

# STATE OF NEW YORK

10739

## IN ASSEMBLY

May 16, 2018

Introduced by M. of A. NIOU -- read once and referred to the Committee on Corporations, Authorities and Commissions

AN ACT to amend the public service law, in relation to limiting autodialed telephone calls to state residents and to require telephone service providers to offer free call mitigation technologies to telephone customers

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

1 Section 1. This act shall be known and may be cited as the "telephone  
2 consumer privacy protection act".

3 § 2. The public service law is amended by adding a new section 91-b to  
4 read as follows:

5 § 91-b. Autodialed telephone calls. 1. As used in this section:

6 (a) "Autodialed call" means:

7 (i) A call made using equipment that makes a series of calls to stored  
8 telephone numbers, including numbers stored on a list, or to telephone  
9 numbers produced using a random or sequential number generator, except  
10 that the term does not include a call made using only equipment that the  
11 caller demonstrates requires substantial additional human intervention  
12 to dial or place a call after a human initiates the call or series of  
13 calls;

14 (ii) a call made using an artificial or prerecorded voice message; or

15 (iii) a text message made using equipment that issues twenty or more  
16 texts at a time, or sends a series of nearly identical texts to tele-  
17 phone numbers on a list, or to telephone numbers produced using a random  
18 or sequential number generator, except that the term does not include  
19 texts that the sender demonstrates were sent to the sender's personal  
20 acquaintances.

21 (b) "Call mitigation technology" means technology that identifies an  
22 incoming call or text message as being, or as probably being, an autod-  
23 ialed call and, on that basis, blocks the call or message, diverts it to  
24 the called person's answering system, or otherwise prevents it from  
25 being completed to the called person, except that it permits a call or  
26 text so identified to be completed when it is identified as being made

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

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1 by a law enforcement or public safety entity, or when it is identified  
2 as originating from a caller with respect to whom the called person has  
3 provided prior express consent to receive such a call or message and has  
4 not revoked that consent.

5 (c) "Prior express consent" means agreement provided by a called  
6 person to allow the caller to make an autodialed call to the called  
7 person's telephone, in relation to the specific subject matter for which  
8 the call is made.

9 2. It shall be unlawful for any person or entity to make any auto-  
10 dialed call (other than a call made for emergency purposes or made with  
11 the prior express consent of the called party) to any telephone number  
12 owned by a person or entity in the state. A customer's prior express  
13 consent can be revoked by the customer at any time in any reasonable  
14 manner, regardless of the context in which the owner or user of the  
15 telephone provided consent.

16 3. (a) A telephone service provider that provides telephone service to  
17 customers residing in the state shall make call mitigation technology  
18 available to any such customer, upon request, and at no additional  
19 charge. Such provider shall also offer to any such customer the ability  
20 to have the provider prevent calls and text messages identified as orig-  
21 inating from a particular person from being completed to the called  
22 person, upon request, and at no additional charge.

23 (b) The commission shall prescribe regulations to implement the  
24 requirements of this subdivision, including, if appropriate, a reason-  
25 able delay in requiring implementation and offering of call mitigation  
26 technology if for good cause, taking into account the consumer  
27 protection purposes of this section, and including procedures for  
28 addressing incidents in which a call wanted by the customer is prevented  
29 from reaching the customer.

30 4. (a) Any person harmed by a violation of the provisions of this  
31 section, or of any regulations promulgated by the commission relating to  
32 this section, may bring an action in any court of competent jurisdic-  
33 tion:

34 (i) to enjoin such violation; and/or

35 (ii) to recover for actual monetary loss from such violation or to  
36 receive five hundred dollars in damages for such violation, whichever is  
37 greater.

38 (b) If the court finds that the defendant willfully or knowingly  
39 violated the provisions of this section or and regulations prescribed  
40 hereunder, the court may, in its discretion, increase the amount of the  
41 monetary award to an amount equal to not more than three times the  
42 amount available pursuant to paragraph (a) of this subdivision.

43 (c) No action to recover damages for a violation of the provisions of  
44 this section may be brought more than four years after the alleged  
45 violation occurred.

46 § 3. This act shall take effect on the thirtieth day after it shall  
47 have become a law. Effective immediately, the addition, amendment  
48 and/or repeal of any rule or regulation necessary for the implementation  
49 of this act on its effective date are authorized and directed to be made  
50 and completed on or before such effective date.