STATE OF NEW YORK

3297--A

2019-2020 Regular Sessions

IN SENATE

February 5, 2019

Introduced by Sens. HOYLMAN, CARLUCCI, BAILEY, BIAGGI, COMRIE, KAMINSKY, KRUEGER, PARKER, PERSAUD, SANDERS, SEPULVEDA -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

AN ACT to amend the public service law, in relation to limiting robocalls to state residents and to require telephone service providers to offer free call mitigation technology 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 "robocall prevention act".

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

§ 91-b. Robocalls. 1. As used in this section:

(a) "Robocall" means a call made, including a text message sent:

(i) 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 for 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; or

(ii) using an artificial or prerecorded voice.

(b) "Call mitigation technology" means technology that identifies an incoming call or text message as being, or as probably being, a robocall 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 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

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

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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 a robocall to the called person's telephone, in relation to the specific subject matter for which the call is made.

2. (a) It shall be unlawful for any person or entity to make any robocall 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.

(b) The commission shall prescribe regulations to implement the provisions of this subdivision, and may exempt from the requirements of this subdivision, subject to such conditions as the commission may prescribe, calls made to a residential telephone line that are not made for a commercial purpose.

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) Whenever there shall be a violation of this section, an application may be made by the attorney general in the name of the people of the state of New York to a court or justice having jurisdiction to issue an injunction, and upon notice to the defendant of not less than five days, to enjoin and restrain the continuance of such violations; and if it shall appear to the satisfaction of the court or justice, that the defendant has, in fact, violated this section an injunction may be issued by such court or justice enjoining and restraining any further violation, without requiring proof that any person has, in fact, been injured or damaged thereby. In any such proceeding, the court may make allowances to the attorney general as provided in paragraph six of subdivision (a) of section eighty-three hundred three of the civil practice law and rules, and direct restitution. Whenever the court shall determine that a violation of subdivision two of this section has occurred, the court may impose a civil penalty of not more than two thousand dollars per call, up to a total of not more than twenty thousand dollars, for calls placed in violation of such subdivision within a continuous seventy-two hour period. In connection with any such proposed application, the attorney general is authorized to take proof and make a determination of the relevant facts and to issue subpoenas in accordance with the civil practice law and rules.

(b) In addition to the right of action granted to the attorney general pursuant to this section, any person harmed by a violation of the provisions of subdivision two 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.

(c) If the court finds that the defendant willfully or knowingly violated the provisions of subdivision two of this section or any 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 (b) of this subdivision.

(d) 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.