

1838

2013-2014 Regular Sessions

I N S E N A T E

(PREFILED)

January 9, 2013

Introduced by Sens. PARKER, HASSELL-THOMPSON -- 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 and the public service law, in relation to the provision of residential wireless telephone service

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

1 Section 1. Short title. This act shall be known and may be cited as
2 the "wireless telephone service consumer protection act".
3 S 2. Statement of legislative findings and purpose. The legislature
4 finds that residential consumers in New York are offered the opportunity
5 to purchase wireless telephone service from a variety of service provid-
6 ers and that the conduct of such providers in making and implementing
7 these offers varies widely. In many instances, consumers are required to
8 evaluate service offerings without receiving a full and fair disclosure
9 of the terms of the service offering or an adequate means to evaluate
10 the offering in practice. The purpose of this legislation is to provide
11 a regulatory program for wireless telephone service provider conduct and
12 for the terms and conditions of such service other than the entry of or
13 the rates charged by any such provider.
14 S 3. The general business law is amended by adding a new section 398-e
15 to read as follows:
16 S 398-E. DISCLOSURE, NOTIFICATION AND CONSUMER PROTECTION REQUIREMENTS
17 IN WIRELESS TELECOMMUNICATIONS CONSUMER TRANSACTIONS. 1. DEFINITIONS.
18 FOR THE PURPOSES OF THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE
19 FOLLOWING MEANINGS:
20 (A) "AUTHORIZED RETAILER" MEANS A RETAILER AUTHORIZED BY A WIRELESS
21 TELEPHONE SERVICE CARRIER, INCLUDING RESELLERS OF WIRELESS TELEPHONE
22 SERVICE PROVIDED BY A WIRELESS TELEPHONE SERVICE CARRIER, TO BE AN AGENT
23 OF SUCH WIRELESS TELEPHONE CARRIER OR RESELLER.

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

LBD05389-01-3

(B) "DIVISION" MEANS THE CONSUMER PROTECTION DIVISION.

(C) "ENHANCED WIRELESS 911 SERVICE" MEANS THE SERVICE REQUIRED TO BE PROVIDED BY WIRELESS TELEPHONE SERVICE PROVIDERS PURSUANT TO THE FCC ORDER.

(D) "FCC ORDER" MEANS ALL ORDERS ISSUED BY THE FEDERAL COMMUNICATIONS COMMISSION PURSUANT TO THE PROCEEDING ENTITLED "REVISION OF THE COMMISSION'S RULE TO ENSURE COMPATIBILITY WITH ENHANCED 911 EMERGENCY CALLING SYSTEMS (CC DOCKET NO. 94-102; RM-8143) OR ANY SUCCESSOR PROCEEDING, REGARDING THE DELIVERY OF ANI AND ALI AS OF THE DATES AND ACCORDING TO THE OTHER CRITERIA ESTABLISHED THEREIN AND THE RULES ADOPTED BY THE FEDERAL COMMUNICATIONS COMMISSION IN ANY SUCH PROCEEDING, AS SUCH RULES MAY BE AMENDED FROM TIME TO TIME.

(E) "SECRETARY" MEANS THE SECRETARY OF THE CONSUMER PROTECTION DIVISION.

(F) "SERVICE PLAN" MEANS A CONTRACT ENTERED INTO BETWEEN A WIRELESS TELEPHONE SERVICE CARRIER AND A RETAIL CUSTOMER FOR THE PROVISION OF WIRELESS TELEPHONE SERVICE OVER A MUTUALLY AGREED UPON PERIOD OF TIME.

(G) "WIRELESS TELEPHONE SERVICE" MEANS A TWO-WAY REAL TIME VOICE TELECOMMUNICATIONS SERVICE THAT IS INTERCONNECTED TO A PUBLIC SWITCHED TELEPHONE NETWORK AND IS PROVIDED BY A COMMERCIAL MOBILE RADIO SERVICE, AS SUCH TERM IS DEFINED BY 47 C.F.R. SECTION 20.3; PROVIDED, HOWEVER, FOR THE PURPOSES OF THIS SECTION, THE TERM WIRELESS TELEPHONE SERVICE SHALL NOT INCLUDE A PREPAID CALLING SERVICE AS THAT TERM IS DEFINED IN SECTION NINETY-TWO-F OF THE PUBLIC SERVICE LAW.

(H) "WIRELESS TELEPHONE SERVICE CARRIER" MEANS A COMMERCIAL MOBILE RADIO SERVICE PROVIDER OF WIRELESS TELEPHONE SERVICE AS SUCH TERM IS DEFINED IN THE UNITED STATES CODE OF FEDERAL REGULATIONS 47 C.F.R. 20.3 OR A RESELLER OF WIRELESS TELEPHONE SERVICE PROVIDED BY A COMMERCIAL MOBILE RADIO SERVICE AS DEFINED BY SUCH 47 C.F.R 20.3.

2. DISCLOSURE REQUIREMENTS. (A) EVERY WIRELESS TELEPHONE SERVICE PROVIDER AND AUTHORIZED RETAILER SHALL MAKE AVAILABLE CLEAR, CONSPICUOUS, PLAIN LANGUAGE DISCLOSURES TO EACH CUSTOMER OR POTENTIAL CUSTOMER AT RETAIL SALES LOCATIONS OF SUCH WIRELESS TELEPHONE CARRIER OR AUTHORIZED RETAILER AND ON ANY INTERNET WEBSITE WHERE A WIRELESS TELEPHONE SERVICE PLAN CAN BE ENTERED INTO, OF THE FOLLOWING INFORMATION CONCERNING ANY PLAN OR PROPOSED PLAN OFFERED FOR THE PROVISION OF RESIDENTIAL WIRELESS TELEPHONE SERVICE TO SUCH CUSTOMER:

I. THE CALLING AREA FOR THE PLAN;

II. THE MONTHLY ACCESS FEE OR BASE CHARGE;

III. THE NUMBER OF AIRTIME MINUTES INCLUDED IN THE PLAN;

IV. ANY NIGHT AND WEEKEND MINUTES INCLUDED IN THE PLAN OR OTHER DIFFERING CHARGES FOR DIFFERENT TIME PERIODS AND THE TIME PERIODS WHEN NIGHT AND WEEKEND MINUTES OR OTHER CHARGES APPLY;

V. THE CHARGES FOR EXCESS OR ADDITIONAL MINUTES;

VI. WHETHER OR NOT, AND THE EXTENT TO WHICH, PER-MINUTE DOMESTIC OR INTERNATIONAL LONG DISTANCE CHARGES ARE INCLUDED IN OTHER RATES, AND, TO THE EXTENT NOT INCLUDED, THE APPLICABLE PER-MINUTE LONG DISTANCE RATES;

VII. PER-MINUTE ROAMING OR OFF-NETWORK CHARGES;

VIII. THE AMOUNT OF ANY ADDITIONAL TAXES, FEES, OR SURCHARGES THAT WILL BE COLLECTED OR RETAINED BY THE WIRELESS TELEPHONE SERVICE PROVIDER;

IX. IF THE PLAN REQUIRES A FIXED-TERM CONTRACT, THE DURATION OF SUCH CONTRACT;

X. THE AMOUNT OF ANY EARLY TERMINATION FEE AND THE CONDITIONS UNDER WHICH ANY SUCH EARLY TERMINATION FEE WOULD APPLY, INCLUDING THE LENGTH OF ANY TRIAL PERIOD DURING WHICH NO EARLY TERMINATION FEE WOULD APPLY;

1 XI. A STATEMENT NOTIFYING THE CUSTOMER THAT THE SERVICE INCLUDES BASIC
2 WIRELESS 911 SERVICE;

3 XII. THE INFORMATION WHICH IS INCLUDED IN THE EDUCATIONAL PLAN FOR
4 INFORMING THE PUBLIC ABOUT THE ENHANCED WIRELESS 911 SERVICE IN NEW YORK
5 STATE REQUIRED BY SUBDIVISION EIGHT OF SECTION THREE HUNDRED
6 TWENTY-EIGHT OF THE COUNTY LAW AND WHICH IS AN EXPLANATION OF THE
7 ENHANCED WIRELESS 911 SYSTEM AND A PROGRESS REPORT ON THE
8 COUNTY-BY-COUNTY IMPLEMENTATION OF THE STATEWIDE SYSTEM AND THE
9 TOLL-FREE HOTLINE AND WEBSITE INFORMATION TO PERMIT THE CONSUMER TO
10 ACCESS SUCH INFORMATION VIA THE INTERNET IN ACCORDANCE WITH SUBDIVISION
11 EIGHT OF SECTION THREE HUNDRED TWENTY-EIGHT OF THE COUNTY LAW;

12 XIII. A COVERAGE MAP PREPARED BY THE PROVIDER USING GENERALLY ACCEPTED
13 INDUSTRY METHODOLOGIES AND STANDARDS; AND

14 XIV. BASED UPON CUSTOMER SUPPLIED INFORMATION REGARDING ANTICIPATED
15 USAGE PATTERNS, A GOOD FAITH ESTIMATE OF THE MONTHLY FIXED AND USAGE
16 CHARGES AND ADDITIONAL TAXES, FEES, OR SURCHARGES AND OF THE ANTICIPATED
17 TOTAL MONTHLY BILL FOR SUCH CUSTOMER UNDER SUCH PLAN, EXCEPT THAT THIS
18 PROVISION SHALL NOT APPLY TO WIRELESS SERVICE THAT IS PRE-PAID PRIOR TO
19 ACTIVATION OF SERVICE AND THAT IS NOT SUBJECT TO MONTHLY BILLING AFTER
20 ACTIVATION OF SERVICE.

21 (B) AT THE TIME A CUSTOMER INITIATES A WIRELESS SERVICE PLAN, THE
22 CARRIER SHALL, OR IF THE CUSTOMER INITIATES A WIRELESS SERVICE PLAN
23 THROUGH AN AUTHORIZED RETAILER, THE AUTHORIZED RETAILER SHALL, PROVIDE
24 OR CONFIRM IN WRITING ALL OF THE INFORMATION REQUIRED IN PARAGRAPH (A)
25 OF THIS SUBDIVISION AS IT APPLIES TO THE SPECIFIC CONTRACT ENTERED INTO
26 BY THE NEW CUSTOMER PRIOR TO THE FINALIZATION OF THE TRANSACTION,
27 PROVIDED, HOWEVER WHEN AN EXISTING CUSTOMER OF A WIRELESS SERVICE CARRI-
28 ER AGREES TO A CHANGE IN SERVICE WHICH RESULTS IN AN EXTENSION OF A
29 CONTRACT BETWEEN THE CUSTOMER AND SUCH CARRIER, THE CARRIER SHALL
30 PROVIDE OR CONFIRM SUCH CHANGE IN SERVICE.

31 3. BILLING. EXCEPT FOR WIRELESS SERVICE THAT IS PRE-PAID PRIOR TO
32 ACTIVATION OF SERVICE AND THAT IS NOT SUBJECT TO MONTHLY BILLING AFTER
33 ACTIVATION OF SERVICE, WIRELESS TELEPHONE SERVICE CARRIERS' BILLING
34 STATEMENTS SHALL:

35 (A) BE CLEARLY ORGANIZED AND DESCRIBE IN PLAIN LANGUAGE THE PRODUCTS
36 AND SERVICES FOR WHICH CHARGES ARE IMPOSED;

37 (B) DISTINGUISH CHARGES THAT ARE DIRECTLY RELATED TO SERVICE AND
38 FEATURES RETAINED BY THE CARRIER FROM TAXES, FEES AND OTHER CHARGES THAT
39 ARE COLLECTED AND REMITTED BY THE CARRIER TO ANY FEDERAL, STATE OR LOCAL
40 GOVERNMENT ENTITY;

41 (C) NOT INCLUDE ANY CHARGES OR FEES FOR PRODUCTS AND SERVICES UNLESS
42 AUTHORIZED BY THE CUSTOMER;

43 (D) ITEMIZE ROAMING CHARGES WITHIN SIXTY DAYS OF THE CALL BEING PLACED
44 AND IDENTIFY THE DATE AND ORIGINATING LOCATION OF THE CALL;

45 (E) INCLUDE THE TOLL-FREE NUMBER MAINTAINED BY THE DIVISION WHICH
46 RECEIVES COMPLAINTS FROM WIRELESS TELEPHONE SERVICE CUSTOMERS RELATING
47 TO THEIR WIRELESS SERVICE; AND

48 (F) FOR THE PURPOSES OF THIS SUBDIVISION, WIRELESS TELEPHONE SERVICE
49 CARRIERS MAY NOT LABEL COST RECOVERY FEES OR CHARGES AS TAXES.

50 4. TRIAL PERIOD. THE TERMS ON WHICH WIRELESS TELEPHONE SERVICES ARE
51 PROVIDED TO ANY CUSTOMER SHALL INCLUDE A TRIAL PERIOD WHICH SHALL END NO
52 EARLIER THAN FIFTEEN DAYS AFTER THE FIRST BILL IS RENDERED TO SUCH
53 CUSTOMER FOLLOWING SERVICE ACTIVATION AND DURING WHICH PERIOD SUCH
54 CUSTOMER MAY, AFTER PAYMENT FOR SERVICES USED, TERMINATE SUCH SERVICE
55 WITHOUT INCURRING ANY TERMINATION FEES OR CHARGES OR ANY OTHER PENALTY
56 OF ANY KIND, AND MAY, UPON RETURN OF ANY HANDSET BOUGHT OR LEASED IN

1 CONNECTION WITH SUCH SERVICE, RECEIVE A PRO RATED REFUND OF ANY AMOUNTS
2 PAID FOR SUCH A HANDSET.

3 5. CONSUMER COMPLAINTS; IMPLEMENTING REGULATIONS; PENALTIES FOR
4 VIOLATIONS. (A) WIRELESS TELEPHONE SERVICE CUSTOMERS MAY FILE COMPLAINTS
5 RELATED TO THEIR WIRELESS SERVICE WITH THE SECRETARY OF THE DIVISION,
6 WHO IS AUTHORIZED TO RESOLVE SUCH COMPLAINTS. THE SECRETARY OR HIS OR
7 HER DESIGNEE IS AUTHORIZED TO CONDUCT SUCH INVESTIGATIONS AS MAY BE
8 NECESSARY TO RESOLVE SUCH COMPLAINTS, TO ADMINISTER OATHS AND TAKE AFFI-
9 DAVITS IN RELATION TO ANY MATTER OR PROCEEDING IN THE EXERCISE OF POWERS
10 AND DUTIES UNDER THIS SECTION, AND TO SUBPOENA AND REQUIRE THE ATTEND-
11 ANCE OF WITNESSES AND THE PRODUCTION OF BOOKS, PAPERS, CONTRACTS AND ANY
12 OTHER DOCUMENTS PERTAINING TO ANY INVESTIGATION CONDUCTED PURSUANT TO
13 THIS SECTION. IF ANY PERSON REFUSES TO COMPLY WITH A SUBPOENA ISSUED
14 UNDER THIS PARAGRAPH, THE SECRETARY MAY PETITION A COURT OF COMPETENT
15 JURISDICTION TO ENFORCE THE SUBPOENA AND FOR SUCH SANCTIONS AS THE COURT
16 MAY ORDER.

17 (B) THE SECRETARY SHALL PROMULGATE ANY RULES AND REGULATIONS NECESSARY
18 TO IMPLEMENT THIS SECTION AND IS FURTHER AUTHORIZED TO ISSUE ANY ORDERS
19 NECESSARY TO ENFORCE THIS SECTION AND SUCH RULES AND REGULATIONS. EXCEPT
20 AS SHALL BE PRE-EMPTED BY FEDERAL LAW REGULATING WIRELESS TELEPHONE
21 SERVICE PROVIDERS, SUCH RULES AND REGULATIONS SHALL BE CONSISTENT WITH
22 FEDERAL LAW REGULATING WIRELESS TELEPHONE SERVICE OR PROVIDERS OF WIRE-
23 LESS TELEPHONE SERVICE.

24 (C) THE SECRETARY MAY ASSESS A CIVIL PENALTY NOT TO EXCEED TWO THOU-
25 SAND DOLLARS PER VIOLATION AGAINST ANY WIRELESS TELEPHONE SERVICE
26 PROVIDER OR AUTHORIZED RETAILER THAT NEGLECTS OR KNOWINGLY FAILS TO
27 COMPLY WITH ANY REQUIREMENT OF THIS SECTION, OF REGULATIONS PROMULGATED
28 UNDER THIS SECTION, OR OF ANY ORDER OF THE SECRETARY IMPLEMENTING OR
29 ENFORCING THIS SECTION OR REGULATIONS PROMULGATED THEREUNDER. ALL MONEYS
30 RECOVERED FROM ANY SUCH PENALTY SHALL BE PAID INTO THE STATE TREASURY TO
31 THE CREDIT OF THE GENERAL FUND.

32 6. REPORTING. AT LEAST ANNUALLY THE DIVISION SHALL REPORT CUSTOMER
33 COMPLAINTS BY CARRIER REGARDING WIRELESS TELEPHONE SERVICE IN THE STATE.
34 SUCH REPORT SHALL INCLUDE INFORMATION ON CARRIER CUSTOMER COMPLAINTS
35 FILED WITH AND RESOLVED BY THE SECRETARY. THE REPORT MAY INCLUDE AN
36 ANALYSIS OF SUCH COMPLAINTS AND RECOMMENDATIONS, IF ANY, TO ADDRESS ANY
37 ISSUES THAT ARE IDENTIFIED BY THE DIVISION.

38 7. APPLICABILITY. FOR PURPOSES OF THIS SECTION, THE WIRELESS TELEPHONE
39 SERVICE TO WHICH THE PROVISIONS OF THIS SECTION APPLY, IS BEING PROVIDED
40 OR BEING PROPOSED TO BE PROVIDED TO A RESIDENTIAL CUSTOMER WHERE THE
41 PLACE OF PRIMARY USE, AS THAT TERM IS USED IN SECTION ONE HUNDRED EIGHT-
42 Y-SIX-E OF THE TAX LAW, IS LOCATED IN THIS STATE.

43 8. SEVERABILITY. THE PROVISIONS OF THIS SECTION ARE SEVERABLE, AND IF
44 ANY PART OR PROVISION HEREOF, OR THE APPLICATION THEREOF TO ANY PERSON
45 OR CIRCUMSTANCE, SHALL BE ADJUDGED BY ANY COURT OF COMPETENT JURISDIC-
46 TION TO BE INVALID OR UNENFORCEABLE, SUCH JUDGMENT SHALL NOT AFFECT,
47 IMPAIR OR INVALIDATE THE REMAINING PROVISIONS OF THIS SECTION OR THE
48 APPLICATION OF ANY SUCH REMAINING PROVISIONS TO ANY PERSON OR CIRCUM-
49 STANCE, BUT SHALL BE CONFINED IN ITS OPERATION TO THE PROVISION, PERSON
50 OR CIRCUMSTANCE DIRECTLY INVOLVED IN THE CONTROVERSY IN WHICH SUCH JUDG-
51 MENT SHALL HAVE BEEN RENDERED.

52 S 4. Paragraph a of subdivision 6 of section 5 of the public service
53 law, as added by chapter 684 of the laws of 1997, is amended to read as
54 follows:

55 a. Application of the provisions of this chapter to cellular telephone
56 services is suspended unless the commission, no sooner than one year

1 after the effective date of this subdivision, makes a determination,
2 after notice and hearing, that suspension of the application of the
3 provisions of this chapter shall cease to the extent found necessary to
4 protect the public interest; PROVIDED, HOWEVER, THAT NOTHING IN THIS
5 PARAGRAPH SHALL SUSPEND OR LIMIT THE AUTHORITY PROVIDED TO THE CONSUMER
6 PROTECTION DIVISION IN SECTION NINETY-FOUR-A OF THE EXECUTIVE LAW TO
7 IMPLEMENT THE PROVISIONS OF LAW CONTAINED THEREIN OR TO PROMULGATE AND
8 ENFORCE REGULATIONS TO AFFORD CONSUMER PROTECTIONS TO RESIDENTIAL
9 CUSTOMERS OF CELLULAR OR WIRELESS TELEPHONE SERVICE PROVIDERS.

10 S 5. This act shall take effect on the one hundred eightieth day after
11 it shall have become a law; provided that the secretary of the consumer
12 protection division is authorized, on or before such date, to promulgate
13 any and all rules and regulations and to take any other measures neces-
14 sary to implement this act on such effective date.