

3114

2013-2014 Regular Sessions

I N A S S E M B L Y

January 23, 2013

Introduced by M. of A. ORTIZ, BOYLAND, WRIGHT -- Multi-Sponsored by --  
M. of A. GOTTFRIED, LAVINE, NOLAN, RIVERA, WEISENBERG -- read once and  
referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to creating the  
cell phone users' bill of rights

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  
2 390-d to read as follows:

3 S 390-D. CELL PHONE USERS' BILL OF RIGHTS. 1. ANY PERSON, FIRM, CORPO-  
4 RATION, OR OTHER ENTITY THAT OFFERS CELLULAR PHONES AND CELLULAR PHONE  
5 SERVICES TO THE PUBLIC SHALL PROVIDE EACH CUSTOMER WITH A THIRTY-DAY  
6 TRIAL PERIOD. IF A CUSTOMER RETURNS A PHONE OR CANCELS SERVICE WITHIN  
7 THAT THIRTY-DAY PERIOD, HE OR SHE SHALL NOT BE SUBJECT TO ANY TERMI-  
8 NATION FEES.

9 A. WHEN A NEW PHONE IS PURCHASED, THE THIRTY-DAY PERIOD SHALL COMMENCE  
10 WHEN THE CUSTOMER PHYSICALLY RECEIVES THE PHONE.

11 B. WHEN A PERSON APPLIES FOR NEW SERVICE, THE THIRTY-DAY PERIOD SHALL  
12 COMMENCE WHEN THE CUSTOMER'S ACCOUNT IS ACTIVATED.

13 2. WHENEVER A PERSON RETURNS A PHONE OR CANCELS A SERVICE WITHIN THE  
14 THIRTY-DAY TRIAL PERIOD REQUIRED PURSUANT TO SUBDIVISION ONE OF THIS  
15 SECTION, SUCH PERSON SHALL BE RESPONSIBLE FOR THE MONTHLY ACCESS FEE,  
16 PRO RATA, AND SHALL ALSO BE RESPONSIBLE FOR THE COSTS OF ANY CALLS MADE  
17 BY SUCH PERSON IF THEY ARE NOT INCLUDED WITHIN THE MONTHLY ACCESS FEE.

18 3. A. ANY PERSON, FIRM, CORPORATION, OR OTHER ENTITY THAT PROVIDES  
19 CELLULAR PHONE SERVICES TO A CUSTOMER FOR A FEE, SUCH FEE SHALL ONLY  
20 INCLUDE THOSE SERVICES AUTHORIZED BY THE CUSTOMER. NO PERSON, FIRM,  
21 CORPORATION, OR OTHER ENTITY SHALL CHARGE A CUSTOMER FOR ANY SERVICE  
22 SUCH CUSTOMER DID NOT REQUEST OR AUTHORIZE.

23 B. ANY PERSON, FIRM, CORPORATION, OR OTHER ENTITY THAT PROVIDES CELLU-  
24 LAR PHONE SERVICES TO A CUSTOMER FOR A FEE SHALL INCLUDE ON ITS MONTHLY

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

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1 STATEMENT A CLEAR AND CONCISE BREAKDOWN OF ALL FEES, COSTS, AND TAXES.  
2 SUCH BREAKDOWN SHALL FURTHER SPECIFY WHICH FEES, TAXES, OR SURCHARGES  
3 ARE MANDATED BY THE GOVERNMENT, AND WHICH FEES, TAXES, OR SURCHARGES ARE  
4 IMPOSED BY THE COMPANY. SUCH MONTHLY STATEMENT SHALL ALSO INCLUDE THE  
5 RATES AND TERMS OF THE CUSTOMER'S SERVICE AGREEMENT.

6 4. A CUSTOMER SHALL NOT BE LIABLE FOR ANY CHARGES TO HIS OR HER  
7 ACCOUNT IF SUCH CHARGES ARE THE RESULT OF CALLS OR MESSAGES PLACED FROM  
8 A PHONE OTHER THAN ONE OWNED BY THE CUSTOMER. IT SHALL BE THE RESPONSI-  
9 BILITY OF THE PERSON, FIRM, CORPORATION, OR OTHER ENTITY TO ENSURE THAT  
10 ALL SERVICES ARE USED SOLELY BY THE PHONE REGISTERED TO THE PERSON  
11 AUTHORIZED UNDER THE SERVICE AGREEMENT. A CUSTOMER SHALL NOT BE LIABLE  
12 FOR ANY CHARGES RESULTING FROM THE THEFT OF THE CUSTOMER'S CELLULAR  
13 PHONE IDENTIFICATION OR SIGNAL.

14 5. ANY PERSON, FIRM, CORPORATION, OR OTHER ENTITY THAT VIOLATES THE  
15 PROVISIONS OF THIS SECTION SHALL PAY A FINE OF NOT LESS THAN FIVE  
16 HUNDRED DOLLARS NOR MORE THAN FIVE THOUSAND DOLLARS PER VIOLATION. SUCH  
17 PERSON, FIRM, CORPORATION, OR OTHER ENTITY SHALL ALSO BE LIABLE TO THE  
18 CUSTOMER FOR CIVIL DAMAGES IN AN AMOUNT OF TWO HUNDRED FIFTY DOLLARS OR  
19 THE CUSTOMER'S ACTUAL EXPENSES, WHICHEVER IS GREATER. THE COURT SHALL  
20 GRANT REASONABLE ATTORNEY'S FEES TO ANY CUSTOMER WHO IS SUCCESSFUL IN AN  
21 ACTION BROUGHT PURSUANT TO THIS SUBDIVISION.

22 S 2. This act shall take effect on the one hundred twentieth day after  
23 it shall have become a law.