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2047--A

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IN ASSEMBLY

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Introduced by M. of A. NIOU, ZEBROWSKI, COLTON, RICHARDSON, FITZPATRICK, EICHENSTEIN, KIM, ENGLEBRIGHT, FRONTUS, FAHY, D. ROSENTHAL, SOLAGES, GOTTFRIED, MORINELLO, L. ROSENTHAL, WEPRIN, PEOPLES-STOKES, SEAWRIGHT, REYES, NORRIS, WALCZYK, BLANKENBUSH, GALEF, LUPARDO, REILLY, WALLACE, CRUZ, WOERNER, SAYEGH, THIELE, DeSTEFANO, BUTTENSCHON, SIMON, DICKENS, COOK, QUART, SANTABARBARA, MONTESANO, ASHBY, SMITH, DARLING, FERNANDEZ -- Multi-Sponsored by -- M. of A. BYRNES, RAMOS -- 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

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 blocking technology to telephone customers

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

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

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

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

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

(a) "automatic [~~dialing-announcing~~] dialing device" means [~~any automatic equipment which incorporates a storage capability of telephone numbers to be called and is used, working alone or in conjunction with other equipment, to disseminate a prerecorded message to the telephone number called without the use of an operator~~] equipment that makes a series of calls to stored telephone numbers, including numbers stored on

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

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a list, except for equipment that requires a human to dial or place each individual call one call at a time, and requires such human to then remain on each call;

(b) "person" means any natural person, firm, organization, partnership, association or corporation, or other entity, whether for-profit or not-for-profit;

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

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

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

(f) "robocall" means a call made, including a text message sent, to any telephone number owned by a person or entity in the state:

(1) using an automatic dialing device; or

(2) using an artificial or prerecorded voice;

(g) "prior express consent" for a call means that the purpose of the call must be closely related to the purpose for which the telephone number was originally provided by the called party. A call by a non-profit organization which is federally tax exempt pursuant to 26 U.S.C. 501(c), to a member who had joined such organization or to the household of such a member, is presumed to be closely related. A call by a sender with an established business relationship with the recipient, which has not been terminated by either party, is presumed to be closely related. A call by a school or school district to parents, guardians, students, or faculty related to the educational mission of the school or to official school activities is presumed to be closely related. A call by a county, city, town, village, or subdivision thereof, to a recipient who is a resident of said entity is presumed to be closely related. A customer's prior express consent can be revoked by the customer at any time in any reasonable manner, regardless of the context in which the owner or user of the telephone provided consent;

(h) "provider" means any company that provides voice service to subscribers in the state utilizing any technology, regardless of whether such provider is regulated pursuant to the public service law;

(i) "labor organization" means any organization of any kind which exists for the purpose, in whole or in part, of representing employees employed within the state of New York in dealing with employers or employer organizations or with a state government, or any political or civil subdivision or other agency thereof, concerning terms and conditions of employment, grievances, labor disputes, or other matters incidental to the employment relationship. For the purposes of this section, each local, parent national or parent international organization of a

1 statewide labor organization, and each statewide federation receiving
2 dues from subsidiary labor organizations, shall be considered a separate
3 labor organization; and

4 (j) "department" means the department of state.

5 2. No person shall [~~operate an automatic dialing-announcing device~~]
6 make any robocall, nor place any consumer telephone call, except in
7 accordance with the provisions of this section. The [~~use of such device~~]
8 making of a robocall by any person, either individually or acting as an
9 officer, agent, or employee of a person [~~operating automatic dialing-an-~~
10 ~~nouncing devices~~] making a robocall, is subject to the provisions of
11 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 a prerecorded voice, such call shall state at the beginning of the
32 call the nature of the call and the name of the person or on whose
33 behalf the message is being transmitted and at the end of such message
34 the address, and telephone number of the person on whose behalf the
35 message is transmitted, provided such disclosures are not otherwise
36 prohibited or restricted by any federal, state or local law; and

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

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

44 4-a. (a) No person making a robocall shall knowingly cause any caller
45 identification service to transmit misleading, inaccurate, or false
46 caller identification information with the intent to defraud, cause
47 harm, or wrongfully obtain anything of value.

48 (b) This subdivision does not prohibit:

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

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

52 4-b. (a) Consistent with authorization provided by federal law and
53 rules or orders of the federal communications commission or its succes-
54 sors: (i) Providers shall offer subscribers services that are capable of
55 blocking calls to a telephone or other device, on an opt-out basis. Such
56 call blocking may include sending a call directly to the called

1 subscriber's voicemail, or to a personal assistant that answers the
2 call, or to a completely automated public turing test to tell computers
3 and humans apart, known as "CAPTCHA", menu that confronts the calling
4 part and requires a caller to confirm that he or she is not a robot.
5 Providers shall, in a manner that is clear for a subscriber to under-
6 stand: (1) offer sufficient information to subscribers so that subscrib-
7 ers can make an informed choice as to whether they wish to opt-out of
8 such service; and (2) clearly disclose to subscribers what types of
9 calls may be blocked and the risks of blocking wanted calls. Deployment
10 of any call blocking services shall result in no additional surcharge or
11 fee to the subscriber. (ii) On or before January first, two thousand
12 twenty-two, and periodically thereafter, all providers shall review the
13 best available call blocking technology and deploy any such technology
14 which may better accomplish the purpose of this section. Any such
15 upgrades shall be deployed to all subscribers as soon as feasible and at
16 no additional surcharge or fee to such subscribers. (iii) By July thir-
17 ty-first of the year following the effective date of this paragraph, and
18 annually thereafter, every provider shall file with both the department,
19 and the public service commission, a report setting forth its deployment
20 and review of the best available call blocking technology required by
21 this section, as well as any available upgrades thereto and deployment
22 thereof to persons or entities, as well as any other information that
23 the department, in consultation with the department of public service,
24 may require. The report shall include a sworn statement by a principal
25 or officer of the provider that the information provided is current and
26 accurate.

27 (b) The department, in consultation with the department of public
28 service, shall promulgate regulations to implement the requirements of
29 this subdivision, including, if appropriate, a reasonable delay in
30 requiring implementation and offering of such call blocking technology
31 if for good cause, taking into account the consumer protection purposes
32 of this section, and including procedures for addressing incidents in
33 which a call wanted by the customer is prevented from reaching the
34 customer. The department may also promulgate regulations allowing for
35 the requirements of this subdivision to be waived for existing network
36 facilities in instances where the provider can reasonably demonstrate
37 that call blocking technology cannot feasibly be implemented on such
38 facilities due to technological limitations, until such time as it can
39 be feasibly implemented.

40 5. No [~~automatic dialing announcing device shall be used to call and~~
41 ~~no~~] robocall or consumer telephone call shall be placed to an emergency
42 telephone line including but not limited to any 911 or E-911 line, or
43 any emergency line of any volunteer fire company or fire department; any
44 emergency medical service, ambulance service, voluntary ambulance
45 service or hospital ambulance service as defined in section three thou-
46 sand one of the public health law; any hospital, nursing home, or resi-
47 dential health care facility as defined in section twenty-eight hundred
48 one of the public health law; any adult care facility as defined in
49 section two of the social services law; or any law enforcement agency or
50 to the telephone line of any guest room or patient room of any hospital,
51 nursing home, or residential health care facility as defined in section
52 two thousand eight hundred one of the public health law, or any adult
53 care facility as defined by section two of the social services law. It
54 shall not constitute a violation of this subdivision if the person who
55 places such a call can affirmatively establish that the call was placed
56 inadvertently despite good faith efforts on the part of such person to

1 comply with the provisions of this section and such person has imple-
2 mented a procedure to prevent subsequent calls from being placed to a
3 particular prohibited telephone number.

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

10 6-a. No telephone solicitor or person who places any consumer tele-
11 phone call or [~~who operates an automatic dialing announcing device~~]
12 robocall and no employer of any such telephone solicitor or person shall
13 intentionally cause to be installed, or shall intentionally utilize, any
14 blocking device or service to prevent the name and/or telephone number
15 of such solicitor or person, or the name and/or telephone number of his
16 or her employer, from being displayed on a caller identification device
17 of the recipient of any such consumer telephone call. A violation of
18 this subdivision shall be subject to the provisions of subdivision eight
19 of this section.

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

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

29 8. Whenever there shall be a violation of subdivision two, three,
30 four, four-a, five, six, or six-a of this section, an application may be
31 made by the attorney general in the name of the people of the state of
32 New York to a court or justice having jurisdiction to issue an injunc-
33 tion, and upon notice to the defendant of not less than five days, to
34 enjoin and restrain the continuance of such violations; and if it shall
35 appear to the satisfaction of the court or justice, that the defendant
36 has, in fact, violated subdivision two, three, four, four-a, five, six,
37 or six-a of this section an injunction may be issued by such court or
38 justice enjoining and restraining any further violation, without requir-
39 ing proof that any person has, in fact, been injured or damaged thereby.
40 In any such proceeding, the court may make allowances to the attorney
41 general as provided in paragraph six of subdivision (a) of section
42 eighty-three hundred three of the civil practice law and rules, and
43 direct restitution. Whenever the court shall determine that a violation
44 of subdivision two, three, four, or five of this section has occurred,
45 the court may impose a civil penalty of not more than two thousand
46 dollars per call, up to a total of not more than twenty thousand
47 dollars, for calls placed in violation of such subdivisions within a
48 continuous seventy-two hour period. Whenever the court shall determine
49 that a violation of subdivision four-a of this section has occurred, the
50 court may impose a civil penalty of not less than five thousand dollars
51 nor more than ten thousand dollars for each violation. Whenever the
52 court shall determine that a violation of subdivision six of this
53 section, or a violation of subdivision six-a of this section, has
54 occurred, the court may impose a civil penalty of not more than two
55 thousand dollars. In connection with any such proposed application, the
56 attorney general is authorized to take proof and make a determination of

1 the relevant facts and to issue subpoenas in accordance with the civil
2 practice law and rules.

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

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

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

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

20 10. (a) The department, in consultation with the department of public
21 service, shall report on issues related to illegal robocalls made to
22 telephone numbers owned by a person or entity in this state, and on the
23 status of the implementation and offering of call blocking technology by
24 providers. Such report shall be delivered no later than December first,
25 two thousand twenty-two, and annually thereafter, to the governor, the
26 temporary president of the senate, the speaker of the assembly, the
27 minority leader of the senate, and the minority leader of the assembly.

28 (b) Such report shall include:

29 (1) A list of providers operating in this state, and the status of
30 their implementation and offering of call blocking services;

31 (2) Information regarding delays in the implementation and offering of
32 call blocking technology, and the reasons for such delays;

33 (3) Recommendations for additional measures to protect customers from
34 illegal robocalls;

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

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

40 11. The public service commission may promulgate any rules or regu-
41 lations necessary to implement and enforce the provisions of this
42 section.

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

46 b. In every case where the court shall determine that a violation of
47 this section has occurred, it may impose a civil penalty of not less
48 than one thousand dollars nor more than two thousand dollars for each
49 violation, provided that for a violation of subdivision seven-a of this
50 section, the court may impose a civil penalty of not less than five
51 thousand dollars nor more than ten thousand dollars for each violation.

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

55 § 4. If any provision of this act, or any application of any provision
56 of this act, is held to be invalid, that shall not affect the validity

1 or effectiveness of any other provision of this act, or of any other
2 application of any provision of this act, which can be given effect
3 without that provision or application; and to that end, the provisions
4 and applications of this act are severable.

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