

2909

2011-2012 Regular Sessions

I N S E N A T E

February 3, 2011

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 and the civil practice law and rules, in relation to prohibiting business entities from transmitting false caller identification information with the intent to defraud or harass any person

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

- 1 Section 1. The general business law is amended by adding a new section
2 399-ppp to read as follows:
3 S 399-PPP. PROHIBITION ON PROVISION OF DECEPTIVE CALLER IDENTIFICATION
4 INFORMATION. 1. IT SHALL BE UNLAWFUL FOR ANY BUSINESS ENTITY WITHIN THE
5 STATE, IN CONNECTION WITH ANY TELECOMMUNICATIONS SERVICE OR VOIP
6 SERVICE, TO CAUSE ANY CALLER IDENTIFICATION SERVICE TO TRANSMIT FALSE
7 CALLER IDENTIFICATION INFORMATION, WITH THE INTENT TO DEFRAUD OR HARASS,
8 WHEN MAKING A CALL TO ANY PERSON WITHIN THE STATE.
9 2. FOR PURPOSES OF THIS SECTION:
10 (A) "BUSINESS ENTITY" MEANS A CORPORATION, ASSOCIATION, PARTNERSHIP,
11 LIMITED LIABILITY COMPANY, LIMITED LIABILITY PARTNERSHIP OR OTHER LEGAL
12 ENTITY.
13 (B) "CALLER IDENTIFICATION INFORMATION" MEANS INFORMATION PROVIDED TO
14 AN END USER BY A CALLER IDENTIFICATION SERVICE REGARDING THE TELEPHONE
15 NUMBER OF, OR OTHER INFORMATION REGARDING THE ORIGINATION OF, A CALL
16 MADE USING A TELECOMMUNICATIONS SERVICE OR VOIP SERVICE.
17 (C) "CALLER IDENTIFICATION SERVICE" MEANS ANY SERVICE OR DEVICE
18 DESIGNED TO PROVIDE THE USER OF THE SERVICE OR DEVICE WITH THE TELEPHONE
19 NUMBER OF, OR OTHER INFORMATION REGARDING THE ORIGINATION OF, A CALL
20 MADE USING A TELECOMMUNICATIONS SERVICE OR VOIP SERVICE. SUCH TERM
21 INCLUDES AUTOMATIC NUMBER IDENTIFICATION SERVICES.
22 (D) "VOIP SERVICE" MEANS A SERVICE THAT:

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

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1 (I) PROVIDES REAL-TIME VOICE COMMUNICATIONS TRANSMITTED THROUGH END
2 USER EQUIPMENT USING TCP/IP PROTOCOL, OR A SUCCESSOR PROTOCOL, FOR A FEE
3 OR WITHOUT A FEE; AND

4 (II) IS OFFERED TO THE PUBLIC, OR SUCH CLASSES OF USERS AS TO BE
5 EFFECTIVELY AVAILABLE TO THE PUBLIC (WHETHER PART OF A BUNDLE OF
6 SERVICES OR SEPARATELY); AND

7 (III) HAS THE CAPABILITY TO ORIGINATE TRAFFIC TO, OR TERMINATE TRAFFIC
8 FROM, THE PUBLIC SWITCHED TELEPHONE NETWORK.

9 3. WHENEVER THERE SHALL BE A VIOLATION OF THIS SECTION, AN APPLICATION
10 MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE
11 STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION TO ISSUE AN
12 INJUNCTION, AND UPON NOTICE TO THE DEFENDANT, TO IMMEDIATELY ENJOIN AND
13 RESTRAIN THE CONTINUANCE OF SUCH VIOLATIONS; AND IF IT SHALL APPEAR TO
14 THE SATISFACTION OF THE COURT OR JUSTICE, BY A PREPONDERANCE OF THE
15 EVIDENCE, THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS SECTION AN
16 INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE ENJOINING AND
17 RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY
18 PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. THE COURT MAY MAKE
19 ALLOWANCES TO THE ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX OF
20 SUBDIVISION (A) OF SECTION EIGHTY-THREE HUNDRED THREE OF THE CIVIL PRACTICE
21 LAW AND RULES. IN ADDITION TO ANY SUCH ALLOWANCES, THE COURT MAY
22 DIRECT RESTITUTION TO ANY VICTIM UPON A SHOWING OF DAMAGES BY A PREPONDERANCE
23 OF THE EVIDENCE. IN ADDITION TO ANY SUCH RESTITUTION, WHENEVER
24 THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS SECTION HAS OCCURRED,
25 THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN TWO THOUSAND
26 DOLLARS PER CALL, UP TO A TOTAL AGGREGATE AMOUNT OF NOT MORE THAN ONE
27 HUNDRED THOUSAND DOLLARS, FOR ALL CALLS PLACED IN VIOLATION OF THIS
28 SECTION WITHIN A CONTINUOUS SEVENTY-TWO HOUR PERIOD. IN CONNECTION WITH
29 ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO
30 TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE
31 SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES.

32 4. IN ADDITION TO THE RIGHT OF ACTION GRANTED TO THE ATTORNEY GENERAL
33 PURSUANT TO THIS SECTION, ANY PERSON WHOSE CALLER IDENTIFICATION INFORMATION
34 WAS USED IN CONNECTION WITH A VIOLATION OF THIS SECTION OR WHO
35 HAS RECEIVED A TELEPHONE CALL IN VIOLATION OF THIS SECTION MAY BRING AN
36 ACTION IN HIS OR HER OWN NAME TO ENJOIN SUCH UNLAWFUL ACT OR PRACTICE,
37 AN ACTION TO RECOVER THE GREATER OF (A) HIS OR HER ACTUAL DAMAGES, OR
38 (B) AN AMOUNT EQUAL TO NOT MORE THAN FIVE HUNDRED DOLLARS PER CALL, UP
39 TO A TOTAL AGGREGATE AMOUNT OF NOT MORE THAN TWENTY-FIVE THOUSAND
40 DOLLARS FOR ALL CALLS PLACED IN VIOLATION OF THIS SECTION WITHIN A
41 CONTINUOUS SEVENTY-TWO HOUR PERIOD; OR BOTH SUCH ACTIONS. THE COURT MAY
42 AWARD REASONABLE ATTORNEY'S FEES TO A PREVAILING PLAINTIFF.

43 S 2. Paragraph 6 of subdivision (a) of section 8303 of the civil practice
44 law and rules, as amended by chapter 530 of the laws of 2002, is
45 amended to read as follows:

46 6. to the plaintiffs in an action or proceeding brought by the [attorney-general]
47 ATTORNEY GENERAL under [articles] ARTICLE twenty-two, twenty-two-A,
48 twenty-three-A or thirty-three or section three hundred ninety-one-b,
49 THREE HUNDRED NINETY-NINE-PPP, or five hundred twenty-a of the
50 general business law, or under subdivision twelve of section sixty-three
51 of the executive law, or under article twenty-three of the arts and
52 cultural affairs law, or in an action or proceeding brought by the
53 [attorney-general] ATTORNEY GENERAL under applicable statutes to
54 dissolve a corporation or for usurpation of public office, or unlawful
55 exercise of franchise or of corporate right, a sum not exceeding two
56 thousand dollars against each defendant.

1 S 3. This act shall take effect on the sixtieth day after it shall
2 have become a law.