

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

8006

2011-2012 Regular Sessions

I N A S S E M B L Y

May 25, 2011

Introduced by M. of A. THIELE -- read once and referred to the Committee
on Consumer Affairs and Protection

AN ACT to amend the public service law, in relation to instituting identification requirements for the purchase of pre-paid mobile devices

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "Pre-Paid Mobile Device Identification Act".
3 S 2. The public service law is amended by adding a new section 92-g to
4 read as follows:
5 S 92-G. PRE-PAID MOBILE DEVICE IDENTIFICATION. 1. DEFINITIONS. AS
6 USED IN THIS SECTION:
7 A. THE TERM "AUTHORIZED RESELLER" MEANS ANY PERSON AUTHORIZED BY
8 (I) A MANUFACTURER TO SELL THE MANUFACTURER'S MOBILE DEVICES OR SIM
9 CARDS; OR
10 (II) A WIRELESS COMMUNICATIONS SERVICE SUPPLIER TO SELL PRE-PAID
11 MOBILE DEVICES OR SIM CARDS TO WHICH THE WIRELESS COMMUNICATIONS SERVICE
12 SUPPLIER WILL PROVIDE WIRELESS CELLULAR SERVICE;
13 B. THE TERM "PRE-PAID MOBILE DEVICE" MEANS ANY CELLULAR PHONE OR SIMI-
14 LAR WIRELESS COMMUNICATION DEVICE FOR WHICH THE MOBILE DEVICE USER
15 PURCHASES A SET ALLOTMENT OF WIRELESS COMMUNICATION SERVICE;
16 C. THE TERM "SIM CARD" MEANS A SUBSCRIBER IDENTITY MODULE OR FUNC-
17 TIONALLY EQUIVALENT DATA STORAGE DEVICE; AND
18 D. THE TERM "WIRELESS COMMUNICATIONS SERVICE" MEANS ALL COMMERCIAL
19 MOBILE SERVICES, AS THAT TERM IS DEFINED IN SECTION 332(D) OF TITLE 47,
20 UNITED STATES CODE, AS AMENDED FROM TIME TO TIME, INCLUDING, BUT NOT
21 LIMITED TO, ALL BROADBAND PERSONAL COMMUNICATIONS SERVICES, WIRELESS
22 RADIO TELEPHONE SERVICES, GEOGRAPHIC AREA SPECIALIZED AND ENHANCED
23 SPECIALIZED MOBILE RADIO SERVICES, AND INCUMBENT-WIDE AREA SPECIALIZED
24 MOBILE RADIO LICENSEES, WHICH OFFER REAL TIME, TWO-WAY VOICE OR DATA
25 SERVICE THAT IS INTERCONNECTED WITH THE PUBLIC SWITCHED TELEPHONE

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

LBD11477-02-1

1 NETWORK OR OTHERWISE PROVIDES ACCESS TO EMERGENCY COMMUNICATIONS
2 SERVICES.

3 E. THE TERM "WIRELESS COMMUNICATIONS SERVICE SUPPLIER" MEANS ANY
4 COMMERCIAL ENTITY THAT OPERATES A WIRELESS COMMUNICATIONS SERVICE IN NEW
5 YORK STATE.

6 2. IDENTIFICATION REQUIREMENT. PRIOR TO THE COMPLETION OF ANY SALE OF
7 A PRE-PAID MOBILE DEVICE OR SIM CARD TO A PURCHASER, AN AUTHORIZED
8 RESELLER SHALL REQUIRE THE PURCHASER TO PROVIDE THE FOLLOWING INFORMA-
9 TION:

10 A. THE FULL NAME OF THE PURCHASER;
11 B. THE COMPLETE HOME ADDRESS OF THE PURCHASER; AND
12 C. THE DATE OF BIRTH OF THE PURCHASER.

13 3. IDENTIFICATION VERIFICATION. A. AN AUTHORIZED RESELLER MAKING A
14 SALE TO A PURCHASER IN PERSON SHALL VERIFY THE PURCHASER INFORMATION
15 PROVIDED UNDER SUBDIVISION TWO OF THIS SECTION BY REQUIRING THE PURCHAS-
16 ER TO DISPLAY:

17 (I) A PHOTOGRAPHIC IDENTIFICATION CARD ISSUED BY A FEDERAL OR STATE
18 GOVERNMENT, OR A DOCUMENT CONSIDERED ACCEPTABLE FOR PURPOSES OF SUBPARA-
19 GRAPHS (B), (C), OR (D) OF SECTION 274A(B)(1) OF THE IMMIGRATION AND
20 NATIONALITY ACT (8 U.S.C. 1324A(B)(1)); OR

21 (II) ANY TWO OF THE FOLLOWING DOCUMENTS:

22 (A) A FORM W-2 WAGE AND TAX STATEMENT RECEIVED FROM THE INTERNAL
23 REVENUE SERVICE, PROVIDED THAT SUCH FORM HAS BEEN RECEIVED FROM THE
24 INTERNAL REVENUE SERVICE WITHIN THE PRIOR EIGHTEEN MONTHS;

25 (B) A FORM 1099 SOCIAL SECURITY BENEFIT STATEMENT RECEIVED FROM THE
26 SOCIAL SECURITY ADMINISTRATION, PROVIDED THAT SUCH FORM HAS BEEN
27 RECEIVED FROM THE SOCIAL SECURITY ADMINISTRATION WITHIN THE PRIOR EIGH-
28 TEEN MONTHS;

29 (C) A FORM 1099 RECEIVED FROM ANY OTHER AGENCY OF THE FEDERAL GOVERN-
30 MENT OTHER THAN THE SOCIAL SECURITY ADMINISTRATION, INCLUDING THE INTER-
31 NAL REVENUE SERVICE, PROVIDED THAT SUCH FORM HAS BEEN RECEIVED WITHIN
32 THE PRIOR EIGHTEEN MONTHS; OR

33 (D) ANY DOCUMENT CONTAINING PERSONAL IDENTIFYING INFORMATION THAT THE
34 COMMISSIONER FINDS, BY REGULATION, TO BE ACCEPTABLE FOR PURPOSES OF THIS
35 SUBDIVISION.

36 B. AN AUTHORIZED RESELLER MAKING A SALE TO A PURCHASER NOT IN PERSON
37 SHALL VERIFY THE PURCHASER INFORMATION PROVIDED UNDER SUBDIVISION TWO OF
38 THIS SECTION BY REQUIRING THE PURCHASER TO SUBMIT THE FOLLOWING:

39 (I) VALID CREDIT OR DEBIT CARD ACCOUNT INFORMATION;
40 (II) SOCIAL SECURITY NUMBER;
41 (III) DRIVER'S LICENSE NUMBER; AND
42 (IV) ANY OTHER PERSONAL IDENTIFYING INFORMATION THAT THE COMMISSIONER
43 FINDS, BY REGULATION, TO BE NECESSARY FOR PURPOSES OF THIS SUBDIVISION.

44 4. RECORD MAKING REQUIREMENT. UPON COMPLETION OF A SALE OF A PRE-PAID
45 MOBILE DEVICE OR SIM CARD, AN AUTHORIZED RESELLER SHALL MAKE A RECORD OF
46 THE SALE THAT INCLUDES THE FOLLOWING INFORMATION:

47 A. THE INFORMATION OBTAINED FROM THE PURCHASER UNDER SUBDIVISION TWO
48 OF THIS SECTION, AND, IF APPLICABLE, THE INFORMATION SUBMITTED BY THE
49 PURCHASER UNDER PARAGRAPH B OF SUBDIVISION THREE OF THIS SECTION;

50 B. THE DATE OF SALE OF THE PRE-PAID MOBILE DEVICE OR SIM CARD;
51 C. THE MANUFACTURER OF THE PRE-PAID MOBILE DEVICE OR SIM CARD;
52 D. THE WIRELESS CARRIER THAT WILL PROVIDE WIRELESS COMMUNICATION
53 SERVICE TO THE PRE-PAID MOBILE DEVICE OR SIM CARD;
54 E. ANY ASSIGNED TELEPHONE NUMBER OR OTHER SUBSCRIBER OR ACCOUNT IDEN-
55 TIFIER KNOWN AT THE TIME OF PURCHASE; AND

F. ANY OF THE FOLLOWING, IF APPLICABLE TO THE PRE-PAID MOBILE DEVICE OR SIM CARD:

- (I) INTERNATIONAL MOBILE EQUIPMENT IDENTIFIER NUMBER;
- (II) ELECTRONIC SERIAL NUMBER;
- (III) MOBILE EQUIPMENT IDENTIFIER;
- (IV) INTERNATIONAL MOBILE SUBSCRIBER IDENTIFIER;
- (V) MACHINE ADDRESS CODE.

5. RECORD TRANSMISSION REQUIREMENT. A. NOT LATER THAN THIRTY DAYS AFTER THE SALE OF A PRE-PAID MOBILE DEVICE OR SIM CARD, AN AUTHORIZED RESELLER SHALL TRANSMIT THE RECORD OF THE SALE MADE IN ACCORDANCE WITH SUBDIVISION FOUR OF THIS SECTION TO THE WIRELESS CARRIER THAT WILL PROVIDE WIRELESS COMMUNICATION SERVICE TO THE PRE-PAID MOBILE DEVICE OR SIM CARD.

B. IN COMPLYING WITH THE REQUIREMENTS OF PARAGRAPH A OF THIS SUBDIVISION, AN AUTHORIZED RESELLER MAY TRANSMIT THE SALE RECORD TO THE WIRELESS CARRIER BY MEANS OF SECURE ELECTRONIC TRANSMISSION.

6. RECORDKEEPING REQUIREMENT. AFTER AN AUTHORIZED RESELLER HAS TRANSMITTED THE SALE RECORD TO THE WIRELESS CARRIER IN ACCORDANCE WITH SUBDIVISION FIVE OF THIS SECTION, A WIRELESS CARRIER SHALL:

A. PROVIDE A TRANSMISSION CONFIRMATION RECEIPT TO THE AUTHORIZED RESELLER, AFTER THE RECEIPT OF WHICH THE AUTHORIZED RESELLER SHALL DISPOSE PROMPTLY OF ANY RETAINED COPY OF THE RECORD; AND

B. RETAIN THE TRANSMITTED SALE RECORD IN ACCORDANCE WITH THE PRIVACY PROTECTIONS OF SECTION 222 OF THE FEDERAL COMMUNICATIONS ACT OF 1934 (47 U.S.C. 222) FOR A PERIOD OF EIGHTEEN MONTHS OR UNTIL THE WIRELESS CARRIER STOPS OR OTHERWISE DISCONTINUES PROVIDING SERVICE TO THE PRE-PAID MOBILE DEVICE OR SIM CARD TO WHICH THE SALE RECORD RELATES.

7. PENALTIES. A. A PURCHASER WHO PROVIDES FALSE OR MISLEADING INFORMATION WHEN PROVIDING THE IDENTIFYING INFORMATION AND DOCUMENTS REQUIRED UNDER SUBDIVISIONS TWO AND THREE OF THIS SECTION SHALL BE SUBJECT TO CRIMINAL PENALTIES UNDER TITLE K OF THE PENAL LAW.

B. (I) AN AUTHORIZED RESELLER OR WIRELESS CARRIER WHO FAILS TO COMPLY WITH THE REQUIREMENTS OF THIS SECTION SHALL BE SUBJECT TO A CIVIL FINE OF FIFTY DOLLARS PER OFFENSE.

(II) EACH SEPARATE SALE OF A PRE-PAID MOBILE DEVICE OR SIM CARD FOR WHICH PURCHASER IDENTIFICATION IS NOT REQUESTED OR VERIFIED IN ACCORDANCE WITH SUBDIVISIONS TWO AND THREE OF THIS SECTION, OR FOR WHICH THE REQUIRED RECORD IS NOT MADE OR MAINTAINED IN ACCORDANCE WITH SUBDIVISION FOUR OR SIX OF THIS SECTION, SHALL CONSTITUTE A SEPARATE OFFENSE.

(III) FOR PURPOSES OF THIS SECTION: (A) A WIRELESS CARRIER IS NOT RESPONSIBLE FOR AN OFFENSE OF AN AUTHORIZED RESELLER; AND (B) AN AUTHORIZED RESELLER IS NOT RESPONSIBLE FOR AN OFFENSE OF A WIRELESS CARRIER.

8. RELATED OFFENSES. A. (I) IT SHALL BE UNLAWFUL FOR ANY PERSON WHO IS NOT AN AUTHORIZED RESELLER TO SELL PREPAID MOBILE DEVICES OR SIM CARDS.

(II) ANY PERSON THAT VIOLATES THE PROHIBITION SET FORTH UNDER SUBPARAGRAPH (I) OF THIS PARAGRAPH SHALL BE FINED NOT MORE THAN FIVE HUNDRED DOLLARS, IMPRISONED FOR NOT LESS THAN ONE YEAR, OR BOTH.

(III) THE COMMISSIONER SHALL ESTABLISH REGULATIONS REQUIRING MANUFACTURERS AND AUTHORIZED RESELLERS TO NOTIFY PURCHASERS OF MOBILE DEVICES AND SIM CARDS OF THE OFFENSE AND PENALTY ESTABLISHED BY THIS SECTION.

B. COMMISSION OF OTHER CRIMES. IF A PERSON USES A PRE-PAID MOBILE DEVICE OR SIM CARD OBTAINED IN VIOLATION OF THIS SECTION TO COMMIT A CRIMINAL OFFENSE, THE MINIMUM TERM OF IMPRISONMENT FOR SUCH OFFENSE THAT IS REQUIRED BY STATUTE SHALL BE INCREASED BY ONE YEAR.

S 3. This act shall take effect on the one hundred eightieth day after it shall have become a law.