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:

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

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

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

(a) "Autodialed call" means:

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

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

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

(b) "Call mitigation technology" means technology that identifies an incoming call or text message as being, or as probably being, an autodialed call and, on that basis, blocks the call or message, diverts it to the called person's answering system, or otherwise prevents it from being completed to the called person, except that it permits a call or 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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by a law enforcement or public safety entity, or when it is identified as originating from a caller with respect to whom the called person has provided prior express consent to receive such a call or message and has not revoked that consent.

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

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

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

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

4. (a) Any person harmed by a violation of the provisions of this section, or of any regulations promulgated by the commission relating to this section, may bring an action in any court of competent jurisdiction:

(i) to enjoin such violation; and/or

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

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

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

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