STATE OF NEW YORK

4777

2019-2020 Regular Sessions

IN SENATE

March 25, 2019

Introduced by Sen. KAMINSKY -- read twice and ordered printed, and when printed to be committed to the Committee on Consumer Protection

AN ACT to amend the general business law, in relation to enacting the "nuisance call act"

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Short title. This act shall be known and may be cited as the "nuisance call act".

§ 2. Subdivisions 9, 10, 11, 12, 13, 14 and 15 of section 399-z of the general business law, subdivisions 9 and 15 as added and subdivisions 10, 11, 12, 13 and 14 as amended by chapter 369 of the laws of 2012, are amended to read as follows:

9. **In the case of any telemarketing sales call made by a natural person, the telemarketer or seller shall inform the customer that he or she may request that his or her telephone number be added to the seller's entity specific do-not-call list. If the customer opts to do so, the telemarketer or seller shall immediately end the call and shall add the number called to such list or cause the number called to be added to such list.**

10. No telemarketer or seller shall transmit, share, or otherwise make available any customer's contact information, including name, telephone number, or email address, which has been provided to such telemarketer or seller by such customer, to any person, corporation, or other entity without the express agreement of the consumer in writing or in electronic format, unless otherwise required by law, or pursuant to a lawful subpoena or court order.

11. Telemarketers and sellers shall keep for a period of twenty-four months from the date the record is created records relating to its telemarketing activities.

[~~10.~~] **12.** a. The department shall provide notice to customers of the establishment of the national "do-not-call" registry. Any customer who

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

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wishes to be included on such registry shall notify the federal trade commission as directed by relevant federal regulations.

b. Any company that provides local telephone directories to customers in this state shall inform its customers of the provisions of this section by means of publishing a notice in such local telephone directories.

[~~11.~~] **13.** When the department has reason to believe a telemarketer has engaged in repeated unlawful acts in violation of this section, or when a notice of hearing has been issued pursuant to subdivision [~~twelve~~] **fourteen** of this section, the department may request in writing the production of relevant documents and records as part of its investigation. If the person upon whom such request was made fails to produce the documents or records within thirty days after the date of the request, the department may issue and serve subpoenas to compel the production of such documents and records. If any person shall refuse to comply with a subpoena issued under this section, the department may petition a court of competent jurisdiction to enforce the subpoena and such sanctions as the court may direct.

[~~12.~~] **14.** a. Where it is determined after hearing that any person has violated one or more provisions of this section, the secretary, or any person deputized or so designated by him or her may assess a fine not to exceed eleven thousand dollars for each violation.

b. Any proceeding conducted pursuant to paragraph a of this subdivision shall be subject to the state administrative procedure act.

c. Nothing in this subdivision shall be construed to restrict any right which any person may have under any other statute or at common law.

[~~13.~~] **15.** A person shall not be held liable for violating this section if:

a. the person has obtained a version of the "do-not-call" registry from the federal trade commission no more than thirty-one days prior to the date any telemarketing call is made, pursuant to 16 C.F.R. Section 310.4(b)(1)(iii)(B), and the person can demonstrate that, as part of the person's routine business practice at the time of an alleged violation, it has established, implemented and updated written policies and procedures related to the requirements of this section prior to the date any telemarketing call is made;

b. the person has trained his or her personnel in the requirements of this section; and

c. the person maintains and can produce records demonstrating compliance with paragraphs a and b of this subdivision and the requirements of this section.

[~~14.~~] **16.** The department shall prescribe rules and regulations to administer this section.

[~~15.~~] **17.** Severability. If any clause, sentence, paragraph or part of this section shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered.

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