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

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I N A S S E M B L Y

January 13, 2011

Introduced by M. of A. REILICH, BURLING, FINCH, KOLB -- Multi-Sponsored by -- M. of A. McDONOUGH -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to the regulation of unsolicited commercial text messages to wireless telephones

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 article 30-B to read as follows:

ARTICLE 30-B

UNSOLICITED COMMERCIAL TEXT MESSAGING

SECTION 645. DEFINITIONS.
646. PROHIBITED ACTS.
647. CIVIL REMEDIES FOR NONCOMPLIANCE.
648. APPLICABILITY.

S 645. DEFINITIONS. FOR THE PURPOSES OF THIS ARTICLE, THE FOLLOWING TERMS SHALL HAVE THE FOLLOWING MEANINGS:

1. "COMMERCIAL TEXT MESSAGING" SHALL MEAN A TYPED MESSAGE TRANSMITTED TO A WIRELESS TELEPHONE NUMBER, REGARDLESS OF WHETHER SUCH MESSAGE IS VIEWED, STORED FOR RETRIEVAL AT ANOTHER TIME, PRINTED ONTO PAPER OR OTHER SIMILAR MATERIAL, OR FILTERED OR SCREENED, THAT:

(A) CONTAINS AN ADVERTISEMENT FOR THE SALE OF A PRODUCT, SERVICE OR REAL ESTATE;

(B) CONTAINS A SOLICITATION FOR THE USE OF A TELEPHONE NUMBER, THE USE OF WHICH CONNECTS THE USER TO A PERSON OR SERVICE THAT ADVERTISES THE SALE OF OR SELLS A PRODUCT, SERVICE OR REAL ESTATE; OR

(C) PROMOTES THE USE OF OR CONTAINS A LIST OF ONE OR MORE INTERNET SITES THAT CONTAIN AN ADVERTISEMENT REFERRED TO IN PARAGRAPH (A) OR A SOLICITATION REFERRED TO IN PARAGRAPH (B) OF THIS SUBDIVISION;

2. "INITIATE THE TRANSMISSION" SHALL MEAN TO TRANSMIT A TEXT MESSAGE TO A WIRELESS TELEPHONE NUMBER, BUT SUCH TERM SHALL NOT INCLUDE ANY

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

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INTERVENING INTERACTIVE COMPUTER SERVICE WHOSE FACILITIES MAY HAVE BEEN USED TO RELAY, HANDLE, OR OTHERWISE RETRANSMIT THE TEXT MESSAGE, UNLESS THE INTERVENING INTERACTIVE SERVICE PROVIDER KNOWINGLY AND WILLFULLY RETRANSMITS ANY TEXT MESSAGE IN VIOLATION OF THIS ARTICLE;

3. "PREEXISTING BUSINESS RELATIONSHIP" SHALL MEAN MUTUAL BUSINESS-RELATED COMMUNICATIONS THAT OCCURRED BETWEEN THE SENDER OF THE COMMERCIAL TEXT MESSAGE AND THE RECIPIENT PRIOR TO THE TRANSMISSION OF SUCH COMMERCIAL TEXT MESSAGE;

4. "TRANSMIT OR CAUSE TO BE TRANSMITTED" SHALL MEAN THE ACTION BY THE ORIGINAL OR SUBSEQUENT SENDER OF THE COMMERCIAL TEXT MESSAGE, BUT SHALL NEITHER INCLUDE NOR REFER TO THE ACTION OF ANY WIRELESS TELEPHONE SERVICE PROVIDER TO THE EXTENT THE SERVICE PROVIDER MERELY CARRIES THAT TRANSMISSION OVER ITS NETWORK.

S 646. PROHIBITED ACTS. NO PERSON SHALL TRANSMIT OR CAUSE TO BE TRANSMITTED AN UNSOLICITED COMMERCIAL TEXT MESSAGE TO A WIRELESS TELEPHONE NUMBER THAT THE PERSON KNOWS OR HAS REASON TO KNOW IS HELD BY A RESIDENT OF THE STATE.

S 647. CIVIL REMEDIES FOR NONCOMPLIANCE. 1. UPON THE COMMISSION OF A "PROHIBITED ACT" AS DEFINED IN SECTION SIX HUNDRED FORTY-SIX OF THIS ARTICLE AN APPLICATION MAY BE MADE BY THE PUBLIC SERVICE COMMISSION TO A COURT HAVING JURISDICTION TO ISSUE AN INJUNCTION, AND UPON NOTICE TO THE RESPONDENT OF NOT LESS THAN FIVE DAYS, TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH VIOLATION. IF IT SHALL APPEAR TO THE SATISFACTION OF THE COURT THAT THE RESPONDENT HAS COMMITTED A "PROHIBITED ACT" AS DEFINED IN SECTION SIX HUNDRED FORTY-SIX OF THIS ARTICLE THE COURT SHALL ENJOIN AND RESTRAIN ANY FURTHER VIOLATION WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN INJURED OR DAMAGED THEREBY.

2. IN A PROCEEDING BROUGHT UNDER THIS SECTION, THE COURT MAY MAKE AN ALLOWANCE TO THE PUBLIC SERVICE COMMISSION PURSUANT TO PARAGRAPH TWO OF SUBDIVISION (A) OF SECTION EIGHT THOUSAND THREE HUNDRED THREE OF THE CIVIL PRACTICE LAW AND RULES.

3. WHENEVER THE COURT SHALL DETERMINE THAT A RESPONDENT HAS COMMITTED A "PROHIBITED ACT" AS DEFINED IN SECTION SIX HUNDRED FORTY-SIX OF THIS ARTICLE, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN FIVE HUNDRED DOLLARS FOR EACH UNSOLICITED TEXT MESSAGE TRANSMITTED TO A RECIPIENT.

S 648. APPLICABILITY. 1. A WIRELESS TELEPHONE SERVICE PROVIDER SHALL NOT BE HELD LIABLE FOR ANY PENALTY IN ANY ACTION BROUGHT UNDER THIS ARTICLE, UNLESS THE WIRELESS SERVICE PROVIDER KNOWINGLY AND WILLFULLY TRANSMITS TEXT MESSAGES IN VIOLATION OF THIS ARTICLE.

2. A WIRELESS TELEPHONE SERVICE PROVIDER SHALL NOT BE HELD LIABLE FOR ANY PENALTY IN ANY ACTION BROUGHT UNDER THIS ARTICLE FOR RELAYING, HANDLING, OR OTHERWISE RETRANSMITTING TEXT MESSAGES WHEN THE WIRELESS TELEPHONE SERVICE PROVIDER IS ACTING AS AN INTERMEDIARY BETWEEN THE PERSON WHO INITIATED THE TRANSMISSION AND THE INTENDED RECIPIENT.

3. A WIRELESS TELEPHONE SERVICE PROVIDER SHALL NOT BE HELD LIABLE FOR ANY PENALTY IN ANY ACTION BROUGHT UNDER THIS ARTICLE FOR FAILING TO BLOCK THE RECEIPT OR TRANSMISSION THROUGH ITS SERVICE OR PROPERTY OF ANY TEXT MESSAGE WHICH IT REASONABLY BELIEVES IS OR WILL BE SENT IN VIOLATION OF THIS ARTICLE.

4. A WIRELESS TELEPHONE SERVICE PROVIDER SHALL NOT BE HELD LIABLE FOR ANY ACTION VOLUNTARILY TAKEN IN GOOD FAITH TO BLOCK THE RECEIPT OR TRANSMISSION THROUGH ITS SERVICE OR PROPERTY OF ANY COMMERCIAL TEXT MESSAGE WHICH IT REASONABLY BELIEVES IS OR WILL BE SENT IN VIOLATION OF THIS ARTICLE.

5. NO PERSON MAY BE HELD LIABLE FOR ANY PENALTY IN ANY ACTION BROUGHT UNDER THIS ARTICLE FOR TRANSMITTING COMMERCIAL TEXT MESSAGES TO A RECIPIENT WITH WHOM THE INITIATOR HAS A PREEXISTING BUSINESS RELATIONSHIP OR PERSONAL RELATIONSHIP.

6. NO PERSON MAY BE HELD LIABLE FOR ANY PENALTY IN ANY ACTION BROUGHT UNDER THIS ARTICLE FOR TRANSMITTING COMMERCIAL TEXT MESSAGES TO A RECIPIENT WHEN THE RECIPIENT HAS INVITED OR EXPRESSLY PERMITTED THE TRANSMISSION OF SUCH TEXT MESSAGE.

7. FOR PURPOSES OF THIS ARTICLE, A PERSON HAS REASON TO KNOW THAT THE INTENDED RECIPIENT OF A COMMERCIAL TEXT MESSAGE IS A RESIDENT OF THE STATE IF THAT INFORMATION IS AVAILABLE, UPON REQUEST, FROM THE PUBLIC SERVICE COMMISSION.

8. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED SO AS TO NULLIFY OR IMPAIR ANY OTHER RIGHTS OR REMEDIES THAT MAY BE AVAILABLE BY COMMON LAW, BY STATUTE, OR OTHERWISE.

9. NOTHING IN THIS ARTICLE SHALL BE CONSTRUED SO AS TO NULLIFY OR IMPAIR ANY TRANSACTION, REPORTING, DISCLOSURE OR OTHER ACTIVITY PERMITTED UNDER THE PROVISIONS OF TITLE V OF THE FEDERAL GRAMM-LEACH-BLILEY ACT (PUB. L. NO. 106-102), THE FEDERAL FAIR CREDIT REPORTING ACT (15 U.S.C. 1681 ET SEQ.), AND OTHER APPLICABLE PROVISIONS OF FEDERAL LAW.

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