

# STATE OF NEW YORK

4187

2019-2020 Regular Sessions

## IN ASSEMBLY

February 1, 2019

Introduced by M. of A. MONTESANO, GOODELL, FINCH -- read once and referred to the Committee on Consumer Affairs and Protection

AN ACT to amend the general business law, in relation to the regulation of unsolicited commercial text messages to wireless telephones

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 article  
2 30-B to read as follows:

### ARTICLE 30-B

#### UNSOLICITED COMMERCIAL TEXT MESSAGING

##### Section 645. Definitions.

646. Prohibited acts.

647. Civil remedies for noncompliance.

648. Applicability.

3 § 645. Definitions. For the purposes of this article, the following  
4 terms shall have the following meanings:

5 1. "commercial text messaging" shall mean a typed message transmitted  
6 to a wireless telephone number, regardless of whether such message is  
7 viewed, stored for retrieval at another time, printed onto paper or  
8 other similar material, or filtered or screened, that:

9 (a) contains an advertisement for the sale of a product, service or  
10 real estate;

11 (b) contains a solicitation for the use of a telephone number, the use  
12 of which connects the user to a person or service that advertises the  
13 sale of or sells a product, service or real estate; or

14 (c) promotes the use of or contains a list of one or more internet  
15 sites that contain an advertisement referred to in paragraph (a) or a  
16 solicitation referred to in paragraph (b) of this subdivision;

17 2. "initiate the transmission" shall mean to transmit a text message  
18 to a wireless telephone number, but such term shall not include any  
19 intervening interactive computer service whose facilities may have been  
20

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

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1 used to relay, handle, or otherwise retransmit the text message, unless  
2 the intervening interactive service provider knowingly and willfully  
3 retransmits any text message in violation of this article;

4 3. "preexisting business relationship" shall mean mutual business-re-  
5 lated communications that occurred between the sender of the commercial  
6 text message and the recipient prior to the transmission of such commer-  
7 cial text message;

8 4. "transmit or cause to be transmitted" shall mean the action by the  
9 original or subsequent sender of the commercial text message, but shall  
10 neither include nor refer to the action of any wireless telephone  
11 service provider to the extent the service provider merely carries that  
12 transmission over its network.

13 § 646. Prohibited acts. No person shall transmit or cause to be trans-  
14 mitted an unsolicited commercial text message to a wireless telephone  
15 number that the person knows or has reason to know is held by a resident  
16 of the state.

17 § 647. Civil remedies for noncompliance. 1. Upon the commission of a  
18 "prohibited act" as defined in section six hundred forty-six of this  
19 article an application may be made by the public service commission to a  
20 court having jurisdiction to issue an injunction, and upon notice to the  
21 respondent of not less than five days, to enjoin and restrain the  
22 continuance of such violation. If it shall appear to the satisfaction of  
23 the court that the respondent has committed a "prohibited act" as  
24 defined in section six hundred forty-six of this article the court shall  
25 enjoin and restrain any further violation without requiring proof that  
26 any person has, in fact, been injured or damaged thereby.

27 2. In a proceeding brought under this section, the court may make an  
28 allowance to the public service commission pursuant to paragraph two of  
29 subdivision (a) of section eight thousand three hundred three of the  
30 civil practice law and rules.

31 3. Whenever the court shall determine that a respondent has committed  
32 a "prohibited act" as defined in section six hundred forty-six of this  
33 article, the court may impose a civil penalty of not more than five  
34 hundred dollars for each unsolicited text message transmitted to a  
35 recipient.

36 § 648. Applicability. 1. A wireless telephone service provider shall  
37 not be held liable for any penalty in any action brought under this  
38 article, unless the wireless service provider knowingly and willfully  
39 transmits text messages in violation of this article.

40 2. A wireless telephone service provider shall not be held liable for  
41 any penalty in any action brought under this article for relaying,  
42 handling, or otherwise retransmitting text messages when the wireless  
43 telephone service provider is acting as an intermediary between the  
44 person who initiated the transmission and the intended recipient.

45 3. A wireless telephone service provider shall not be held liable for  
46 any penalty in any action brought under this article for failing to  
47 block the receipt or transmission through its service or property of any  
48 text message which it reasonably believes is or will be sent in  
49 violation of this article.

50 4. A wireless telephone service provider shall not be held liable for  
51 any action voluntarily taken in good faith to block the receipt or tran-  
52 smision through its service or property of any commercial text message  
53 which it reasonably believes is or will be sent in violation of this  
54 article.

55 5. No person may be held liable for any penalty in any action brought  
56 under this article for transmitting commercial text messages to a recip-

1 ient with whom the initiator has a preexisting business relationship or  
2 personal relationship.

3 6. No person may be held liable for any penalty in any action brought  
4 under this article for transmitting commercial text messages to a recip-  
5 ient when the recipient has invited or expressly permitted the trans-  
6 mission of such text message.

7 7. For purposes of this article, a person has reason to know that the  
8 intended recipient of a commercial text message is a resident of the  
9 state if that information is available, upon request, from the public  
10 service commission.

11 8. Nothing in this article shall be construed so as to nullify or  
12 impair any other rights or remedies that may be available by common law,  
13 by statute, or otherwise.

14 9. Nothing in this article shall be construed so as to nullify or  
15 impair any transaction, reporting, disclosure or other activity permit-  
16 ted under the provisions of Title V of the federal Gramm-Leach-Bliley  
17 Act (Pub. L. No. 106-102), the federal fair credit reporting act (15  
18 U.S.C. 1681 et seq.), and other applicable provisions of federal law.

19 § 2. This act shall take effect on the first of January next succeed-  
20 ing the date on which it shall have become a law.