

2497--B

2013-2014 Regular Sessions

I N S E N A T E

January 18, 2013

Introduced by Sen. GALLIVAN -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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
15 NUMBER OF, OR OTHER INFORMATION REGARDING THE ORIGINATION OF, A CALL
16 MADE USING A TELECOMMUNICATIONS SERVICE OR VOIP SERVICE.
17 (C) "CALLER IDENTIFICATION SERVICE" MEANS ANY SERVICE OR DEVICE
18 DESIGNED TO PROVIDE THE USER OF THE SERVICE OR DEVICE WITH THE TELEPHONE
19 NUMBER OF, OR OTHER INFORMATION REGARDING THE ORIGINATION OF, A CALL
20 MADE USING A TELECOMMUNICATIONS SERVICE OR VOIP SERVICE. SUCH TERM
21 INCLUDES AUTOMATIC NUMBER IDENTIFICATION SERVICES.
22 (D) "VOIP SERVICE" MEANS ANY SERVICE THAT: ENABLES REAL TIME, TWO-WAY
23 VOICE COMMUNICATION ORIGINATING FROM OR TERMINATING AT THE USER'S

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

LBD04476-04-3

1 LOCATION IN INTERNET PROTOCOL OR A SUCCESSOR PROTOCOL; UTILIZES A BROAD-
2 BAND CONNECTION AT THE USER'S LOCATION; AND PERMITS A USER TO RECEIVE A
3 CALL THAT ORIGINATES ON THE PUBLIC SWITCHED TELEPHONE NETWORK AND TO
4 TERMINATE A CALL TO THE PUBLIC SWITCHED TELEPHONE NETWORK.

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

28 4. SUBDIVISION THREE OF THIS SECTION DOES NOT CREATE, AND IS NOT
29 INTENDED TO CREATE, ANY RIGHT OF ACTION AGAINST A TELECOMMUNICATIONS
30 SERVICE PROVIDER OR VOIP SERVICE PROVIDER WHOSE SERVICE, INCLUDING CALL-
31 ER IDENTIFICATION SERVICE, IS USED BY A BUSINESS ENTITY TO TRANSMIT OR
32 DISPLAY FALSE CALLER IDENTIFICATION INFORMATION IN VIOLATION OF THIS
33 SECTION.

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

38 S 2. Paragraph 6 of subdivision (a) of section 8303 of the civil prac-
39 tice law and rules, as amended by chapter 530 of the laws of 2002, is
40 amended to read as follows:

41 6. to the plaintiffs in an action or proceeding brought by the [attor-
42 ney-general] ATTORNEY GENERAL under [articles] ARTICLE twenty-two, twen-
43 ty-two-A, twenty-three-A or thirty-three or section three hundred nine-
44 ty-one-b, THREE HUNDRED NINETY-NINE-PPP, or five hundred twenty-a of the
45 general business law, or under subdivision twelve of section sixty-three
46 of the executive law, or under article twenty-three of the arts and
47 cultural affairs law, or in an action or proceeding brought by the
48 [attorney-general] ATTORNEY GENERAL under applicable statutes to
49 dissolve a corporation or for usurpation of public office, or unlawful
50 exercise of franchise or of corporate right, a sum not exceeding two
51 thousand dollars against each defendant.

52 S 3. This act shall take effect on the sixtieth day after it shall
53 have become a law.