

1191--A

2013-2014 Regular Sessions

I N   A S S E M B L Y

(PREFILED)

January 9, 2013

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Introduced by M. of A. COLTON -- read once and referred to the Committee on Consumer Affairs and Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the business corporation law and the general business law, in relation to prohibiting the transmission of certain text messages to cellular telephones or pagers

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

1     Section 1. The business corporation law is amended by adding a new  
2     section 521 to read as follows:  
3     S 521. APPLICABILITY OF THE GENERAL BUSINESS LAW TO BUSINESS CORPO-  
4     RATIONS THAT MAINTAIN DATA.  
5     EVERY BUSINESS CORPORATION ORGANIZED UNDER THIS CHAPTER AND EVERY  
6     FOREIGN CORPORATION (INCLUDING EVERY FOREIGN PROFESSIONAL SERVICE CORPO-  
7     RATION) QUALIFIED TO DO BUSINESS IN THIS STATE PURSUANT TO THIS CHAPTER  
8     IS SUBJECT TO SECTION THREE HUNDRED NINETY-D OF THE GENERAL BUSINESS  
9     LAW.  
10    S 2. The general business law is amended by adding a new section 390-d  
11    to read as follows:  
12    S 390-D. UNSOLICITED TEXT MESSAGES. 1. EXCEPT AS PROVIDED IN SUBDI-  
13    VISION TWO OF THIS SECTION, NO PERSON OR ENTITY CONDUCTING BUSINESS IN  
14    THIS STATE SHALL TRANSMIT OR CAUSE TO BE TRANSMITTED A TEXT MESSAGE  
15    ADVERTISEMENT TO A CELLULAR TELEPHONE OR PAGER EQUIPPED WITH SHORT  
16    MESSAGE CAPABILITY OR ANY SIMILAR CAPABILITY ALLOWING THE TRANSMISSION  
17    OF TEXT MESSAGES. A TEXT MESSAGE ADVERTISEMENT IS A MESSAGE, THE PRINCI-  
18    PAL PURPOSE OF WHICH IS TO PROMOTE THE SALE OF GOODS OR SERVICES TO THE  
19    RECIPIENT, CONSISTING OF ADVERTISING MATERIAL FOR THE LEASE, SALE,  
20    RENTAL, GIFT OFFER, OR OTHER DISPOSITION OF ANY REALTY, GOODS, SERVICES,  
21    OR EXTENSION OF CREDIT.

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

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1 2. THIS SECTION SHALL NOT APPLY TO TEXT MESSAGES TRANSMITTED AT THE  
2 DIRECTION OF A PERSON OR ENTITY OFFERING CELLULAR TELEPHONE OR PAGER  
3 SERVICE, OR BY A BUSINESS OR AFFILIATES OF THAT BUSINESS, THAT HAS AN  
4 EXISTING RELATIONSHIP WITH THE SUBSCRIBER, BUT ONLY IF THE SUBSCRIBER  
5 HAS PROVIDED CONSENT TO THE PERSON OR ENTITY OFFERING CELLULAR TELEPHONE  
6 OR PAGER SERVICE OR BUSINESS WITH WHICH HE OR SHE HAS THAT RELATIONSHIP  
7 TO RECEIVE TEXT MESSAGES FROM THAT BUSINESS OR AFFILIATES OF THAT BUSI-  
8 NESS. "AFFILIATE" MEANS ANY COMPANY THAT CONTROLS, IS CONTROLLED BY, OR  
9 IS UNDER COMMON CONTROL WITH, ANOTHER COMPANY. A SPECIFIC, SEPARATE  
10 CONSENT MUST BE GIVEN FOR EACH INDIVIDUAL PERSON OR ENTITY, BUSINESS, OR  
11 AFFILIATE.

12 3. WHENEVER THERE SHALL BE A VIOLATION OF THIS SECTION, AN APPLICATION  
13 MAY BE MADE BY THE ATTORNEY GENERAL IN THE NAME OF THE PEOPLE OF THE  
14 STATE OF NEW YORK TO A COURT OR JUSTICE HAVING JURISDICTION TO ISSUE AN  
15 INJUNCTION, AND UPON NOTICE TO THE DEFENDANT OF NOT LESS THAN FIVE DAYS,  
16 TO ENJOIN AND RESTRAIN THE CONTINUANCE OF SUCH VIOLATION; AND IF IT  
17 SHALL APPEAR TO THE SATISFACTION OF THE COURT OR JUSTICE, THAT THE  
18 DEFENDANT HAS, IN FACT, VIOLATED THIS SECTION AN INJUNCTION MAY BE  
19 ISSUED BY SUCH COURT OR JUSTICE ENJOINING AND RESTRAINING ANY FURTHER  
20 VIOLATION, WITHOUT REQUIRING PROOF THAT ANY PERSON HAS, IN FACT, BEEN  
21 INJURED OR DAMAGED THEREBY. IN ANY SUCH PROCEEDING, THE COURT MAY MAKE  
22 ALLOWANCES TO THE ATTORNEY GENERAL AS PROVIDED IN PARAGRAPH SIX OF  
23 SUBDIVISION (A) OF SECTION EIGHTY-THREE HUNDRED THREE OF THE CIVIL PRAC-  
24 TICE LAW AND RULES, AND DIRECT RESTITUTION. WHENEVER THE COURT SHALL  
25 DETERMINE THAT A VIOLATION OF A SUBDIVISION OF THIS SECTION HAS  
26 OCCURRED, THE COURT MAY IMPOSE A CIVIL PENALTY OF NOT MORE THAN TWO  
27 THOUSAND DOLLARS PER TEXT MESSAGE, UP TO A TOTAL OF NOT MORE THAN TWENTY  
28 THOUSAND DOLLARS, FOR TEXT MESSAGES PLACED IN VIOLATION OF SUCH SUBDIVI-  
29 SIONS WITHIN A CONTINUOUS SEVENTY-TWO HOUR PERIOD. IN CONNECTION WITH  
30 ANY SUCH PROPOSED APPLICATION, THE ATTORNEY GENERAL IS AUTHORIZED TO  
31 TAKE PROOF AND MAKE A DETERMINATION OF THE RELEVANT FACTS AND TO ISSUE  
32 SUBPOENAS IN ACCORDANCE WITH THE CIVIL PRACTICE LAW AND RULES.

33 4. IN ADDITION TO THE RIGHT OF ACTION GRANTED TO THE ATTORNEY GENERAL  
34 PURSUANT TO THIS SECTION, ANY PERSON WHO HAS RECEIVED A TEXT MESSAGE IN  
35 VIOLATION OF SUBDIVISION ONE OF THIS SECTION MAY BRING AN ACTION IN HIS  
36 OR HER OWN NAME TO ENJOIN SUCH UNLAWFUL ACT OR PRACTICE, AN ACTION TO  
37 RECOVER HIS OR HER ACTUAL DAMAGES OR FIFTY DOLLARS, WHICHEVER IS GREAT-  
38 ER, OR BOTH SUCH ACTIONS. THE COURT MAY, IN ITS DISCRETION, INCREASE  
39 THE AWARD OF DAMAGES TO AN AMOUNT NOT TO EXCEED THREE TIMES THE ACTUAL  
40 DAMAGES UP TO ONE THOUSAND DOLLARS, IF THE COURT FINDS THE DEFENDANT  
41 WILLFULLY OR KNOWINGLY VIOLATED SUCH SUBDIVISION. THE COURT MAY AWARD  
42 REASONABLE ATTORNEY'S FEES TO A PREVAILING PLAINTIFF.

43 S 3. This act shall take effect on the ninetieth day after it shall  
44 have become a law.