

2910

2011-2012 Regular Sessions

I N   S E N A T E

February 3, 2011

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Introduced by Sen. ZELDIN -- 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 the no telemarketing sales calls statewide registry

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

1     Section 1. Section 399-z of the general business law, as amended by  
2 chapter 344 of the laws of 2010, is amended to read as follows:  
3     S 399-z. Telemarketing; establishment of no telemarketing sales calls  
4 OR FACSIMILE SALES TRANSMISSIONS statewide registry; authorization of  
5 the transfer of telephone numbers on the no telemarketing sales calls OR  
6 FACSIMILE SALES TRANSMISSIONS statewide registry to the national  
7 ["do-not-call"] "DO-NOT-CALL-OR-TRANSMIT" registry. 1. As used in this  
8 section, the following terms shall have the following meanings:  
9     a. "Board" shall mean the consumer protection board;  
10    b. "Director" means the executive director of the consumer protection  
11 board;  
12    c. "Customer" means any natural person who is a resident of this state  
13 and who is or may be required to pay for or to exchange consideration  
14 for goods and services offered through telemarketing;  
15    d. "Doing business in this state" means conducting telephonic sales  
16 calls OR FACSIMILE SALES TRANSMISSIONS: (i) from a location in this  
17 state; or (ii) from a location outside of this state to consumers resid-  
18 ing in this state;  
19    e. "Goods and services" means any goods and services, and shall  
20 include any real property or any tangible personal property or services  
21 of any kind;  
22    f. "Negative option feature" means, in an offer or agreement to sell  
23 or provide any goods or services, a provision under which the customer's  
24 silence or failure to take an affirmative action to reject such goods or

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

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1 services or to cancel the agreement is interpreted by the seller as  
2 acceptance of the offer.

3 g. "Person" means any natural person, association, partnership, firm,  
4 corporation and its affiliates or subsidiaries or other business entity;

5 h. "Telemarketer" means any person who, for financial profit or  
6 commercial purposes in connection with telemarketing, makes telemarket-  
7 ing sales calls OR FACSIMILE SALES TRANSMISSIONS to a customer when the  
8 customer is in this state or any person who directly controls or super-  
9 vises the conduct of a telemarketer. For the purposes of this section,  
10 "commercial purposes" shall mean the sale or offer for sale of goods or  
11 services;

12 [.] i. "Telemarketing" means any plan, program or campaign which is  
13 conducted to induce payment or the exchange of any other consideration  
14 for any goods or services by use of one or more telephones OR TELECOPI-  
15 ERS and which involves more than one telephone call OR FACSIMILE TRANS-  
16 MISSION by a telemarketer in which the customer is located within the  
17 state at the time of the call OR TRANSMISSION. Telemarketing does not  
18 include the solicitation of sales through media other than by telephone  
19 calls OR FACSIMILE TRANSMISSIONS;

20 j. "Telemarketing sales call" means a telephone call OR FACSIMILE  
21 TRANSMISSION made by a telemarketer or by any outbound telephone calling  
22 technology that delivers a prerecorded message either to a customer or  
23 to their voicemail or answering machine service for the purpose of  
24 inducing payment or the exchange of any other consideration for any  
25 goods or services;

26 k. "Unsolicited telemarketing sales call" means any telemarketing  
27 sales call OR FACSIMILE TRANSMISSION other than a call OR FACSIMILE  
28 TRANSMISSION made:

29 (i) in response to an express written or verbal request of the custom-  
30 er called; or

31 (ii) in connection with an established business relationship, which  
32 has not been terminated by either party, unless such customer has stated  
33 to the telemarketer that such customer no longer wishes to receive the  
34 telemarketing sales calls of such telemarketer.

35 L. "TELECOPIER" MEANS A TRANSMITTING AND RECEIVING TELECOMMUNICATION  
36 DEVICE USED FOR PRODUCING FACSIMILE COPIES OF DOCUMENTS.

37 2. No telemarketer or seller shall engage in telemarketing at any time  
38 other than between 8:00 A.M. and 9:00 P.M. local time unless the consum-  
39 er has given his or her express consent to the call OR TRANSMISSION at a  
40 different time, and shall provide, in a clear and coherent manner using  
41 words with common and everyday meanings, at the beginning of each tele-  
42 marketing sales call OR FACSIMILE SALES TRANSMISSION all of the follow-  
43 ing information:

44 (i) the telemarketer's name and the person on whose behalf the solici-  
45 tation is being made, if other than the telemarketer;

46 (ii) the purpose of the telephone call OR FACSIMILE TRANSMISSION; and

47 (iii) the identity of the goods or services for which a fee will be  
48 charged.

49 3. Prior to the purchase of any good or service telemarketers shall  
50 disclose to the customer the cost of the goods or services that are the  
51 subject of the call OR TRANSMISSION and if the offer includes a negative  
52 option feature, all material terms and conditions of the negative option  
53 feature, including, but not limited to the fact that the customer's  
54 account will be charged unless the customer takes an affirmative action  
55 to avoid the charges, the dates the charges will be submitted for

1 payment, and the specific steps the customer must take to avoid the  
2 charge.

3 4. a. The board is authorized to establish, manage, and maintain a no  
4 telemarketing sales calls OR FACSIMILE SALES TRANSMISSIONS statewide  
5 registry which shall contain a list of customers who do not wish to  
6 receive unsolicited telemarketing sales calls OR FACSIMILE SALES TRANS-  
7 MISSIONS. The board may contract with a private vendor to establish,  
8 manage and maintain such registry, provided the private vendor has main-  
9 tained national no telemarketing sales calls OR FACSIMILE SALES TRANS-  
10 MISSIONS registries for more than two years, and the contract requires  
11 the vendor to provide the no telemarketing sales calls OR FACSIMILE  
12 SALES TRANSMISSIONS registry in a printed hard copy format and in any  
13 other format as prescribed by the board.

14 b. The board is authorized to have the national ["do-not-call"]  
15 "DO-NOT-CALL-OR-TRANSMIT" registry established, managed and maintained  
16 by the federal trade commission pursuant to 16 C.F.R. Section 310.4 (b)  
17 (1) (iii) (B) serve as the New York state no telemarketing sales calls  
18 statewide registry provided for by this section. The board is further  
19 authorized to take whatever administrative actions may be necessary or  
20 appropriate for such transition including, but not limited to, providing  
21 the telephone numbers OR TELECOPIER NUMBERS of New York customers regis-  
22 tered on the no telemarketing sales calls OR FACSIMILE SALES TRANS-  
23 MISSION statewide registry to the federal trade commission, for inclu-  
24 sion on the national ["do-not-call"] "DO-NOT-CALL-OR-TRANSMIT" registry.

25 5. No telemarketer or seller may make or cause to be made any unsolic-  
26 ited telemarketing sales call OR FACSIMILE SALES TRANSMISSIONS to any  
27 customer when that customer's telephone number OR TELECOPIER NUMBER OR  
28 NUMBERS has been on the national ["do-not-call"] "DO-NOT-CALL-OR-TRAN-  
29 SMIT" registry, established by the federal trade commission, for a peri-  
30 od of thirty-one days prior to the date the call OR TRANSMISSION is  
31 made, pursuant to 16 CFR Section 310.4(b)(1)(iii)(B).

32 6. a. The board shall provide notice to customers of the establishment  
33 of the national ["do-not-call"] "DO-NOT-CALL-OR-TRANSMIT" registry. Any  
34 customer who wishes to be included on such registry shall notify the  
35 federal trade commission as directed by relevant federal regulations.

36 b. Any company that provides local telephone directories to customers  
37 in this state shall inform its customers of the provisions of this  
38 section by means of publishing a notice in such local telephone directo-  
39 ries.

40 7. When the board has reason to believe a telemarketer has engaged in  
41 repeated unlawful acts in violation of this section, or when a notice of  
42 hearing has been issued pursuant to subdivision eight of this section,  
43 the board may request in writing the production of relevant documents  
44 and records as part of its investigation. If the person upon whom such  
45 request was made fails to produce the documents or records within thirty  
46 days after the date of the request, the board may issue and serve  
47 subpoenas to compel the production of such documents and records. If any  
48 person shall refuse to comply with a subpoena issued under this section,  
49 the board may petition a court of competent jurisdiction to enforce the  
50 subpoena and such sanctions as the court may direct.

51 8. a. Where it is determined after hearing that any person has  
52 violated one or more provisions of this section, the director, or any  
53 person deputized or so designated by him or her may assess a fine not to  
54 exceed eleven thousand dollars for each violation.

55 b. Any proceeding conducted pursuant to paragraph a of this subdivi-  
56 sion shall be subject to the state administrative procedure act.

1 c. Nothing in this subdivision shall be construed to restrict any  
2 right which any person may have under any other statute or at common  
3 law.  
4 9. A person shall not be held liable for violating this section if:  
5 a. the person has obtained a version of the ["do-not-call"]  
6 "DO-NOT-CALL-OR-TRANSMIT" registry from the federal trade commission no  
7 more than thirty-one days prior to the date any telemarketing call OR  
8 FACSIMILE SALES TRANSMISSION is made, pursuant to 16 C.F.R. Section  
9 310.4(b)(1)(iii)(B), and has established, implemented and updated writ-  
10 ten policies and procedures related to the requirements of this section  
11 prior to the date any telemarketing call OR FACSIMILE SALES TRANSMISSION  
12 is made;  
13 b. the person has trained his or her personnel in the requirements of  
14 this section; and  
15 c. the person maintains records demonstrating compliance with para-  
16 graphs a and b of this subdivision and the requirements of this section.  
17 10. The board shall prescribe rules and regulations to administer this  
18 section.  
19 S 2. This act shall take effect immediately.