

2554

2011-2012 Regular Sessions

I N S E N A T E

January 25, 2011

Introduced by Sen. MAZIARZ -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer 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 ASSEMBLY, 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
25 FORTH AND IN THE MANNER PROVIDED IN THE MEMBERSHIP CAMPING CONTRACT. A

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

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

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

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

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

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