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

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2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. ORTIZ, BOYLAND, WRIGHT -- Multi-Sponsored by -- M. of A. GOTTFRIED, LAVINE, MAYERSOHN, McENENY, NOLAN, J. RIVERA, WEISENBERG -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to creating the cell phone users' bill of rights

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 390-d to read as follows:

S 390-D. CELL PHONE USERS' BILL OF RIGHTS. 1. ANY PERSON, FIRM, CORPORATION, OR OTHER ENTITY THAT OFFERS CELLULAR PHONES AND CELLULAR PHONE SERVICES TO THE PUBLIC SHALL PROVIDE EACH CUSTOMER WITH A THIRTY-DAY TRIAL PERIOD. IF A CUSTOMER RETURNS A PHONE OR CANCELS SERVICE WITHIN THAT THIRTY-DAY PERIOD, HE OR SHE SHALL NOT BE SUBJECT TO ANY TERMINATION FEES.

A. WHEN A NEW PHONE IS PURCHASED, THE THIRTY-DAY PERIOD SHALL COMMENCE WHEN THE CUSTOMER PHYSICALLY RECEIVES THE PHONE.

B. WHEN A PERSON APPLIES FOR NEW SERVICE, THE THIRTY-DAY PERIOD SHALL COMMENCE WHEN THE CUSTOMER'S ACCOUNT IS ACTIVATED.

2. WHENEVER A PERSON RETURNS A PHONE OR CANCELS A SERVICE WITHIN THE THIRTY-DAY TRIAL PERIOD REQUIRED PURSUANT TO SUBDIVISION ONE OF THIS SECTION, SUCH PERSON SHALL BE RESPONSIBLE FOR THE MONTHLY ACCESS FEE, PRO RATA, AND SHALL ALSO BE RESPONSIBLE FOR THE COSTS OF ANY CALLS MADE BY SUCH PERSON IF THEY ARE NOT INCLUDED WITHIN THE MONTHLY ACCESS FEE.

3. A. ANY PERSON, FIRM, CORPORATION, OR OTHER ENTITY THAT PROVIDES CELLULAR PHONE SERVICES TO A CUSTOMER FOR A FEE, SUCH FEE SHALL ONLY INCLUDE THOSE SERVICES AUTHORIZED BY THE CUSTOMER. NO PERSON, FIRM, CORPORATION, OR OTHER ENTITY SHALL CHARGE A CUSTOMER FOR ANY SERVICE SUCH CUSTOMER DID NOT REQUEST OR AUTHORIZE.

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

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B. ANY PERSON, FIRM, CORPORATION, OR OTHER ENTITY THAT PROVIDES CELLULAR PHONE SERVICES TO A CUSTOMER FOR A FEE SHALL INCLUDE ON ITS MONTHLY STATEMENT A CLEAR AND CONCISE BREAKDOWN OF ALL FEES, COSTS, AND TAXES. SUCH BREAKDOWN SHALL FURTHER SPECIFY WHICH FEES, TAXES, OR SURCHARGES ARE MANDATED BY THE GOVERNMENT, AND WHICH FEES, TAXES, OR SURCHARGES ARE IMPOSED BY THE COMPANY. SUCH MONTHLY STATEMENT SHALL ALSO INCLUDE THE RATES AND TERMS OF THE CUSTOMER'S SERVICE AGREEMENT.

4. A CUSTOMER SHALL NOT BE LIABLE FOR ANY CHARGES TO HIS OR HER ACCOUNT IF SUCH CHARGES ARE THE RESULT OF CALLS OR MESSAGES PLACED FROM A PHONE OTHER THAN ONE OWNED BY THE CUSTOMER. IT SHALL BE THE RESPONSIBILITY OF THE PERSON, FIRM, CORPORATION, OR OTHER ENTITY TO ENSURE THAT ALL SERVICES ARE USED SOLELY BY THE PHONE REGISTERED TO THE PERSON AUTHORIZED UNDER THE SERVICE AGREEMENT. A CUSTOMER SHALL NOT BE LIABLE FOR ANY CHARGES RESULTING FROM THE THEFT OF THE CUSTOMER'S CELLULAR PHONE IDENTIFICATION OR SIGNAL.

5. ANY PERSON, FIRM, CORPORATION, OR OTHER ENTITY THAT VIOLATES THE PROVISIONS OF THIS SECTION SHALL PAY A FINE OF NOT LESS THAN FIVE HUNDRED DOLLARS NOR MORE THAN FIVE THOUSAND DOLLARS PER VIOLATION. SUCH PERSON, FIRM, CORPORATION, OR OTHER ENTITY SHALL ALSO BE LIABLE TO THE CUSTOMER FOR CIVIL DAMAGES IN AN AMOUNT OF TWO HUNDRED FIFTY DOLLARS OR THE CUSTOMER'S ACTUAL EXPENSES, WHICHEVER IS GREATER. THE COURT SHALL GRANT REASONABLE ATTORNEY'S FEES TO ANY CUSTOMER WHO IS SUCCESSFUL IN AN ACTION BROUGHT PURSUANT TO THIS SUBDIVISION.

S 2. This act shall take effect on the one hundred twentieth day after it shall have become a law.