

1832

2011-2012 Regular Sessions

I N   S E N A T E

January 13, 2011

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Introduced by Sen. FLANAGAN -- 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 consumer protections against cramming

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

1     Section 1. The opening paragraph of section 92-d of the public service  
2 law, as separately amended by chapters 546 and 547 of the laws of 2000,  
3 is amended to read as follows:  
4     Each local exchange telephone company shall inform its customers of  
5 the provisions of SECTION NINETY-TWO-G OF THIS ARTICLE, sections three  
6 hundred ninety-nine-p [and], three hundred ninety-nine-z and three  
7 hundred ninety-nine-pp of the general business law, and article ten-B of  
8 the personal property law, as such provisions relate to the rights of  
9 consumers with respect to CRAMMING, telemarketers, sellers, the no tele-  
10 marketing sales call statewide registry and automatic dialing-announcing  
11 devices, by means of:  
12     S 2. The public service law is amended by adding a new section 92-g to  
13 read as follows:  
14     S 92-G. CRAMMING PROHIBITED. 1. FOR THE PURPOSES OF THIS SECTION,  
15 "CRAMMING" MEANS THE INCLUSION AND IMPOSITION OF CHARGES ON THE INVOICE  
16 OR BILL OF A CUSTOMER FROM A TELEPHONE CORPORATION AT THE REQUEST OF A  
17 THIRD PARTY OR BILLING AGGREGATOR THAT (A) WERE NOT AUTHORIZED BY THE  
18 CUSTOMER, OR (B) IF AUTHORIZED, WERE OBTAINED THROUGH MISLEADING OR  
19 DECEPTIVE MEANS.  
20     2. A CUSTOMER SHALL NOT BE LIABLE FOR CHARGES APPEARING ON THE INVOICE  
21 OR BILL OF A TELEPHONE CORPORATION THAT ARE THE RESULT OF CRAMMING. NO  
22 CHARGES FOR ANY PRODUCTS OR SERVICES, OTHER THAN THOSE PROVIDED BY THE  
23 TELEPHONE CORPORATION, ITS AFFILIATES, A THIRD PARTY VIDEO PROVIDER WITH  
24 WHOM A TELEPHONE CORPORATION OR ITS AFFILIATE JOINTLY MARKET SERVICES,

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

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1 OR OTHERWISE PERMITTED BY LAW, SHALL BE INCLUDED ON ANY BILL OR INVOICE  
2 OF A CUSTOMER, UNLESS THE THIRD PARTY REQUESTING THE PAYMENT OF SUCH  
3 CHARGES RETAINS AND PROVIDES UPON REQUEST VALID PROOF THAT:

4 A. THE CUSTOMER WAS PROVIDED WITH CLEAR AND CONSPICUOUS DISCLOSURE OF  
5 ALL MATERIAL TERMS AND CONDITIONS OF THE PRODUCT OR SERVICE BEING  
6 OFFERED, INCLUDING BUT NOT LIMITED TO ALL INITIAL AND RECURRING CHARGES  
7 AND THE FACT THAT SUCH CHARGES SHALL APPEAR ON THE CUSTOMER'S TELEPHONE  
8 BILL;

9 B. AFTER RECEIVING CLEAR AND CONSPICUOUS DISCLOSURE AS PROVIDED IN  
10 PARAGRAPH A OF THIS SUBDIVISION, THE CUSTOMER EXPLICITLY CONSENTED TO  
11 THE NATURE AND AMOUNT OF SUCH CHARGES; AND

12 C. THE THIRD PARTY OFFERING THE PRODUCT OR SERVICE OR AN AGENT OF SUCH  
13 THIRD PARTY PROVIDED THE CUSTOMER WITH A TOLL-FREE TELEPHONE NUMBER THE  
14 CUSTOMER MAY CALL AND AN ADDRESS TO WHICH THE CUSTOMER MAY WRITE TO  
15 RESOLVE ANY BILLING DISPUTE.

16 3. ANY CHARGES FOR THIRD PARTY PRODUCTS OR SERVICES THAT ARE INCLUDED  
17 ON A BILL OR INVOICE BY A TELEPHONE CORPORATION WITHOUT THE CONSENT OF  
18 THE CUSTOMER HAVING BEEN OBTAINED AS PROVIDED IN SUBDIVISION TWO OF THIS  
19 SECTION SHALL BE VOID AND UNENFORCEABLE, AND SHALL BE REMOVED FROM THE  
20 BILL OR INVOICE UPON NOTICE FROM SUCH CUSTOMER.

21 4. THE COMMISSION SHALL SUPERVISE AND ENSURE COMPLIANCE WITH THE  
22 PROVISIONS OF THIS SECTION, AND MAY PROMULGATE ANY RULES AND REGULATIONS  
23 IT DEEMS NECESSARY OR DESIRABLE TO ENSURE SUCH COMPLIANCE, INCLUDING BUT  
24 NOT LIMITED TO ANY ADDITIONAL REQUIREMENTS FOR VERIFICATION OF CUSTOMER  
25 ORDERS AND ANY ADDITIONAL STANDARDS THAT THIRD PARTIES OR AGENTS MUST  
26 MEET TO BE AUTHORIZED TO RECEIVE PAYMENT THROUGH THE INCLUSION OF CHARG-  
27 ES ON BILLS OR INVOICES OF TELEPHONE CORPORATIONS. ANY FAILURE BY A  
28 TELEPHONE CORPORATION TO COMPLY WITH THE PROVISIONS OF THIS SECTION MAY  
29 BE REDRESSED AS PROVIDED IN SUBDIVISION THREE OF SECTION NINETY-SIX OF  
30 THIS ARTICLE OR AS OTHERWISE AUTHORIZED BY LAW.

31 S 3. This act shall take effect on the one hundred eightieth day after  
32 it shall have become a law.