

## NY CLS Gen Bus § 349-b

Current through 2024 released Chapters 1-59, 61-117

*New York Consolidated Laws Service > General Business Law (§§ 1 — 1601) > Article 22-A Consumer Protection from Deceptive Acts and Practices (§§ 349 — 350-f-1)*

### § 349-b. Residential telephone equipment advertising, sale and warranty requirements

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1. For the purpose of this section:

- (a) “Residential telephone equipment” shall mean customer premises equipment such as telephone handsets, designed for use on the residential premises of a person, other than a carrier, to originate, route or terminate telecommunications, and does not include equipment used to multiplex, maintain or terminate access lines;
- (b) “New residential telephone equipment” shall mean residential telephone equipment that is neither rebuilt nor used;
- (c) “Rebuilt residential telephone equipment” shall mean residential telephone equipment which has been modified, rebuilt, improved or reconditioned, either with new components or with components which were previously used in other equipment;
- (d) “Used residential telephone equipment” shall mean residential telephone equipment previously used by another person and in proper working order but not modified, rebuilt, improved or reconditioned;
- (e) “Consumer” or “purchaser” shall mean a retail customer who purchases such equipment for personal use in a place of residence; and
- (f) “Seller” shall mean any retailer, distributor or manufacturer who sells or offers for sale new residential telephone equipment, rebuilt residential telephone equipment or used residential telephone equipment directly to a consumer or purchaser or places in the chain of distribution such equipment to be ultimately sold to a consumer or purchaser.

2. Any manufacturer of new residential telephone equipment, rebuilt residential telephone equipment or used residential telephone equipment shall specify on or in the package in which such equipment is sold, and any seller shall specify in all advertisements and catalogues excepting television, radio and cable television advertising whether such equipment employs pulse, tone, pulse-or-tone or another signalling method and a statement as to whether such equipment is capable of accessing tone-actuated computer systems.

3. Notwithstanding any other provisions of this chapter, the provisions of subdivision two of this section shall not apply to any of the following:

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- (a) Advertising, point-of-sale advertising, catalogues for and sales of such equipment not intended for direct connection to a telephone corporation's lines or a central switching office;
  - (b) Advertising for such equipment located on a customer's premises offered for sale in place; and
  - (c) Catalogues and equipment packages for such equipment which are in print or physical production on or before the effective date of this section.
- 4. Any manufacturer of such equipment shall specify on the package and any retailer shall specify in conspicuous notice at the point-of-sale, excepting sale in place:
  - (a) whether such equipment is rebuilt or used;
  - (b) whether such equipment requires a source of power or connection other than ordinary connections to the inside premises' telephone wiring of the customer.
- 5. Any manufacturer of such equipment, except equipment sold in place, shall specify on the package the period of warranty of such equipment. Information regarding obtaining a copy of the warranty showing the name and address of the manufacturer or other person to whom service questions or warranty claims should be addressed during the warranty duration shall be specified on or in the package.
- 6. Any seller of such equipment, except equipment sold in place, shall provide written warranties of not less than one year for new residential telephone equipment, not less than ninety days for rebuilt residential telephone equipment and not less than sixty days for used residential telephone equipment. All warranties shall guarantee that the equipment so warranted is fit for the use for which it is intended during the time period specified in this subdivision. The primary obligation to provide the written warranty required by this section shall be the obligation of the manufacturer or distributor of the residential telephone equipment. A retailer shall be deemed to have complied with this section if the residential telephone equipment it sells is warranted in compliance with the requirements of this section by the manufacturer or distributor. If the equipment does not conform to the written warranty and the consumer or purchaser reports, during the effective period of the warranty, such nonconformity, defect or condition to the manufacturer, the distributor, or the retailer from whom the consumer or purchaser purchased the equipment, such equipment shall be replaced or repaired, free of charge by any such seller to whom the consumer or purchaser reports the nonconformity, defect or condition.
- 7. It shall be an affirmative defense to any claim under this section that the nonconformity, defect or condition is the result of abuse, damage while in transit to a service location, neglect or unauthorized modifications or alterations to such telephone equipment.
- 8. Nothing in this section shall in any way limit the rights or remedies which are otherwise available to a consumer or purchaser under any other law.
- 9. Nothing in this section shall in any way limit the rights or remedies which are otherwise available to a seller against any other seller. Any seller who repairs or replaces residential telephone equipment at the request of a consumer or purchaser shall have a right of subrogation to assert any claim the consumer or purchaser would have had against any prior seller in the chain of distribution.

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**10.** Any person who has been injured by reason of any violation of this section may bring an action to enjoin such unlawful act or practice and to recover actual damages or fifty dollars, whichever is greater. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the actual damages up to one thousand dollars if the court finds the defendant willfully or knowingly violated this section.

**11.** Any agreement entered into by a consumer for the purchase of new residential telephone equipment, rebuilt residential telephone equipment or used residential telephone equipment which waives, limits or disclaims the rights set forth in this section shall be void as contrary to the public policy.

**12.** Any action brought pursuant to this section shall be commenced within three years of the date of original delivery of such equipment to the consumer or purchaser.

**13.** A court may award reasonable attorney's fees to a prevailing plaintiff.

## History

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Add, L 1987, ch 255, § 2, eff Jan 1, 1988 (see 1987 note below).

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