STATE OF NEW YORK

3297--D

Cal. No. 318

2019-2020 Regular Sessions

IN SENATE

February 5, 2019

Introduced by Sens. HOYLMAN, CARLUCCI, ADDABBO, BAILEY, BIAGGI, BRESLIN, BROOKS, COMRIE, GAUGHRAN, GOUNARDES, HARCKHAM, JACKSON, KAMINSKY, KAPLAN, KAVANAGH, KENNEDY, KRUEGER, MAY, MAYER, MONTGOMERY, MYRIE, PARKER, PERSAUD, RAMOS, RIVERA, SALAZAR, SANDERS, SEPULVEDA, SERRANO, STAVISKY, THOMAS -- 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 -- reported favorably from said committee, ordered to first and second report, ordered to a third reading, amended and ordered reprinted, retaining its place in the order of third reading -- again amended and ordered reprinted, retaining its place in the order of third reading -- again amended and ordered reprinted, retaining its place in the order of third reading

AN ACT to amend the general business 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. Section 399-p of the general business law, as amended by chapter 581 of the laws of 1992, subdivision 6 as amended by chapter 546 of the laws of 2000, subdivision 6-a as added and subdivision 8 as amended by chapter 176 of the laws of 1998, is amended to read as follows:

§ 399-p. [~~Telemarketing; use~~] **Use** of automatic [~~dialing-announcing~~] **dialing** devices and placement of **robocalls and** consumer telephone calls. 1. Definitions. As used in this section, the following terms shall have the following meanings:

(a) "automatic [~~dialing-announcing~~] **dialing** device" means [~~any automatic equipment which incorporates a storage capability of telephone numbers to be called and is used, working alone or in conjunction with~~

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

LBD02262-26-9

~~other equipment, to disseminate a prerecorded message to the telephone number called without the use of an operator~~] equipment that makes a series of calls to stored telephone numbers, including numbers stored on a list, except for equipment that requires a human to dial or place each individual call one call at a time, and requires such human to then remain on each call;

(b) "person" means any natural person, firm, organization, partnership, association or corporation, or other entity, whether for-profit or not-for-profit;

(c) "consumer" means a natural person who is solicited to purchase, lease or receive a good or service for personal, family or household use;

(d) "consumer telephone call" means a call made to a telephone number by a telephone solicitor, whether by device, live operator, or any combination thereof, for the purpose of soliciting a sale of any consumer goods or services for personal, family or household purposes to the consumer called, or for the purpose of soliciting an extension of credit for consumer goods or services to the consumer called, or for the purpose of obtaining information that will or may be used for the direct solicitation of a sale of consumer goods or services to the consumer called or an extension of credit for such purposes; provided, however, that "consumer telephone call" shall not include a call made by a telephone corporation, as defined by subdivision seventeen of section two of the public service law, in response to a specific inquiry initiated by a consumer regarding that consumer's existing or requested telephone service; [~~and~~]

(e) "telephone solicitor" means a person who makes or causes to be made a consumer telephone call;

(f) "robocall" means a call made, including a text message sent, to any telephone number owned by a person or entity in the state:

(1) using an automatic dialing device; or

(2) using an artificial or prerecorded voice;

(g) "call mitigation technology" means technology that identifies an incoming call or text message as being, or as probably being, an unwanted 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;

(h) "prior express consent" for a call means that the purpose of the call must be closely related to the purpose for which the telephone number was originally provided by the called party. A call by a non-profit organization which is federally tax exempt pursuant to 26 U.S.C. 501(c), to a member who had joined such organization or to the household of such a member, is presumed to be closely related. 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;

(i) "telephone service provider" means any company that provides voice service utilizing any technology, regardless of whether such provider is regulated pursuant to the public service law;

(j) "labor organization" means any organization of any kind which exists for the purpose, in whole or in part, of representing employees employed within the state of New York in dealing with employers or employer organizations or with a state government, or any political or civil subdivision or other agency thereof, concerning terms and condi-

tions of employment, grievances, labor disputes, or other matters incidental to the employment relationship. For the purposes of this section, each local, parent national or parent international organization of a statewide labor organization, and each statewide federation receiving dues from subsidiary labor organizations, shall be considered a separate labor organization; and

(k) "department" means the department of state.

2. No person shall [~~operate an automatic dialing-announcing device~~] make any robocall, nor place any consumer telephone call, except in accordance with the provisions of this section. The [~~use of such device~~] making of a robocall by any person, either individually or acting as an officer, agent, or employee of a person [~~operating automatic dialing-announcing devices~~] making a robocall, is subject to the provisions of this section.

2-a. (a) A person shall be permitted to make a robocall only when such robocall is:

(1) made for emergency purposes, pursuant to subdivision seven of this section;

(2) made with the prior express consent of the called party;

(3) made by a labor organization to such organization's members or to the household of such members; or

(4) authorized by regulations promulgated by the department pursuant to paragraph (b) of this subdivision.

(b) The department, in consultation with the department of public service, shall promulgate regulations to implement the provisions of this subdivision, and may permit, subject to such conditions as the department may prescribe, robocalls to be made to a residential telephone line without prior express consent if such calls are not made for a commercial purpose.

3. [~~Whenever telephone calls are placed through the use of an automatic dialing-announcing device, such device shall do all of the following~~] In addition to the provisions of subdivision two-a of this section:

(a) If a robocall or consumer telephone call permitted by this section uses a prerecorded voice, such call shall state at the beginning of the call the nature of the call and the name of the person or on whose behalf the message is being transmitted and at the end of such message the address, and telephone number of the person on whose behalf the message is transmitted, provided such disclosures are not otherwise prohibited or restricted by any federal, state or local law; and

(b) If a robocall permitted by this section is made using an automatic dialing device, such device shall disconnect [~~the automatic dialing-announcing device~~] from the telephone line upon the termination of the call by either the person calling or the person called.

4. No person shall operate an automatic [~~dialing-announcing~~] dialing device which uses a random or sequential number generator to produce a number to be called.

4-a. (a) No person making a robocall shall knowingly cause any caller identification service to transmit misleading, inaccurate, or false caller identification information with the intent to defraud, cause harm, or wrongfully obtain anything of value.

(b) This subdivision does not prohibit:

(1) Any authorized activity of a law enforcement agency; or

(2) Any activity pursuant to a court order that specifically authorizes the use of caller identification manipulation.

4-b. (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 department, in consultation with the department of public service, shall promulgate 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. The department may also promulgate regulations allowing for the requirements of this subdivision to be waived for existing network facilities in instances where the telephone service provider can reasonably demonstrate that call mitigation technology cannot feasibly be implemented on such facilities due to technological limitations, until such time as it can be feasibly implemented.

5. No [~~automatic dialing-announcing device shall be used to call and no~~] robocall or consumer telephone call shall be placed to an emergency telephone line including but not limited to any 911 or E-911 line, or any emergency line of any volunteer fire company or fire department; any emergency medical service, ambulance service, voluntary ambulance service or hospital ambulance service as defined in section three thousand one of the public health law; any hospital, nursing home, or residential health care facility as defined in section twenty-eight hundred one of the public health law; any adult care facility as defined in section two of the social services law; or any law enforcement agency or to the telephone line of any guest room or patient room of any hospital, nursing home, or residential health care facility as defined in section two thousand eight hundred one of the public health law, or any adult care facility as defined by section two of the social services law. It shall not constitute a violation of this subdivision if the person who places such a call can affirmatively establish that the call was placed inadvertently despite good faith efforts on the part of such person to comply with the provisions of this section and such person has implemented a procedure to prevent subsequent calls from being placed to a particular prohibited telephone number.

6. A telephone solicitor shall not make a consumer telephone call to a consumer unless the telephone solicitor conforms with subparagraph one of paragraph b of subdivision six of section three hundred ninety-nine-pp of this article. Nothing contained herein shall be deemed to limit, annul, alter, or affect the provisions of subdivision three of this section.

6-a. No telephone solicitor or person who places any consumer telephone call or [~~who operates an automatic dialing-announcing device~~] robocall and no employer of any such telephone solicitor or person shall intentionally cause to be installed, or shall intentionally utilize, any blocking device or service to prevent the name and/or telephone number of such solicitor or person, or the name and/or telephone number of his or her employer, from being displayed on a caller identification device of the recipient of any such consumer telephone call. A violation of this subdivision shall be subject to the provisions of subdivision eight of this section.

7. (a) Federal, state or local municipalities, or any subdivision thereof, [~~using an automatic dialing-announcing device~~] making a robo-

call for emergency purposes shall be exempted from the provisions of this section.

(b) Notwithstanding the provisions of paragraph (a) of this subdivision, any entity [~~which operates~~] making a robocall for emergency purposes through the operation of a telephone warning or alert system [~~which utilizes any such device for emergency purposes~~] shall also be exempted from the provisions of this section.

8. Whenever there shall be a violation of subdivision two, three, four, four-a, five, six, or six-a 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 subdivision two, three, four, four-a, five, six, or six-a of 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, three, four, or five 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 subdivisions within a continuous seventy-two hour period. Whenever the court shall determine that a violation of subdivision four-a of this section has occurred, the court may impose a civil penalty of not less than five thousand dollars nor more than ten thousand dollars for each violation. Whenever the court shall determine that a violation of subdivision six of this section, or a violation of subdivision six-a of this section, has occurred, the court may impose a civil penalty of not more than two thousand dollars. 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.

9. In addition to the right of action granted to the attorney general pursuant to this section, any person who has received a telephone call in violation of subdivision two, three, four, four-a or five of this section may bring:

(a) an action in his or her own name to enjoin such unlawful act or practice[~~,~~];

(b) an action to recover his or her actual damages or [~~fifty~~] five hundred dollars, whichever is greater[~~,~~]; or

(c) both such actions. The court may, in its discretion, increase the award of damages to an amount not to exceed three times the [~~actual damages up to one thousand dollars~~] amount available under paragraph (b) of this subdivision, if the court finds the defendant willfully or knowingly violated such subdivisions. The court [~~may~~] shall award reasonable attorney's fees to a prevailing plaintiff. Any damages recoverable pursuant to this section may be recovered in any action which a court may authorize to be brought as a class action pursuant to article nine of the civil practice law and rules.

10. (a) The department, in consultation with the department of public service, shall report on issues related to illegal robocalls made to

telephone numbers owned by a person or entity in this state, and on the status of the implementation and offering of call mitigation technology by telephone service providers that provide telephone service to customers residing in the state. Such report shall be delivered no later than December first, two thousand twenty, and annually thereafter, to the governor, the temporary president of the senate, the speaker of the assembly, the minority leader of the senate, and the minority leader of the assembly.

(b) Such report shall include:

(1) A list of telephone service providers operating in this state, and the status of their implementation and offering of call mitigation technology;

(2) Information regarding delays in the implementation and offering of call mitigation technology, and the reasons for such delays;

(3) Recommendations for additional measures to protect customers from illegal robocalls;

(4) The number of illegal robocalls made to telephone numbers owned by a person or entity in this state, to the extent that such information is known; and

(5) Any other information or recommendations relating to the issue of robocalls that the department judges to be pertinent or necessary.

§ 3. Paragraph b of subdivision 11 of section 399-pp of the general business law, as added by chapter 546 of the laws of 2000, is amended to read as follows:

b. In every case where the court shall determine that a violation of this section has occurred, it may impose a civil penalty of not less than one thousand dollars nor more than two thousand dollars for each violation, provided that for a violation of subdivision seven-a of this section, the court may impose a civil penalty of not less than five thousand dollars nor more than ten thousand dollars for each violation. Such penalty shall be in addition to the denial of registration or renewal, suspension of registration or revocation of registration or assessment of a fine authorized by subdivision five of this section.

§ 4. If any provision of this act, or any application of any provision of this act, is held to be invalid, that shall not affect the validity or effectiveness of any other provision of this act, or of any other application of any provision of this act, which can be given effect without that provision or application; and to that end, the provisions and applications of this act are severable.

§ 5. This act shall take effect on the ninetieth 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.