

1045

2009-2010 Regular Sessions

I N S E N A T E

January 22, 2009

Introduced by Sen. BRESLIN -- 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, in relation to including facsimile transmissions in the no telemarketing sales calls statewide registry

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, 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 AND FACSIMILE TRANSMISSIONS statewide registry; authorization of the
9 transfer of telephone numbers AND/OR FACSIMILE TRANSMISSIONS NUMBER OR
10 NUMBERS on the no telemarketing sales calls AND FACSIMILE TRANSMISSIONS
11 statewide registry to the national "do-not-call" registry. 1. As used in
12 this section, the following terms shall have the following meanings:
13 a. "Board" shall mean the consumer protection board[;].
14 b. "Director" means the executive director of the consumer protection
15 board[;].
16 c. "Customer" means any natural person who is a resident of this state
17 and who is or may be required to pay for or to exchange consideration
18 for goods and services offered through telemarketing[;].
19 d. "Doing business in this state" means conducting telephonic sales
20 calls OR FACSIMILE TRANSMISSIONS: (i) from a location in this state; or
21 (ii) from a location outside of this state to consumers residing in this
22 state[;].

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

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1 D-1. "FACSIMILE TRANSMISSION" MEANS ANY METHOD OF TRANSMISSION OF A
2 DOCUMENT TO A FACSIMILE MACHINE AT A REMOTE LOCATION WHICH CAN AUTOMAT-
3 ICALLY PRODUCE A TANGIBLE COPY OF SUCH DOCUMENT.

4 e. "Goods and services" means any goods and services, and shall
5 include any real property or any tangible personal property or services
6 of any kind[;].

7 f. "Person" means any natural person, association, partnership, firm,
8 LIMITED LIABILITY COMPANY, corporation and its affiliates or subsid-
9 iaries or other business entity[;].

10 g. "Telemarketer" means any person who, for financial profit or
11 commercial purposes in connection with telemarketing, makes telemarket-
12 ing sales calls OR FACSIMILE TRANSMISSIONS to a customer when the
13 customer is in this state or any person who directly controls or super-
14 vises the conduct of a telemarketer. For the purposes of this section,
15 "commercial purposes" shall mean the sale or offer for sale of goods or
16 services[;].

17 h. "Telemarketing" means any plan, program or campaign which is
18 conducted to induce payment or the exchange of any other consideration
19 for any goods or services by use of one or more telephones OR FACSIMILE
20 MACHINES and which involves more than one telephone call OR FACSIMILE
21 TRANSMISSIONS by a telemarketer in which the customer is located within
22 the state at the time of the call OR FACSIMILE TRANSMISSIONS. Telemar-
23 keting does not include the solicitation of sales through media other
24 than by telephone calls[;] OR FACSIMILE TRANSMISSIONS.

25 H-1. "TELEMARKETING FACSIMILE TRANSMISSION" MEANS A FACSIMILE TRANS-
26 MISSION MADE BY A TELEMARKETER TO A CUSTOMER FOR THE PURPOSE OF INDUCING
27 PAYMENT OR THE EXCHANGE OF ANY OTHER CONSIDERATION FOR ANY GOODS OR
28 SERVICES.

29 i. "Telemarketing sales call" means a telephone call made by a tele-
30 marketer to a customer for the purpose of inducing payment or the
31 exchange of any other consideration for any goods or services[;].

32 j. "Unsolicited telemarketing sales call OR FACSIMILE TRANSMISSION"
33 means any telemarketing sales call OR TELEMARKETING FACSIMILE TRANS-
34 MISSION other than a call OR TRANSMISSION made:

35 (i) in response to an express written or verbal request of the custom-
36 er called; or

37 (ii) in connection with an established business relationship, which
38 has not been terminated by either party, unless such customer has stated
39 to the telemarketer that such customer no longer wishes to receive the
40 telemarketing sales calls of such telemarketer; or

41 (iii) to an existing customer, unless such customer has stated to the
42 telemarketer that such customer no longer wishes to receive the telemar-
43 keting sales calls OR TELEMARKETING FACSIMILE TRANSMISSION of such tele-
44 marketer.

45 2. a. The board is authorized to establish, manage, and maintain a no
46 telemarketing sales calls AND FACSIMILE TRANSMISSIONS statewide registry
47 which shall contain a list of customers who do not wish to receive unso-
48 licited telemarketing sales calls AND/OR TELEMARKETING FACSIMILE TRANS-
49 MISSIONS. The board may contract with a private vendor to establish,
50 manage and maintain such registry, provided the private vendor has main-
51 tained national no telemarketing sales calls AND FACSIMILE TRANSMISSIONS
52 registries for more than two years, and the contract requires the vendor
53 to provide the no telemarketing sales calls AND FACSIMILE TRANSMISSIONS
54 registry in a printed hard copy format and in any other format as
55 prescribed by the board.

1 b. The board is authorized to have the national "do-not-call" registry
2 established, managed and maintained by the federal trade commission
3 pursuant to 16 C.F.R. Section 310.4 (b) (1) (iii) (B) serve as the New
4 York state no telemarketing sales calls AND FACSIMILE TRANSMISSIONS
5 statewide registry provided for by this section. The board is further
6 authorized to take whatever administrative actions may be necessary or
7 appropriate for such transition including, but not limited to, providing
8 the telephone numbers AND/OR FACSIMILE TRANSMISSION NUMBER OR NUMBERS of
9 New York customers registered on the no telemarketing sales calls AND
10 FACSIMILE TRANSMISSIONS statewide registry to the federal trade commis-
11 sion, for inclusion on the national "do-not-call" registry.

12 3. No telemarketer or seller [may] SHALL make or cause to be made any
13 unsolicited telemarketing sales call OR FACSIMILE TRANSMISSION to any
14 customer when that customer's telephone number has been on the national
15 "do-not-call" registry, established by the federal trade commission, for
16 a period of thirty-one days prior to the date the call is made, pursuant
17 to 16 CFR Section 310.4(b)(1) (iii)(B).

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

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

26 5. The board shall prescribe rules and regulations to administer this
27 section.

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

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

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

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

38 a. the person has obtained a version of the "do-not-call" registry
39 from the federal trade commission no more than thirty-one days prior to
40 the date any telemarketing call OR FACSIMILE TRANSMISSION is made,
41 pursuant to 16 C.F.R. Section 310.4(b)(1)(iii)(B), and has established
42 and implemented written policies and procedures related to the require-
43 ments of this section;

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

46 c. the person maintains records demonstrating compliance with para-
47 graphs a and b of this subdivision and the requirements of this section;
48 and

49 d. any subsequent unsolicited telemarketing sales call OR FACSIMILE
50 TRANSMISSIONS is the result of error.

51 S 2. This act shall take effect on the one hundred twentieth day after
52 it shall have become a law, provided that any rules and regulations
53 necessary to implement the provisions of this act on its effective date
54 are authorized and directed to be completed on or before such date.