

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

3374--A

Cal. No. 103

2013-2014 Regular Sessions

I N S E N A T E

February 1, 2013

Introduced by Sens. GRIFFO, AVELLA -- read twice and ordered printed, and when printed to be committed to the Committee on Corporations, Authorities and Commissions -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading

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,

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

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1 RENTAL, GIFT OFFER, OR OTHER DISPOSITION OF ANY REALTY, GOODS, SERVICES,
2 OR EXTENSION OF CREDIT.

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

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

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

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