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

4173

2009-2010 Regular Sessions

I N A S S E M B L Y

January 30, 2009

Introduced by M. of A. COOK, JOHN -- Multi-Sponsored by -- M. of A. AUBRY, GIANARIS, HOOPER, V. LOPEZ, McENENY, REILLY, TOWNS, WRIGHT -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public service law, in relation to prohibiting certain telephone solicitation calls

THE PEOPLE OF THE STATE OF NEW YORK, REPRESENTED IN SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. The public service law is amended by adding a new section 92-g to read as follows:

S 92-G. TELEPHONE SOLICITATION CALLS PROHIBITED DURING CERTAIN HOURS. 1. AS USED IN THIS SECTION THE TERM: (A) "TELEPHONE SOLICITATION CALL" SHALL MEAN A CALL OR MESSAGE TO A RESIDENTIAL TELEPHONE CUSTOMER FOR THE PURPOSE OF SOLICITING A PURCHASE, LEASE, OR RENTAL OF, OR INVESTMENT IN, OR CONTRACT OR EXTENSION OF CREDIT FOR GOODS, SERVICES OR PROPERTY, OR FOR THE PURPOSE OF OBTAINING INFORMATION FOR SUCH PURPOSES. SUCH TERM SHALL NOT INCLUDE A CALL MADE TO A RESIDENTIAL TELEPHONE CUSTOMER IN RESPONSE TO AN INQUIRY OR INVITATION, BASED ON AN ESTABLISHED BUSINESS RELATIONSHIP, OR AFTER RECEIPT OF EXPRESS PERMISSION.

(B) "PERSON" SHALL MEAN ANY INDIVIDUAL, FIRM, ORGANIZATION, PARTNERSHIP, ASSOCIATION, CORPORATION OR OTHER BUSINESS ENTITY. SUCH TERM SHALL NOT INCLUDE ANY NON-PROFIT ORGANIZATION.

2. NO PERSON SHALL PLACE A TELEPHONE SOLICITATION CALL BETWEEN THE HOURS OF EIGHT P.M. AND EIGHT A.M.

3. 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 OF NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH VIOLATIONS; AND IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE, THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS SECTION AN INJUNCTION MAY BE

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

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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. IN ANY SUCH PROCEEDING, 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, AND DIRECT 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 ONE HUNDRED DOLLARS PER CALL, UP TO A TOTAL OF NOT MORE THAN TWENTY THOUSAND DOLLARS, FOR 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.

4. IN ADDITION TO THE RIGHT OF ACTION GRANTED TO THE ATTORNEY GENERAL PURSUANT TO THIS SECTION, ANY PERSON 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 HIS OR HER ACTUAL DAMAGES OR FIVE HUNDRED DOLLARS, WHICHEVER IS GREATER, OR BOTH SUCH ACTIONS. THE COURT MAY, IN ITS DISCRETION, INCREASE THE AWARD OF DAMAGES TO AN AMOUNT NOT TO EXCEED THREE TIMES THE ACTUAL DAMAGES OR ONE THOUSAND FIVE HUNDRED DOLLARS, WHICHEVER IS GREATER, IF THE COURT FINDS THE DEFENDANT WILLFULLY OR KNOWINGLY VIOLATED THIS SECTION. THE COURT MAY AWARD REASONABLE ATTORNEY'S FEES TO A PREVAILING PLAINTIFF.

S 2. This act shall take effect on the first of November next succeeding the date on which it shall have become a law.