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

7498

2009-2010 Regular Sessions

I N A S S E M B L Y

April 13, 2009

Introduced by M. of A. MILLER -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to the use of automatic telephone answering devices

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 391-q to read as follows:

S 391-Q. USE OF AUTOMATIC TELEPHONE ANSWERING DEVICES. 1. DEFINITIONS. AS USED IN THIS SECTION, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

(A) "AUTOMATIC TELEPHONE ANSWERING DEVICE" MEANS ANY AUTOMATIC EQUIPMENT USED TO ANSWER A TELEPHONE BY MEANS OTHER THAN THE ACTION OF A HUMAN BEING.

(B) "OPERATOR" MEANS ANY NON-RESIDENTIAL USER OF AN AUTOMATIC TELEPHONE ANSWERING DEVICE, AND INCLUDES ALL BUSINESS, COMMERCIAL, AND PROFESSIONAL ENTITIES, NONPROFIT ENTITIES, THE STATE, AND ALL POLITICAL SUBDIVISIONS OF THE STATE. THE TERM OPERATOR ALSO INCLUDES ANY PERSON, FIRM, CORPORATION, OR OTHER LEGAL ENTITY NOT PHYSICALLY PRESENT IN THE STATE BUT DOING BUSINESS IN THE STATE SO AS TO BE SUBJECT TO THE JURISDICTION OF THE STATE AS PROVIDED IN SUBDIVISION (A) OF SECTION THREE HUNDRED TWO OF THE CIVIL PRACTICE LAW AND RULES.

2. NO OPERATOR SHALL EMPLOY OR USE AN AUTOMATIC TELEPHONE ANSWERING DEVICE IN A MANNER INCONSISTENT WITH THE PROVISIONS OF THIS SECTION.

3. EVERY SUCH DEVICE SHALL, IMMEDIATELY UPON ANSWERING A TELEPHONE CALL, ANNOUNCE: (A) THAT THE CALL IS BEING ANSWERED BY AN AUTOMATIC DEVICE, (B) WHETHER OR NOT THE CALLER CAN BE CONNECTED TO A HUMAN BEING VIA THE INSTANT CONNECTION, AND IF SO, HOW, AND (C) WHEN, IF EVER, A HUMAN BEING IS AVAILABLE TO TAKE THE CALLER'S CALL, IF A HUMAN BEING IS NOT THEN AVAILABLE.

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

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4. WHEN CONNECTION TO A HUMAN BEING VIA THE INSTANT CONNECTION IS AVAILABLE, SUCH CONNECTION MUST BE MADE WITHIN SEVEN MINUTES OF SUCH DEVICE'S FIRST ANSWERING THE CALL, AND THE DEVICE MUST SO ANNOUNCE. IF SUCH DEVICE IS UNABLE TO COMPLETE SUCH A CONNECTION AT THE END OF SUCH SEVEN MINUTE PERIOD, THE DEVICE MUST ACCEPT A MESSAGE FROM THE CALLER ALLOWING THE CALLER TO GIVE HIS NAME AND A TELEPHONE NUMBER AT WHICH HE MAY BE REACHED. IN SUCH EVENT, A HUMAN BEING MUST PLACE A CALL TO THE CALLER, AT THE OPERATOR'S EXPENSE, WITHIN ONE HOUR OF SUCH FAILURE TO CONNECT AFTER THE SEVEN MINUTE PERIOD. IF THIS CALL IS NOT COMPLETED, THE EFFORT TO COMPLETE SUCH CALL MUST BE REPEATED THREE TIMES BEFORE IT MAY BE ABANDONED.

5. IF ANY OPERATOR SHALL CAUSE TO BE LISTED IN A TELEPHONE DIRECTORY OR SHALL OTHERWISE PUBLISH OR ADVERTISE A TELEPHONE NUMBER CONNECTED TO AN AUTOMATIC TELEPHONE ANSWERING DEVICE, WHICH DEVICE DOES NOT CONNECT TO A HUMAN BEING, SUCH LISTING, PUBLICATION, OR ADVERTISEMENT MUST SO STATE.

6. 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 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. WHENEVER THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS SECTION HAS OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF ONE HUNDRED DOLLARS FOR A FIRST VIOLATION AND OF UP TO ONE THOUSAND FOR A SECOND OR SUBSEQUENT VIOLATION WITHIN A ONE YEAR 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.

S 2. This act shall take effect on the one hundred eightieth day after it shall have become a law.