

4412

2011-2012 Regular Sessions

I N A S S E M B L Y

February 3, 2011

Introduced by M. of A. P. RIVERA -- Multi-Sponsored by -- M. of A. JAFFEE -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the public service law, the abandoned property law and the general business law, in relation to prepaid telephone calling cards and services; and to repeal section 92-f of the public service law relating to prepaid telephone calling card consumer protections

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

1 Section 1. Section 92-f of the public service law is REPEALED.

2 S 2. The public service law is amended by adding a new article 5-A to
3 read as follows:

4 ARTICLE 5-A

5 PREPAID TELEPHONE CALLING CARDS

6 SECTION 103. DEFINITIONS.

7 103-A. CERTIFICATION.

8 103-B. DISCLOSURE REQUIREMENTS.

9 103-C. CUSTOMER SERVICE.

10 103-D. ENFORCEMENT.

11 S 103. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE, UNLESS THE
12 CONTEXT OR SUBJECT MATTER OTHERWISE REQUIRES, THE FOLLOWING TERMS SHALL
13 HAVE THE FOLLOWING MEANINGS:

14 1. "ADVERTISEMENT" MEANS THE ATTEMPT, DIRECTLY OR INDIRECTLY, BY
15 PUBLICATION, DISSEMINATION, SOLICITATION, ENDORSEMENT OR CIRCULATION, OR
16 IN ANY OTHER WAY, TO INDUCE DIRECTLY OR INDIRECTLY ANY PERSON TO
17 PURCHASE A PREPAID CARD OR PREPAID SERVICE, WHETHER APPEARING IN ANY
18 NEWSPAPER, MAGAZINE, PERIODICAL, CIRCULAR, IN-STORE OR OUT-OF-STORE
19 SIGN, OR OTHER WRITTEN MATTER PLACED BEFORE THE CONSUMING PUBLIC, OR IN
20 ANY RADIO BROADCAST, TELEVISION BROADCAST, ELECTRONIC MEDIUM, OR DELIV-
21 ERED TO OR THROUGH ANY COMPUTER.

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

LBD00022-01-1

1 2. "PERSON" MEANS AND INCLUDES ANY CORPORATION, COMPANY, ASSOCIATION,
2 FIRM, ENTITY, PARTNERSHIP OR INDIVIDUAL.

3 3. "PREPAID CARD" MEANS ANY OBJECT OR RIGHT OF USE PURCHASED FOR A SUM
4 CERTAIN THAT ENABLES A CONSUMER TO USE A PREPAID SERVICE. SUCH RIGHTS OF
5 USE MAY BE EMBODIED ON A CARD OR OTHER PHYSICAL OBJECT OR MAY BE
6 PURCHASED BY AN ELECTRONIC OR TELEPHONIC MEANS WITHOUT A PHYSICAL
7 OBJECT. THE TERM "PREPAID CARD" SHALL NOT INCLUDE:

8 (A) PREPAID CARDS THAT ARE PROVIDED FOR FREE OR AT NO ADDITIONAL
9 CHARGE AS A PROMOTIONAL ITEM ACCOMPANYING ANOTHER PRODUCT OR SERVICE
10 PURCHASED BY A CONSUMER;

11 (B) PREPAID CARDS PROVIDED PURSUANT TO AN AWARDS, LOYALTY OR REBATE
12 PROGRAM WITHOUT ANY SEPARATE MONETARY CONSIDERATION BEING GIVEN BY THE
13 CONSUMER FOR THE PREPAID CARD; OR

14 (C) AN OBJECT OR RIGHT OF USE THAT PROVIDES ACCESS TO A WIRELESS TELE-
15 COMMUNICATIONS SERVICE (WHETHER PRE OR POST PAID).

16 4. "PREPAID DISTRIBUTOR" MEANS (A) ANY PERSON THAT PURCHASES OR
17 RECEIVES PREPAID CARDS OR PREPAID SERVICE FROM A PREPAID PROVIDER, A
18 TELECOMMUNICATIONS CARRIER OR OTHER PREPAID DISTRIBUTOR, AND SELLS OR
19 DISTRIBUTES THE PREPAID CARDS AND/OR PREPAID SERVICE TO ONE OR MORE
20 PREPAID DISTRIBUTORS OR TO ONE OR MORE PREPAID RETAILERS; AND (B) ANY
21 PERSON THAT OTHERWISE ACTIVELY ENGAGES IN THE PROMOTION, ADVERTISING OR
22 DISSEMINATION OF PREPAID CARDS OR PREPAID SERVICE AND IS NOT A PREPAID
23 PROVIDER. SUCH TERM SHALL NOT INCLUDE ANY PREPAID RETAILER ENGAGED
24 EXCLUSIVELY IN POINT-OF-SALE TRANSACTIONS WITH CONSUMERS.

25 5. "PREPAID PROVIDER" MEANS ANY PERSON THAT IS ENGAGED IN PROVIDING
26 PREPAID SERVICE TO THE PUBLIC USING ITS OWN, A RESOLD TELECOMMUNICATIONS
27 NETWORK, OR VOICE OVER INTERNET TECHNOLOGY.

28 6. "PREPAID RETAILER" MEANS ANY PERSON THAT SELLS OR OFFERS TO SELL
29 PREPAID CARDS OR PREPAID SERVICE DIRECTLY TO ONE OR MORE CONSUMERS.

30 7. "PREPAID SERVICE" MEANS ANY TELECOMMUNICATIONS SERVICE THAT (A)
31 MUST BE PAID FOR IN ADVANCE BY A CONSUMER AND (B) ENABLES THE CONSUMER
32 TO ORIGINATE TELEPHONE CALLS BY USING AN ACCESS NUMBER AND AN AUTHORI-
33 ZATION CODE, WHETHER MANUALLY OR ELECTRONICALLY DIALED. THE TERM
34 "PREPAID SERVICE" SHALL NOT INCLUDE ANY SERVICE THAT PROVIDES ACCESS TO
35 A WIRELESS TELECOMMUNICATIONS SERVICE (WHETHER PRE OR POST PAID).

36 8. "PROVIDER CERTIFICATE" MEANS A PROVIDER CERTIFICATE ISSUED BY THE
37 COMMISSION TO A PREPAID PROVIDER PURSUANT TO SUBDIVISION ONE OF SECTION
38 ONE HUNDRED THREE-A OF THIS ARTICLE.

39 S 103-A. CERTIFICATION. 1. PREPAID PROVIDERS. (A) GENERAL. IT SHALL BE
40 UNLAWFUL FOR ANY PREPAID PROVIDER TO OFFER, PROVIDE OR SEEK TO OFFER OR
41 PROVIDE PREPAID SERVICE IN THIS STATE UNLESS THE PREPAID PROVIDER HAS
42 APPLIED FOR AND RECEIVED A PROVIDER CERTIFICATE FROM THE COMMISSION.

43 (B) APPLICATION. APPLICATION FOR A PROVIDER CERTIFICATE SHALL BE ON A
44 FORM PROVIDED BY THE COMMISSION IN ACCORDANCE WITH THIS SUBDIVISION AND
45 SHALL BE ACCOMPANIED BY A FEE IN THE AMOUNT OF FIVE HUNDRED DOLLARS. THE
46 APPLICATION FOR A PROVIDER CERTIFICATE SHALL CONTAIN ANY INFORMATION THE
47 COMMISSION MAY REQUIRE, BUT SHALL INCLUDE AT A MINIMUM:

48 (I) THE NAME, ADDRESS AND TITLE OF EACH OFFICER, DIRECTOR, EXECUTIVE
49 AND PARTNER OF THE PREPAID PROVIDER;

50 (II) A DESCRIPTION OF THE PREPAID SERVICES AND PREPAID CARDS THAT THE
51 PREPAID PROVIDER INTENDS TO OFFER;

52 (III) THE PREPAID PROVIDER'S TWENTY-FOUR HOUR CUSTOMER SERVICE TELE-
53 PHONE NUMBER FOR CONSUMERS WITHIN THIS STATE; AND

54 (IV) THE NAME AND ADDRESS OF THE PREPAID PROVIDER'S REGISTERED AGENT
55 FOR SERVICE OF PROCESS IN THIS STATE.

1 (C) APPROVAL BY COMMISSION. THE COMMISSION SHALL APPROVE AN APPLICA-
2 TION FOR A PROVIDER CERTIFICATE UPON A SHOWING BY THE APPLICANT AND A
3 FINDING BY THE COMMISSION THAT THE APPLICANT POSSESSES SUFFICIENT TECH-
4 NICAL, FINANCIAL AND MANAGERIAL RESOURCES AND ABILITIES TO PROVIDE
5 PREPAID SERVICE. THE COMMISSION SHALL APPROVE AN APPLICATION FOR A
6 PROVIDER CERTIFICATE UPON A SHOWING BY AN APPLICANT THAT THE COMMISSION
7 HAS ISSUED AN APPROPRIATE CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSI-
8 TY TO THE APPLICANT OR THE TELECOMMUNICATIONS SERVICE CARRIER WHOSE
9 SERVICE THE APPLICANT IS SEEKING TO RESELL, PROVIDED THAT THE APPLICANT
10 OR TELECOMMUNICATIONS SERVICE CARRIER (AS THE CASE MAY BE) REMAINS IN
11 GOOD STANDING WITH THE COMMISSION. THE COMMISSION SHALL ALSO REQUIRE AS
12 A CONDITION OF APPROVAL THE PROCUREMENT OF A SURETY BOND, OR OTHER
13 AUTHORIZED SECURITY, FROM THE PREPAID PROVIDER IN THE MINIMUM AMOUNT OF
14 FIFTY THOUSAND DOLLARS. THE COMMISSION MAY REQUIRE A LARGER SURETY BOND
15 IF IT DETERMINES THAT A PREPAID PROVIDER HAS ENGAGED IN A PATTERN OF
16 CONDUCT RESULTING IN BONA FIDE CONSUMER COMPLAINTS OF MISCONDUCT AND
17 THAT SUCH INCREASED BOND IS NECESSARY FOR THE PROTECTION OF CONSUMERS.
18 EACH APPROVED PREPAID PROVIDER SHALL RECEIVE A CERTIFICATE NUMBER FROM
19 THE COMMISSION.

20 (D) POSTING BY COMMISSION. THE COMMISSION SHALL POST ON THE COMMIS-
21 SION'S WEBSITE, ON A LINK SOLELY DEDICATED TO PREPAID PROVIDERS, A LIST
22 THAT CONTAINS THE FULL LEGAL NAME OF EACH PREPAID PROVIDER THAT HAS
23 RECEIVED A PROVIDER CERTIFICATE AND THE CUSTOMER SERVICE NUMBER FOR EACH
24 SUCH PREPAID PROVIDER.

25 (E) NOTIFICATION TO PREPAID DISTRIBUTORS. PREPAID PROVIDERS SHALL
26 SUPPLY PROOF OF THEIR PROVIDER CERTIFICATE TO EACH PREPAID DISTRIBUTOR
27 IN THIS STATE TO WHOM THE PREPAID PROVIDER PROVIDES PREPAID SERVICE
28 AND/OR PREPAID CARDS.

29 2. PREPAID DISTRIBUTORS. (A) GENERAL. IT SHALL BE UNLAWFUL FOR ANY
30 PREPAID DISTRIBUTOR TO DISTRIBUTE, SELL OR RESELL PREPAID CARDS AND/OR
31 PREPAID SERVICE IN THIS STATE UNLESS IT IS REGISTERED WITH THE COMMIS-
32 SION IN ACCORDANCE WITH THE PROVISIONS OF THIS SUBDIVISION.

33 (B) APPLICATION. APPLICATION FOR A PREPAID DISTRIBUTOR SHALL BE ON A
34 FORM PROVIDED BY THE COMMISSION IN ACCORDANCE WITH THIS SUBDIVISION AND
35 SHALL BE ACCOMPANIED BY A FEE IN THE AMOUNT OF THREE HUNDRED DOLLARS.
36 THE APPLICATION SHALL CONTAIN ANY INFORMATION THE COMMISSION MAY
37 REQUIRE, BUT SHALL INCLUDE AT A MINIMUM:

38 (I) THE NAME, ADDRESS AND TITLE OF EACH OFFICER, DIRECTOR, EXECUTIVE
39 AND PARTNER OF THE PREPAID DISTRIBUTOR;

40 (II) A DESCRIPTION OF THE PREPAID SERVICES AND PREPAID CARDS THAT THE
41 PREPAID DISTRIBUTOR INTENDS TO DISTRIBUTE, SELL, RESELL OR OFFER; AND

42 (III) THE NAME AND ADDRESS OF THE PREPAID DISTRIBUTOR'S REGISTERED
43 AGENT FOR SERVICE OF PROCESS IN THIS STATE.

44 (C) APPROVAL BY COMMISSION. THE COMMISSION SHALL APPROVE AN APPLICA-
45 TION OF A PREPAID DISTRIBUTOR UPON A SHOWING BY THE APPLICANT AND A
46 FINDING BY THE COMMISSION THAT THE APPLICANT POSSESSES SUFFICIENT TECH-
47 NICAL, FINANCIAL, AND MANAGERIAL RESOURCES AND ABILITIES TO DISTRIBUTE
48 PREPAID CARDS AND/OR PREPAID SERVICE. THE COMMISSION SHALL ALSO REQUIRE
49 AS A CONDITION OF APPROVAL THE PROCUREMENT OF A SURETY BOND, OR OTHER
50 AUTHORIZED SECURITY, FROM THE PREPAID DISTRIBUTOR IN THE MINIMUM AMOUNT
51 OF TEN THOUSAND DOLLARS. IF THE ANNUAL SALES OF THE PREPAID DISTRIBUTOR
52 IN THIS STATE EXCEED ONE MILLION DOLLARS, THE MINIMUM AMOUNT OF THE
53 SURETY BOND, OR OTHER AUTHORIZED SECURITY, SHALL BE TWENTY-FIVE THOUSAND
54 DOLLARS. EACH APPROVED PREPAID DISTRIBUTOR SHALL RECEIVE A REGISTRATION
55 NUMBER FROM THE COMMISSION.

1 (D) NOTIFICATION. PREPAID DISTRIBUTORS SHALL SUPPLY PROOF OF THEIR
2 REGISTRATION WITH THE COMMISSION TO EACH PREPAID RETAILER OR OTHER
3 PREPAID DISTRIBUTOR IN THIS STATE TO WHOM THE PREPAID DISTRIBUTOR SELLS,
4 PROVIDES OR DISTRIBUTES PREPAID CARDS. PREPAID DISTRIBUTORS SHALL
5 FORWARD THE PROOF SUPPLIED BY EACH PREPAID PROVIDER OF SUCH PREPAID
6 PROVIDER'S CERTIFICATION WITH THE COMMISSION TO EACH PREPAID RETAILER OR
7 OTHER PREPAID DISTRIBUTOR IN THIS STATE TO WHOM THE PREPAID DISTRIBUTOR
8 SELLS, PROVIDES OR DISTRIBUTES PREPAID CARDS.

9 3. PREPAID RETAILERS. (A) IT SHALL BE UNLAWFUL FOR ANY PREPAID RETAIL-
10 ER TO SELL OR OFFER TO SELL PREPAID CARDS OR PREPAID SERVICE TO ANY
11 CONSUMER IN THIS STATE UNLESS THE PREPAID RETAILER HAS RECEIVED PROOF OF
12 THE PROVIDER CERTIFICATE FOR EACH APPLICABLE PREPAID CARD AND PREPAID
13 SERVICE OFFERED BY THE PREPAID RETAILER.

14 (B) IT SHALL BE UNLAWFUL FOR ANY PREPAID RETAILER TO PURCHASE OR OFFER
15 TO PURCHASE PREPAID CARDS OR PREPAID SERVICE FROM ANY PREPAID DISTRIBUTOR
16 UNLESS THE PREPAID RETAILER HAS RECEIVED PROOF OF THE PREPAID
17 DISTRIBUTOR'S REGISTRATION WITH THE COMMISSION.

18 (C) PREPAID RETAILERS SHALL NOT SELL OR OFFER FOR SALE ANY PREPAID
19 CARD THAT THE PREPAID RETAILER KNOWS PROVIDES FEWER MINUTES THAN THE
20 NUMBER OF MINUTES PROMOTED OR ADVERTISED FOR SUCH PREPAID CARD, INCLUD-
21 ING THE NUMBER OF MINUTES LISTED ON THE PREPAID CARD, ANY ADVERTISING OR
22 POINT-OF-SALE MATERIAL RELATED TO THE PREPAID CARD OR ANY VOICE PROMPT
23 ANNOUNCING THE NUMBER OF MINUTES AVAILABLE FOR A CALL WITH THE PREPAID
24 CARD.

25 (D) PREPAID RETAILERS SHALL POST THE COMMISSION'S TOLL-FREE HOTLINE
26 TELEPHONE NUMBER IN A CONSPICUOUS LOCATION WITHIN EACH STORE.

27 4. AMENDMENTS. EACH PREPAID PROVIDER AND PREPAID DISTRIBUTOR SHALL
28 FILE AN AMENDED APPLICATION WITHIN TWENTY DAYS AFTER ANY CHANGE IN THE
29 INFORMATION CONTAINED IN THEIR APPLICATION. NO FEE SHALL BE REQUIRED FOR
30 THE FILING OF AN AMENDMENT.

31 5. REVOCATION. THE COMMISSION MAY, IN ITS DISCRETION, CANCEL, REVOKE
32 OR SUSPEND THE CERTIFICATE AND/OR REGISTRATION OF ANY PREPAID PROVIDER
33 OR PREPAID DISTRIBUTOR UPON ANY OF THE FOLLOWING GROUNDS:

34 (A) THE PREPAID PROVIDER OR PREPAID DISTRIBUTOR DOES NOT PROVIDE OR
35 UPDATE THE INFORMATION REQUIRED BY THIS SECTION;

36 (B) THE PREPAID PROVIDER OR PREPAID DISTRIBUTOR FAILS TO PROVIDE OR
37 MAINTAIN THE REQUIRED SURETY BOND OR OTHER AUTHORIZED SECURITY;

38 (C) THE PREPAID PROVIDER OR PREPAID DISTRIBUTOR VIOLATES ANY ORDER,
39 DECISION, RULE, REGULATION OR REQUIREMENT ESTABLISHED OR ADOPTED BY THE
40 COMMISSION PURSUANT TO THIS ARTICLE;

41 (D) THE PREPAID PROVIDER OR PREPAID DISTRIBUTOR FILES A FALSE STATE-
42 MENT WITH THE COMMISSION; OR

43 (E) THE PREPAID PROVIDER OR PREPAID DISTRIBUTOR VIOLATES ANY PROVISION
44 OF LAW.

45 6. OTHER REGISTRATIONS. THE CERTIFICATION AND REGISTRATION REQUIRE-
46 MENTS OF THIS SECTION SHALL BE IN ADDITION TO, AND DO NOT OBTIATE, ANY
47 CERTIFICATION, AUTHORIZATION, REGISTRATION OR OTHER REGULATORY REQUIRE-
48 MENTS IMPOSED ON INTRASTATE TELECOMMUNICATIONS CARRIERS BY THE STATE.

49 S 103-B. DISCLOSURE REQUIREMENTS. 1. PREPAID CARDS. PREPAID PROVIDERS
50 AND PREPAID DISTRIBUTORS SHALL CLEARLY AND CONSPICUOUSLY DISCLOSE THE
51 FOLLOWING INFORMATION ON ALL PREPAID CARDS:

52 (A) THE NAME OF THE PREPAID PROVIDER AS CERTIFICATED BY THE COMMIS-
53 SION;

54 (B) THE PREPAID PROVIDER'S TWENTY-FOUR-HOUR CUSTOMER SERVICE TELEPHONE
55 NUMBER;

56 (C) AN ACCESS NUMBER, IF REQUIRED TO ACCESS THE PREPAID SERVICE;

- 1 (D) AN AUTHORIZATION CODE, IF REQUIRED TO ACCESS THE PREPAID SERVICE;
2 AND
- 3 (E) ANY EXPIRATION DATE OR POLICY.
- 4 2. PREPAID CARDS OR PACKAGING. PREPAID PROVIDERS AND PREPAID DISTRIBUTORS SHALL CLEARLY AND CONSPICUOUSLY DISCLOSE ALL MATERIAL TERMS AND
5 CONDITIONS FOR USE OF A PREPAID CARD OR PREPAID SERVICE EITHER ON THE
6 PREPAID CARD OR ITS PACKAGING, WHICH TERMS AND CONDITIONS SHALL BE VISI-
7 BLE TO THE CONSUMER PRIOR TO PURCHASE AT THE POINT OF SALE, INCLUDING
8 WITHOUT LIMITATION THE FOLLOWING ITEMS:
9
- 10 (A) THE MAXIMUM AMOUNT AND FREQUENCY OF ANY CHARGE, FEE, TAX OR
11 SURCHARGE (EXCLUDING THE APPLICABLE PER MINUTE RATE) THAT MAY BE APPLI-
12 CABLE TO THE USE OF THE PREPAID CARD OR PREPAID SERVICE FOR CALLS ORIGI-
13 NATING WITHIN THE UNITED STATES;
- 14 (B) NOTICE THAT ADDITIONAL OR DIFFERENT PER MINUTE RATES, CHARGES,
15 FEES, TAXES OR SURCHARGES MAY APPLY TO USE OF THE PREPAID CARD OR
16 PREPAID SERVICE FOR CALLS ORIGINATING OUTSIDE THE UNITED STATES AND/OR
17 FOR CALLS TO INTERNATIONAL CELLULAR AND WIRELESS TELEPHONE NUMBERS;
- 18 (C) NOTICE THAT PER MINUTE RATES MAY BE HIGHER FOR CALLS MADE VIA
19 TOLL-FREE ACCESS NUMBERS;
- 20 (D) THE VALUE OF THE PREPAID CARD OR PREPAID SERVICE, IN DOLLARS OR
21 MINUTES;
- 22 (E) ANY MINIMUM CHARGE PER CALL; AND
- 23 (F) ANY APPLICABLE POLICIES RELATING TO REFUND, RECHARGE, DECREMENT
24 AND EXPIRATION.
- 25 3. POINT-OF-SALE MATERIALS (OTHER THAN PREPAID CARDS AND PACKAGING).
26 PREPAID PROVIDERS AND PREPAID DISTRIBUTORS SHALL CLEARLY AND CONSPICU-
27 OUSLY DISCLOSE THE INFORMATION REQUIRED BY SUBDIVISIONS ONE AND TWO OF
28 THIS SECTION ON ALL POINT-OF-SALE MATERIALS (WHICH TERM SHALL NOT
29 INCLUDE THE PREPAID CARDS THEMSELVES AND THEIR PACKAGING) REGARDING A
30 PREPAID SERVICE. ALL POINT-OF-SALE MATERIALS (WHICH TERM SHALL NOT
31 INCLUDE THE PREPAID CARDS THEMSELVES AND THEIR PACKAGING) REGARDING A
32 PREPAID SERVICE SHALL CLEARLY AND CONSPICUOUSLY DISPLAY THE COMMISSION'S
33 TOLL-FREE HOTLINE TELEPHONE NUMBER.
- 34 4. ADVERTISEMENTS (OTHER THAN POINT-OF-SALE MATERIALS). PREPAID
35 PROVIDERS AND PREPAID DISTRIBUTORS SHALL CLEARLY AND CONSPICUOUSLY
36 DISCLOSE THE FOLLOWING INFORMATION ON ALL ADVERTISEMENTS FOR A PREPAID
37 CARD OR PREPAID SERVICE (OTHER THAN POINT-OF-SALE MATERIALS):
- 38 (A) THE NAME OF THE PREPAID PROVIDER AS CERTIFICATED BY THE COMMIS-
39 SION;
- 40 (B) THE PREPAID PROVIDER'S TWENTY-FOUR-HOUR CUSTOMER SERVICE TELEPHONE
41 NUMBER; AND
- 42 (C) ANY EXPIRATION DATE OR POLICY.
- 43 5. ADVERTISEMENTS OF MINUTES AND/OR RATES. ALL MINUTES AND/OR RATES
44 PROMOTED OR ADVERTISED ON A PREPAID CARD, ANY POINT-OF-SALE MATERIAL
45 RELATING TO THAT PREPAID CARD, ANY ADVERTISEMENT REGARDING A PREPAID
46 SERVICE, OR OTHERWISE RELATING TO ANY PREPAID SERVICE, SHALL BE AVAIL-
47 ABLE AND ACHIEVABLE BY THE CONSUMER, AND THERE SHALL BE NO LIMITATIONS
48 ON THE PERIOD OF TIME FOR WHICH THE PROMOTED OR ADVERTISED MINUTES
49 AND/OR RATES WILL BE AVAILABLE TO THE CONSUMER UNLESS THOSE LIMITATIONS
50 ARE CLEARLY AND CONSPICUOUSLY DISCLOSED IN THE SAME LOCATION WHERE THE
51 MINUTES AND/OR RATES ARE LISTED.
- 52 6. VOICE PROMPTS. ALL MINUTES ANNOUNCED ON ANY VOICE PROMPT GIVEN TO A
53 CONSUMER AT THE TIME THE CONSUMER PLACES A CALL WITH A PREPAID SERVICE
54 SHALL BE IMMEDIATELY AVAILABLE AND ACHIEVABLE BY THE CONSUMER ON THAT
55 CALL. ALL PREPAID PROVIDERS SHALL GIVE A VOICE PROMPT TO A CONSUMER AT
56 THE TIME THE CONSUMER PLACES A CALL WITH A PREPAID SERVICE THAT

1 ANNOUNCES THE NUMBER OF MINUTES AVAILABLE FOR THAT CALL, WHICH NUMBER OF
2 MINUTES SHALL BE INCLUSIVE OF THE APPLICABLE PER MINUTE RATE AND ALL
3 APPLICABLE CHARGES, FEES, TAXES OR SURCHARGES.

4 7. PERMITTED CHARGES. A PREPAID PROVIDER SHALL NOT CHARGE, APPLY OR
5 DEDUCT FROM A PREPAID CARD'S BALANCE ANY CHARGES, FEES, TAXES,
6 SURCHARGES OR OTHER AMOUNTS FOR USE OF THE PREPAID SERVICE EXCEPT:

7 (A) THE PER MINUTE RATE FOR EACH PARTICULAR DESTINATION CALLED BY THE
8 CONSUMER;

9 (B) CHARGES, FEES, TAXES AND SURCHARGES THAT ARE PROPERLY DISCLOSED
10 PURSUANT TO THIS SECTION; AND

11 (C) ANY PER MINUTE RATE, CHARGE, FEE, TAX OR SURCHARGE PERMITTED
12 PURSUANT TO PARAGRAPHS (B) AND (C) OF SUBDIVISION TWO OF THIS SECTION. A
13 CONSUMER SHALL NOT BE CHARGED FOR ANY BUSY SIGNAL OR UNANSWERED CALL. A
14 PREPAID PROVIDER SHALL NOT IMPOSE ANY FEE OR SURCHARGE THAT IS NOT
15 DISCLOSED AS REQUIRED BY THIS SECTION OR THAT EXCEEDS THE AMOUNT
16 DISCLOSED. THE AMOUNT OF ANY CHARGE, FEE, TAX OR SURCHARGE THAT IS
17 IMPOSED, ASSESSED OR DEDUCTED FROM A PREPAID CARD'S VALUE OR BALANCE
18 SHALL BE EXPRESSED AND DISCLOSED IN THE SAME FORMAT, EITHER DOLLARS OR
19 MINUTES, AS THE VALUE OF THE PREPAID CARD.

20 8. FOREIGN LANGUAGE. IF A PREPAID CARD OR ANY POINT-OF-SALE MATERIAL
21 FOR A PREPAID CARD OR PREPAID SERVICE IS PREDOMINANTLY WRITTEN IN A
22 LANGUAGE OTHER THAN ENGLISH, THEN THE DISCLOSURES REQUIRED BY THIS
23 SECTION SHALL BE DISCLOSED IN THAT OTHER LANGUAGE ON THE APPLICABLE
24 PREPAID CARD OR POINT-OF-SALE MATERIAL.

25 9. PAYPHONE SURCHARGE. A PREPAID PROVIDER MAY PROVIDE A VOICE PROMPT
26 NOTIFICATION OF ANY APPLICABLE PAYPHONE SURCHARGE FOR USE OF A PREPAID
27 SERVICE FROM A PAYPHONE IN LIEU OF PROVIDING NOTICE OF SUCH SURCHARGE AS
28 REQUIRED BY THIS SECTION.

29 10. INTERNET SALES. NOTWITHSTANDING ANY OTHER PROVISION OF THIS
30 SECTION, IN THE CASE OF A PREPAID CARD THAT CONSUMERS PURCHASE VIA THE
31 INTERNET, THE DISCLOSURES REQUIRED BY SUBDIVISIONS ONE AND TWO OF THIS
32 SECTION SHALL BE DISCLOSED CLEARLY AND CONSPICUOUSLY ON THE INTERNET
33 SITE THAT THE CONSUMER MUST ACCESS PRIOR TO PURCHASING THE PREPAID CARD.

34 S 103-C. CUSTOMER SERVICE. 1. GENERAL REQUIREMENTS. ALL PREPAID
35 PROVIDERS SHALL ESTABLISH AND MAINTAIN A TOLL-FREE CUSTOMER SERVICE
36 TELEPHONE NUMBER. PREPAID PROVIDERS SHALL PROVIDE CUSTOMER SERVICE TWEN-
37 TY-FOUR HOURS A DAY, SEVEN DAYS A WEEK. CUSTOMER SERVICE MAY BE PROVIDED
38 BY A COMBINATION OF LIVE OPERATOR, INTERACTIVE VOICE RESPONSE, AND ELEC-
39 TRONIC VOICE RECORDING OF CUSTOMER INQUIRIES AND COMPLAINTS. LIVE OPER-
40 ATOR SERVICE SHALL BE AVAILABLE AT A MINIMUM FROM 9:00 A.M. TO 9:00 P.M.
41 IF AN ELECTRONIC VOICE RECORDER IS USED, THE PREPAID PROVIDER SHALL
42 ATTEMPT TO CONTACT THE CONSUMER NO LATER THAN THE NEXT DAY FOLLOWING THE
43 DATE OF THE RECORDING.

44 2. SPECIFIC REQUIREMENTS. CUSTOMER SERVICE MUST ENABLE A CONSUMER TO
45 ACCURATELY AND CLEARLY OBTAIN ALL APPLICABLE INFORMATION REGARDING A
46 PREPAID CARD OR PREPAID SERVICE, INCLUDING:

47 (A) A DESCRIPTION OF ALL APPLICABLE FEES AND SURCHARGES;

48 (B) SPECIFIC PER MINUTE RATES TO SPECIFIC DESTINATIONS;

49 (C) BALANCE REMAINING; AND

50 (D) MINUTES AVAILABLE AND REMAINING FOR USE IN A SINGLE, UNINTERRUPTED
51 CALL TO A SINGLE, REQUESTED DESTINATION.

52 3. REFUNDS. A PREPAID PROVIDER SHALL PROVIDE A REFUND TO ANY CONSUMER
53 WHO PURCHASES A PREPAID CARD IF THE TELECOMMUNICATION NETWORK SERVICES
54 ASSOCIATED WITH THE PREPAID SERVICE FAIL TO OPERATE IN A COMMERCIALY
55 REASONABLE MANNER. THE REFUND SHALL BE IN AN AMOUNT NOT LESS THAN THE
56 VALUE REMAINING ON THE PREPAID CARD AT THE TIME OF THE FAILURE AND IN

1 THE FORM OF EITHER A REPLACEMENT PREPAID CARD OR BY ADDING THE REFUND
2 AMOUNT TO THE PREPAID CARD'S CURRENT BALANCE. ALL REFUNDS SHALL BE
3 PROVIDED TO THE CONSUMER WITHIN SIXTY DAYS FROM THE DATE OF RECEIPT OF
4 NOTIFICATION FROM THE CONSUMER THAT THE PREPAID SERVICE HAS FAILED TO
5 OPERATE IN A COMMERCIALY REASONABLE MANNER.

6 4. EXPIRATION. PREPAID CARDS WITHOUT A SPECIFIC EXPIRATION DATE OR
7 POLICY PRINTED ON THE PREPAID CARD AND WITH A BALANCE OF PREPAID SERVICE
8 REMAINING SHALL BE CONSIDERED ACTIVE FOR A MINIMUM OF ONE YEAR FROM THE
9 DATE OF ACTIVATION, OR IF RECHARGED, FROM THE DATE OF THE LAST RECHARGE.

10 5. SERVICE SUSPENSION. A PREPAID PROVIDER HAS THE RIGHT TO SUSPEND USE
11 OF A PREPAID CARD AND ITS ACCESS TO PREPAID SERVICE WHEN IT REASONABLY
12 BELIEVES THAT (A) THE PREPAID CARD HAS BEEN STOLEN, OR (B) THE PREPAID
13 SERVICE HAS BEEN OBTAINED FRAUDULENTLY, OR (C) THE PREPAID CARD OR
14 SERVICE IS BEING USED IN AN ILLEGAL OR FRAUDULENT MANNER. IF THE PREPAID
15 PROVIDER SUSPENDS USE OF THE PREPAID SERVICE, THE PREPAID PROVIDER SHALL
16 DIRECT AN AFFECTED CONSUMER TO CONTACT CUSTOMER SERVICE WHERE AN EXPLA-
17 NATION SHALL BE PROVIDED.

18 S 103-D. ENFORCEMENT. 1. VIOLATIONS. THE COMMISSION SHALL HAVE THE
19 POWER AND AUTHORITY TO ASSESS A PENALTY AGAINST ANY PERSON THAT VIOLATES
20 ANY PROVISION OF THIS ARTICLE OR ANY REGULATION OR ORDER OF THE COMMIS-
21 SION IMPLEMENTING OR ENFORCING THE PROVISIONS OF THIS ARTICLE. THE
22 PENALTY FOR A FIRST VIOLATION SHALL NOT EXCEED FIVE THOUSAND DOLLARS AND
23 THE PENALTY FOR EACH SUBSEQUENT VIOLATION SHALL NOT EXCEED TEN THOUSAND
24 DOLLARS. ALL MONEYS COLLECTED FROM ANY PENALTY SHALL BE PAID INTO THE
25 GENERAL FUND.

26 2. REGULATIONS. THE COMMISSION SHALL ADOPT ANY RULES AND REGULATIONS
27 NECESSARY TO EFFECTUATE THE PURPOSES OF THIS ARTICLE.

28 3. PRIVATE RIGHT OF ACTION. ANY PERSON WHO SUFFERS DAMAGES AS THE
29 RESULT OF, OR IS OTHERWISE AGGRIEVED BY, A VIOLATION OF ANY PROVISION OF
30 THIS ARTICLE, MAY COMMENCE A CAUSE OF ACTION OR ASSERT A COUNTERCLAIM IN
31 A COURT OF COMPETENT JURISDICTION.

32 S 3. Subdivision (g) of section 103 of the abandoned property law, as
33 added by chapter 170 of the laws of 2004, is amended to read as follows:

34 (g) "Gift certificate" shall mean a written promise or electronic
35 payment device that: (i) is usable at a single merchant or an affiliated
36 group of merchants that share the same name, mark, or logo, or is usable
37 at multiple, unaffiliated merchants or service providers; and (ii) is
38 issued in a specified amount; and (iii) may or may not be increased in
39 value or reloaded; and (iv) is purchased and/or loaded on a prepaid
40 basis for the future purchase or delivery of any goods or services; and
41 (v) is honored upon presentation. Gift certificate shall not include an
42 electronic payment device linked to a deposit account, or prepaid tele-
43 phone calling cards regulated under [section ninety-two-f] ARTICLE
44 FIVE-A of the public service law. Gift certificate also shall not
45 include flexible spending arrangements as defined in Section 106(c)(2)
46 of the Internal Revenue Code, 26 U.S.C. S 106(c)(2); flexible spending
47 accounts subject to Section 125 of the Internal Revenue Code, 26 U.S.C.
48 S 125; Archer MSAs as defined in Section 220(d) of the Internal Revenue
49 Code, 26 U.S.C. S 220(d); dependent care reimbursement accounts subject
50 to Section 129 of the Internal Revenue Code, 26 U.S.C. S 129; health
51 savings accounts subject to Section 223(d) of the Internal Revenue Code,
52 26 U.S.C. S 223(d), as amended by Section 1201 of the Medicare
53 Prescription Drug, Improvement, and Modernization Act of 2003, Pub. L.
54 No. 108-173; or similar accounts from which, under the Internal Revenue
55 Code and its implementing regulations, individuals may pay medical
56 expenses, health care expenses, dependent care expenses, or similar

1 expenses on a pretax basis. Gift certificate also shall not include a
2 prepaid discount card or program used to purchase identified goods or
3 services at a price or percentage below the normal and customary price;
4 provided that the expiration date of the prepaid discount card or
5 program is clearly and conspicuously disclosed. Gift certificate also
6 shall not include payroll cards or other electronic payment devices
7 which are linked to a deposit account and which are given in exchange
8 for goods or services rendered.

9 S 4. Subdivision 1 of section 396-i of the general business law, as
10 amended by chapter 170 of the laws of 2004, is amended to read as
11 follows:

12 1. For the purposes of this section, "gift certificate" shall mean a
13 written promise or electronic payment device that: (i) is usable at a
14 single merchant or an affiliated group of merchants that share the same
15 name, mark, or logo, or is usable at multiple, unaffiliated merchants or
16 service providers; and (ii) is issued in a specified amount; and (iii)
17 may or may not be increased in value or reloaded; and (iv) is purchased
18 and/or loaded on a prepaid basis for the future purchase or delivery of
19 any goods or services; and (v) is honored upon presentation. Gift
20 certificate shall not include an electronic payment device linked to a
21 deposit account, or prepaid telephone calling cards regulated under
22 [section ninety-two-f] ARTICLE FIVE-A of the public service law. Gift
23 certificate also shall not include flexible spending arrangements as
24 defined in Section 106(c)(2) of the Internal Revenue Code, 26 U.S.C. S
25 106(c)(2); flexible spending accounts subject to Section 125 of the
26 Internal Revenue Code, 26 U.S.C. S 125; Archer MSAs as defined in
27 Section 220(d) of the Internal Revenue Code, 26 U.S.C. S 220(d); depend-
28 ent care reimbursement accounts subject to Section 129 of the Internal
29 Revenue Code, 26 U.S.C. S 129; health savings accounts subject to
30 Section 223(d) of the Internal Revenue Code, 26 U.S.C. S 223(d), as
31 amended by Section 1201 of the Medicare Prescription Drug, Improvement,
32 and Modernization Act of 2003, Pub. L. No. 108-173; or similar accounts
33 from which, under the Internal Revenue Code and its implementing regu-
34 lations, individuals may pay medical expenses, health care expenses,
35 dependent care expenses, or similar expenses on a pretax basis. Gift
36 certificate also shall not include a prepaid discount card or program
37 used to purchase identified goods or services at a price or percentage
38 below the normal and customary price; provided that the expiration date
39 of the prepaid discount card or program is clearly and conspicuously
40 disclosed. Gift certificate also shall not include payroll cards or
41 other electronic payment devices which are linked to a deposit account
42 and which are given in exchange for goods or services rendered.

43 S 5. This act shall take effect on the first of the calendar month
44 commencing immediately after the ninetieth day after it shall have
45 become a law; provided that any rules and regulations, or any other
46 actions, necessary to implement the provisions of this act on its effec-
47 tive date are authorized and directed to be completed on or before such
48 date. This act shall only apply to prepaid cards printed on or after
49 such effective date, and to advertisements, promotions, point-of-sale
50 materials and voice prompts relating to a prepaid service that is
51 created, aired, printed, distributed or otherwise disseminated on or
52 after such effective date.