERVICE, INCLUDING:

(A) A DESCRIPTION OF ALL APPLICABLE FEES AND SURCHARGES;

(B) SPECIFIC PER MINUTE RATES TO SPECIFIC DESTINATIONS;

(C) BALANCE REMAINING; AND

(D) MINUTES AVAILABLE AND REMAINING FOR USE IN A SINGLE, UNINTERRUPTED CALL TO A SINGLE, REQUESTED DESTINATION.

3. REFUNDS. A PREPAID PROVIDER SHALL PROVIDE A REFUND TO ANY CONSUMER WHO PURCHASES A PREPAID CARD IF THE TELECOMMUNICATION NETWORK SERVICES ASSOCIATED WITH THE PREPAID SERVICE FAIL TO OPERATE IN A COMMERCIALLY REASONABLE MANNER. THE REFUND SHALL BE IN AN AMOUNT NOT LESS THAN THE VALUE REMAINING ON THE PREPAID CARD AT THE TIME OF THE FAILURE AND IN

THE FORM OF EITHER A REPLACEMENT PREPAID CARD OR BY ADDING THE REFUND AMOUNT TO THE PREPAID CARD'S CURRENT BALANCE. ALL REFUNDS SHALL BE PROVIDED TO THE CONSUMER WITHIN SIXTY DAYS FROM THE DATE OF RECEIPT OF NOTIFICATION FROM THE CONSUMER THAT THE PREPAID SERVICE HAS FAILED TO OPERATE IN A COMMERCIALLY REASONABLE MANNER.

4. EXPIRATION. PREPAID CARDS WITHOUT A SPECIFIC EXPIRATION DATE OR POLICY PRINTED ON THE PREPAID CARD AND WITH A BALANCE OF PREPAID SERVICE REMAINING SHALL BE CONSIDERED ACTIVE FOR A MINIMUM OF ONE YEAR FROM THE DATE OF ACTIVATION, OR IF RECHARGED, FROM THE DATE OF THE LAST RECHARGE.

5. SERVICE SUSPENSION. A PREPAID PROVIDER HAS THE RIGHT TO SUSPEND USE OF A PREPAID CARD AND ITS ACCESS TO PREPAID SERVICE WHEN IT REASONABLY BELIEVES THAT (A) THE PREPAID CARD HAS BEEN STOLEN, OR (B) THE PREPAID SERVICE HAS BEEN OBTAINED FRAUDULENTLY, OR (C) THE PREPAID CARD OR SERVICE IS BEING USED IN AN ILLEGAL OR FRAUDULENT MANNER. IF THE PREPAID PROVIDER SUSPENDS USE OF THE PREPAID SERVICE, THE PREPAID PROVIDER SHALL DIRECT AN AFFECTED CONSUMER TO CONTACT CUSTOMER SERVICE WHERE AN EXPLANATION SHALL BE PROVIDED.

S 103-D. ENFORCEMENT. 1. VIOLATIONS. THE COMMISSION SHALL HAVE THE POWER AND AUTHORITY TO ASSESS A PENALTY AGAINST ANY PERSON THAT VIOLATES ANY PROVISION OF THIS ARTICLE OR ANY REGULATION OR ORDER OF THE COMMISSION IMPLEMENTING OR ENFORCING THE PROVISIONS OF THIS ARTICLE. THE PENALTY FOR A FIRST VIOLATION SHALL NOT EXCEED FIVE THOUSAND DOLLARS AND THE PENALTY FOR EACH SUBSEQUENT VIOLATION SHALL NOT EXCEED TEN THOUSAND DOLLARS. ALL MONEYS COLLECTED FROM ANY PENALTY SHALL BE PAID INTO THE GENERAL FUND.

2. REGULATIONS. THE COMMISSION SHALL ADOPT ANY RULES AND REGULATIONS NECESSARY TO EFFECTUATE THE PURPOSES OF THIS ARTICLE.

3. PRIVATE RIGHT OF ACTION. ANY PERSON WHO SUFFERS DAMAGES AS THE RESULT OF, OR IS OTHERWISE AGGRIEVED BY, A VIOLATION OF ANY PROVISION OF THIS ARTICLE, MAY COMMENCE A CAUSE OF ACTION OR ASSERT A COUNTERCLAIM IN A COURT OF COMPETENT JURISDICTION.

S 3. Subdivision (g) of section 103 of the abandoned property law, as added by chapter 170 of the laws of 2004, is amended to read as follows:

(g) "Gift certificate" shall mean a written promise or electronic payment device that: (i) is usable at a single merchant or an affiliated group of merchants that share the same name, mark, or logo, or is usable at multiple, unaffiliated merchants or service providers; and (ii) is issued in a specified amount; and (iii) may or may not be increased in value or reloaded; and (iv) is purchased and/or loaded on a prepaid basis for the future purchase or delivery of any goods or services; and (v) is honored upon presentation. Gift certificate shall not include an electronic payment device linked to a deposit account, or prepaid telephone calling cards regulated under [section ninety-two-f] ARTICLE FIVE-A of the public service law. Gift certificate also shall not include flexible spending arrangements as defined in Section 106(c)(2) of the Internal Revenue Code, 26 U.S.C. S 106(c)(2); flexible spending accounts subject to Section 125 of the Internal Revenue Code, 26 U.S.C. S 125; Archer MSAs as defined in Section 220(d) of the Internal Revenue Code, 26 U.S.C. S 220(d); dependent care reimbursement accounts subject to Section 129 of the Internal Revenue Code, 26 U.S.C. S 129; health savings accounts subject to Section 223(d) of the Internal Revenue Code, 26 U.S.C. S 223(d), as amended by Section 1201 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173; or similar accounts from which, under the Internal Revenue Code and its implementing regulations, individuals may pay medical expenses, health care expenses, dependent care expenses, or similar

expenses on a pretax basis. Gift certificate also shall not include a prepaid discount card or program used to purchase identified goods or services at a price or percentage below the normal and customary price; provided that the expiration date of the prepaid discount card or program is clearly and conspicuously disclosed. Gift certificate also shall not include payroll cards or other electronic payment devices which are linked to a deposit account and which are given in exchange for goods or services rendered.

S 4. Subdivision 1 of section 396-i of the general business law, as amended by chapter 170 of the laws of 2004, is amended to read as follows:

1. For the purposes of this section, "gift certificate" shall mean a written promise or electronic payment device that: (i) is usable at a single merchant or an affiliated group of merchants that share the same name, mark, or logo, or is usable at multiple, unaffiliated merchants or service providers; and (ii) is issued in a specified amount; and (iii) may or may not be increased in value or reloaded; and (iv) is purchased and/or loaded on a prepaid basis for the future purchase or delivery of any goods or services; and (v) is honored upon presentation. Gift certificate shall not include an electronic payment device linked to a deposit account, or prepaid telephone calling cards regulated under [section ninety-two-f] ARTICLE FIVE-A of the public service law. Gift certificate also shall not include flexible spending arrangements as defined in Section 106(c)(2) of the Internal Revenue Code, 26 U.S.C. S 106(c)(2); flexible spending accounts subject to Section 125 of the Internal Revenue Code, 26 U.S.C. S 125; Archer MSAs as defined in Section 220(d) of the Internal Revenue Code, 26 U.S.C. S 220(d); dependent care reimbursement accounts subject to Section 129 of the Internal Revenue Code, 26 U.S.C. S 129; health savings accounts subject to Section 223(d) of the Internal Revenue Code, 26 U.S.C. S 223(d), as amended by Section 1201 of the Medicare Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L. No. 108-173; or similar accounts from which, under the Internal Revenue Code and its implementing regulations, individuals may pay medical expenses, health care expenses, dependent care expenses, or similar expenses on a pretax basis. Gift certificate also shall not include a prepaid discount card or program used to purchase identified goods or services at a price or percentage below the normal and customary price; provided that the expiration date of the prepaid discount card or program is clearly and conspicuously disclosed. Gift certificate also shall not include payroll cards or other electronic payment devices which are linked to a deposit account and which are given in exchange for goods or services rendered.

S 5. This act shall take effect on the first of the calendar month commencing immediately after the ninetieth day after it shall have become a law; provided that any rules and regulations, or any other actions, necessary to implement the provisions of this act on its effective date are authorized and directed to be completed on or before such date. This act shall only apply to prepaid cards printed on or after such effective date, and to advertisements, promotions, point-of-sale materials and voice prompts relating to a prepaid service that is created, aired, printed, distributed or otherwise disseminated on or after such effective date.