

STATE OF NEW YORK

675

2019-2020 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 9, 2019

Introduced by M. of A. NIOU, ZEBROWSKI -- read once and referred to the Committee on Corporations, Authorities and Commissions

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-

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

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1 ialed call and, on that basis, blocks the call or message, diverts it to
2 the called person's answering system, or otherwise prevents it from
3 being completed to the called person, except that it permits a call or
4 text so identified to be completed when it is identified as being made
5 by a law enforcement or public safety entity, or when it is identified
6 as originating from a caller with respect to whom the called person has
7 provided prior express consent to receive such a call or message and has
8 not revoked that consent.

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

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

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

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

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

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

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

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

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

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