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2011-2012 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 5, 2011

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Introduced by M. of A. PHEFFER, 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 ASSEM-  
BLY, DO ENACT AS FOLLOWS:

1     Section 1. The general business law is amended by adding a new section  
2     654-a to read as follows:

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

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

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

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

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

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

23    (1) THERE IS A MATERIAL BREACH OF CONTRACT BY THE MEMBERSHIP CAMP-  
24    GROUND OPERATOR TO PROVIDE THE ESSENTIAL SERVICES AND PROGRAMS AS SET

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

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1 FORTH AND IN THE MANNER PROVIDED IN THE MEMBERSHIP CAMPING CONTRACT. A  
2 NATURAL DISASTER OR PHENOMENA, FAILURE OR SHORTAGE OF ELECTRIC POWER OR  
3 OTHER SOURCE OF ENERGY, UNAUTHORIZED OR ILLEGAL ACTS, LABOR STRIKES OR  
4 DISPUTES DISRUPTING OPERATIONS, OR GOVERNMENTAL, JUDICIAL, OR LAW  
5 ENFORCEMENT ACTIONS SHALL NOT BE A BASIS FOR CANCELLATION, UNLESS THE  
6 MEMBERSHIP CAMPGROUND OPERATOR FAILS TO DILIGENTLY RESTORE SUCH SERVICES  
7 AND PROGRAMS WITHIN A REASONABLE PERIOD OF TIME; OR

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

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

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

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

1 B. WHEN A PURCHASER CANCELS A CONTRACT PURSUANT TO THIS SUBDIVISION  
2 SUCH PURCHASER SHALL BE REQUIRED TO HAVE PAID THE PURCHASE PRICE OF HIS  
3 OR HER MEMBERSHIP IN FULL, AS WELL AS ALL OUTSTANDING FEES, DUES, OR ANY  
4 OTHER PAYMENTS DUE AT THE TIME OF CANCELLATION AND FOR NINETY DAYS THEREAFTER.  
5 HOWEVER, IF ALL OF THE PURCHASERS WHO SIGNED THE CONTRACT DIE,  
6 THE RELEVANT ESTATE OR ESTATES SHALL BE RELIEVED OF ANY FURTHER OBLIGATION  
7 UNDER THE CONTRACT NOT THEN DUE AND OWING.

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

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

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

29 2-a. The following statement, in bold letters of at least ten point  
30 type, which advises the purchaser of the right to cancel the contract  
31 under section six hundred fifty-four of this article shall be contained  
32 in the contract:

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

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

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

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

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

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

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

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

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

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

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

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

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

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