

STATE OF NEW YORK

3297--D

Cal. No. 318

2019-2020 Regular Sessions

IN SENATE

February 5, 2019

Introduced by Sens. HOYLMAN, CARLUCCI, ADDABBO, BAILEY, BIAGGI, BRESLIN, BROOKS, COMRIE, GAUGHRAN, GOUNARDES, HARCKHAM, JACKSON, KAMINSKY, KAPLAN, KAVANAGH, KENNEDY, KRUEGER, MAY, MAYER, MONTGOMERY, MYRIE, PARKER, PERSAUD, RAMOS, RIVERA, SALAZAR, SANDERS, SEPULVEDA, SERRANO, STAVISKY, 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 -- again amended and ordered reprinted, retaining its place in the order of third reading -- again amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the general business 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. Section 399-p of the general business law, as amended by chapter
4 581 of the laws of 1992, subdivision 6 as amended by chapter 546 of the
5 laws of 2000, subdivision 6-a as added and subdivision 8 as amended by
6 chapter 176 of the laws of 1998, is amended to read as follows:

7 § 399-p. ~~Telemarketing; use~~ Use of automatic ~~[dialing-announcing]~~
8 dialing devices and placement of robocalls and consumer telephone calls.

9 1. Definitions. As used in this section, the following terms shall have
10 the following meanings:

11 (a) "automatic ~~[dialing-announcing]~~ dialing device" means ~~[any auto-~~
12 ~~matic equipment which incorporates a storage capability of telephone~~
13 ~~numbers to be called and is used, working alone or in conjunction with~~

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

LBD02262-26-9

~~other equipment, to disseminate a prerecorded message to the telephone number called without the use of an operator]~~ equipment that makes a series of calls to stored telephone numbers, including numbers stored on a list, except for equipment that requires a human to dial or place each individual call one call at a time, and requires such human to then remain on each call;

(b) "person" means any natural person, firm, organization, partnership, association or corporation, or other entity, whether for-profit or not-for-profit;

(c) "consumer" means a natural person who is solicited to purchase, lease or receive a good or service for personal, family or household use;

(d) "consumer telephone call" means a call made to a telephone number by a telephone solicitor, whether by device, live operator, or any combination thereof, for the purpose of soliciting a sale of any consumer goods or services for personal, family or household purposes to the consumer called, or for the purpose of soliciting an extension of credit for consumer goods or services to the consumer called, or for the purpose of obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services to the consumer called or an extension of credit for such purposes; provided, however, that "consumer telephone call" shall not include a call made by a telephone corporation, as defined by subdivision seventeen of section two of the public service law, in response to a specific inquiry initiated by a consumer regarding that consumer's existing or requested telephone service; ~~and~~

(e) "telephone solicitor" means a person who makes or causes to be made a consumer telephone call;

(f) "robocall" means a call made, including a text message sent, to any telephone number owned by a person or entity in the state:

(1) using an automatic dialing device; or

(2) using an artificial or prerecorded voice;

(g) "call mitigation technology" means technology that identifies an incoming call or text message as being, or as probably being, an unwanted robocall, and, on that basis, blocks the call or message, diverts it to the called person's answering system, or otherwise prevents it from being completed to the called person, except that it permits a call or text so identified to be completed when it is identified as being made by a law enforcement or public safety entity;

(h) "prior express consent" for a call means that the purpose of the call must be closely related to the purpose for which the telephone number was originally provided by the called party. A call by a non-profit organization which is federally tax exempt pursuant to 26 U.S.C. 501(c), to a member who had joined such organization or to the household of such a member, is presumed to be closely related. A customer's prior express consent can be revoked by the customer at any time in any reasonable manner, regardless of the context in which the owner or user of the telephone provided consent;

(i) "telephone service provider" means any company that provides voice service utilizing any technology, regardless of whether such provider is regulated pursuant to the public service law;

(j) "labor organization" means any organization of any kind which exists for the purpose, in whole or in part, of representing employees employed within the state of New York in dealing with employers or employer organizations or with a state government, or any political or civil subdivision or other agency thereof, concerning terms and condi-

tions of employment, grievances, labor disputes, or other matters incidental to the employment relationship. For the purposes of this section, each local, parent national or parent international organization of a statewide labor organization, and each statewide federation receiving dues from subsidiary labor organizations, shall be considered a separate labor organization; and

(k) "department" means the department of state.

2. No person shall ~~[operate an automatic dialing announcing device]~~ make any robocall, nor place any consumer telephone call, except in accordance with the provisions of this section. The ~~[use of such device]~~ making of a robocall by any person, either individually or acting as an officer, agent, or employee of a person ~~[operating automatic dialing announcing devices]~~ making a robocall, is subject to the provisions of this section.

2-a. (a) A person shall be permitted to make a robocall only when such robocall is:

(1) made for emergency purposes, pursuant to subdivision seven of this section;

(2) made with the prior express consent of the called party;

(3) made by a labor organization to such organization's members or to the household of such members; or

(4) authorized by regulations promulgated by the department pursuant to paragraph (b) of this subdivision.

(b) The department, in consultation with the department of public service, shall promulgate regulations to implement the provisions of this subdivision, and may permit, subject to such conditions as the department may prescribe, robocalls to be made to a residential telephone line without prior express consent if such calls are not made for a commercial purpose.

3. ~~[Whenever telephone calls are placed through the use of an automatic dialing announcing device, such device shall do all of the following]~~
In addition to the provisions of subdivision two-a of this section:

(a) If a robocall or consumer telephone call permitted by this section uses a prerecorded voice, such call shall state at the beginning of the call the nature of the call and the name of the person or on whose behalf the message is being transmitted and at the end of such message the address, and telephone number of the person on whose behalf the message is transmitted, provided such disclosures are not otherwise prohibited or restricted by any federal, state or local law; and

(b) If a robocall permitted by this section is made using an automatic dialing device, such device shall disconnect ~~[the automatic dialing announcing device]~~ from the telephone line upon the termination of the call by either the person calling or the person called.

4. No person shall operate an automatic ~~[dialing announcing]~~ dialing device which uses a random or sequential number generator to produce a number to be called.

4-a. (a) No person making a robocall shall knowingly cause any caller identification service to transmit misleading, inaccurate, or false caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value.

(b) This subdivision does not prohibit:

(1) Any authorized activity of a law enforcement agency; or

(2) Any activity pursuant to a court order that specifically authorizes the use of caller identification manipulation.

4-b. (a) A telephone service provider that provides telephone service to customers residing in the state shall make call mitigation technology

1 available to any such customer, upon request, and at no additional
2 charge. Such provider shall also offer to any such customer the ability
3 to have the provider prevent calls and text messages identified as orig-
4 inating from a particular person from being completed to the called
5 person, upon request, and at no additional charge.

6 (b) The department, in consultation with the department of public
7 service, shall promulgate regulations to implement the requirements of
8 this subdivision, including, if appropriate, a reasonable delay in
9 requiring implementation and offering of call mitigation technology if
10 for good cause, taking into account the consumer protection purposes of
11 this section, and including procedures for addressing incidents in which
12 a call wanted by the customer is prevented from reaching the customer.
13 The department may also promulgate regulations allowing for the require-
14 ments of this subdivision to be waived for existing network facilities
15 in instances where the telephone service provider can reasonably demon-
16 strate that call mitigation technology cannot feasibly be implemented on
17 such facilities due to technological limitations, until such time as it
18 can be feasibly implemented.

19 5. No ~~[automatic dialing-announcing device shall be used to call and~~
20 ~~no]~~ robocall or consumer telephone call shall be placed to an emergency
21 telephone line including but not limited to any 911 or E-911 line, or
22 any emergency line of any volunteer fire company or fire department; any
23 emergency medical service, ambulance service, voluntary ambulance
24 service or hospital ambulance service as defined in section three thou-
25 sand one of the public health law; any hospital, nursing home, or resi-
26 dential health care facility as defined in section twenty-eight hundred
27 one of the public health law; any adult care facility as defined in
28 section two of the social services law; or any law enforcement agency or
29 to the telephone line of any guest room or patient room of any hospital,
30 nursing home, or residential health care facility as defined in section
31 two thousand eight hundred one of the public health law, or any adult
32 care facility as defined by section two of the social services law. It
33 shall not constitute a violation of this subdivision if the person who
34 places such a call can affirmatively establish that the call was placed
35 inadvertently despite good faith efforts on the part of such person to
36 comply with the provisions of this section and such person has imple-
37 mented a procedure to prevent subsequent calls from being placed to a
38 particular prohibited telephone number.

39 6. A telephone solicitor shall not make a consumer telephone call to a
40 consumer unless the telephone solicitor conforms with subparagraph one
41 of paragraph b of subdivision six of section three hundred ninety-nine-
42 pp of this article. Nothing contained herein shall be deemed to limit,
43 annul, alter, or affect the provisions of subdivision three of this
44 section.

45 6-a. No telephone solicitor or person who places any consumer tele-
46 phone call or ~~[who operates an automatic dialing-announcing device]~~
47 robocall and no employer of any such telephone solicitor or person shall
48 intentionally cause to be installed, or shall intentionally utilize, any
49 blocking device or service to prevent the name and/or telephone number
50 of such solicitor or person, or the name and/or telephone number of his
51 or her employer, from being displayed on a caller identification device
52 of the recipient of any such consumer telephone call. A violation of
53 this subdivision shall be subject to the provisions of subdivision eight
54 of this section.

55 7. (a) Federal, state or local municipalities, or any subdivision
56 thereof, ~~[using an automatic dialing-announcing device]~~ making a robo-

1 call for emergency purposes shall be exempted from the provisions of
2 this section.

3 (b) Notwithstanding the provisions of paragraph (a) of this subdivi-
4 sion, any entity [~~which operates~~] making a robocall for emergency
5 purposes through the operation of a telephone warning or alert system
6 [~~which utilizes any such device for emergency purposes~~] shall also be
7 exempted from the provisions of this section.

8 8. Whenever there shall be a violation of subdivision two, three,
9 four, four-a, five, six, or six-a of this section, an application may be
10 made by the attorney general in the name of the people of the state of
11 New York to a court or justice having jurisdiction to issue an injunc-
12 tion, and upon notice to the defendant of not less than five days, to
13 enjoin and restrain the continuance of such violations; and if it shall
14 appear to the satisfaction of the court or justice, that the defendant
15 has, in fact, violated subdivision two, three, four, four-a, five, six,
16 or six-a of this section an injunction may be issued by such court or
17 justice enjoining and restraining any further violation, without requir-
18 ing proof that any person has, in fact, been injured or damaged thereby.
19 In any such proceeding, the court may make allowances to the attorney
20 general as provided in paragraph six of subdivision (a) of section
21 eighty-three hundred three of the civil practice law and rules, and
22 direct restitution. Whenever the court shall determine that a violation
23 of subdivision two, three, four, or five of this section has occurred,
24 the court may impose a civil penalty of not more than two thousand
25 dollars per call, up to a total of not more than twenty thousand
26 dollars, for calls placed in violation of such subdivisions within a
27 continuous seventy-two hour period. Whenever the court shall determine
28 that a violation of subdivision four-a of this section has occurred, the
29 court may impose a civil penalty of not less than five thousand dollars
30 nor more than ten thousand dollars for each violation. Whenever the
31 court shall determine that a violation of subdivision six of this
32 section, or a violation of subdivision six-a of this section, has
33 occurred, the court may impose a civil penalty of not more than two
34 thousand dollars. In connection with any such proposed application, the
35 attorney general is authorized to take proof and make a determination of
36 the relevant facts and to issue subpoenas in accordance with the civil
37 practice law and rules.

38 9. In addition to the right of action granted to the attorney general
39 pursuant to this section, any person who has received a telephone call
40 in violation of subdivision two, three, four, four-a or five of this
41 section may bring:

42 (a) an action in his or her own name to enjoin such unlawful act or
43 practice[~~r~~];

44 (b) an action to recover his or her actual damages or [~~fifty~~] five
45 hundred dollars, whichever is greater[~~r~~]; or

46 (c) both such actions. The court may, in its discretion, increase the
47 award of damages to an amount not to exceed three times the [~~actual~~
48 ~~damages up to one thousand dollars~~] amount available under paragraph (b)
49 of this subdivision, if the court finds the defendant willfully or know-
50 ingly violated such subdivisions. The court [~~may~~] shall award reasonable
51 attorney's fees to a prevailing plaintiff. Any damages recoverable
52 pursuant to this section may be recovered in any action which a court
53 may authorize to be brought as a class action pursuant to article nine
54 of the civil practice law and rules.

55 10. (a) The department, in consultation with the department of public
56 service, shall report on issues related to illegal robocalls made to

1 telephone numbers owned by a person or entity in this state, and on the
2 status of the implementation and offering of call mitigation technology
3 by telephone service providers that provide telephone service to custom-
4 ers residing in the state. Such report shall be delivered no later than
5 December first, two thousand twenty, and annually thereafter, to the
6 governor, the temporary president of the senate, the speaker of the
7 assembly, the minority leader of the senate, and the minority leader of
8 the assembly.

9 (b) Such report shall include:

10 (1) A list of telephone service providers operating in this state, and
11 the status of their implementation and offering of call mitigation tech-
12 nology;

13 (2) Information regarding delays in the implementation and offering of
14 call mitigation technology, and the reasons for such delays;

15 (3) Recommendations for additional measures to protect customers from
16 illegal robocalls;

17 (4) The number of illegal robocalls made to telephone numbers owned by
18 a person or entity in this state, to the extent that such information is
19 known; and

20 (5) Any other information or recommendations relating to the issue of
21 robocalls that the department judges to be pertinent or necessary.

22 § 3. Paragraph b of subdivision 11 of section 399-pp of the general
23 business law, as added by chapter 546 of the laws of 2000, is amended to
24 read as follows:

25 b. In every case where the court shall determine that a violation of
26 this section has occurred, it may impose a civil penalty of not less
27 than one thousand dollars nor more than two thousand dollars for each
28 violation, provided that for a violation of subdivision seven-a of this
29 section, the court may impose a civil penalty of not less than five
30 thousand dollars nor more than ten thousand dollars for each violation.
31 Such penalty shall be in addition to the denial of registration or
32 renewal, suspension of registration or revocation of registration or
33 assessment of a fine authorized by subdivision five of this section.

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

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