

52--A

Cal. No. 125

2011-2012 Regular Sessions

I N A S S E M B L Y

(PREFILED)

January 5, 2011

Introduced by M. of A. PAULIN, DINOWITZ, MARKEY, GALEF, JAFFEE, BENEDETTO, GABRYSZAK, LATIMER, CASTRO, CYMBROWITZ, GUNTHER, SPANO, DenDEKKER, COLTON, SCARBOROUGH, ZEBROWSKI, TITONE, GIBSON, PERRY, M. MILLER -- Multi-Sponsored by -- M. of A. ABBATE, BOYLAND, CAHILL, HIKIND, LIFTON, LUPARDO, MAISEL, ORTIZ, PHEFFER, REILLY, SCHIMEL, WEISENBERG -- read once and referred to the Committee on Consumer Affairs and Protection -- passed by Assembly and delivered to the Senate, recalled from the Senate, vote reconsidered, bill amended, ordered reprinted, retaining its place on the order of third reading

AN ACT to amend the general business law and the civil practice law and rules, in relation to prohibiting business entities from transmitting false caller identification information with the intent to defraud or harass any person

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

1 Section 1. The general business law is amended by adding a new section
2 399-ppp to read as follows:
3 S 399-PPP. PROHIBITION ON PROVISION OF DECEPTIVE CALLER IDENTIFICATION
4 INFORMATION. 1. IT SHALL BE UNLAWFUL FOR ANY BUSINESS ENTITY, IN
5 CONNECTION WITH ANY TELECOMMUNICATIONS SERVICE OR VOIP SERVICE, TO CAUSE
6 ANY CALLER IDENTIFICATION SERVICE TO TRANSMIT FALSE CALLER IDENTIFICA-
7 TION INFORMATION, WITH THE INTENT TO DEFRAUD OR HARASS, WHEN MAKING A
8 CALL TO ANY PERSON WITHIN THE STATE.
9 2. FOR PURPOSES OF THIS SECTION:
10 (A) "BUSINESS ENTITY" MEANS A CORPORATION, ASSOCIATION, PARTNERSHIP,
11 LIMITED LIABILITY COMPANY, LIMITED LIABILITY PARTNERSHIP OR OTHER LEGAL
12 ENTITY.
13 (B) "CALLER IDENTIFICATION INFORMATION" MEANS INFORMATION PROVIDED TO
14 AN END USER BY A CALLER IDENTIFICATION SERVICE REGARDING THE TELEPHONE

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

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1 NUMBER OF, OR OTHER INFORMATION REGARDING THE ORIGINATION OF, A CALL
2 MADE USING A TELECOMMUNICATIONS SERVICE OR VOIP SERVICE.

3 (C) "CALLER IDENTIFICATION SERVICE" MEANS ANY SERVICE OR DEVICE
4 DESIGNED TO PROVIDE THE USER OF THE SERVICE OR DEVICE WITH THE TELEPHONE
5 NUMBER OF, OR OTHER INFORMATION REGARDING THE ORIGINATION OF, A CALL
6 MADE USING A TELECOMMUNICATIONS SERVICE OR VOIP SERVICE. SUCH TERM
7 INCLUDES AUTOMATIC NUMBER IDENTIFICATION SERVICES.

8 (D) "VOIP SERVICE" MEANS A SERVICE THAT:

9 (I) PROVIDES REAL-TIME VOICE COMMUNICATIONS TRANSMITTED THROUGH END
10 USER EQUIPMENT USING TCP/IP PROTOCOL, OR A SUCCESSOR PROTOCOL, FOR A FEE
11 OR WITHOUT A FEE; AND

12 (II) IS OFFERED TO THE PUBLIC, OR SUCH CLASSES OF USERS AS TO BE
13 EFFECTIVELY AVAILABLE TO THE PUBLIC (WHETHER PART OF A BUNDLE OF
14 SERVICES OR SEPARATELY); AND

15 (III) HAS THE CAPABILITY TO ORIGINATE TRAFFIC TO, OR TERMINATE TRAFFIC
16 FROM, THE PUBLIC SWITCHED TELEPHONE NETWORK.

17 3. WHENEVER THERE SHALL BE A VIOLATION OF THIS SECTION, AN APPLICATION
18 MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE
19 STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION TO ISSUE AN
20 INJUNCTION, AND UPON NOTICE TO THE DEFENDANT, TO IMMEDIATELY ENJOIN AND
21 RESTRAIN THE CONTINUANCE OF SUCH VIOLATIONS; AND IF IT SHALL APPEAR TO
22 THE SATISFACTION OF THE COURT OR JUSTICE, BY A PREPONDERANCE OF THE
23 EVIDENCE, THAT THE DEFENDANT HAS, IN FACT, VIOLATED THIS SECTION AN
24 INJUNCTION MAY BE ISSUED BY SUCH COURT OR JUSTICE ENJOINING AND
25 RESTRAINING ANY FURTHER VIOLATION, WITHOUT REQUIRING PROOF THAT ANY
26 PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY. THE COURT MAY MAKE
27 ALLOWANCES TO THE ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX OF
28 SUBDIVISION (A) OF SECTION EIGHTY-THREE HUNDRED THREE OF THE CIVIL PRACTICE
29 LAW AND RULES. IN ADDITION TO ANY SUCH ALLOWANCES, THE COURT MAY
30 DIRECT RESTITUTION TO ANY VICTIM UPON A SHOWING OF DAMAGES BY A PREPON-
31 DERANCE OF THE EVIDENCE. IN ADDITION TO ANY SUCH RESTITUTION, WHENEVER
32 THE COURT SHALL DETERMINE THAT A VIOLATION OF THIS SECTION HAS OCCURRED,
33 THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN TWO THOUSAND
34 DOLLARS PER CALL, UP TO A TOTAL AGGREGATE AMOUNT OF NOT MORE THAN ONE
35 HUNDRED THOUSAND DOLLARS, FOR ALL CALLS PLACED IN VIOLATION OF THIS
36 SECTION WITHIN A CONTINUOUS SEVENTY-TWO HOUR PERIOD. IN CONNECTION WITH
37 ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO
38 TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE
39 SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES.

40 4. IN ADDITION TO THE RIGHT OF ACTION GRANTED TO THE ATTORNEY GENERAL
41 PURSUANT TO THIS SECTION, ANY PERSON WHOSE CALLER IDENTIFICATION INFOR-
42 MATION WAS USED IN CONNECTION WITH A VIOLATION OF THIS SECTION OR WHO
43 HAS RECEIVED A TELEPHONE CALL IN VIOLATION OF THIS SECTION MAY BRING AN
44 ACTION IN HIS OR HER OWN NAME TO ENJOIN SUCH UNLAWFUL ACT OR PRACTICE,
45 AN ACTION TO RECOVER THE GREATER OF (A) HIS OR HER ACTUAL DAMAGES, OR
46 (B) AN AMOUNT EQUAL TO NOT MORE THAN FIVE HUNDRED DOLLARS PER CALL, UP
47 TO A TOTAL AGGREGATE AMOUNT OF NOT MORE THAN TWENTY-FIVE THOUSAND
48 DOLLARS FOR ALL CALLS PLACED IN VIOLATION OF THIS SECTION WITHIN A
49 CONTINUOUS SEVENTY-TWO HOUR PERIOD; OR BOTH SUCH ACTIONS. THE COURT MAY
50 AWARD REASONABLE ATTORNEY'S FEES TO A PREVAILING PLAINTIFF.

51 5. THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO ANY MEMBER OF A
52 LAW ENFORCEMENT UNIT ACTING WITHIN THE SCOPE OF HIS OR HER ASSIGNED
53 DUTIES OR TO A COURT ORDER THAT SPECIFICALLY AUTHORIZES THE USE OF CALL-
54 ER IDENTIFICATION MANIPULATION.

1 S 2. Paragraph 6 of subdivision (a) of section 8303 of the civil prac-
2 tice law and rules, as amended by chapter 530 of the laws of 2002, is
3 amended to read as follows:
4 6. to the plaintiffs in an action or proceeding brought by the [attor-
5 ney-general] ATTORNEY GENERAL under [articles] ARTICLE twenty-two, twen-
6 ty-two-A, twenty-three-A or thirty-three or section three hundred nine-
7 ty-one-b, THREE HUNDRED NINETY-NINE-PPP, or five hundred twenty-a of the
8 general business law, or under subdivision twelve of section sixty-three
9 of the executive law, or under article twenty-three of the arts and
10 cultural affairs law, or in an action or proceeding brought by the
11 [attorney-general] ATTORNEY GENERAL under applicable statutes to
12 dissolve a corporation or for usurpation of public office, or unlawful
13 exercise of franchise or of corporate right, a sum not exceeding two
14 thousand dollars against each defendant.
15 S 3. This act shall take effect on the sixtieth day after it shall
16 have become a law.