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

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I N A S S E M B L Y

January 10, 2012

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

AN ACT to amend the general business law, in relation to cancellation of membership camping contracts

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 654-a to read as follows:

S 654-A. CANCELLATION OF MEMBERSHIP CAMPING CONTRACTS. 1. FOR THE PURPOSES OF THIS SECTION THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

A. "ADULT CARE FACILITY" SHALL HAVE THE SAME MEANING AS SUCH TERM IS DEFINED IN SUBDIVISION TWENTY-ONE OF SECTION TWO OF THE SOCIAL SERVICES LAW, PROVIDED, HOWEVER, THAT FOR THE PURPOSES OF THIS SECTION THE TERM "ADULT CARE FACILITY" SHALL NOT INCLUDE A SHELTER FOR ADULTS;

B. "DOMESTIC PARTNER" SHALL HAVE THE SAME MEANING AS SUCH TERM IS DEFINED IN SUBDIVISION SEVEN OF SECTION TWENTY-NINE HUNDRED NINETY-FOUR-A OF THE PUBLIC HEALTH LAW.

C. "RESIDENTIAL HEALTH CARE FACILITY" SHALL HAVE THE SAME MEANING AS SUCH TERM IS DEFINED IN SUBDIVISION THREE OF SECTION TWENTY-EIGHT HUNDRED ONE OF THE PUBLIC HEALTH LAW; AND

D. "SHELTER FOR ADULTS" SHALL HAVE THE SAME MEANING AS SUCH TERM IS DEFINED IN SUBDIVISION TWENTY-THREE OF SECTION TWO OF THE SOCIAL SERVICES LAW.

2. A. UPON THE EXPIRATION OF THE CANCELLATION PERIOD PROVIDED UNDER SECTION SIX HUNDRED FIFTY-FOUR OF THIS ARTICLE, A PURCHASER OF A MEMBERSHIP CAMPING CONTRACT SHALL HAVE THE RIGHT TO CANCEL SUCH CONTRACT UNDER THE FOLLOWING CONDITIONS:

(1) THERE IS A MATERIAL BREACH OF CONTRACT BY THE MEMBERSHIP CAMPGROUND OPERATOR TO PROVIDE THE ESSENTIAL SERVICES AND PROGRAMS AS SET FORTH AND IN THE MANNER PROVIDED IN THE MEMBERSHIP CAMPING CONTRACT. A NATURAL DISASTER OR PHENOMENA, FAILURE OR SHORTAGE OF ELECTRIC POWER OR OTHER SOURCE OF ENERGY, UNAUTHORIZED OR ILLEGAL ACTS, LABOR STRIKES OR DISPUTES DISRUPTING OPERATIONS, OR GOVERNMENTAL, JUDICIAL, OR LAW

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

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ENFORCEMENT ACTIONS SHALL NOT BE A BASIS FOR CANCELLATION, UNLESS THE MEMBERSHIP CAMPGROUND OPERATOR FAILS TO DILIGENTLY RESTORE SUCH SERVICES AND PROGRAMS WITHIN A REASONABLE PERIOD OF TIME; OR

(2) THE PURCHASER HAS RELOCATED TO A PERMANENT RESIDENCE NOT LESS THAN FIVE HUNDRED MILES FROM THE CAMPGROUND OR THE LOCATION OF ANY OTHER CAMPGROUND AVAILABLE TO THE PURCHASER PURSUANT TO ONE OR MORE RECIPROCAL PROGRAMS OUTLINED IN THE MEMBERSHIP CAMPING CONTRACT; OR

(3) THE PURCHASER, OR THE PURCHASER'S SPOUSE OR DOMESTIC PARTNER CURRENTLY RESIDES IN OR IS NOTIFIED OF AND ACCEPTS THE OPPORTUNITY TO COMMENCE OCCUPANCY IN AN ADULT CARE FACILITY OR A RESIDENTIAL HEALTH CARE FACILITY AND THE PURCHASER PROVIDES A COPY OF SUCH NOTIFICATION OR PROOF OF RESIDENCY TO THE OPERATOR; OR

(4) THE PURCHASER OR THE PURCHASER'S SPOUSE OR DOMESTIC PARTNER RECEIVES A WRITTEN CERTIFICATION FROM A PHYSICIAN STATING THAT THE PURCHASER OR THE PURCHASER'S SPOUSE OR DOMESTIC PARTNER IS BEDRIDDEN, HOUSEBOUND, OR SIMILARLY PHYSICALLY UNABLE DUE TO AILMENT OR INJURY TO VISIT THE CAMPGROUND AND MATERIALLY UTILIZE ANY OF THE SERVICES AND PROGRAMS AS OUTLINED IN THE MEMBERSHIP CAMPING CONTRACT, AND SUCH CONDITION IS NOT EXPECTED TO BE TEMPORARY. THE PURCHASER MUST PROVIDE A COPY OF SUCH CERTIFICATION TO THE OPERATOR; OR

(5) THE PURCHASER OF A CONTRACT SIGNED BY MORE THAN ONE PURCHASER PROVIDES TO THE OPERATOR A COPY OF ANY OF THE FOLLOWING, WITHIN SIX MONTHS OF ITS ISSUANCE, INVOLVING DOMESTIC VIOLENCE BY ANOTHER SIGNATORY OF THE SAME CONTRACT: (A) A VALID DOMESTIC VIOLENCE INCIDENT REPORT FORM AS SUCH TERM IS DEFINED IN SUBDIVISION FIFTEEN OF SECTION EIGHT HUNDRED THIRTY-SEVEN OF THE EXECUTIVE LAW; (B) A VALID POLICE REPORT; (C) A VALID ORDER OF PROTECTION; OR (D) A SIGNED AFFIDAVIT FROM A LICENSED MEDICAL OR MENTAL HEALTH CARE PROVIDER, EMPLOYEE OF A COURT ACTING WITHIN THE SCOPE OF HIS OR HER EMPLOYMENT, SOCIAL WORKER, A RAPE CRISIS COUNSELOR AS DEFINED IN SECTION FORTY-FIVE HUNDRED TEN OF THE CIVIL PRACTICE LAW AND RULES, OR ADVOCATE ACTING ON BEHALF OF AN AGENCY THAT ASSISTS DOMESTIC VIOLENCE VICTIMS. PARAGRAPH D OF THIS SUBDIVISION SHALL NOT APPLY TO A PURCHASER CANCELING UNDER THIS SUBPARAGRAPH. A CLAIM FOR TERMINATION UNDER THIS SUBPARAGRAPH SHALL BE MADE IN GOOD FAITH. TERMINATION UNDER THIS SUBPARAGRAPH SHALL REQUIRE, AND THE PROVISION OF ANY OF THE ITEMS IN (A) THROUGH (D) OF THIS SUBPARAGRAPH, FOR THE PURPOSES OF THIS SUBPARAGRAPH, SHALL BE PRESUMPTIVE EVIDENCE OF THE CONTINUED EXISTENCE OF A SUBSTANTIAL RISK OF PHYSICAL OR EMOTIONAL HARM TO THE PURCHASER OR PURCHASER'S CHILD. PROVISION OF ANY OF THE ITEMS IN (A) THROUGH (D) OF THIS SUBPARAGRAPH SHALL GIVE THE OPERATOR, AT ITS OPTION, THE RIGHT TO INVESTIGATE AND, BASED ON THE INFORMATION CONTAINED IN SUCH ITEMS, IF HE OR SHE DETERMINES THAT THE SAFETY OF CAMPGROUND USERS OR EMPLOYEES WOULD BE ENDANGERED BY ALLOWING THE PURCHASER THAT IS NOT EXERCISING HIS OR HER RIGHTS UNDER THIS SUBDIVISION TO REMAIN AUTHORIZED TO USE THE CAMPGROUND FACILITIES, THE OPERATOR SHALL PROVIDE WRITTEN NOTICE OF SUCH DETERMINATION TO SUCH PURCHASER WHICH SHALL INFORM SUCH PURCHASER OF HIS OR HER RIGHT TO RESPOND IN WRITING TO THE OPERATOR WITHIN THIRTY DAYS OF RECEIPT OF SUCH NOTICE. UPON EXPIRATION OF THE THIRTY DAY PERIOD, IF THE OPERATOR REASONABLY DETERMINES THAT THE RESPONSE FROM THE PURCHASER NOT EXERCISING HIS OR HER RIGHTS UNDER THIS SUBDIVISION IS INSUFFICIENT, THE OPERATOR MAY TERMINATE THE CONTRACT OF SUCH PURCHASER.

B. WHEN A PURCHASER CANCELS A CONTRACT PURSUANT TO THIS SUBDIVISION SUCH PURCHASER SHALL BE REQUIRED TO HAVE PAID THE PURCHASE PRICE OF HIS OR HER MEMBERSHIP IN FULL, AS WELL AS ALL OUTSTANDING FEES, DUES, OR ANY OTHER PAYMENTS DUE AT THE TIME OF CANCELLATION AND FOR NINETY DAYS THER-

EAFTER. HOWEVER, IF ALL OF THE PURCHASERS WHO SIGNED THE CONTRACT DIE, THE RELEVANT ESTATE OR ESTATES SHALL BE RELIEVED OF ANY FURTHER OBLIGATION UNDER THE CONTRACT NOT THEN DUE AND OWING.

C. WRITTEN NOTIFICATION OF THE INTENT TO CANCEL A MEMBERSHIP CAMPGROUND CONTRACT SHALL BE SIGNED BY THE PURCHASER OR HIS OR HER LEGALLY DESIGNATED REPRESENTATIVE AND DELIVERED TO THE OPERATOR BY CERTIFIED MAIL DULY ADDRESSED TO THE OPERATOR. SUCH NOTIFICATION SHALL INCLUDE A WRITTEN STATEMENT THAT CERTIFIES THAT THE REPRESENTATIONS ARE TRUE AND CORRECT, AND CONTAIN NO MATERIAL OMISSIONS OF FACT TO THE BEST KNOWLEDGE AND BELIEF OF THE PERSON SUBMITTING THE CERTIFICATION.

D. IN THE EVENT THAT THE MEMBERSHIP CAMPGROUND CONTRACT IS SIGNED BY MORE THAN ONE PURCHASER, AND ONE OR MORE PURCHASERS MEET THE REQUIREMENTS TO CANCEL PURSUANT TO THIS SUBDIVISION, EVERY PURCHASER UNDER THE CONTRACT SHALL HAVE THE RIGHT TO CANCEL THE CONTRACT PROVIDED THE OTHER PURCHASER OR PURCHASERS SO NOTIFY THE OPERATOR BY SIGNING AND DELIVERING, AT THE SAME TIME, THE SAME CANCELLATION NOTICE REQUIRED BY PARAGRAPH C OF THIS SUBDIVISION SIGNED BY THE PURCHASER OR PURCHASERS MEETING THE CANCELLATION REQUIREMENTS, IN WHICH CASE ALL SUCH PURCHASER OR PURCHASERS WHO SIGN THE CANCELLATION NOTICE SHALL BE RELIEVED OF ANY FURTHER OBLIGATION UNDER THE CONTRACT EXCEPT FOR THOSE OBLIGATIONS OUTLINED IN PARAGRAPH B OF THIS SUBDIVISION.

S 2. Subdivision 2-a of section 653 of the general business law, as amended by chapter 489 of the laws of 1990, is amended to read as follows:

2-a. The following statement, in bold letters of at least ten point type, which advises the purchaser of the right to cancel the contract under section six hundred fifty-four of this article shall be contained in the contract:

> YOU MAY CANCEL THIS MEMBERSHIP CONTRACT WITHOUT ANY PENALTY, FORFEITURE, OR FURTHER OBLIGATION WITHIN THREE (3) BUSINESS DAYS FROM THE DATE THAT YOU EXECUTE SAID CONTRACT. FOR ADDITIONAL RIGHT OF CANCELLATION SEE THE DISCLOSURE DOCUMENT.

Immediately following the above right of cancellation notice, the instructions below shall be given in the same type as the print for the contract text.

"Notice of cancellation shall be in writing subscribed by the purchaser OR HIS OR HER LEGALLY DESIGNATED REPRESENTATIVE and hand delivered or mailed BY CERTIFIED MAIL to the membership campground operator at the address stated herein and postmarked not later than three business days from the date of execution of said contract. Such notice shall be accompanied by the original or copies of the membership camping contract and all supporting documentation."

S 3. Subdivision 2 of section 653 of the general business law is amended by adding a new paragraph o to read as follows:

O. THE FOLLOWING STATEMENT, IN BOLD LETTERS OF AT LEAST TEN POINT TYPE WHERE IN CAPITAL LETTERS BELOW, WHICH ADVISES THE PURCHASER OF THE RIGHT TO CANCEL THE CONTRACT UNDER SECTION SIX HUNDRED FIFTY-FOUR-A OF THIS ARTICLE, SHALL BE CONTAINED IN THE DISCLOSURE DOCUMENT:

ADDITIONAL RIGHT OF CANCELLATION: AFTER THREE (3) BUSINESS DAYS FROM THE DATE THAT YOU EXECUTE SAID CONTRACT YOU MAY CANCEL FOR ANY OF THE FOLLOWING REASONS:

(1) A MATERIAL BREACH IN THE PROVISION OF THE ESSENTIAL SERVICES AND PROGRAMS SET FORTH IN THE MEMBERSHIP CAMPING CONTRACT; OR

(2) YOU HAVE RELOCATED TO A PERMANENT RESIDENCE NOT LESS THAN FIVE HUNDRED MILES FROM A CAMPGROUND OR OTHER FACILITY WHERE YOU CAN USE YOUR MEMBERSHIP; OR

(3) YOU, YOUR SPOUSE, OR YOUR DOMESTIC PARTNER CURRENTLY RESIDES IN OR ARE NOTIFIED OF AND ACCEPT THE OPPORTUNITY TO COMMENCE OCCUPANCY IN AN ADULT CARE FACILITY OR A RESIDENTIAL HEALTH CARE FACILITY; OR

(4) YOU, YOUR SPOUSE, OR YOUR DOMESTIC PARTNER ARE CERTIFIED BY A PHYSICIAN AS PHYSICALLY UNABLE TO VISIT THE RESORT AND MATERIALLY USE THE SERVICES AND PROGRAMS AS OUTLINED IN THE CONTRACT; OR

(5) YOU ARE THE VICTIM OF DOMESTIC VIOLENCE PERPETRATED BY ANOTHER SIGNATORY OF THE SAME CONTRACT.

IMMEDIATELY FOLLOWING THE ABOVE RIGHT OF CANCELLATION NOTICE, THE INSTRUCTIONS BELOW SHALL BE GIVEN IN THE SAME TYPE AS THE PRINT FOR THE CONTRACT TEXT.

"NOTICE OF CANCELLATION SHALL BE IN WRITING SUBSCRIBED BY THE PURCHASER OR HIS OR HER LEGALLY DESIGNATED REPRESENTATIVE AND SENT BY CERTIFIED MAIL TO THE MEMBERSHIP CAMPGROUND OPERATOR AT THE ADDRESS STATED HEREIN. SUCH NOTICE SHALL BE ACCOMPANIED BY THE ORIGINAL OR COPIES OF THE MEMBERSHIP CAMPING CONTRACT AND ALL SUPPORTING DOCUMENTATION. IF YOU ARE EXERCISING YOUR RIGHT TO CANCEL AFTER THREE BUSINESS DAYS, SUCH NOTIFICATION SHALL ALSO INCLUDE A WRITTEN STATEMENT THAT CERTIFIES THAT THE REPRESENTATIONS ARE TRUE AND CORRECT, AND CONTAIN NO MATERIAL OMISSIONS OF FACT TO THE BEST OF YOUR KNOWLEDGE AND BELIEF."

S 4. This act shall take effect on the one hundred eightieth day after it shall have become a law.