

# 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:

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

3 § 2. Subdivisions 9, 10, 11, 12, 13, 14 and 15 of section 399-z of the  
4 general business law, subdivisions 9 and 15 as added and subdivisions  
5 10, 11, 12, 13 and 14 as amended by chapter 369 of the laws of 2012, are  
6 amended to read as follows:

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

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

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

24 [~~10.~~] 12. a. The department shall provide notice to customers of the  
25 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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1 wishes to be included on such registry shall notify the federal trade  
2 commission as directed by relevant federal regulations.

3 b. Any company that provides local telephone directories to customers  
4 in this state shall inform its customers of the provisions of this  
5 section by means of publishing a notice in such local telephone directo-  
6 ries.

7 ~~[11.]~~ 13. When the department has reason to believe a telemarketer has  
8 engaged in repeated unlawful acts in violation of this section, or when  
9 a notice of hearing has been issued pursuant to subdivision ~~[twelve]~~  
10 ~~fourteen~~ of this section, the department may request in writing the  
11 production of relevant documents and records as part of its investi-  
12 gation. If the person upon whom such request was made fails to produce  
13 the documents or records within thirty days after the date of the  
14 request, the department may issue and serve subpoenas to compel the  
15 production of such documents and records. If any person shall refuse to  
16 comply with a subpoena issued under this section, the department may  
17 petition a court of competent jurisdiction to enforce the subpoena and  
18 such sanctions as the court may direct.

19 ~~[12.]~~ 14. a. Where it is determined after hearing that any person has  
20 violated one or more provisions of this section, the secretary, or any  
21 person deputized or so designated by him or her may assess a fine not to  
22 exceed eleven thousand dollars for each violation.

23 b. Any proceeding conducted pursuant to paragraph a of this subdivi-  
24 sion shall be subject to the state administrative procedure act.

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

28 ~~[13.]~~ 15. A person shall not be held liable for violating this section  
29 if:

30 a. the person has obtained a version of the "do-not-call" registry  
31 from the federal trade commission no more than thirty-one days prior to  
32 the date any telemarketing call is made, pursuant to 16 C.F.R. Section  
33 310.4(b)(1)(iii)(B), and the person can demonstrate that, as part of the  
34 person's routine business practice at the time of an alleged violation,  
35 it has established, implemented and updated written policies and proce-  
36 dures related to the requirements of this section prior to the date any  
37 telemarketing call is made;

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

40 c. the person maintains and can produce records demonstrating compli-  
41 ance with paragraphs a and b of this subdivision and the requirements of  
42 this section.

43 ~~[14.]~~ 16. The department shall prescribe rules and regulations to  
44 administer this section.

45 ~~[15.]~~ 17. Severability. If any clause, sentence, paragraph or part of  
46 this section shall be adjudged by any court of competent jurisdiction to  
47 be invalid, such judgment shall not affect, impair or invalidate the  
48 remainder thereof, but shall be confined in its operation to the clause,  
49 sentence, paragraph or part thereof directly involved in the controversy  
50 in which such judgment shall have been rendered.

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