

3763

2009-2010 Regular Sessions

I N S E N A T E

March 31, 2009

Introduced by Sen. ADAMS -- (at request of the Consumer Protection Board) -- 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 providing for enhanced consumer protection measures and enforcement of the do-not-call 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 statewide registry; authorization of the transfer of telephone numbers
9 on the no telemarketing sales calls statewide registry to the national
10 "do-not-call" registry. 1. As used in this section, the following terms
11 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 OR BY ANY OUTBOUND TELEPHONE CALLING TECHNOLOGY THAT DELIVERS A
18 PRERECORDED MESSAGE EITHER to a customer OR TO THEIR VOICEMAIL OR
19 ANSWERING MACHINE SERVICE for the purpose of inducing payment or the
20 exchange of any other consideration for any goods or services;
- 21 j. "Unsolicited telemarketing sales call" means any telemarketing
22 sales call other than a call made:
- 23 (i) in response to an express written or verbal request of the custom-
24 er called; or
- 25 (ii) in connection with an established business relationship, which
26 has not been terminated by either party, unless such customer has stated
27 to the telemarketer that such customer no longer wishes to receive the
28 telemarketing sales calls of such telemarketer; or
- 29 (iii) to an existing customer, unless such customer has stated to the
30 telemarketer that such customer no longer wishes to receive the telemar-
31 keting sales calls of such telemarketer.
- 32 2. TELEMARETERS SHALL NOT ENGAGE IN TELEMARETING TO A PERSON'S
33 RESIDENCE AT ANY TIME OTHER THAN BETWEEN 8:00 A.M. AND 9:00 P.M. LOCAL
34 TIME AND SHALL PROVIDE, IN A CLEAR AND COHERENT MANNER USING WORDS WITH
35 COMMON AND EVERYDAY MEANINGS, AT THE BEGINNING OF EACH TELEMARETING
36 SALES CALL ALL OF THE FOLLOWING INFORMATION:
- 37 (I) THE TELEMARETER'S NAME AND THE PERSON ON WHOSE BEHALF THE SOLIC-
38 ITATION IS BEING MADE, IF OTHER THAN THE TELEMARETER;
- 39 (II) THE PURPOSE OF THE TELEPHONE CALL;
- 40 (III) THE IDENTITY OF THE GOODS OR SERVICES FOR WHICH A FEE WILL BE
41 CHARGED; AND
- 42 (IV) THE COST OF THE GOODS OR SERVICES THAT ARE THE SUBJECT OF THE
43 CALL.
- 44 3. a. The board is authorized to establish, manage, and maintain a no
45 telemarketing sales calls statewide registry which shall contain a list
46 of customers who do not wish to receive unsolicited telemarketing sales
47 calls. The board may contract with a private vendor to establish, manage
48 and maintain such registry, provided the private vendor has maintained
49 national no telemarketing sales calls registries for more than two
50 years, and the contract requires the vendor to provide the no telemar-
51 keting sales calls registry in a printed hard copy format and in any
52 other format as prescribed by the board.
- 53 b. The board is authorized to have the national "do-not-call" registry
54 established, managed and maintained by the federal trade commission
55 pursuant to 16 C.F.R. Section 310.4 (b) (1) (iii) (B) serve as the New
56 York state no telemarketing sales calls statewide registry provided for

1 by this section. The board is further authorized to take whatever admin-
2 istrative actions may be necessary or appropriate for such transition
3 including, but not limited to, providing the telephone numbers of New
4 York customers registered on the no telemarketing sales calls statewide
5 registry to the federal trade commission, for inclusion on the national
6 "do-not-call" registry.

7 [3.] 4. No telemarketer or seller may make or cause to be made any
8 unsolicited telemarketing sales call to any customer when that custom-
9 er's telephone number has been on the national "do-not-call" registry,
10 established by the federal trade commission, for a period of thirty-one
11 days prior to the date the call is made, pursuant to 16 CFR Section
12 310.4(b)(1) (iii)(B).

13 [4.] 5. a. The board shall provide notice to customers of the estab-
14 lishment of the national "do-not-call" registry. Any customer who wishes
15 to be included on such registry shall notify the federal trade commis-
16 sion as directed by relevant federal regulations.

17 b. Any company that provides local telephone directories to customers
18 in this state shall inform its customers of the provisions of this
19 section by means of publishing a notice in such local telephone directo-
20 ries.

21 [5. The board shall prescribe rules and regulations to administer this
22 section.]

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

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

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

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

33 a. the person has obtained a version of the "do-not-call" registry
34 from the federal trade commission no more than thirty-one days prior to
35 the date any telemarketing call is made, pursuant to 16 C.F.R. Section
36 310.4(b)(1)(iii)(B), and has established and implemented written poli-
37 cies and procedures related to the requirements of this section;

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

40 c. the person maintains records demonstrating compliance with para-
41 graphs a and b of this subdivision and the requirements of this section;
42 and

43 d. any subsequent unsolicited telemarketing sales call is the result
44 of error.

45 8. THE BOARD SHALL PRESCRIBE RULES AND REGULATIONS TO ADMINISTER THIS
46 SECTION.

47 S 2. This act shall take effect immediately.