

STATE OF NEW YORK

3297--B

Cal. No. 318

2019-2020 Regular Sessions

IN SENATE

February 5, 2019

Introduced by Sens. HOYLMAN, CARLUCCI, BAILEY, BIAGGI, BROOKS, COMRIE, GAUGHRAN, GOUNARDES, HARCKHAM, KAMINSKY, KAPLAN, KENNEDY, KRUEGER, MAY, MAYER, PARKER, PERSAUD, RIVERA, SALAZAR, SANDERS, SEPULVEDA, SERRANO, THOMAS -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the public service law, in relation to limiting robocalls to state residents and to require telephone service providers to offer free call mitigation technology to telephone customers

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "robocall
2 prevention act".

3 § 2. The public service law is amended by adding a new section 91-b to
4 read as follows:

5 § 91-b. Robocalls. 1. As used in this section:

6 (a) "Robocall" means a call made, including a text message sent:

7 (i) using equipment that makes a series of calls to stored telephone
8 numbers, including numbers stored on a list, or to telephone numbers
9 produced using a random or sequential number generator, except for a
10 call made using only equipment that the caller demonstrates requires
11 substantial additional human intervention to dial or place a call after
12 a human initiates the call or series of calls; or

13 (ii) using an artificial or prerecorded voice.

14 (b) "Call mitigation technology" means technology that identifies an
15 incoming call or text message as being, or as probably being, a robocall
16 and, on that basis, blocks the call or message, diverts it to the called

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

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1 person's answering system, or otherwise prevents it from being completed
2 to the called person, except that it permits a call or text so identi-
3 fied to be completed when it is identified as being made by a law
4 enforcement or public safety entity, or when it is identified as origi-
5 inating from a caller with respect to whom the called person has provided
6 prior express consent to receive such a call or message and has not
7 revoked that consent.

8 (c) "Labor organization" means any organization of any kind which
9 exists for the purpose, in whole or in part, of representing employees
10 employed within the state of New York in dealing with employers or
11 employer organizations or with a state government, or any political or
12 civil subdivision or other agency thereof, concerning terms and condi-
13 tions of employment, grievances, labor disputes, or other matters inci-
14 dental to the employment relationship. For the purposes of this section,
15 each local, parent national or parent international organization of a
16 statewide labor organization, and each statewide federation receiving
17 dues from subsidiary labor organizations, shall be considered a separate
18 labor organization.

19 (d) "Prior express consent" for a call means that the purpose of the
20 call must be closely related to the purpose for which the telephone
21 number was originally provided by the called party.

22 2. (a) It shall be unlawful for any person or entity to make any robo-
23 call other than a call made for emergency purposes or made with the
24 prior express consent of the called party, to any telephone number owned
25 by a person or entity in the state. A customer's prior express consent
26 can be revoked by the customer at any time in any reasonable manner,
27 regardless of the context in which the owner or user of the telephone
28 provided consent.

29 (b) The commission shall prescribe regulations to implement the
30 provisions of this subdivision, and may exempt from the requirements of
31 this subdivision, subject to such conditions as the commission may
32 prescribe, calls made to a residential telephone line that are not made
33 for a commercial purpose.

34 (c) The provisions of paragraph (a) of this subdivision shall not
35 apply to any communications made by a labor organization, or by a non-
36 profit organization which is federally tax-exempt pursuant to 26 U.S.C.
37 501(c), to such organization's members or to the households of such
38 members.

39 3. (a) A telephone service provider that provides telephone service to
40 customers residing in the state shall make call mitigation technology
41 available to any such customer, upon request, and at no additional
42 charge. Such provider shall also offer to any such customer the ability
43 to have the provider prevent calls and text messages identified as origi-
44 inating from a particular person from being completed to the called
45 person, upon request, and at no additional charge.

46 (b) The commission shall prescribe regulations to implement the
47 requirements of this subdivision, including, if appropriate, a reason-
48 able delay in requiring implementation and offering of call mitigation
49 technology if for good cause, taking into account the consumer
50 protection purposes of this section, and including procedures for
51 addressing incidents in which a call wanted by the customer is prevented
52 from reaching the customer.

53 4. (a) Whenever there shall be a violation of this section, an appli-
54 cation may be made by the attorney general in the name of the people of
55 the state of New York to a court or justice having jurisdiction to issue
56 an injunction, and upon notice to the defendant of not less than five

1 days, to enjoin and restrain the continuance of such violations; and if
2 it shall appear to the satisfaction of the court or justice, that the
3 defendant has, in fact, violated this section an injunction may be
4 issued by such court or justice enjoining and restraining any further
5 violation, without requiring proof that any person has, in fact, been
6 injured or damaged thereby. In any such proceeding, the court may make
7 allowances to the attorney general as provided in paragraph six of
8 subdivision (a) of section eighty-three hundred three of the civil prac-
9 tice law and rules, and direct restitution. Whenever the court shall
10 determine that a violation of subdivision two of this section has
11 occurred, the court may impose a civil penalty of not more than two
12 thousand dollars per call, up to a total of not more than twenty thou-
13 sand dollars, for calls placed in violation of such subdivision within a
14 continuous seventy-two hour period. In connection with any such proposed
15 application, the attorney general is authorized to take proof and make a
16 determination of the relevant facts and to issue subpoenas in accordance
17 with the civil practice law and rules.

18 (b) In addition to the right of action granted to the attorney general
19 pursuant to this section, any person harmed by a violation of the
20 provisions of subdivision two of this section, or of any regulations
21 promulgated by the commission relating to this section, may bring an
22 action in any court of competent jurisdiction:

23 (i) to enjoin such violation; and/or
24 (ii) to recover for actual monetary loss from such violation or to
25 receive five hundred dollars in damages for such violation, whichever is
26 greater.

27 (c) If the court finds that the defendant willfully or knowingly
28 violated the provisions of subdivision two of this section or any regu-
29 lations prescribed hereunder, the court may, in its discretion, increase
30 the amount of the monetary award to an amount equal to not more than
31 three times the amount available pursuant to paragraph (b) of this
32 subdivision.

33 (d) No action to recover damages for a violation of the provisions of
34 this section may be brought more than four years after the alleged
35 violation occurred.

36 § 3. If any provision of this act, or any application of any provision
37 of this act, is held to be invalid, that shall not affect the validity
38 or effectiveness of any other provision of this act, or of any other
39 application of any provision of this act, which can be given effect
40 without that provision or application; and to that end, the provisions
41 and applications of this act are severable.

42 § 4. This act shall take effect on the thirtieth day after it shall
43 have become a law. Effective immediately, the addition, amendment
44 and/or repeal of any rule or regulation necessary for the implementation
45 of this act on its effective date are authorized and directed to be made
46 and completed on or before such effective date.