

STATE OF NEW YORK

8674

IN SENATE

May 10, 2018

Introduced by Sens. HOYLMAN, CARLUCCI, KRUEGER -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

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

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

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

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

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

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

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

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

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

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

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

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

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