

576

2011-2012 Regular Sessions

I N S E N A T E

(PREFILED)

January 5, 2011

Introduced by Sen. KLEIN -- 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 the disclosure of early termination fees

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
2 390-d to read as follows:
3 S 390-D. EARLY TERMINATION FEE DISCLOSURE. 1. FOR PURPOSES OF THIS
4 SECTION:
5 (A) "EARLY TERMINATION FEE" MEANS ANY CHARGE OR FEE THAT IS PROVIDED
6 FOR IN A CONTRACT OR AGREEMENT, INCLUDING ANY CONTRACT RENEWAL OR EXTEN-
7 SION, THAT INCLUDES THE PROVISION OF VIDEO PROGRAMMING AND IS ASSESSED
8 AGAINST A SUBSCRIBER WHEN A SUBSCRIBER TERMINATES FOR ANY REASON VIDEO
9 PROGRAMMING SERVICE PRIOR TO THE END OF THE CONTRACT OR AGREEMENT.
10 (B) "CONDITIONAL SALES PRICE" MEANS ANY PRICE FOR A SERVICE THAT
11 INCLUDES VIDEO PROGRAMMING AND WHICH IS AVAILABLE PURSUANT TO AN AGREE-
12 MENT THAT INCLUDES AN EARLY TERMINATION FEE.
13 (C) "MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTOR" SHALL HAVE THE MEAN-
14 ING AS SET FORTH IN 47 U.S.C. SECTION 522 (13).
15 (D) "VIDEO PROGRAMMING" SHALL HAVE THE MEANING AS SET FORTH IN 47
16 U.S.C. SECTION 522 (20).
17 2. NO MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTOR THAT PROMOTES A
18 CONDITIONAL SALES PRICE FOR SERVICES THAT INCLUDE VIDEO PROGRAMMING
19 SHALL, IN CONNECTION WITH SUCH PRICE, REQUIRE THAT A SUBSCRIBER BE
20 SUBJECT TO AN EARLY TERMINATION FEE UNLESS SUCH FEE AND THE TERMS UNDER
21 WHICH IT IS TO APPLY ARE DISCLOSED IN A CLEAR AND CONSPICUOUS MANNER AS
22 FOLLOWS:
23 (A) IN ANY MEDIUM USED BY THE MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTOR
24 TO PROMOTE A CONDITIONAL SALES PRICE, THE EXISTENCE AND AMOUNT OF

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

LBD04866-01-1

1 ANY EARLY TERMINATION FEE AND THE TERMS UNDER WHICH IT IS TO APPLY SHALL
2 BE DISCLOSED WITH THE SAME PROMINENCE AND IN THE SAME LOCATION AS THE
3 CONDITIONAL SALES PRICE.

4 (B) IN ANY SOLICITATION THAT MAY RESULT IN AN ORDER FOR VIDEO PROGRAM-
5 MING SUBJECT TO A CONDITIONAL SALES PRICE, WHICH FOR THE PURPOSES OF
6 THIS SUBDIVISION SHALL INCLUDE THE DESCRIPTION OF SERVICES, THE MULTI-
7 CHANNEL VIDEO PROGRAMMING DISTRIBUTOR SHALL INFORM POTENTIAL CUSTOMERS
8 OF ANY EARLY TERMINATION FEE AND ITS AMOUNT AND THE TERMS UNDER WHICH IT
9 IS TO APPLY PRIOR TO SALE.

10 3. ANY EARLY TERMINATION FEE THAT IS ASSESSED IN CONNECTION WITH THE
11 TERMINATION OF A SERVICE SUBJECT TO A CONDITIONAL SALES PRICE MAY NOT BE
12 GREATER THAN THE PRO RATA SHARE OF SUCH FEE UNDER AN AGREEMENT OR
13 CONTRACT CALCULATED AS FOLLOWS: THE FRACTIONAL EQUIVALENT TO THE NUMBER
14 OF MONTHS IN THE AGREEMENT TERM THAT HAVE ELAPSED DIVIDED BY THE TOTAL
15 NUMBER OF MONTHS IN THE AGREEMENT TERM, MULTIPLIED BY THE AMOUNT OF THE
16 EARLY TERMINATION FEE DISCLOSED PURSUANT TO SUBDIVISION TWO OF THIS
17 SECTION.

18 4. A MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTOR THAT FAILS TO PROVIDE
19 NOTICE AS REQUIRED IN SUBDIVISION TWO OF THIS SECTION OR FAILS TO ASSESS
20 AN EARLY TERMINATION FEE IN ACCORDANCE WITH SUBDIVISION THREE OF THIS
21 SECTION SHALL BE PROHIBITED FROM ENFORCING AN EARLY TERMINATION FEE IN
22 CONNECTION WITH THE TERMINATION OF SERVICE SUBJECT TO A CONDITIONAL
23 SALES PRICE. FOR THE PURPOSES OF THIS SUBDIVISION, "ENFORCEMENT" SHALL
24 INCLUDE ANY REFERENCE, WHETHER WRITTEN OR VERBAL AND IN ANY MEDIUM, TO
25 AN EARLY TERMINATION FEE WITH REGARD TO IMPOSING, NEGOTIATING OR WAIVING
26 AN EARLY TERMINATION FEE, AS AN INDUCEMENT TO RENEW, EXTEND OR ENTER
27 INTO AN AGREEMENT, OR RESOLVE ANY DISPUTE BETWEEN A CONSUMER AND A
28 MULTICHANNEL VIDEO PROGRAMMING DISTRIBUTOR, ITS AGENTS, OR ANY PERSON
29 ATTEMPTING TO RESOLVE A DEBT BASED UPON AN EARLY TERMINATION FEE UNDER
30 THIS SUBDIVISION.

31 5. ANY VIOLATION OF THIS SECTION SHALL BE DEEMED A DECEPTIVE ACT OR
32 PRACTICE PURSUANT TO SECTION THREE HUNDRED FORTY-NINE OF THIS CHAPTER.
33 NOTHING IN THIS SECTION SHALL IN ANY WAY LIMIT THE RIGHTS OR REMEDIES
34 THAT ARE OTHERWISE AVAILABLE TO A CONSUMER OR PURCHASER UNDER ANY OTHER
35 LAW.

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