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

S. 755 A. 2285

2009-2010 Regular Sessions

S E N A T E - A S S E M B L Y

January 15, 2009

IN SENATE -- Introduced by Sen. BRESLIN -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

IN ASSEMBLY -- Introduced by M. of A. McENENY, REILLY, MILLMAN -- Multi-Sponsored by -- M. of A. CHRISTENSEN, FIELDS, GALEF, JOHN, MAGEE, WEISENBERG -- 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 establishing the no political solicitation call statewide registry regarding political calls

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-zz to read as follows:

S 399-ZZ. POLITICAL SOLICITATION; ESTABLISHMENT OF NO POLITICAL SOLICITATION CALL STATEWIDE REGISTRY. 1. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

A. "BOARD" SHALL MEAN THE CONSUMER PROTECTION BOARD;

B. "DIRECTOR" MEANS THE EXECUTIVE DIRECTOR OF THE CONSUMER PROTECTION BOARD;

C. "PERSON" MEANS ANY NATURAL PERSON, ASSOCIATION, PARTNERSHIP, FIRM, CORPORATION AND ITS AFFILIATES OR SUBSIDIARIES OR OTHER BUSINESS ENTITY; AND

D. "UNSOLICITED POLITICAL CALL" MEANS ANY TELEPHONE CALL OTHER THAN A CALL MADE:

(I) IN RESPONSE TO AN EXPRESS WRITTEN OR VERBAL REQUEST OF THE PERSON CALLED; OR

(II) IN CONNECTION WITH AN ESTABLISHED POLITICAL RELATIONSHIP, WHICH HAS NOT BEEN TERMINATED BY EITHER PARTY.

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

LBD05582-01-9

2. THE BOARD SHALL ESTABLISH AND MAINTAIN A NO POLITICAL SOLICITATION CALL STATEWIDE REGISTRY WHICH SHALL CONTAIN A LIST OF PERSONS WHO DO NOT WISH TO RECEIVE AN UNSOLICITED POLITICAL CALL. THE BOARD MAY CONTRACT WITH A PRIVATE VENDOR TO ESTABLISH AND MAINTAIN SUCH REGISTRY, PROVIDED THE PRIVATE VENDOR HAS MAINTAINED NATIONAL NO POLITICAL SOLICITATION CALL REGISTRIES FOR MORE THAN TWO YEARS, AND THE CONTRACT REQUIRES THE VENDOR TO PROVIDE THE NO POLITICAL SOLICITATION CALL STATEWIDE REGISTRY IN A PRINTED HARD COPY FORMAT AND IN ANY OTHER FORMAT AS PRESCRIBED BY THE BOARD.

3. NO CALLERS MAY MAKE OR CAUSE TO BE MADE ANY UNSOLICITED POLITICAL CALL TO ANY PERSON MORE THAN THIRTY DAYS AFTER THE PERSON'S NAME AND TELEPHONE NUMBER OR NUMBERS APPEAR ON THE THEN CURRENT QUARTERLY NO POLITICAL SOLICITATION CALL STATEWIDE REGISTRY MADE AVAILABLE BY THE BOARD PURSUANT TO SUBDIVISION TWO OF THIS SECTION.

4. A. THE BOARD SHALL PROVIDE NOTICE OF THE ESTABLISHMENT OF THE NO POLITICAL SOLICITATION CALL STATEWIDE REGISTRY. ANY PERSON WHO WISHES TO BE INCLUDED ON SUCH LISTING SHALL NOTIFY THE BOARD BY CALLING A TOLL-FREE NUMBER PROVIDED BY THE BOARD, OR IN ANY OTHER SUCH MANNER AND AT SUCH TIMES AS THE BOARD MAY PRESCRIBE WHICH MAY INCLUDE NOTIFICATION VIA THE INTERNET. A PERSON ON SUCH REGISTRY SHALL BE DELETED FROM SUCH REGISTRY UPON THE PERSON'S WRITTEN REQUEST. THE BOARD SHALL UPDATE SUCH REGISTRY NOT LESS THAN QUARTERLY AND SHALL MAKE SUCH REGISTRY AVAILABLE TO POLITICAL CALLERS FOR A FEE AS THE BOARD SHALL PRESCRIBE.

B. ANY COMPANY THAT PROVIDES LOCAL TELEPHONE DIRECTORIES TO PERSONS OF THIS STATE SHALL INFORM ITS CUSTOMERS OF THE PROVISIONS OF THIS SECTION BY MEANS OF PUBLISHING A NOTICE IN SUCH LOCAL TELEPHONE DIRECTORIES.

5. THE BOARD SHALL PRESCRIBE RULES AND REGULATIONS TO ADMINISTER THIS SECTION.

6. A. WHERE IT IS DETERMINED AFTER HEARING THAT ANY PERSON HAS VIOLATED ONE OR MORE PROVISIONS OF THIS SECTION, THE DIRECTOR, OR ANY PERSON DEPUTIZED OR SO DESIGNATED BY HIM OR HER MAY ASSESS A FINE NOT TO EXCEED TWO HUNDRED DOLLARS FOR EACH VIOLATION.

B. ANY PROCEEDING CONDUCTED PURSUANT TO PARAGRAPH A OF THIS SUBDIVISION SHALL BE SUBJECT TO THE STATE ADMINISTRATIVE PROCEDURE ACT.

C. NOTHING IN THIS SUBDIVISION SHALL BE CONSTRUED TO RESTRICT ANY RIGHT WHICH ANY PERSON MAY HAVE UNDER ANY OTHER STATUTE OR AT COMMON LAW.

7. A PERSON SHALL NOT BE HELD LIABLE FOR VIOLATING THIS SECTION IF:

A. THE PERSON HAS OBTAINED A COPY OF AN UPDATED, QUARTERLY NO POLITICAL SOLICITATION CALL STATEWIDE REGISTRY AND HAS ESTABLISHED AND IMPLEMENTED WRITTEN POLICIES AND PROCEDURES RELATED TO THE REQUIREMENT OF THIS SECTION;

B. THE PERSON HAS TRAINED HIS OR HER PERSONNEL IN THE REQUIREMENTS OF THIS SECTION;

C. THE PERSON MAINTAINS RECORDS DEMONSTRATING COMPLIANCE WITH PARAGRAPHS A AND B OF THIS SUBDIVISION AND THE REQUIREMENTS OF THIS SECTION; AND

D. ANY SUBSEQUENT UNSOLICITED POLITICAL CALL IS THE RESULT OF ERROR.

S 2. The opening paragraph of section 92-d of the public service law, as separately amended by chapters 546 and 547 of the laws of 2000, is amended to read as follows:

Each local exchange telephone company shall inform its customers of the provisions of sections three hundred ninety-nine-p [and], three hundred ninety-nine-z [and], three hundred ninety-nine-pp AND THREE HUNDRED NINETY-NINE-ZZ of the general business law and article ten-B of the personal property law, as such provisions relate to the rights of

consumers with respect to telemarketers, sellers, the no telemarketing sales [call] CALLS statewide registry, THE NO POLITICAL SOLICITATION CALL STATEWIDE REGISTRY, and automatic dialing-announcing devices, by means of:

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

S 97-www. CONSUMER PROTECTION ACCOUNT. 1. [Consumer protection account.] There is hereby established in the joint custody of the state comptroller and the commissioner of taxation and finance an account within the miscellaneous special revenue fund to be known as the "consumer protection account."

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

3. Monies in the account shall be available to the state consumer protection board for the payment of costs of producing and distributing educational materials and conducting educational activities relating to the promotion of the ["unsolicited telemarketing sales call] "NO TELE-MARKETING SALES CALLS STATEWIDE registry", THE "NO POLITICAL SOLICITA-TION CALL STATEWIDE REGISTRY" and all related costs and expenditures incurred in the administration of [section] SECTIONS three hundred nine-ty-nine-z AND THREE HUNDRED NINETY-NINE-ZZ of the general business law and article ten-B of the personal property law.

4. Monies in the account shall be paid out of the account on the audit and warrant of the state comptroller on vouchers certified or approved by the state consumer protection board or any officer or employee desig-nated by the executive director.

S 4. Severability. If any clause, sentence, paragraph, section or part of this act shall be adjudged by any court of competent jurisdiction to be invalid and after exhaustion of all further judicial review, the judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, para-graph, section or part of this act directly involved in the controversy in which the judgment shall have been rendered.

S 5. This act shall take effect April 1, 2009; provided, however, that any rules and regulations necessary for the timely implementation of this act on its effective date shall be promulgated on or before such date.