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

5435

2015-2016 Regular Sessions

I N S E N A T E

May 14, 2015

Introduced by Sen. FUNKE -- 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 establishing a cap that limits the amount a consumer may be charged for leasing a modem from a cable or internet provider

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

Section 1. The general business law is amended by adding a new article 28-F to read as follows:

ARTICLE 28-F

LEASING OF MODEMS FROM CABLE OR INTERNET PROVIDERS

SECTION 495-A. PURPOSE.
495-B. DEFINITIONS.
495-C. PROHIBITED ACTS.
495-D. ENFORCEMENT BY THE ATTORNEY GENERAL.
495-E. CIVIL PENALTY.

S 495-A. PURPOSE. THE PURPOSE OF THIS ARTICLE IS TO LIMIT THE AMOUNT A CABLE OR INTERNET PROVIDER MAY CHARGE CONSUMERS FOR THE LEASE OF A MODEM.

S 495-B. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE: 1. "MODEM" MEANS AN ELECTRONIC DEVICE THAT MAKES POSSIBLE THE TRANSMISSION OF DATA TO OR FROM A COMPUTER VIA TELEPHONE OR OTHER COMMUNICATION LINES.

2. "LEASE" MEANS A CONTRACT OR INSTRUMENT CONVEYING PROPERTY TO ANOTHER FOR A SPECIFIED PERIOD OR FOR A PERIOD DETERMINABLE AT THE WILL OF EITHER LESSOR OR LESSEE IN CONSIDERATION OF COMPENSATION.

3. "INTERNET OR CABLE PROVIDER" MEANS AN ORGANIZATION THAT PROVIDES SERVICES FOR ACCESSING, USING, OR PARTICIPATING ON THE INTERNET OR CABLE.

S 495-C. PROHIBITED ACTS. 1. NO CABLE OR INTERNET PROVIDER SHALL CHARGE ANY CONSUMER AN AMOUNT WHICH IS MORE THAN SIXTEEN PERCENT OVER THE ACTUAL COST OF THE MODEM DEVICE PAID BY THE PROVIDER.

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

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2. A CABLE OR INTERNET PROVIDER SHALL DISCLOSE IN AN INITIAL BILLING CORRESPONDENCE: (A) THE AMOUNT THE MODEM COSTS THE PROVIDER, (B) HOW MANY PAYMENTS THE CONSUMER MUST MAKE ON THE MODEM IN TOTAL, AND (C) INFORMATION REGARDING HOW OR WHERE A CONSUMER MAY PURCHASE A MODEM AT RETAIL.

3. NO CABLE OR INTERNET PROVIDER SHALL CHARGE ANY CONSUMER A MONTHLY FEE FOR THE LEASE OR USE OF A NEW MODEM BEYOND TWELVE MONTHS AFTER THE MODEM HAS BEEN PROVIDED BY SUCH CABLE OR INTERNET PROVIDER. IF AN INTERNET OR CABLE PROVIDER REPLACES THE CUSTOMER'S EXISTING MODEM WITH A NEW MODEM DURING OR AFTER SUCH TWELVE MONTH PERIOD AN ADDITIONAL TWELVE MONTH PERIOD SHALL COMMENCE.

4. NO CABLE OR INTERNET PROVIDER SHALL CHARGE AN ADDITIONAL OR MONTHLY FEE FOR THE MAINTENANCE OF A PROVIDED MODEM.

S 495-D. ENFORCEMENT BY ATTORNEY GENERAL. WHENEVER THERE SHALL BE A VIOLATION OF THIS ARTICLE, 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 ARTICLE, AN INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE, ENJOINING AND RESTRAINING ANY FURTHER VIOLATION, 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.

S 495-E. CIVIL PENALTY. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS ARTICLE HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN FIVE HUNDRED DOLLARS FOR EACH VIOLATION. 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.

S 2. This act shall take effect immediately.