

# 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:

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

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

5 § 91-b. Robocalls. 1. As used in this section:

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

7 (i) using equipment that makes a series of calls to stored telephone  
8 numbers, including numbers stored on a list, or to telephone numbers  
9 produced using a random or sequential number generator, except for a  
10 call made using only equipment that the caller demonstrates requires  
11 substantial additional human intervention to dial or place a call after  
12 a human initiates the call or series of calls; or

13 (ii) using an artificial or prerecorded voice.

14 (b) "Call mitigation technology" means technology that identifies an  
15 incoming call or text message as being, or as probably being, a robocall  
16 and, on that basis, blocks the call or message, diverts it to the called  
17 person's answering system, or otherwise prevents it from being completed  
18 to the called person, except that it permits a call or text so identi-  
19 fied to be completed when it is identified as being made by a law  
20 enforcement or public safety entity, or when it is identified as origi-  
21 nating 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.

LBD02262-04-9

1 prior express consent to receive such a call or message and has not  
2 revoked that consent.

3 (c) "Prior express consent" means agreement provided by a called  
4 person to allow the caller to make a robocall to the called person's  
5 telephone, in relation to the specific subject matter for which the call  
6 is made.

7 2. (a) It shall be unlawful for any person or entity to make any robo-  
8 call other than a call made for emergency purposes or made with the  
9 prior express consent of the called party, to any telephone number owned  
10 by a person or entity in the state. A customer's prior express consent  
11 can be revoked by the customer at any time in any reasonable manner,  
12 regardless of the context in which the owner or user of the telephone  
13 provided consent.

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

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

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

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

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

1 promulgated by the commission relating to this section, may bring an  
2 action in any court of competent jurisdiction:

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

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

7 (c) If the court finds that the defendant willfully or knowingly  
8 violated the provisions of subdivision two of this section or any regu-  
9 lations prescribed hereunder, the court may, in its discretion, increase  
10 the amount of the monetary award to an amount equal to not more than  
11 three times the amount available pursuant to paragraph (b) of this  
12 subdivision.

13 (d) No action to recover damages for a violation of the provisions of  
14 this section may be brought more than four years after the alleged  
15 violation occurred.

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