

2586

2011-2012 Regular Sessions

I N S E N A T E

January 26, 2011

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:

1 Section 1. The public service law is amended by adding a new section
2 119-d to read as follows:

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

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

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

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

17 (C) SERVICES OBTAINED FROM THE CORPORATION;

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

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

21 3. THE PROVISIONS OF THIS SECTION SHALL NOT PROHIBIT THE REPORTING BY
22 A CORPORATION OF THE INFORMATION ABOUT A RESIDENTIAL CUSTOMER'S OR

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

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1 SUBSCRIBER'S PAYMENT RECORD OF THE SERVICES PROVIDED BY THE CORPORATION
2 TO CONSUMER REPORTING AGENCIES FOR USE BY SUCH AGENCY, IN COMPLIANCE
3 WITH THE PROVISIONS OF THE FEDERAL FAIR CREDIT REPORTING ACT (15 U.S.C.
4 SECTION 1681 ET SEQ.), ARTICLE TWENTY-FIVE OF THE GENERAL BUSINESS LAW
5 AND ANY REGULATIONS PROMULGATED THEREUNDER, AS THEY MAY BE FROM TIME TO
6 TIME AMENDED.

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

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

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

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

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

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

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