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

5454--A

2011-2012 Regular Sessions

I N A S S E M B L Y

February 18, 2011

Introduced by M. of A. P. RIVERA, JAFFEE, GIBSON, ROBERTS, ABINANTI, McDONOUGH, CALHOUN, HOOPER, STEVENSON -- Multi-Sponsored by -- M. of A. BOYLAND, McLAUGHLIN -- read once and referred to the Committee on Consumer Affairs and Protection -- recommitted to the Committee on Consumer Affairs and Protection in accordance with Assembly Rule 3, sec. 2 -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to wireless telephone disclosure

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

Section 1. The general business law is amended by adding a new section 399-ccc to read as follows:

S 399-CCC. WIRELESS TELEPHONE DISCLOSURE. 1. SHORT TITLE. THIS SECTION SHALL BE KNOWN AND MAY BE CITED AS THE "WIRELESS TELEPHONE RIGHT TO KNOW LAW".

2. DEFINITIONS. AS USED IN THIS SECTION, THE FOLLOWING WORDS AND TERMS SHALL HAVE THE FOLLOWING MEANINGS UNLESS THE CONTEXT INDICATES ANOTHER OR DIFFERENT MEANING OR INTENT:

(A) "DEPARTMENT" MEANS THE DEPARTMENT OF STATE.

(B) "DISPLAY MATERIALS" MEANS INFORMATIONAL OR PROMOTIONAL MATERIALS POSTED ADJACENT TO A SAMPLE WIRELESS TELEPHONE OR TELEPHONES ON DISPLAY AT THE RETAIL LOCATION THAT DESCRIBE OR LIST THE FEATURES OF THE WIRELESS TELEPHONE. SUCH TERM SHALL NOT INCLUDE ANY TAG, STICKER OR DECAL ATTACHED TO A WIRELESS TELEPHONE BY THE MANUFACTURER, THE MANUFACTURER'S PACKAGING FOR A WIRELESS TELEPHONE OR MATERIALS THAT LIST ONLY THE PRICE AND AN IDENTIFIER FOR THE WIRELESS TELEPHONE.

(C) "SECRETARY" MEANS THE SECRETARY OF STATE.

(D) "WIRELESS TELEPHONE" MEANS A WIRELESS COMMUNICATIONS DEVICE AS DEFINED IN SUBDIVISION NINE OF SECTION THREE HUNDRED ONE OF THE COUNTY

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

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LAW. SUCH TERM SHALL NOT INCLUDE A WIRELESS TELEPHONE DEVICE THAT IS INTEGRATED INTO THE ELECTRICAL ARCHITECTURE OF A MOTOR VEHICLE.

(E) "WIRELESS TELEPHONE RETAILER" MEANS ANY PERSON OR ENTITY THAT SELLS, LEASES, OR OFFERS FOR SALE OR LEASE, AT RETAIL, WIRELESS TELEPHONES. SUCH TERM SHALL NOT INCLUDE ANY PERSON SELLING OR LEASING WIRELESS TELEPHONES:

(I) OVER THE PHONE, BY MAIL OR OVER THE INTERNET; OR

(II) DIRECTLY TO THE PUBLIC AT A CONVENTION, TRADE SHOW OR CONFERENCE, OR OTHERWISE SELLING OR LEASING WIRELESS TELEPHONES DIRECTLY TO THE PUBLIC WITHIN THE STATE FOR FEWER THAN TEN DAYS IN A YEAR.

(F) "WIRELESS TELEPHONE SERVICE PROVIDER" MEANS A WIRELESS COMMUNICATIONS SERVICE SUPPLIER AS DEFINED IN SUBDIVISION TWELVE OF SECTION THREE HUNDRED ONE OF THE COUNTY LAW.

3. REQUIREMENTS FOR WIRELESS TELEPHONE SERVICE PROVIDERS. ANY WIRELESS TELEPHONE SERVICE PROVIDER THAT SELLS ITS SERVICE THROUGH A WIRELESS TELEPHONE RETAILER IN THIS STATE SHALL PROVIDE A LIST OF THE RETAIL LOCATION OR LOCATIONS OF EACH SUCH RETAILER TO THE DEPARTMENT, IN A FORM DETERMINED BY THE SECRETARY. THE WIRELESS SERVICE PROVIDER SHALL UPDATE SUCH LIST OF RETAILERS ANNUALLY. THE DEPARTMENT SHALL ADOPT REGULATIONS GOVERNING THE FORM AND SUBMISSION OF SUCH LISTS.

4. REQUIREMENTS FOR WIRELESS TELEPHONE RETAILERS. (A) BEGINNING FIFTEEN DAYS AFTER THE DEPARTMENT ADOPTS THE REGULATIONS REQUIRED PURSUANT TO SUBDIVISION FIVE OF THIS SECTION, WIRELESS TELEPHONE RETAILERS SHALL DISPLAY IN A PROMINENT LOCATION VISIBLE TO THE PUBLIC, WITHIN ITS RETAIL STORE, AN INFORMATIONAL POSTER DEVELOPED BY THE DEPARTMENT PURSUANT TO SUBDIVISION FIVE OF THIS SECTION.

(B) BEGINNING FIFTEEN DAYS AFTER THE DEPARTMENT ADOPTS THE REGULATIONS REQUIRED PURSUANT TO SUBDIVISION FIVE OF THIS SECTION, WIRELESS TELEPHONE RETAILERS SHALL PROVIDE, TO EVERY CUSTOMER THAT PURCHASES A WIRELESS TELEPHONE, A FREE COPY OF AN INFORMATIONAL FACTSHEET DEVELOPED BY THE DEPARTMENT PURSUANT TO SUBDIVISION FIVE OF THIS SECTION. A COPY OF THIS FACTSHEET MUST ALSO BE PROVIDED TO ANY CUSTOMER WHO REQUESTS IT, REGARDLESS OF WHETHER HE OR SHE PURCHASES A WIRELESS TELEPHONE.

(C) BEGINNING THIRTY DAYS AFTER THE DEPARTMENT ADOPTS THE REGULATIONS REQUIRED PURSUANT TO SUBDIVISION FIVE OF THIS SECTION, IF A WIRELESS TELEPHONE RETAILER POSTS DISPLAY MATERIALS IN CONNECTION WITH SAMPLE WIRELESS TELEPHONES ON DISPLAY, THE DISPLAY MATERIALS MUST INCLUDE THE FOLLOWING THREE INFORMATIONAL STATEMENTS THE CONTENTS, SIZE AND FORMAT OF WHICH, AS PRINTED, SHALL BE DETERMINED BY THE DEPARTMENT:

(I) A STATEMENT EXPLAINING THAT WIRELESS TELEPHONES EMIT RADIOFREQUENCY ENERGY THAT IS ABSORBED BY THE HEAD AND BODY;

(II) A STATEMENT REFERENCING MEASURES TO REDUCE EXPOSURE TO RADIOFREQUENCY ENERGY FROM THE USE OF A WIRELESS TELEPHONE; AND

(III) A STATEMENT THAT THE INFORMATIONAL FACTSHEET REFERENCED IN PARAGRAPH (B) OF THIS SUBDIVISION IS AVAILABLE FROM THE WIRELESS TELEPHONE RETAILER UPON REQUEST.

(D) THE SECRETARY MAY, IN HIS OR HER DISCRETION, AUTHORIZE A WIRELESS TELEPHONE RETAILER TO USE ALTERNATE MEANS TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION. THE SECRETARY SHALL AUTHORIZE SUCH ALTERNATE MEANS THROUGH THE ADOPTION OF A REGULATION, AND NO WIRELESS TELEPHONE RETAILER MAY SELL OR LEASE WIRELESS TELEPHONES TO THE PUBLIC, OR OFFER TO SELL OR LEASE WIRELESS TELEPHONES TO THE PUBLIC USING ANY ALTERNATE MEANS OF COMPLIANCE WITH THIS SECTION UNLESS SPECIFICALLY AUTHORIZED TO DO SO IN ADVANCE IN WRITING BY THE SECRETARY.

5. RULES AND REGULATIONS. (A) THE DEPARTMENT SHALL, IN CONSULTATION WITH THE DEPARTMENT OF HEALTH, DEVELOP AND MAKE AVAILABLE TO WIRELESS TELEPHONE RETAILERS:

(I) INFORMATIONAL POSTERS, AS REFERENCED IN PARAGRAPH (A) OF SUBDIVISION FOUR OF THIS SECTION;

(II) INFORMATIONAL FACTSHEETS, AS REFERENCED IN PARAGRAPH (B) OF SUBDIVISION FOUR OF THIS SECTION; AND

(III) SETS OF STATEMENTS THAT MUST BE INCLUDED IN DISPLAY MATERIALS, AS REFERENCED IN PARAGRAPH (C) OF SUBDIVISION FOUR OF THIS SECTION.

(B) THE MATERIAL DEVELOPED PURSUANT TO THIS SUBDIVISION SHALL INFORM CONSUMERS OF ISSUES PERTAINING TO REDIOFREQUENCY ENERGY EMISSIONS FROM WIRELESS TELEPHONES AND ACTIONS THAT CAN BE TAKEN BY WIRELESS TELEPHONE USERS TO MINIMIZE EXPOSURE TO REDIOFREQUENCY ENERGY, SUCH AS TURNING OFF WIRELESS TELEPHONES WHEN NOT IN USE, USING A HEADSET AND SPEAKER PHONE, OR USING THE WIRELESS TELEPHONE TO SEND TEXT MESSAGES.

(C) THE DEPARTMENT MAY BY REGULATION REQUIRE THE INCLUSION OF ADDITIONAL INFORMATION IN THE POSTER, THE FACTSHEET AND/OR THE STATEMENTS REQUIRED IN CONNECTION WITH DISPLAY MATERIALS.

(D) (I) THE DEPARTMENT SHALL ISSUE REGULATIONS, TO TAKE EFFECT FIFTEEN DAYS AFTER THE EFFECTIVE DATE OF THIS SECTION SPECIFYING THE CONTENTS, SIZE AND FORMAT FOR THE POSTER, THE FACTSHEET AND THE STATEMENTS REQUIRED IN CONNECTION WITH DISPLAY MATERIALS DEVELOPED PURSUANT TO PARAGRAPH (A) OF THIS SUBDIVISION AND PROVIDE TEMPLATES OF THEM FOR USE BY WIRELESS TELEPHONE RETAILERS.

(II) (A) THE INFORMATIONAL POSTER SHALL BE A MAXIMUM SIZE OF ELEVEN INCHES BY SEVENTEEN INCHES;

(B) THE INFORMATIONAL FACTSHEET SHALL BE A MAXIMUM SIZE OF FIVE AND ONE-HALF INCHES BY ELEVEN INCHES (HALF-SHEET OF PAPER); AND

(C) THE INFORMATIONAL STATEMENTS SHALL BE PRINTED IN A SPACE NO SMALLER THAN ONE INCH BY TWO AND FIVE-EIGHTHS INCHES.

(E) IN THE EVENT THAT THE SCIENTIFIC COMMUNITY OR THE FEDERAL COMMUNICATIONS COMMISSION DEVELOPS A NEW METRIC TO MEASURE THE ACTUAL AMOUNT OF RADIOFREQUENCY AN AVERAGE USER WILL ABSORB FROM EACH MODEL OF WIRELESS TELEPHONE, THE DEPARTMENT SHALL MAKE RECOMMENDATIONS TO THE LEGISLATURE FOR AMENDMENTS TO THIS SECTION TO REQUIRE NOTIFICATION TO THE PUBLIC OF THIS METRIC AT THE POINT OF SALE.

6. PENALTIES. (A) ANY WIRELESS TELEPHONE SERVICE PROVIDER OR WIRELESS TELEPHONE RETAILER THAT VIOLATES THIS SECTION SHALL BE SUBJECT TO A CIVIL PENALTY OF NOT MORE THAN ONE HUNDRED DOLLARS FOR THE FIRST VIOLATION, NOT MORE THAN TWO HUNDRED FIFTY DOLLARS FOR THE SECOND VIOLATION, AND NOT MORE THAN FIVE HUNDRED DOLLARS FOR EACH VIOLATION THEREAFTER.

(B) THE PROVISIONS OF SUBDIVISION FOUR OF THIS SECTION MAY BE ENFORCED CONCURRENTLY BY THE DIRECTOR OF A MUNICIPAL CONSUMER AFFAIRS OFFICE, THE TOWN ATTORNEY, COUNTY ATTORNEY, THE CORPORATION COUNSEL OR OTHER LAWFUL DESIGNEE OF A MUNICIPALITY OR LOCAL GOVERNMENT, AND ALL MONEYS COLLECTED PURSUANT TO THIS PARAGRAPH SHALL BE RETAINED BY SUCH MUNICIPALITY OR LOCAL GOVERNMENT.

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, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date is authorized and directed to be made and completed on or before such effective date.