

7288

I N S E N A T E

May 9, 2014

Introduced by Sen. ESPAILLAT -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the public service law and the general business law, in relation to consumer protections against cramming

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

1 Section 1. The opening paragraph of section 92-d of the public service
2 law, as separately amended by chapters 546 and 547 of the laws of 2000,
3 is amended to read as follows:
4 Each local exchange telephone company shall inform its customers of
5 the provisions of SECTION NINETY-TWO-H OF THIS ARTICLE, sections three
6 hundred ninety-nine-p [and], three hundred ninety-nine-z and three
7 hundred ninety-nine-pp of the general business law, and article ten-B of
8 the personal property law, as such provisions relate to the rights of
9 consumers with respect to CRAMMING, telemarketers, sellers, the no tele-
10 marketing sales call statewide registry and automatic dialing-announcing
11 devices, by means of:
12 S 2. The public service law is amended by adding a new section 92-h to
13 read as follows:
14 S 92-H. CRAMMING PROHIBITED. 1. FOR THE PURPOSES OF THIS SECTION,
15 "CRAMMING" MEANS THE INCLUSION AND IMPOSITION OF CHARGES ON THE INVOICE
16 OR BILL OF A CUSTOMER FROM A TELEPHONE CORPORATION AT THE REQUEST OF A
17 THIRD PARTY OR BILLING AGGREGATOR THAT (A) WERE NOT AUTHORIZED BY THE
18 CUSTOMER, OR (B) IF AUTHORIZED, WERE OBTAINED THROUGH MISLEADING OR
19 DECEPTIVE MEANS.
20 2. A CUSTOMER SHALL NOT BE LIABLE FOR CHARGES APPEARING ON THE INVOICE
21 OR BILL OF A TELEPHONE CORPORATION THAT ARE THE RESULT OF CRAMMING. NO
22 CHARGES FOR ANY PRODUCTS OR SERVICES, OTHER THAN THOSE PROVIDED BY THE
23 TELEPHONE CORPORATION, ITS AFFILIATES, A THIRD PARTY VIDEO PROVIDER WITH
24 WHOM A TELEPHONE CORPORATION OR ITS AFFILIATE JOINTLY MARKET SERVICES,
25 OR OTHERWISE PERMITTED BY LAW, SHALL BE INCLUDED ON ANY BILL OR INVOICE
26 OF A CUSTOMER, UNLESS THE THIRD PARTY REQUESTING THE PAYMENT OF SUCH
27 CHARGES RETAINS AND PROVIDES UPON REQUEST VALID PROOF THAT:

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

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1 (A) THE CUSTOMER WAS PROVIDED WITH CLEAR AND CONSPICUOUS DISCLOSURE OF
2 ALL MATERIAL TERMS AND CONDITIONS OF THE PRODUCT OR SERVICE BEING
3 OFFERED, INCLUDING BUT NOT LIMITED TO ALL INITIAL AND RECURRING CHARGES
4 AND THE FACT THAT SUCH CHARGES SHALL APPEAR ON THE CUSTOMER'S TELEPHONE
5 BILL;

6 (B) AFTER RECEIVING CLEAR AND CONSPICUOUS DISCLOSURE AS PROVIDED IN
7 PARAGRAPH (A) OF THIS SUBDIVISION, THE CUSTOMER EXPLICITLY CONSENTED TO
8 THE NATURE AND AMOUNT OF SUCH CHARGES; AND

9 (C) THE THIRD PARTY OFFERING THE PRODUCT OR SERVICE OR AN AGENT OF
10 SUCH THIRD PARTY PROVIDED THE CUSTOMER WITH A TOLL-FREE TELEPHONE NUMBER
11 THE CUSTOMER MAY CALL AND AN ADDRESS TO WHICH THE CUSTOMER MAY WRITE TO
12 RESOLVE ANY BILLING DISPUTE.

13 3. ANY CHARGES FOR THIRD PARTY PRODUCTS OR SERVICES THAT ARE INCLUDED
14 ON A BILL OR INVOICE BY A TELEPHONE CORPORATION WITHOUT THE CONSENT OF
15 THE CUSTOMER HAVING BEEN OBTAINED AS PROVIDED IN SUBDIVISION TWO OF THIS
16 SECTION SHALL BE VOID AND UNENFORCEABLE, AND SHALL BE REMOVED FROM THE
17 BILL OR INVOICE UPON NOTICE FROM SUCH CUSTOMER.

18 4. THE COMMISSION SHALL SUPERVISE AND ENSURE COMPLIANCE WITH THE
19 PROVISIONS OF THIS SECTION, AND MAY PROMULGATE ANY RULES AND REGULATIONS
20 IT DEEMS NECESSARY OR DESIRABLE TO ENSURE SUCH COMPLIANCE, INCLUDING BUT
21 NOT LIMITED TO ANY ADDITIONAL REQUIREMENTS FOR VERIFICATION OF CUSTOMER
22 ORDERS AND ANY ADDITIONAL STANDARDS THAT THIRD PARTIES OR AGENTS MUST
23 MEET TO BE AUTHORIZED TO RECEIVE PAYMENT THROUGH THE INCLUSION OF CHARG-
24 ES ON BILLS OR INVOICES OF TELEPHONE CORPORATIONS. ANY FAILURE BY A
25 TELEPHONE CORPORATION TO COMPLY WITH THE PROVISIONS OF THIS SECTION MAY
26 BE REDRESSED AS PROVIDED IN SUBDIVISION THREE OF SECTION NINETY-SIX OF
27 THIS ARTICLE OR AS OTHERWISE AUTHORIZED BY LAW.

28 S 3. The general business law is amended by adding a new section 390-
29 bb to read as follows:

30 S 390-BB. CRAMMING PROHIBITED. 1. FOR THE PURPOSES OF THIS SECTION,
31 "CRAMMING" MEANS THE INCLUSION AND IMPOSITION OF CHARGES ON THE INVOICE
32 OR BILL FOR TELEPHONE SERVICE TO A CUSTOMER FROM A CABLE TELEVISION
33 COMPANY, AS DEFINED IN SECTION TWO HUNDRED TWELVE OF THE PUBLIC SERVICE
34 LAW, THAT PROVIDES TELEPHONE SERVICE TO CUSTOMERS IN NEW YORK, AT THE
35 REQUEST OF A THIRD PARTY OR BILLING AGGREGATOR THAT (A) WERE NOT AUTHOR-
36 IZED BY THE CUSTOMER, OR (B) IF AUTHORIZED, WERE OBTAINED THROUGH
37 MISLEADING OR DECEPTIVE MEANS.

38 2. A CUSTOMER SHALL NOT BE LIABLE FOR CHARGES APPEARING ON THE INVOICE
39 OR BILL OF A CABLE TELEVISION COMPANY FOR TELEPHONE SERVICE THAT ARE THE
40 RESULT OF CRAMMING. NO CHARGES FOR ANY PRODUCTS OR SERVICES, OTHER THAN
41 THOSE PROVIDED BY THE CABLE TELEVISION COMPANY, ITS AFFILIATES, A THIRD
42 PARTY VIDEO PROVIDER WITH WHOM A CABLE TELEVISION COMPANY OR ITS AFFIL-
43 IATE JOINTLY MARKET SERVICES, OR OTHERWISE PERMITTED BY LAW, SHALL BE
44 INCLUDED ON ANY BILL OR INVOICE FOR TELEPHONE SERVICE, UNLESS THE THIRD
45 PARTY REQUESTING THE PAYMENT OF SUCH CHARGES RETAINS AND PROVIDES UPON
46 REQUEST VALID PROOF THAT:

47 (A) THE CUSTOMER WAS PROVIDED WITH CLEAR AND CONSPICUOUS DISCLOSURE OF
48 ALL MATERIAL TERMS AND CONDITIONS OF THE PRODUCT OR SERVICE BEING
49 OFFERED, INCLUDING BUT NOT LIMITED TO ALL INITIAL AND RECURRING CHARGES
50 AND THE FACT THAT SUCH CHARGES SHALL APPEAR ON THE CUSTOMER'S FOR TELE-
51 PHONE SERVICE BILL;

52 (B) AFTER RECEIVING CLEAR AND CONSPICUOUS DISCLOSURE AS PROVIDED IN
53 PARAGRAPH (A) OF THIS SUBDIVISION, THE CUSTOMER EXPLICITLY CONSENTED TO
54 THE NATURE AND AMOUNT OF SUCH CHARGES; AND

55 (C) THE THIRD PARTY OFFERING THE PRODUCT OR SERVICE OR AN AGENT OF
56 SUCH THIRD PARTY PROVIDED THE CUSTOMER WITH A TOLL-FREE TELEPHONE NUMBER

1 THE CUSTOMER MAY CALL AND AN ADDRESS TO WHICH THE CUSTOMER MAY WRITE TO
2 RESOLVE ANY BILLING DISPUTE.

3 3. ANY CHARGES FOR THIRD PARTY PRODUCTS OR SERVICES THAT ARE INCLUDED
4 ON A BILL OR INVOICE FOR TELEPHONE SERVICE BY A CABLE TELEVISION COMPANY
5 WITHOUT THE CONSENT OF THE CUSTOMER HAVING BEEN OBTAINED AS PROVIDED IN
6 SUBDIVISION TWO OF THIS SECTION SHALL BE VOID AND UNENFORCEABLE, AND
7 SHALL BE REMOVED FROM THE BILL OR INVOICE UPON NOTICE FROM SUCH CUSTOM-
8 ER.

9 S 4. Subdivision 1 of section 227-a of the public service law, as
10 added by chapter 83 of the laws of 1995, is amended to read as follows:

11 1. Every cable television company, and all officers, agents and
12 employees of any cable television company shall obey, observe and comply
13 with every order, direction or requirement made by the commission, under
14 authority of this article, so long as the same shall be and remain in
15 force. Except as provided in subdivision two of this section, any cable
16 television company which shall violate any provision of this article OR
17 SECTION THREE HUNDRED NINETY-BB OF THE GENERAL BUSINESS LAW, or which
18 fails, omits or neglects to obey, observe or comply with any order or
19 any direction or requirement of the commission, shall forfeit to the
20 people of the state of New York a sum to be set by the commission not to
21 exceed one thousand dollars for each and every offense; every violation
22 of any such order or direction or requirement, or of this article OR
23 SECTION THREE HUNDRED NINETY-BB OF THE GENERAL BUSINESS LAW, shall be a
24 separate and distinct offense, and, in case of a continuing violation,
25 every day's continuance thereof shall be a separate and distinct
26 offense.

27 S 5. This act shall take effect on the one hundred eightieth day after
28 it shall have become a law.