

# 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:

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

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

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

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

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

### ARTICLE 14-A

#### RAILROAD PASSENGER RIGHTS

##### Section 251-n. Definitions.

19 251-o. Consumer bill of rights regarding railroad passengers.

20 251-p. Office of the railroad consumer advocate.

21 251-q. Limitations on applicability of article.

22 251-r. Severability.

23 § 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.

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

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

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

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

9 § 251-o. Consumer bill of rights regarding railroad passengers. 1.  
10 Whenever railroad passengers have boarded a train and are delayed more  
11 than three hours on the train prior to departure, the carrier shall  
12 ensure that passengers are provided as needed with:

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

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

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

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

24 (a) a telephone number and mailing address of the office of the rail-  
25 road consumer advocate and the federal railroad administration;

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

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

28 § 251-p. Office of the railroad consumer advocate. 1. There shall be  
29 in the division an office to be known as the office of railroad consumer  
30 advocate. The secretary of state may appoint such staff for the office  
31 as necessary and prescribe their duties and fix their compensation with-  
32 in the appropriation provided by law.

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

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

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

38 (iii) to propose solutions, including administrative changes to prac-  
39 tices and procedures of the carrier or railroad station;

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

41 (v) to promote open and direct communications; and

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

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

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

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

12 (d) The attorney general shall be authorized to recover a civil penal-  
13 ty not to exceed one thousand dollars per violation; provided, however,  
14 that for a violation of subdivision one of section two hundred fifty-  
15 one-o of this article the civil penalty shall not exceed one thousand  
16 dollars per passenger. Any such penalty shall take into consideration  
17 any compensation paid or offered by the carrier to passengers. The civil  
18 penalty imposed pursuant to this paragraph may be sought in a civil  
19 action brought by the attorney general in any court of competent juris-  
20 isdiction. If the attorney general prevails in a civil action, the court  
21 may award the attorney general reasonable attorneys' fees, and an amount  
22 equal to the ordinary costs and expenses incurred by the division, as it  
23 deems appropriate. If the attorney general reaches a settlement, this  
24 settlement shall include an amount equal to the ordinary costs and  
25 expenses incurred by the division. Upon the receipt of any award or  
26 settlement to the attorney general of the ordinary costs and expenses  
27 incurred by the division, the attorney general shall deliver such amount  
28 immediately to the division. "Ordinary costs and expenses" shall mean  
29 costs and expenses incurred by the division as a consequence of investi-  
30 gation of violations of this article.

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

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

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

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

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

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

49 § 251-q. Limitations on applicability of article. Nothing in this  
50 article shall be construed as requiring any carrier, railroad station or  
51 other entity to take any action in contravention of any written direc-  
52 tive of the federal railroad administration or other federal agency  
53 having jurisdiction over such entity.

54 § 251-r. Severability. If any clause, sentence, paragraph, section or  
55 part of this article be adjudged by any court of competent jurisdiction  
56 to be invalid, such judgment shall not affect, impair or invalidate the

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

4 § 3. This act shall take effect on the first of January next succeed-  
5 ing the date on which it shall have become a law. Effective immediate-  
6 ly, the addition, amendment and/or repeal of any rule or regulation  
7 necessary for the implementation of this act on its effective date are  
8 authorized and directed to be made and completed on or before such  
9 effective date.