

8421

I N A S S E M B L Y

January 15, 2014

Introduced by M. of A. MONTESANO -- 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:

1 Section 1. The general business law is amended by adding a new article
2 30-B to read as follows:

3 ARTICLE 30-B

4 UNSOLICITED COMMERCIAL TEXT MESSAGING

5 SECTION 645. DEFINITIONS.

6 646. PROHIBITED ACTS.

7 647. CIVIL REMEDIES FOR NONCOMPLIANCE.

8 648. APPLICABILITY.

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

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

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

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

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

23 2. "INITIATE THE TRANSMISSION" SHALL MEAN TO TRANSMIT A TEXT MESSAGE
24 TO A WIRELESS TELEPHONE NUMBER, BUT SUCH TERM SHALL NOT INCLUDE ANY
25 INTERVENING INTERACTIVE COMPUTER SERVICE WHOSE FACILITIES MAY HAVE BEEN
26 USED TO RELAY, HANDLE, OR OTHERWISE RETRANSMIT THE TEXT MESSAGE, UNLESS
27 THE INTERVENING INTERACTIVE SERVICE PROVIDER KNOWINGLY AND WILLFULLY
28 RETRANSMITS ANY TEXT MESSAGE IN VIOLATION OF THIS ARTICLE;

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

1 3. "PREEXISTING BUSINESS RELATIONSHIP" SHALL MEAN MUTUAL BUSINESS-RE-
2 LATED COMMUNICATIONS THAT OCCURRED BETWEEN THE SENDER OF THE COMMERCIAL
3 TEXT MESSAGE AND THE RECIPIENT PRIOR TO THE TRANSMISSION OF SUCH COMMER-
4 CIAL TEXT MESSAGE;

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

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

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

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

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

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

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

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

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

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

1 6. NO PERSON MAY BE HELD LIABLE FOR ANY PENALTY IN ANY ACTION BROUGHT
2 UNDER THIS ARTICLE FOR TRANSMITTING COMMERCIAL TEXT MESSAGES TO A RECIP-
3 IENT WHEN THE RECIPIENT HAS INVITED OR EXPRESSLY PERMITTED THE TRANS-
4 MISSION OF SUCH TEXT MESSAGE.

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

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

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

17 S 2. This act shall take effect on the first of January next succeed-
18 ing the date on which it shall have become a law.