STATE OF NEW YORK

9621

IN ASSEMBLY

January 26, 2018

Introduced by M. of A. CRESPO, SEPULVEDA, DE LA ROSA, PICHARDO, DILAN, RAMOS, RODRIGUEZ, DAVILA -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law and the executive law, in relation to automated purchasing software

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

Section 1. The general business law is amended by adding a new section 390-d to read as follows:

§ 390-d. Automated purchasing software; prohibited. 1. For the purposes of this section, the following terms shall have the following meanings:

(a) "Automated purchasing software" shall mean any machine, device, computer program or computer software that, on its own or with human assistance, bypasses security measures or access control systems on a retail goods purchasing platform, or other controls or measures on a retail goods purchasing platform, that assist in implementing a limit on the number of any specific item of goods that can be purchased, to purchase any specific item of goods.

(b) "Retail goods purchasing platform" shall mean a retail goods purchasing website, application, phone system, or other technology platform used to sell goods.

2. (a) It shall be unlawful for any person, firm, corporation or other entity to utilize automated purchasing software to purchase goods.

(b) It shall be unlawful for any person, firm, corporation or other entity to knowingly resell or offer to resell any item of goods that such person, firm, corporation or other entity knows was obtained using automated purchasing software.

3. Any person, firm, corporation or other entity who knowingly utilizes automated purchasing software in order to purchase any item of goods shall be subject to a civil penalty in an amount of no less than five hundred dollars and no more than one thousand five hundred dollars for each such violation and shall forfeit all profits made from the sale of any such unlawfully obtained goods.

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

LBD14255-01-8

4. Any person, firm, corporation or other entity who intentionally maintains any interest in or maintains any control of the operation of automated purchasing software to purchase goods shall be subject to a civil penalty in an amount of no less than seven hundred fifty dollars and no more than one thousand five hundred dollars for each such violation and shall forfeit all profits made from the sale of any such unlawfully obtained goods.

5. Any person, firm, corporation or other entity who knowingly sells or offers to sell any item of goods that such person, firm, corporation or other entity knows was obtained using automated purchasing software shall be subject to a civil penalty in an amount of no less than five hundred dollars and no more than one thousand five hundred dollars for each such violation and shall forfeit all profits made from the sale of any such unlawfully obtained goods.

6. Any person who is subject to a civil penalty under this section and has been assessed a penalty under this section in the previous three years shall be guilty of a violation and may be fined no less than one thousand dollars and no more than five thousand dollars for each such violation and shall forfeit all profits from the sale of any such unlawfully obtained goods. In addition, a person convicted of a violation under this section may be required to forfeit any and all equipment used in the unlawful purchasing of goods.

7. The consumer protection division of the department of state shall receive, compile and forward to the attorney general complaints of violations of the provisions of this section.

8. The attorney general shall have jurisdiction to enforce the provisions of this section.

9. Any aggrieved party that has been injured by wrongful conduct prescribed by this section may bring an action to recover all actual damages suffered as a result of any of such wrongful conduct. The court in its discretion may award damages up to three times the amount of actual damages. The court may enjoin the respondent from any and all activity prohibited under this section. The court may also award reasonable attorney's fees and costs.

§ 2. Subdivision 3 of section 94-a of the executive law is amended by adding a new paragraph 13-a to read as follows:

(13-a) receive, compile and forward to the attorney general complaints of violations of section three hundred ninety-d of the general business law prohibiting the use of automated purchasing software;

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