S T A T E O F N E W Y O R K

369--A

2013-2014 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 9, 2013

Introduced by M. of A. DINOWITZ, HIKIND, MAISEL, GALEF, ROBERTS, HOOPER, WEPRIN, MONTESANO -- Multi-Sponsored by -- M. of A. ARROYO, BOYLAND, COOK, CRESPO, GOTTFRIED, RAMOS, ROBINSON, STEVENSON, WEISENBERG -- read once and referred to the Committee on Consumer Affairs and Protection -- reported and referred to the Committee on Codes -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the general business law, in relation to enacting "the truth in lockout and locksmith services act"

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

Section 1. This act shall be known as "the truth in lockout and locksmith services act".

S 2. The general business law is amended by adding a new section 391-s to read as follows:

S 391-S. LOCKOUT AND LOCKSMITH SERVICES. 1. (A) FOR THE PURPOSES OF THIS SECTION "LOCKSMITH" MEANS A NATURAL PERSON WHO PERFORMS LOCKSMITH SERVICES AND ACCESS CONTROL SERVICES TO THE PUBLIC.

(B) "LOCKSMITH SERVICES" MEANS:

(I) SERVICING, INSTALLING, REPAIRING, REBUILDING, REKEYING, REPINNING, ADJUSTING OR INSTALLING LOCKS, MECHANICAL OR ELECTRONIC SECURITY DEVICES, SAFES, VAULTS, OR SAFE DEPOSIT BOXES; AND

(II) OPERATING A LOCK, MECHANICAL OR ELECTRONIC SECURITY DEVICE, SAFE, VAULT, OR SAFE DEPOSIT BOX BY A MEANS OTHER THAN THOSE INTENDED BY THE MANUFACTURER OF SUCH DEVICES.

(C) "LOCKOUT SERVICES" MEANS OFFERING TO OPERATE A LOCK, MECHANICAL OR ELECTRONIC SECURITY DEVICE, BY A MEANS OTHER THAN THOSE INTENDED BY THE MANUFACTURER OF SUCH DEVICES FOR THE PURPOSES OF OBTAINING ENTRY TO A CONSUMER'S MOTOR VEHICLE OR RESIDENCE.

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

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(D) "MILEAGE CHARGE" MEANS ANY CHARGE IMPOSED BY A LOCKSMITH RELATED TO THE COST OF TRANSPORTATION TO A LOCATION WHERE LOCKSMITH SERVICES ARE TO BE PROVIDED.

(E) "TELEPHONE DIRECTORY" MEANS A PUBLICATION DISSEMINATED BY PRINT MEDIA OR THE INTERNET LISTING:

(I) THE NAMES, ADDRESSES AND TELEPHONE NUMBERS OF BUSINESSES BY TYPE, AND CONTAINING ADVERTISEMENTS PROMOTING THOSE BUSINESSES OR THE PRODUCTS THEY SELL; AND/OR

(II) THE NAMES, ADDRESSES AND TELEPHONE NUMBERS OF INDIVIDUALS, BUSINESSES AND GOVERNMENT LISTINGS IN ALPHABETICAL ORDER.

2. (A) NO PERSON, FIRM, CORPORATION, ASSOCIATION OR AGENT OR EMPLOYEE THEREOF SHALL MISREPRESENT THE GEOGRAPHICAL LOCATION OF A BUSINESS THAT DERIVES ANY PORTION OF ITS GROSS INCOME FROM LOCKSMITH SERVICES OR ARRANGING FOR THE SALE OR PROVISION OF LOCKSMITH SERVICES:

(I) IN THE LISTING OF THE BUSINESS IN A TELEPHONE DIRECTORY OR THE DIRECTORY ASSISTANCE DATABASE; OR

(II) IN ANY LISTING, ENTRY OR ADVERTISING AVAILABLE TO THE PUBLIC THROUGH THE USE OF ANY INTERNET DIRECTORY, INTERNET SEARCH ENGINE, OR OTHER ELECTRONIC MEDIA.

(B) FOR PURPOSES OF THIS SUBDIVISION, A MISREPRESENTATION OF THE GEOGRAPHICAL LOCATION OF A BUSINESS OCCURS WHEN THE NAME OF THE BUSINESS INDICATES THAT THE BUSINESS IS LOCATED IN A GEOGRAPHICAL AREA AND:

(I) THE BUSINESS IS NOT LOCATED WITHIN THE GEOGRAPHICAL AREA INDICATED AND THE LISTING FAILS TO IDENTIFY THE MUNICIPALITY AND STATE OF THE BUSINESS' GEOGRAPHICAL LOCATION; AND

(II) TELEPHONE CALLS TO THE LOCAL TELEPHONE NUMBER LISTED IN THE TELEPHONE DIRECTORY ARE FORWARDED OR TRANSFERRED TO A LOCATION THAT IS OUTSIDE THE CALLING AREA COVERED BY THE TELEPHONE DIRECTORY OR DIRECTORY ASSISTANCE DATABASE IN WHICH THE NUMBER IS LISTED.

(C) A PERSON, FIRM, CORPORATION, ASSOCIATION OR AGENT OR EMPLOYEE MAY PLACE A DIRECTORY LISTING FOR A BUSINESS, THE NAME OF WHICH INDICATES THAT IT IS LOCATED IN A GEOGRAPHICAL AREA THAT IS DIFFERENT FROM THE GEOGRAPHICAL AREA IN WHICH THE BUSINESS IS LOCATED IF A CONSPICUOUS NOTICE IN THE LISTING STATES THE MUNICIPALITY AND STATE OF THE BUSINESS.

(D) THIS SUBDIVISION SHALL NOT APPLY:

(I) TO THE PUBLISHERS OF A TELEPHONE DIRECTORY OR PROVIDERS OF A DIRECTORY ASSISTANCE SERVICE PROVIDING INFORMATION ABOUT ANOTHER BUSINESS;

(II) TO ANY TELEVISION OR RADIO BROADCASTING STATION OR TO ANY PUBLISHER OR PRINTER OF A NEWSPAPER, MAGAZINE OR OTHER FORM OF PRINTED ADVERTISING PROVIDING INFORMATION ABOUT ANOTHER BUSINESS, WHO BROADCASTS, PUBLISHES, OR PRINTS THE ADVERTISEMENT; OR

(III) TO ANY PUBLISHER OF ANY LISTING, ENTRY OR ADVERTISING AVAILABLE TO THE PUBLIC THROUGH THE USE OF ANY INTERNET DIRECTORY, INTERNET SEARCH ENGINE, OR OTHER ELECTRONIC MEDIA PROVIDING INFORMATION ABOUT ANOTHER BUSINESS, WHO BROADCASTS OR PUBLISHES THE LISTING, ENTRY OR ADVERTISEMENT.

3. NO PERSON, FIRM, CORPORATION, ASSOCIATION OR AGENT OR EMPLOYEE THEREOF SHALL PROVIDE AN ESTIMATE FOR LOCKOUT SERVICES THAT DOES NOT INCLUDE ALL CHARGES, EXCEPT TAXES, WHICH A CONSUMER MUST PAY TO OBTAIN SUCH SERVICES. SUCH ESTIMATE MAY BE EXPRESSED AS A RANGE BETWEEN TWO AMOUNTS, PROVIDED THAT SUCH RANGE IS REASONABLE AND DETERMINED IN GOOD FAITH BASED ON THE INFORMATION PROVIDED BY THE CONSUMER. ANY MILEAGE CHARGE SHALL BE ESTIMATED BASED ON THE LOCATION WHERE THE LOCKOUT SERVICES ARE TO TAKE PLACE AND INCLUDED IN THE TOTAL AMOUNT OF ANY ESTIMATE PROVIDED TO THE CONSUMER. ANY MINIMUM FEE FOR A SERVICE CALL OR

CHARGE RELATED TO THE TIME OR DAY OF THE WEEK SUCH LOCKSMITH SERVICES ARE TO BE PROVIDED SHALL BE DISCLOSED TO THE CONSUMER IN A CLEAR AND CONSPICUOUS MANNER.

4. ANY LOCKSMITH PROVIDING LOCKSMITH SERVICES SHALL PROVIDE THE CONSUMER WITH A RECEIPT CONTAINING AN ITEMIZATION OF ANY FEES OR CHARGES, INCLUDING, BUT NOT LIMITED TO, CHARGES FOR PARTS, LABOR, MILEAGE, AND THE PRICE OF THE SERVICE CALL. SUCH RECEIPT SHALL ALSO INCLUDE AT LEAST THE FOLLOWING INFORMATION:

(A) THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE LOCKSMITH OR LOCKSMITH'S EMPLOYER; AND

(B) A BRIEF DESCRIPTION OF SERVICES PROVIDED.

5. ANY LOCKSMITH PROVIDING LOCKOUT SERVICES SHALL PROVIDE THE CONSUMER WITH A RECEIPT CONTAINING AN ITEMIZATION OF ANY FEES OR CHARGES, INCLUDING, BUT NOT LIMITED TO, CHARGES FOR PARTS, LABOR, MILEAGE, AND THE PRICE OF THE SERVICE CALL. SUCH RECEIPT SHALL ALSO INCLUDE AT LEAST THE FOLLOWING INFORMATION:

(A) THE NAME, ADDRESS AND TELEPHONE NUMBER OF THE LOCKSMITH OR LOCKSMITH'S EMPLOYER;

(B) A BRIEF DESCRIPTION OF SERVICES PROVIDED; AND

(C) IF SUCH LOCKOUT SERVICES INVOLVED OBTAINING ENTRY TO A CONSUMER'S MOTOR VEHICLE, THE VEHICLE YEAR, MAKE AND MODEL, VEHICLE IDENTIFICATION NUMBER (VIN), THE CONSUMER'S DRIVER'S LICENSE NUMBER, AND LICENSE PLATE NUMBER.

6. (A) WHENEVER THERE SHALL BE A VIOLATION OF THIS SECTION AN APPLICATION MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION BY A SPECIAL PROCEEDING TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH VIOLATIONS; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS SECTION, AN INJUNCTION MAY BE ISSUED BY THE COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER VIOLATIONS, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. IN ANY SUCH PROCEEDING, THE COURT MAY MAKE ALLOWANCES TO THE ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX OF SUBDIVISION (A) OF SECTION EIGHTY-THREE HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES, AND DIRECT RESTITUTION. IN CONNECTION WITH ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES.

(B) (I) IN EVERY CASE WHERE THE COURT SHALL DETERMINE THAT A VIOLATION OF SUBDIVISION TWO OF THIS SECTION HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN ONE THOUSAND DOLLARS FOR A SINGLE VIOLATION AND NOT MORE THAN TWENTY-FIVE THOUSAND DOLLARS FOR MULTIPLE VIOLATIONS RESULTING FROM A SINGLE ACT OR INCIDENT.

(II) IN EVERY CASE WHERE THE COURT SHALL DETERMINE THAT A VIOLATION OF SUBDIVISIONS THREE, FOUR OR FIVE OF THIS SECTION HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN ONE THOUSAND DOLLARS FOR EACH VIOLATION.

(C) IN ADDITION TO THE ENFORCEMENT AUTHORITY GRANTED TO THE ATTORNEY GENERAL, THE DIRECTOR OF A MUNICIPAL CONSUMER AFFAIRS OFFICE, THE DISTRICT ATTORNEY, TOWN ATTORNEY, COUNTY ATTORNEY, AND THE CORPORATION COUNSEL, OR OTHER LAWFUL DESIGNEE OF A MUNICIPALITY OR LOCAL GOVERNMENT SHALL HAVE CONCURRENT AUTHORITY TO SEEK THE RELIEF IN PARAGRAPH (B) OF THIS SUBDIVISION, AND ALL CIVIL PENALTIES OBTAINED IN ANY SUCH ACTION SHALL BE RETAINED BY THE MUNICIPALITY OR LOCAL GOVERNMENT.

(D) ANY PERSON WHO SUBCONTRACTS WITH A LOCKSMITH OR ANY PERSON, FIRM, CORPORATION OR ASSOCIATION PROVIDING LOCKSMITH SERVICES AND HAS ACTUAL KNOWLEDGE THAT THE LOCKSMITH OR PERSON, FIRM, CORPORATION OR ASSOCIATION IS ACTING IN VIOLATION OF THIS SECTION SHALL BE DEEMED TO BE IN VIOLATION OF THIS SECTION, UNLESS SUCH PERSON TAKES REASONABLE MEASURES TO PREVENT AND CORRECT ANY CONDUCT THAT VIOLATES THIS SECTION.

(E) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO RESTRICT ANY RIGHT WHICH ANY PERSON MAY HAVE UNDER ANY OTHER STATUTE OR THE COMMON LAW.

7. THE PROVISIONS OF THIS SECTION SHALL NOT BE CONSTRUED TO LIMIT IN ANY WAY THE AUTHORITY OF ANY COUNTY, OR OF ANY CITY HAVING A POPULATION OF ONE MILLION OR MORE PERSONS, TO ENFORCE LOCAL LAWS AND REGULATIONS GOVERNING THE LICENSURE, REGISTRATION OR CONDUCT OF LOCKSMITHS OR ANY PERSON PROVIDING LOCKSMITH SERVICES IN EFFECT PRIOR TO THE EFFECTIVE DATE OF THIS SECTION, TO ENACT, IMPLEMENT AND ENFORCE ANY AMENDMENTS THERETO AFTER THE EFFECTIVE DATE OF THIS SECTION, OR TO ENACT, IMPLEMENT AND ENFORCE ANY LOCAL LAWS AND REGULATIONS RELATING TO LOCKSMITH AND LOCKOUT SERVICES, EXCEPT TO THE EXTENT THAT SUCH LAWS OR REGULATIONS ARE INCONSISTENT WITH ANY PROVISION OF THIS SECTION. NO LAW OR REGULATION SHALL BE CONSIDERED INCONSISTENT IF IT PROVIDES CONSUMER PROTECTION EQUAL TO OR GREATER THAN THE PROVISIONS OF THIS SECTION.

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