STATE OF NEW YORK

3941

2021-2022 Regular Sessions

IN SENATE

February 1, 2021

Introduced by Sen. COMRIE -- 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 including electronic messaging texts as a form of telemarketing communication

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

Section 1. Paragraphs h, i, j, k, l and m of subdivision 1 of section 399-z of the general business law, paragraphs h, i and j as amended by chapter 369 of the laws of 2012 and paragraph k as amended and paragraphs l and m as added by chapter 484 of the laws of 2016, are amended and a new paragraph n is added to read as follows:

h. "Telemarketer" means any person who, for financial profit or commercial purposes in connection with telemarketing, makes telemarketing sales calls **or electronic messaging texts** to a customer when the customer is in this state or any person who directly controls or supervises the conduct of a telemarketer. For the purposes of this section, "commercial purposes" shall mean the sale or offer for sale of goods or services;

i. "Telemarketing" means any plan, program or campaign that is conducted to induce payment or the exchange of any other consideration for any goods or services that involves more than one telephone call **or electronic messaging text** by a telemarketer in which the customer is located within the state at the time of the call. Telemarketing does not include the solicitation of sales through media other than by telephone calls **or electronic messaging texts** and does not include calls **or electronic messaging texts** intended to implement or complete a transaction to which the customer has previously consented;

j. "Telemarketing sales call" means a telephone call **or electronic messaging text** made **directly or indirectly** by a telemarketer or by any outbound telephone calling technology that delivers a prerecorded message to a customer or to a customer's voicemail or answering machine

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

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service**, in which such telephone call or electronic messaging text is** for the purpose of inducing payment or the exchange of any other consideration for any goods or services;

k. "Unsolicited telemarketing sales call" means any telemarketing sales call **or electronic messaging text** other than [~~a call made~~]:

(i) in response to an express written or verbal request by the customer; or

(ii) in connection with an established business relationship, which has not been terminated by either party, unless such customer has stated to the telemarketer that such customer no longer wishes to receive the telemarketing sales calls of such telemarketer;

l. "Caller identification information" means information provided by a caller identification service regarding the telephone number and name of the person calling; [~~and~~]

m. "Caller identification service" means a service that allows a telephone subscriber to have the telephone number, and, where available, name of the calling party transmitted contemporaneously with the telephone call, and displayed on a device in or connected to the subscriber's telephone[~~.~~]**; and**

n. "Electronic messaging text" means real-time or near real-time non-voice messages in text form over communications networks, and includes the transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, cable or other like connection between the points of origin and reception of such transmission.

§ 2. This act shall take effect on the thirtieth day after it shall have become a law.