STATE OF NEW YORK

2962

2019-2020 Regular Sessions

IN SENATE

January 31, 2019

Introduced by Sen. KAPLAN -- read twice and ordered printed, and when printed to be committed to the Committee on Finance

AN ACT to amend the executive law and the general business law, in relation to creating a consumer bill of rights regarding railroad passengers

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Subparagraphs 14 and 15 of paragraph (a) of subdivision 3 of section 94-a of the executive law, as added by section 21 of part A of chapter 62 of the laws of 2011, are amended and a new subparagraph 16 is added to read as follows:

(14) cooperate with and assist consumers in class actions in proper cases; [~~and~~]

(15) create an internet website or webpage pursuant to section three hundred ninety-c of the general business law[~~.~~]**; and**

(16) in conjunction with the office of the railroad consumer advocate, initiate, investigate, attempt to resolve and, if necessary, refer to the attorney general any matters or complaints received pursuant to article fourteen-A of the general business law as provided in such article.

§ 2. The general business law is amended by adding a new article 14-A to read as follows:

ARTICLE 14-A

RAILROAD PASSENGER RIGHTS

Section 251-n. Definitions.

251-o. Consumer bill of rights regarding railroad passengers.

251-p. Office of the railroad consumer advocate.

251-q. Limitations on applicability of article.

251-r. Severability.

§ 251-n. Definitions. For the purposes of this article:

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

LBD08863-01-9

1. "Carrier" means any partnership, corporation or other business entity regulated by the metropolitan transportation authority that conducts scheduled passenger rail transportation.

2. "Train" means any contrivance for passenger travel by rail.

3. "Railroad station" means any facility used by trains for receiving or discharging passengers.

4. "Division" means the consumer protection division as established in section ninety-four-a of the executive law.

§ 251-o. Consumer bill of rights regarding railroad passengers. 1. Whenever railroad passengers have boarded a train and are delayed more than three hours on the train prior to departure, the carrier shall ensure that passengers are provided as needed with:

(a) electric generation service to provide temporary power for fresh air and lights;

(b) waste removal service in order to service the holding tanks for on-board restrooms; and

(c) adequate food and drinking water and other refreshments.

2. All carriers shall provide clear and conspicuous notice on consumer complaint contact information by providing forms and/or causing signs to be posted at all service desks and other appropriate areas as necessary in their respective areas in a railroad station which shall contain information in such form and manner as the railroad consumer advocate shall prescribe, including, but not limited to, the following:

(a) a telephone number and mailing address of the office of the railroad consumer advocate and the federal railroad administration;

(b) explanations of the rights of railroad passengers; and

(c) basic information on the office of the railroad consumer advocate.

§ 251-p. Office of the railroad consumer advocate. 1. There shall be in the division an office to be known as the office of railroad consumer advocate. The secretary of state may appoint such staff for the office as necessary and prescribe their duties and fix their compensation within the appropriation provided by law.

2. (a) The office of the railroad consumer advocate shall have the following functions, powers, and duties:

(i) to assist customers in resolving problems with railroad carriers;

(ii) to identify areas in which customers have problems in dealings with carriers;

(iii) to propose solutions, including administrative changes to practices and procedures of the carrier or railroad station;

(iv) to preserve and promote the rights of the customer;

(v) to promote open and direct communications; and

(vi) in conjunction with the division, to initiate, investigate, attempt to resolve, and if necessary refer to the attorney general any matters or complaints received pursuant to this article.

(b) Any complaints regarding violations of section two hundred fifty-one-o of this article shall be filed with the office of the railroad consumer advocate who may, on behalf of the division and in conjunction with other staff of the division, conduct an investigation and may request in writing the production of documents and records as part of its investigation. If the person upon whom such request was made fails to produce the documents or records within thirty days after the date of the request, the division may issue and serve subpoenas to compel the production of such documents and records. If any person shall refuse to comply with a subpoena issued under this section, the division may petition a court of competent jurisdiction to enforce the subpoena and such sanctions as the court may direct. After completion of an investi-

gation, the division shall either: (i) dismiss the complaint following a determination that no violation occurred; or (ii) determine that a violation has likely occurred and, if so, shall attempt to resolve the matter by settlement, which may include a monetary settlement to cover the ordinary costs and expenses incurred by the division. If no settlement is achieved, then the matter shall be referred to the attorney general for further proceedings, including, if necessary, legal action.

(c) Any records, documents, papers, maps, books, tapes, photographs, files, sound recordings or other business material, regardless of form or characteristics, obtained by the division pursuant to subpoena shall be confidential.

(d) The attorney general shall be authorized to recover a civil penalty not to exceed one thousand dollars per violation; provided, however, that for a violation of subdivision one of section two hundred fifty-one-o of this article the civil penalty shall not exceed one thousand dollars per passenger. Any such penalty shall take into consideration any compensation paid or offered by the carrier to passengers. The civil penalty imposed pursuant to this paragraph may be sought in a civil action brought by the attorney general in any court of competent jurisdiction. If the attorney general prevails in a civil action, the court may award the attorney general reasonable attorneys' fees, and an amount equal to the ordinary costs and expenses incurred by the division, as it deems appropriate. If the attorney general reaches a settlement, this settlement shall include an amount equal to the ordinary costs and expenses incurred by the division. Upon the receipt of any award or settlement to the attorney general of the ordinary costs and expenses incurred by the division, the attorney general shall deliver such amount immediately to the division. "Ordinary costs and expenses" shall mean costs and expenses incurred by the division as a consequence of investigation of violations of this article.

(e) The annual report prepared by the secretary of state pursuant to subdivision five of section ninety-four-a of the executive law shall include a summary of the activities of the office of the railroad consumer advocate. Such report shall contain full and substantive analysis, in addition to statistical information, and shall:

(i) identify the initiatives the office of railroad consumer advocate has taken to improve railroad services;

(ii) contain a summary of the most serious problems encountered by customers, including a description of the nature of such problems;

(iii) contain an inventory of the items described in subparagraphs (i) and (ii) of this paragraph for which action has been taken and the status and results of such actions, and an inventory of items for which no action has been taken, and the reasons therefor;

(iv) contain recommendations for such legislative or administrative proposals as may be appropriate to resolve problems encountered by customers; and

(v) include such other information as the office of the railroad consumer advocate and the secretary of state may deem advisable.

§ 251-q. Limitations on applicability of article. Nothing in this article shall be construed as requiring any carrier, railroad station or other entity to take any action in contravention of any written directive of the federal railroad administration or other federal agency having jurisdiction over such entity.

§ 251-r. Severability. If any clause, sentence, paragraph, section or part of this article be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the

remainder hereof but shall be applied in its operation to the clause, sentence, paragraph, section or part hereof directly involved in the controversy in which such judgment shall have been rendered.

§ 3. This act shall take effect on the first of January next succeeding the date on which it shall have become a law. Effective immediately, the addition, amendment and/or repeal of any rule or regulation necessary for the implementation of this act on its effective date are authorized and directed to be made and completed on or before such effective date.