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

4526--A

2015-2016 Regular Sessions

I N S E N A T E

March 26, 2015

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

AN ACT to amend the public service law, in relation to telemarketing practices of energy services companies

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

Section 1. The public service law is amended by adding a new article 4-C to read as follows:

ARTICLE 4-C

ENERGY SERVICE COMPANIES

SECTION 89-Q. ENERGY SERVICES COMPANY TELEMARKETING STANDARDS.

S 89-Q. ENERGY SERVICES COMPANY TELEMARKETING STANDARDS. 1. FOR THE PURPOSE OF THIS SECTION:

(A) "ENERGY SERVICES COMPANY" OR "ESCO," SHALL MEAN ANY ENTITY ELIGIBLE TO SELL ENERGY SERVICES TO END USE CUSTOMERS USING THE TRANSMISSION OR DISTRIBUTION SYSTEM OF A UTILITY CORPORATION.

(B) "DISTRIBUTION UTILITY" SHALL MEAN A GAS OR ELECTRIC CORPORATION OWNING, OPERATING OR MANAGING ELECTRIC OR GAS FACILITIES FOR THE PURPOSE OF DISTRIBUTING GAS OR ELECTRICITY TO END USERS.

(C) "ESCO TELEMARKETING REPRESENTATIVE" SHALL MEAN ANY EMPLOYEE OR AGENT OF AN ESCO THAT ENGAGES IN ANY TELEMARKETING ACTIVITY INTENDED TO ENROLL, CONTRACT OR SELL ENERGY SERVICES TO END USE CUSTOMERS WITH SUCH ESCO.

(D) "INDEPENDENT THIRD PARTY VERIFICATION" SHALL MEAN THE CONFIRMATION OF A CUSTOMER'S AGREEMENT TO TAKE SERVICE FROM AN ESCO, BY AN ENTITY THAT IS INDEPENDENT OF THE ESCO.

2. (A) EACH ENERGY SERVICES COMPANY ENGAGING IN TELEMARKETING OR TELEMARKETING FIRM ENGAGED IN TELEMARKETING FOR ENERGY SERVICES SHALL BE SUBJECT TO AND COMPLY WITH SECTIONS THREE HUNDRED NINETY-NINE-PP AND

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

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THREE HUNDRED NINETY-NINE-Z OF THE GENERAL BUSINESS LAW, INCLUDING BUT NOT LIMITED TO THE ADHERENCE TO THE NATIONAL "DO-NOT-CALL" REGISTRY ESTABLISHED, MANAGED AND MAINTAINED BY THE FEDERAL TRADE COMMISSION PURSUANT TO 16 CFR SECTION 310.4(B)(1)(III) AS AMENDED FROM TIME TO TIME.

(B) EACH ENERGY SERVICES COMPANY SHALL REQUIRE ANY CONTRACT FOR TELEMARKETING SERVICES TO REQUIRE THE TELEMARKETER TO HAVE A CERTIFICATE OF REGISTRATION FROM THE SECRETARY OF STATE AND SUCH TELEMARKETER SHALL AGREE TO BE SUBJECT TO AND COMPLY WITH SECTIONS THREE HUNDRED NINETY-NINE-PP AND THREE HUNDRED NINETY-NINE-Z OF THE GENERAL BUSINESS LAW, INCLUDING BUT NOT LIMITED TO THE ADHERENCE TO THE NATIONAL "DO-NOT-CALL" REGISTRY ESTABLISHED, MANAGED AND MAINTAINED BY THE FEDERAL TRADE COMMISSION PURSUANT TO 16 CFR SECTION 310.4(B)(1)(III) AS AMENDED FROM TIME TO TIME.

3. THE COMMISSION SHALL DIRECT EACH ENERGY SERVICES COMPANY AND ANY ESCO TELEMARKETING REPRESENTATIVE SELLING OR OFFERING FOR SALE ENERGY SERVICES TO RESIDENTIAL OR SMALL NON-RESIDENTIAL CUSTOMERS TO:

(A) REMOVE A RESIDENTIAL OR SMALL NON-RESIDENTIAL CUSTOMER'S NAME, TELEPHONE, AND CONTACT INFORMATION FROM ANY ESCO TELEMARKETING DATABASE UPON SUCH RESIDENTIAL OR SMALL NON-RESIDENTIAL CUSTOMER'S REQUEST;

(B) PROVIDE TO A POTENTIAL RESIDENTIAL OR SMALL NON-RESIDENTIAL CUSTOMER: THE NAME OF THE ESCO TELEMARKETING REPRESENTATIVE ON THE CALL, THE NAME OF THE ESCO ON WHOSE BEHALF THE CALL IS BEING MADE AND THE PURPOSE OF SUCH CALL AND, UPON REQUEST, THE ESCO TELEMARKETING REPRESENTATIVE'S IDENTIFICATION NUMBER;

(C) IMMEDIATELY TRANSFER A RESIDENTIAL OR SMALL NON-RESIDENTIAL CUSTOMER TO A REPRESENTATIVE WHO SPEAKS THE RESIDENTIAL OR SMALL NON-RESIDENTIAL CUSTOMER'S PRIMARY LANGUAGE OR TERMINATE THE CALL;

(D) USE INDEPENDENT THIRD PARTY VERIFICATION OF TELEMARKETING TRANSACTIONS, AS APPROVED BY THE COMMISSION, PRIOR TO ENROLLING A RESIDENTIAL OR SMALL NON-RESIDENTIAL CUSTOMER; AND

(E) PROHIBIT ESCO TELEMARKETING REPRESENTATIVES FROM ASSERTING THAT AN ESCO IS ACTING ON BEHALF OF A DISTRIBUTION UTILITY.

4. (A) THE COMMISSION IS HEREBY GRANTED THE AUTHORITY, SUBJECT TO PARAGRAPH (B) OF THIS SUBDIVISION, TO ASSESS A CIVIL PENALTY NOT TO EXCEED ONE THOUSAND DOLLARS AGAINST ANY ESCO WHEN SUCH ESCO OR ITS ESCO TELEMARKETING REPRESENTATIVES KNOWINGLY FAILS OR NEGLECTS TO COMPLY WITH ANY PROVISION OF THIS SECTION OR ANY REGULATION OR ORDER OF THE COMMISSION IMPLEMENTING OR ENFORCING THE PROVISIONS OF THIS SECTION. IN THE CASE OF A CONTINUING VIOLATION, THE COMMISSION IS HEREBY AUTHORIZED TO DEEM EACH DAY A SEPARATE AND DISTINCT OFFENSE.

(B) WHENEVER THE COMMISSION HAS REASON TO BELIEVE THAT AN ESCO SHOULD BE SUBJECT TO IMPOSITION OF A CIVIL PENALTY OR PENALTIES AS SET FORTH IN THIS SUBDIVISION, THE COMMISSION SHALL NOTIFY SUCH ESCO. SUCH NOTICE SHALL INCLUDE, BUT SHALL NOT BE LIMITED TO (I) THE DATE AND A BRIEF DESCRIPTION OF THE FACTS AND NATURE OF EACH ACT OR FAILURE TO ACT FOR WHICH SUCH PENALTY IS PROPOSED; (II) THE AMOUNT OF EACH PENALTY THAT THE COMMISSION PROPOSES TO ASSESS; AND (III) THE OPTION TO REQUEST A HEARING TO DEMONSTRATE WHY THE PROPOSED PENALTY OR PENALTIES SHOULD NOT BE ASSESSED AGAINST SUCH ESCO.

5. NOTHING IN THIS SECTION SHALL BE DEEMED TO LIMIT ANY AUTHORITY OF THE COMMISSION OR THE LONG ISLAND POWER AUTHORITY TO LIMIT, SUSPEND OR REVOKE THE ELIGIBILITY OF AN ENERGY SERVICES COMPANY OR ESCO TELEMARKETING REPRESENTATIVE TO SELL, OFFER, OR MARKET ENERGY SERVICES FOR VIOLATION OF ANY PROVISION OF LAW, RULE, REGULATION OR POLICY ENFORCEABLE BY THE COMMISSION OR THE LONG ISLAND POWER AUTHORITY.

6. NOTHING IN THIS SECTION SHALL LIMIT THE AUTHORITY OF THE COMMISSION OR THE LONG ISLAND POWER AUTHORITY TO ADOPT ADDITIONAL ORDERS, GUIDELINES, PRACTICES, POLICIES, RULES OR REGULATIONS RELATING TO THE MARKETING PRACTICES OF ENERGY SERVICES COMPANIES TO RESIDENTIAL, SMALL NON-RESIDENTIAL AND COMMERCIAL CUSTOMERS, WHETHER IN PERSON (INCLUDING DOOR TO DOOR), OR BY MAIL, TELEPHONE OR OTHER ELECTRONIC MEANS, THAT ARE NOT INCONSISTENT WITH THE PROVISIONS OF THIS SECTION.

S 2. This act shall take effect on the ninetieth day after it shall have become a law; provided however that the public service commission is authorized and directed to take any and all actions, including but not limited to the promulgation of any orders, guidelines, practices, policies, rules and regulations necessary to implement the provisions of this act on or before such effective date.