S T A T E O F N E W Y O R K

2497--B

2013-2014 Regular Sessions

I N S E N A T E

January 18, 2013

Introduced by Sen. GALLIVAN -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

Section 1. The general business law is amended by adding a new section 399-ppp to read as follows:

S 399-PPP. PROHIBITION ON PROVISION OF DECEPTIVE CALLER IDENTIFICATION INFORMATION. 1. IT SHALL BE UNLAWFUL FOR ANY BUSINESS ENTITY, IN CONNECTION WITH ANY TELECOMMUNICATIONS SERVICE OR VOIP SERVICE, TO CAUSE ANY CALLER IDENTIFICATION SERVICE TO TRANSMIT FALSE CALLER IDENTIFICATION INFORMATION, WITH THE INTENT TO DEFRAUD OR HARASS, WHEN MAKING A CALL TO ANY PERSON WITHIN THE STATE.

2. FOR PURPOSES OF THIS SECTION:

(A) "BUSINESS ENTITY" MEANS A CORPORATION, ASSOCIATION, PARTNERSHIP, LIMITED LIABILITY COMPANY, LIMITED LIABILITY PARTNERSHIP OR OTHER LEGAL ENTITY.

(B) "CALLER IDENTIFICATION INFORMATION" MEANS INFORMATION PROVIDED TO AN END USER BY A CALLER IDENTIFICATION SERVICE REGARDING THE TELEPHONE NUMBER OF, OR OTHER INFORMATION REGARDING THE ORIGINATION OF, A CALL MADE USING A TELECOMMUNICATIONS SERVICE OR VOIP SERVICE.

(C) "CALLER IDENTIFICATION SERVICE" MEANS ANY SERVICE OR DEVICE DESIGNED TO PROVIDE THE USER OF THE SERVICE OR DEVICE WITH THE TELEPHONE NUMBER OF, OR OTHER INFORMATION REGARDING THE ORIGINATION OF, A CALL MADE USING A TELECOMMUNICATIONS SERVICE OR VOIP SERVICE. SUCH TERM INCLUDES AUTOMATIC NUMBER IDENTIFICATION SERVICES.

(D) "VOIP SERVICE" MEANS ANY SERVICE THAT: ENABLES REAL TIME, TWO-WAY VOICE COMMUNICATION ORIGINATING FROM OR TERMINATING AT THE USER'S

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

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LOCATION IN INTERNET PROTOCOL OR A SUCCESSOR PROTOCOL; UTILIZES A BROADBAND CONNECTION AT THE USER'S LOCATION; AND PERMITS A USER TO RECEIVE A CALL THAT ORIGINATES ON THE PUBLIC SWITCHED TELEPHONE NETWORK AND TO TERMINATE A CALL TO THE PUBLIC SWITCHED TELEPHONE NETWORK.

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

4. SUBDIVISION THREE OF THIS SECTION DOES NOT CREATE, AND IS NOT INTENDED TO CREATE, ANY RIGHT OF ACTION AGAINST A TELECOMMUNICATIONS SERVICE PROVIDER OR VOIP SERVICE PROVIDER WHOSE SERVICE, INCLUDING CALLER IDENTIFICATION SERVICE, IS USED BY A BUSINESS ENTITY TO TRANSMIT OR DISPLAY FALSE CALLER IDENTIFICATION INFORMATION IN VIOLATION OF THIS SECTION.

5. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO ANY MEMBER OF A LAW ENFORCEMENT UNIT ACTING WITHIN THE SCOPE OF HIS OR HER ASSIGNED DUTIES OR TO A COURT ORDER THAT SPECIFICALLY AUTHORIZES THE USE OF CALLER IDENTIFICATION MANIPULATION.

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

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

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