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

2753

2009-2010 Regular Sessions

I N S E N A T E

March 2, 2009

Introduced by Sen. C. JOHNSON -- 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 and the civil practice law and rules, in relation to prohibiting individuals from transmitting misleading or inaccurate caller identification information with the intent to defraud, harass, mislead, or cause harm to 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 PERSON WITHIN THE STATE, IN CONNECTION WITH ANY TELECOMMUNICATIONS SERVICE OR VOIP SERVICE, TO CAUSE ANY CALLER IDENTIFICATION SERVICE TO TRANSMIT MISLEADING OR INACCURATE CALLER IDENTIFICATION INFORMATION, WITH THE INTENT TO DEFRAUD, HARASS, MISLEAD, OR CAUSE HARM TO ANY PERSON WHEN MAKING A CALL TO ANOTHER PERSON WITHIN THE STATE.

2. NOTHING IN THIS SECTION SHALL BE CONSTRUED TO PREVENT OR RESTRICT ANY PERSON FROM BLOCKING THE CAPABILITY OF ANY CALLER IDENTIFICATION SERVICE TO TRANSMIT CALLER IDENTIFICATION INFORMATION.

3. FOR PURPOSES OF THIS SECTION:

(A) "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.

(B) "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.

(C) "VOIP SERVICE" MEANS A SERVICE THAT:

(I) PROVIDES REAL-TIME VOICE COMMUNICATIONS TRANSMITTED THROUGH END USER EQUIPMENT USING TCP/IP PROTOCOL, OR A SUCCESSOR PROTOCOL, FOR A FEE OR WITHOUT A FEE; AND

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

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(II) IS OFFERED TO THE PUBLIC, OR SUCH CLASSES OF USERS AS TO BE EFFECTIVELY AVAILABLE TO THE PUBLIC (WHETHER PART OF A BUNDLE OF SERVICES OR SEPARATELY); AND

(III) HAS THE CAPABILITY TO ORIGINATE TRAFFIC TO, OR TERMINATE TRAFFIC FROM, THE PUBLIC SWITCHED TELEPHONE NETWORK.

4. 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.

5. IN ADDITION TO THE RIGHT OF ACTION GRANTED TO THE ATTORNEY GENERAL PURSUANT TO THIS SECTION, ANY PERSON WHOSE CALLER IDENTIFICATION INFORMATION WAS USED IN CONNECTION WITH A VIOLATION OF THIS SECTION OR WHO HAS RECEIVED A TELEPHONE CALL IN VIOLATION OF THIS SECTION MAY BRING AN ACTION IN HIS OR HER OWN NAME TO ENJOIN SUCH UNLAWFUL ACT OR PRACTICE, AN ACTION TO RECOVER THE GREATER OF (A) HIS OR HER ACTUAL DAMAGES, OR (B) AN AMOUNT EQUAL TO NOT MORE THAN FIVE HUNDRED DOLLARS PER CALL, UP TO A TOTAL AGGREGATE AMOUNT OF NOT MORE THAN TWENTY-FIVE THOUSAND DOLLARS FOR ALL CALLS PLACED IN VIOLATION OF THIS SECTION WITHIN A CONTINUOUS SEVENTY-TWO HOUR PERIOD; OR BOTH SUCH ACTIONS. THE COURT SHALL AWARD REASONABLE ATTORNEY'S FEES TO A PREVAILING PLAINTIFF.

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.