

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:

1 Section 1. The general business law is amended by adding a new section
2 390-d to read as follows:

3 § 390-d. Automated purchasing software; prohibited. 1. For the
4 purposes of this section, the following terms shall have the following
5 meanings:

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

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

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

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

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

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

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

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

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

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

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

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

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

37 (13-a) receive, compile and forward to the attorney general complaints
38 of violations of section three hundred ninety-d of the general business
39 law prohibiting the use of automated purchasing software;

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