

4157

2009-2010 Regular Sessions

I N A S S E M B L Y

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Introduced by M. of A. CYMBROWITZ, COLTON, DINOWITZ, ALESSI, GALEF,
EDDINGTON -- Multi-Sponsored by -- M. of A. GUNTHER, JOHN, KOON --
read once and referred to the Committee on Consumer Affairs and
Protection

AN ACT to amend the general business law, the public service law and the
state finance law, in relation to allowing individuals to register
their telefacsimile telephone numbers with the consumer protection
board as part of the "do not call" statewide registry

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

1 Section 1. Section 399-z of the general business law, as amended by
2 chapter 124 of the laws of 2003, paragraph j of subdivision 1 as amended
3 by chapter 214 of the laws of 2005, subdivision 3 as amended by chapter
4 69 of the laws of 2007, paragraph a of subdivision 6 as amended by chap-
5 ter 417 of the laws of 2004 and paragraph a of subdivision 7 as amended
6 by chapter 263 of the laws of 2006, is amended to read as follows:
7 S 399-z. Telemarketing; establishment of no telemarketing sales calls
8 statewide registry; authorization of the transfer of telephone numbers
9 on the no telemarketing sales calls AND TELEFACSIMILE ADVERTISING state-
10 wide registry to the national "do-not-call" registry. 1. As used in this
11 section, the following terms shall have the following meanings:
12 a. "Board" shall mean the consumer protection board;
13 b. "Director" means the executive director of the consumer protection
14 board;
15 c. "Customer" means any natural person who is a resident of this state
16 and who is or may be required to pay for or to exchange consideration
17 for goods and services offered through telemarketing;
18 d. "Doing business in this state" means conducting telephonic sales
19 calls: (i) from a location in this state; or (ii) from a location
20 outside of this state to consumers residing in this state;
21 e. "Goods and services" means any goods and services, and shall
22 include any real property or any tangible personal property or services
23 of any kind;

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

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1 f. "Person" means any natural person, association, partnership, firm,
2 corporation and its affiliates or subsidiaries or other business entity;
3 g. "Telemarketer" means any person who, for financial profit or
4 commercial purposes in connection with telemarketing, makes telemarket-
5 ing sales calls to a customer when the customer is in this state or any
6 person who directly controls or supervises the conduct of a telemarket-
7 er. For the purposes of this section, "commercial purposes" shall mean
8 the sale or offer for sale of goods or services;
9 h. "Telemarketing" means any plan, program or campaign which is
10 conducted to induce payment or the exchange of any other consideration
11 for any goods or services by use of one or more telephones and which
12 involves more than one telephone call by a telemarketer in which the
13 customer is located within the state at the time of the call. Telemar-
14 keting does not include the solicitation of sales through media other
15 than by telephone calls;
16 i. "Telemarketing sales call" means a telephone call made by a tele-
17 marketer to a customer for the purpose of inducing payment or the
18 exchange of any other consideration for any goods or services;
19 j. "Unsolicited telemarketing sales call" means any telemarketing
20 sales call other than a call made:
21 (i) in response to an express written or verbal request of the custom-
22 er called; or
23 (ii) in connection with an established business relationship, which
24 has not been terminated by either party, unless such customer has stated
25 to the telemarketer that such customer no longer wishes to receive the
26 telemarketing sales calls of such telemarketer; or
27 (iii) to an existing customer, unless such customer has stated to the
28 telemarketer that such customer no longer wishes to receive the telemar-
29 keting sales calls of such telemarketer[.];
30 K. "UNSOLICITED TELEFACSIMILE ADVERTISEMENT" MEANS ANY TELEFACSIMILE
31 MESSAGE THAT PROMOTES GOODS AND SERVICES FOR PURCHASE BY THE RECIPIENT
32 OF SUCH MESSAGE, EXCEPT WHERE THE MESSAGE IS SENT TO A RECIPIENT WITH
33 WHICH THE INITIATOR HAS HAD A PREEXISTING BUSINESS OR CONTRACTUAL
34 RELATIONSHIP;
35 L. "TELEFACSIMILE" MEANS EVERY PROCESS IN WHICH ELECTRONIC SIGNALS ARE
36 TRANSMITTED BY TELEPHONE LINES FOR CONVERSION INTO WRITTEN TEXT;
37 M. "TELEFACSIMILE ADVERTISER" MEANS ANY PERSON, CORPORATION, PARTNER-
38 SHIP OR ASSOCIATION WHO INITIATES UNSOLICITED TELEFACSIMILE ADVERTISE-
39 MENTS.
40 2. a. The board is authorized to establish, manage, and maintain a no
41 telemarketing sales calls AND TELEFACSIMILE ADVERTISING statewide regis-
42 try which shall contain a list of customers who do not wish to receive
43 unsolicited telemarketing sales calls OR TELEFACSIMILE ADVERTISING. The
44 board may contract with a private vendor to establish, manage and main-
45 tain such registry, provided the private vendor has maintained national
46 no telemarketing sales calls OR TELEFACSIMILE ADVERTISING registries for
47 more than two years, and the contract requires the vendor to provide the
48 no telemarketing sales calls AND TELEFACSIMILE ADVERTISING registry in a
49 printed hard copy format and in any other format as prescribed by the
50 board. ANY TYPE OF COPY FORMAT MAINTAINED FOR TELEMARKETING SALES CALLS
51 SHALL BE MAINTAINED FOR TELEFACSIMILE ADVERTISING.
52 b. The board is authorized to have the national "do-not-call" registry
53 established, managed and maintained by the federal trade commission
54 pursuant to 16 C.F.R. Section 310.4 (b) (1) (iii) (B) serve as the New
55 York state no telemarketing sales calls AND TELEFACSIMILE ADVERTISING
56 statewide registry provided for by this section. The board is further

1 authorized to take whatever administrative actions may be necessary or
2 appropriate for such transition including, but not limited to, providing
3 the telephone numbers of New York customers registered on the no tele-
4 marketing sales calls AND TELEFACSIMILE ADVERTISING statewide registry
5 to the federal trade commission, for inclusion on the national "do-not-
6 call" registry.

7 3. A. No telemarketer or seller may make or cause to be made any unso-
8 licited telemarketing sales call to any customer when that customer's
9 telephone number has been on the national "do-not-call" registry, estab-
10 lished by the federal trade commission, for a period of thirty-one days
11 prior to the date the call is made, pursuant to 16 CFR Section
12 310.4(b)(1)(iii)(B).

13 B. NO TELEFACSIMILE ADVERTISER MAY MAKE OR CAUSE TO BE MADE ANY UNSO-
14 LICITED TELEFACSIMILE ADVERTISEMENT TO ANY CUSTOMER MORE THAN THIRTY
15 DAYS AFTER THE CUSTOMER'S NAME AND TELEPHONE NUMBER OR NUMBERS APPEAR ON
16 THE THEN CURRENT QUARTERLY NO TELEMARKETING SALES CALLS AND TELEFACSIM-
17 ILE ADVERTISING REGISTRY MADE AVAILABLE BY THE BOARD PURSUANT TO SUBDI-
18 VISION TWO OF THIS SECTION.

19 4. a. The board shall provide notice to customers of the establishment
20 of the national "do-not-call" registry. Any customer who wishes to be
21 included on such registry shall notify the federal trade commission as
22 directed by relevant federal regulations.

23 b. Any company that provides local telephone directories to customers
24 in this state shall inform its customers of the provisions of this
25 section by means of publishing a notice in such local telephone directo-
26 ries.

27 C. ANY COMPANY IN THIS STATE THAT SELLS EQUIPMENT CAPABLE OF TRANSMIT-
28 TING A TELEFACSIMILE SHALL INFORM ITS CUSTOMERS OF THE PROVISIONS OF
29 THIS SECTION BY MEANS OF POSTING A NOTICE ISSUED BY THE BOARD.

30 5. The board shall prescribe rules and regulations to administer this
31 section.

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

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

38 c. Nothing in this subdivision shall be construed to restrict any
39 right which any person may have under any other statute or at common
40 law.

41 7. A person shall not be held liable for violating this section if:

42 a. the person has obtained a version of the "do-not-call" registry
43 from the federal trade commission no more than thirty-one days prior to
44 the date any telemarketing call OR UNSOLICITED TELEFACSIMILE ADVERTISE-
45 MENT is made, pursuant to 16 C.F.R. Section 310.4(b)(1)(iii)(B), and has
46 established and implemented written policies and procedures related to
47 the requirements of this section;

48 b. the person has trained his or her personnel in the requirements of
49 this section;

50 c. the person maintains records demonstrating compliance with para-
51 graphs a and b of this subdivision and the requirements of this section;
52 and

53 d. any subsequent unsolicited telemarketing sales call OR UNSOLICITED
54 TELEFACSIMILE ADVERTISEMENT is the result of error.

1 S 2. Section 92-d of the public service law, as amended by chapter 546
2 of the laws of 2000, the opening paragraph as separately amended by
3 chapter 547 of the laws of 2000, is amended to read as follows:
4 S 92-d. Telephone solicitations. Each local exchange telephone company
5 shall inform its customers of the provisions of sections three hundred
6 ninety-nine-p [and], three hundred ninety-nine-z and three hundred
7 ninety-nine-pp of the general business law and article ten-B of the
8 personal property law, as such provisions relate to the rights of
9 consumers with respect to telemarketers, sellers, the no telemarketing
10 sales [call] CALLS AND TELEFACSIMILE ADVERTISING statewide registry, and
11 automatic dialing-announcing devices, by means of:

12 1. Inserting a notice annually in the customers' billing statements;
13 and

14 2. Publishing a notice in local telephone directories.

15 S 3. Section 97-www of the state finance law, as added by chapter 547
16 of the laws of 2000, is amended to read as follows:

17 S 97-www. [1.] Consumer protection account. 1. There is hereby estab-
18 lished in the joint custody of the state comptroller and the commission-
19 er of taxation and finance an account within the miscellaneous special
20 revenue fund to be known as the "consumer protection account."

21 2. Such account shall consist of all fees and penalties received by
22 the state consumer protection board pursuant to article ten-B of the
23 personal property law[,] AND section three hundred ninety-nine-z of the
24 general business law, and any additional monies appropriated, credited
25 or transferred to such account by the [Legislature] LEGISLATURE. Any
26 interest earned by the investment of monies in such account shall be
27 added to such account, become part of such account, and be used for the
28 purposes of such account.

29 3. Monies in the account shall be available to the state consumer
30 protection board for the payment of costs of producing and distributing
31 educational materials and conducting educational activities relating to
32 the promotion of the "[unsolicited] NO telemarketing sales [call] CALLS
33 AND TELEFACSIMILE ADVERTISING STATEWIDE registry" and all related costs
34 and expenditures incurred in the administration of section three hundred
35 ninety-nine-z of the general business law and article ten-B of the
36 personal property law.

37 4. Monies [in the account] shall be paid out of the account on the
38 audit and warrant of the state comptroller on vouchers certified or
39 approved by the EXECUTIVE DIRECTOR OF THE state consumer protection
40 board or [any officer or employee designated by the executive director]
41 BY HIS OR HER DULY DESIGNATED REPRESENTATIVE, IN THE MANNER PRESCRIBED
42 BY LAW.

43 S 4. Separability clause; construction. If any part or provision of
44 this act or the application thereof to any person or circumstances be
45 adjudged invalid by any court of competent jurisdiction, such judgment
46 shall be confined in its operation to the part, provision or application
47 directly involved in the controversy in which such judgment shall have
48 been rendered and shall not affect or impair the validity of the remain-
49 der of this act or the application thereof to other persons or circum-
50 stances.

51 S 5. This act shall take effect on the one hundred eightieth day after
52 it shall have become a law, provided, however, that effective immediate-
53 ly, the addition, amendment and/or repeal of any rules or regulations
54 necessary for the implementation of section one of this act on its
55 effective date is authorized and directed to be made and completed on or
56 before such effective date.