

STATE OF NEW YORK

675--C

2019-2020 Regular Sessions

IN ASSEMBLY

(Prefiled)

January 9, 2019

Introduced by M. of A. NIOU, ZEBROWSKI, COLTON, RICHARDSON, FITZPATRICK, EICHENSTEIN, KIM, ENGLEBRIGHT, FRONTUS, FAHY, D. ROSENTHAL, SOLAGES, BUCHWALD, D'URSO, GOTTFRIED, LIPETRI, MORINELLO, L. ROSENTHAL, WEPRIN, PEOPLES-STOKES, SEAWRIGHT, REYES, NORRIS, WALCZYK, BLANKENBUSH -- Multi-Sponsored by -- M. of A. BYRNES -- read once and referred to the Committee on Corporations, Authorities and Commissions -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee -- again reported from said committee with amendments, ordered reprinted as amended and recommitted to said committee -- committee discharged, bill amended, ordered reprinted as amended and recommitted to said committee

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:

1 Section 1. This act shall be known and may be cited as the "robocall
2 prevention act".

3 § 2. Section 399-p of the general business law, as amended by chapter
4 581 of the laws of 1992, subdivision 6 as amended by chapter 546 of the
5 laws of 2000, subdivision 6-a as added and subdivision 8 as amended by
6 chapter 176 of the laws of 1998, is amended to read as follows:

7 § 399-p. [~~Telemarketing, use~~] Use of automatic [~~dialing-announcing~~]
8 dialing devices and placement of robocalls and consumer telephone calls.

9 1. Definitions. As used in this section, the following terms shall have
10 the following meanings:

11 (a) "automatic [~~dialing-announcing~~] dialing device" means [~~any auto-~~
12 ~~matic equipment which incorporates a storage capability of telephone~~
13 ~~numbers to be called and is used, working alone or in conjunction with~~
14 ~~other equipment, to disseminate a prerecorded message to the telephone~~

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

LBD02262-16-9

1 ~~number called without the use of an operator~~ equipment that makes a
2 series of calls to stored telephone numbers, including numbers stored on
3 a list, except for equipment that requires a human to dial or place each
4 individual call and participate in the call after such human initiates
5 the call or series of calls;

6 (b) "person" means any natural person, firm, organization, partner-
7 ship, association or corporation, or other entity, whether for-profit or
8 not-for-profit;

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

12 (d) "consumer telephone call" means a call made to a telephone number
13 by a telephone solicitor, whether by device, live operator, or any
14 combination thereof, for the purpose of soliciting a sale of any consum-
15 er goods or services for personal, family or household purposes to the
16 consumer called, or for the purpose of soliciting an extension of credit
17 for consumer goods or services to the consumer called, or for the
18 purpose of obtaining information that will or may be used for the direct
19 solicitation of a sale of consumer goods or services to the consumer
20 called or an extension of credit for such purposes; provided, however,
21 that "consumer telephone call" shall not include a call made by a tele-
22 phone corporation, as defined by subdivision seventeen of section two of
23 the public service law, in response to a specific inquiry initiated by a
24 consumer regarding that consumer's existing or requested telephone
25 service; ~~and~~

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

28 (f) "robocall" means a call made, including a text message sent:

29 (1) using an automatic dialing device; or

30 (2) using an artificial or prerecorded voice;

31 (g) "call mitigation technology" means technology that identifies an
32 incoming call or text message as being, or as probably being, an
33 unwanted robocall, and, on that basis, blocks the call or message,
34 diverts it to the called person's answering system, or otherwise
35 prevents it from being completed to the called person, except that it
36 permits a call or text so identified to be completed when it is identi-
37 fied as being made by a law enforcement or public safety entity;

38 (h) "prior express consent" for a call means that the purpose of the
39 call must be closely related to the purpose for which the telephone
40 number was originally provided by the called party. A call by a non-pro-
41 fit organization which is federally tax exempt pursuant to 26 U.S.C.
42 501(c), to a member who had joined such organization or to the household
43 of such a member, is presumed to be closely related. A customer's prior
44 express consent can be revoked by the customer at any time in any
45 reasonable manner, regardless of the context in which the owner or user
46 of the telephone provided consent;

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

50 (j) "labor organization" means any organization of any kind which
51 exists for the purpose, in whole or in part, of representing employees
52 employed within the state of New York in dealing with employers or
53 employer organizations or with a state government, or any political or
54 civil subdivision or other agency thereof, concerning terms and condi-
55 tions of employment, grievances, labor disputes, or other matters inci-
56 dental to the employment relationship. For the purposes of this section,

1 each local, parent national or parent international organization of a
2 statewide labor organization, and each statewide federation receiving
3 dues from subsidiary labor organizations, shall be considered a separate
4 labor organization; and

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

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

12 2-a. (a) A person shall be permitted to make a robocall only when such
13 robocall is:

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

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

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

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

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

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

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

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

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

45 4-a. (a) No person making a robocall shall knowingly cause any caller
46 identification service to transmit misleading, inaccurate, or false
47 caller identification information with the intent to defraud, cause
48 harm, or wrongfully obtain anything of value.

49 (b) This subdivision does not prohibit:

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

51 (2) Any activity pursuant to a court order that specifically author-
52 izes the use of caller identification manipulation.

53 4-b. (a) A telephone service provider that provides telephone service
54 to customers residing in the state shall make call mitigation technology
55 available to any such customer, upon request, and at no additional
56 charge. Such provider shall also offer to any such customer the ability

1 to have the provider prevent calls and text messages identified as orig-
2 inating from a particular person from being completed to the called
3 person, upon request, and at no additional charge.

4 (b) The department, in consultation with the department of public
5 service, shall promulgate regulations to implement the requirements of
6 this subdivision, including, if appropriate, a reasonable delay in
7 requiring implementation and offering of call mitigation technology if
8 for good cause, taking into account the consumer protection purposes of
9 this section, and including procedures for addressing incidents in which
10 a call wanted by the customer is prevented from reaching the customer.
11 The department may also promulgate regulations allowing for the require-
12 ments of this subdivision to be waived for existing network facilities
13 in instances where the telephone service provider can reasonably demon-
14 strate that call mitigation technology cannot feasibly be implemented on
15 such facilities due to technological limitations, until such time as it
16 can be feasibly implemented.

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

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

43 6-a. No telephone solicitor or person who places any consumer tele-
44 phone call or [~~who operates an automatic dialing-announcing device~~
45 robocall] and no employer of any such telephone solicitor or person shall
46 intentionally cause to be installed, or shall intentionally utilize, any
47 blocking device or service to prevent the name and/or telephone number
48 of such solicitor or person, or the name and/or telephone number of his
49 or her employer, from being displayed on a caller identification device
50 of the recipient of any such consumer telephone call. A violation of
51 this subdivision shall be subject to the provisions of subdivision eight
52 of this section.

53 7. (a) Federal, state or local municipalities, or any subdivision
54 thereof, [~~using an automatic dialing-announcing device~~] making a robo-
55 call for emergency purposes shall be exempted from the provisions of
56 this section.

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

6 8. Whenever there shall be a violation of subdivision two, three,
7 four, four-a, five, six, or six-a of this section, an application may be
8 made by the attorney general in the name of the people of the state of
9 New York to a court or justice having jurisdiction to issue an injunc-
10 tion, and upon notice to the defendant of not less than five days, to
11 enjoin and restrain the continuance of such violations; and if it shall
12 appear to the satisfaction of the court or justice, that the defendant
13 has, in fact, violated subdivision two, three, four, four-a, five, six,
14 or six-a of this section an injunction may be issued by such court or
15 justice enjoining and restraining any further violation, without requir-
16 ing proof that any person has, in fact, been injured or damaged thereby.
17 In any such proceeding, the court may make allowances to the attorney
18 general as provided in paragraph six of subdivision (a) of section
19 eighty-three hundred three of the civil practice law and rules, and
20 direct restitution. Whenever the court shall determine that a violation
21 of subdivision two, three, four, or five of this section has occurred,
22 the court may impose a civil penalty of not more than two thousand
23 dollars per call, up to a total of not more than twenty thousand
24 dollars, for calls placed in violation of such subdivisions within a
25 continuous seventy-two hour period. Whenever the court shall determine
26 that a violation of subdivision four-a of this section has occurred, the
27 court may impose a civil penalty of not less than five thousand dollars
28 nor more than ten thousand dollars for each violation. Whenever the
29 court shall determine that a violation of subdivision six of this
30 section, or a violation of subdivision six-a of this section, has
31 occurred, the court may impose a civil penalty of not more than two
32 thousand dollars. In connection with any such proposed application, the
33 attorney general is authorized to take proof and make a determination of
34 the relevant facts and to issue subpoenas in accordance with the civil
35 practice law and rules.

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

40 (a) an action in his or her own name to enjoin such unlawful act or
41 practice[7];

42 (b) an action to recover his or her actual damages or [~~fifty~~] five
43 hundred dollars, whichever is greater[7]; or

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

53 10. (a) The department, in consultation with the department of public
54 service, shall report on issues related to illegal robocalls made to
55 telephone numbers owned by a person or entity in this state, and on the
56 status of the implementation and offering of call mitigation technology

1 by telephone service providers that provide telephone service to custom-
2 ers residing in the state. Such report shall be delivered no later than
3 December first, two thousand twenty, and annually thereafter, to the
4 governor, the temporary president of the senate, the speaker of the
5 assembly, the minority leader of the senate, and the minority leader of
6 the assembly.

7 (b) Such report shall include:

8 (1) A list of telephone service providers operating in this state, and
9 the status of their implementation and offering of call mitigation tech-
10 nology;

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

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

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

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

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

23 b. In every case where the court shall determine that a violation of
24 this section has occurred, it may impose a civil penalty of not less
25 than one thousand dollars nor more than two thousand dollars for each
26 violation, provided that for a violation of subdivision seven-a of this
27 section, the court may impose a civil penalty of not less than five
28 thousand dollars nor more than ten thousand dollars for each violation.

29 Such penalty shall be in addition to the denial of registration or
30 renewal, suspension of registration or revocation of registration or
31 assessment of a fine authorized by subdivision five of this section.

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

38 § 5. This act shall take effect on the ninetieth day after it shall
39 have become a law. Effective immediately, the addition, amendment
40 and/or repeal of any rule or regulation necessary for the implementation
41 of this act on its effective date are authorized and directed to be made
42 and completed on or before such effective date.