

538

2009-2010 Regular Sessions

I N   S E N A T E

(PREFILED)

January 7, 2009

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Introduced by Sen. ALESI -- 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, 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 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 TELEFACSIMILE ADVERTISING statewide registry; authorization of the  
9 transfer of telephone numbers on the no telemarketing sales calls 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;

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

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1 e. "Goods and services" means any goods and services, and shall  
2 include any real property or any tangible personal property or services  
3 of any kind;

4 f. "Person" means any natural person, association, partnership, firm,  
5 corporation and its affiliates or subsidiaries or other business entity;

6 g. "Telemarketer" means any person who, for financial profit or  
7 commercial purposes in connection with telemarketing, makes telemarket-  
8 ing sales calls to a customer when the customer is in this state or any  
9 person who directly controls or supervises the conduct of a telemarket-  
10 er. For the purposes of this section, "commercial purposes" shall mean  
11 the sale or offer for sale of goods or services;

12 h. "Telemarketing" means any plan, program or campaign which is  
13 conducted to induce payment or the exchange of any other consideration  
14 for any goods or services by use of one or more telephones and which  
15 involves more than one telephone call by a telemarketer in which the  
16 customer is located within the state at the time of the call. Telemar-  
17 keting does not include the solicitation of sales through media other  
18 than by telephone calls;

19 i. "Telemarketing sales call" means a telephone call made by a tele-  
20 marketer to a customer for the purpose of inducing payment or the  
21 exchange of any other consideration for any goods or services;

22 j. "Unsolicited telemarketing sales call" means any telemarketing  
23 sales call other than a call made:

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

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

30 (iii) to an existing customer, unless such customer has stated to the  
31 telemarketer that such customer no longer wishes to receive the telemar-  
32 keting sales calls of such telemarketer[.];

33 K. "UNSOLICITED TELEFACSIMILE ADVERTISEMENT" MEANS ANY TELEFACSIMILE  
34 MESSAGE THAT PROMOTES GOODS AND SERVICES FOR PURCHASE BY THE RECIPIENT  
35 OF SUCH MESSAGE, EXCEPT WHERE THE MESSAGE IS SENT TO A RECIPIENT WITH  
36 WHICH THE INITIATOR HAS HAD A PREEXISTING BUSINESS OR CONTRACTUAL  
37 RELATIONSHIP;

38 L. "TELEFACSIMILE" MEANS EVERY PROCESS IN WHICH ELECTRONIC SIGNALS ARE  
39 TRANSMITTED BY TELEPHONE LINES FOR CONVERSION INTO WRITTEN TEXT;

40 M. "TELEFACSIMILE ADVERTISER" MEANS ANY PERSON, CORPORATION, PARTNER-  
41 SHIP OR ASSOCIATION WHO INITIATES UNSOLICITED TELEFACSIMILE ADVERTISE-  
42 MENTS.

43 2. a. The board is authorized to establish, manage, and maintain a no  
44 telemarketing sales calls AND TELEFACSIMILE ADVERTISING statewide regis-  
45 try which shall contain a list of customers who do not wish to receive  
46 unsolicited telemarketing sales calls OR UNSOLICITED TELEFACSIMILE  
47 ADVERTISEMENTS. The board may contract with a private vendor to estab-  
48 lish, manage and maintain such registry, provided the private vendor has  
49 maintained national no telemarketing sales calls registries for more  
50 than two years, and the contract requires the vendor to provide the no  
51 telemarketing sales calls AND TELEFACSIMILE ADVERTISING registry in a  
52 printed hard copy format and in any other format as prescribed by the  
53 board.

54 ANY TYPE OF COPY FORMAT MAINTAINED FOR TELEMARKETING SALES CALLS SHALL  
55 BE MAINTAINED FOR TELEFACSIMILE ADVERTISING.

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 statewide registry provided for  
5 by this section. The board is further authorized to take whatever admin-  
6 istrative actions may be necessary or appropriate for such transition  
7 including, but not limited to, providing the telephone numbers of New  
8 York customers registered on the no telemarketing sales calls AND TELE-  
9 FACSIMILE ADVERTISING statewide registry to the federal trade commis-  
10 sion, for inclusion on the national "do-not-call" registry.

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

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

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

27 b. Any company that provides local telephone directories to customers  
28 in this state shall inform its customers of the provisions of this  
29 section by means of publishing a notice in such local telephone directo-  
30 ries.

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

34 5. The board shall prescribe rules and regulations to administer this  
35 section.

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

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

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

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

46 a. the person has obtained a version of the "do-not-call" registry OR  
47 THE NO TELEMARKETING SALES CALLS AND TELEFACSIMILE ADVERTISING REGISTRY  
48 from the federal trade commission no more than thirty-one days prior to  
49 the date any telemarketing call OR ANY TELEFACSIMILE ADVERTISEMENT is  
50 made, pursuant to 16 C.F.R. Section 310.4(b)(1)(iii)(B), and has estab-  
51 lished and implemented written policies and procedures related to the  
52 requirements of this section;

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

1 c. the person maintains records demonstrating compliance with para-  
2 graphs a and b of this subdivision and the requirements of this section;  
3 and

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

6 S 2. Section 92-d of the public service law, as amended by chapter 546  
7 of the laws of 2000 and the opening paragraph as separately amended by  
8 chapter 547 of the laws of 2000, is amended to read as follows:

9 S 92-d. Telephone solicitations. Each local exchange telephone company  
10 shall inform its customers of the provisions of sections three hundred  
11 ninety-nine-p [and], three hundred ninety-nine-z and three hundred  
12 ninety-nine-pp of the general business law and article ten-B of the  
13 personal property law, as such provisions relate to the rights of  
14 consumers with respect to telemarketers, sellers, the no telemarketing  
15 sales [call] CALLS AND TELEFACSIMILE ADVERTISING statewide registry, and  
16 automatic dialing-announcing devices, by means of:

17 1. Inserting a notice annually in the customers' billing statements;  
18 and

19 2. Publishing a notice in local telephone directories.

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

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

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

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

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

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

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