

# 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:

1 Section 1. Paragraphs h, i, j, k, l and m of subdivision 1 of section  
2 399-z of the general business law, paragraphs h, i and j as amended by  
3 chapter 369 of the laws of 2012 and paragraph k as amended and para-  
4 graphs l and m as added by chapter 484 of the laws of 2016, are amended  
5 and a new paragraph n is added to read as follows:

6 h. "Telemarketer" means any person who, for financial profit or  
7 commercial purposes in connection with telemarketing, makes telemarket-  
8 ing sales calls or electronic messaging texts to a customer when the  
9 customer is in this state or any person who directly controls or super-  
10 vises the conduct of a telemarketer. For the purposes of this section,  
11 "commercial purposes" shall mean the sale or offer for sale of goods or  
12 services;

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

22 j. "Telemarketing sales call" means a telephone call or electronic  
23 messaging text made directly or indirectly by a telemarketer or by any  
24 outbound telephone calling technology that delivers a prerecorded  
25 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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1 service, in which such telephone call or electronic messaging text is  
2 for the purpose of inducing payment or the exchange of any other consid-  
3 eration for any goods or services;

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

6 (i) in response to an express written or verbal request by the custom-  
7 er; or

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

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

15 m. "Caller identification service" means a service that allows a tele-  
16 phone subscriber to have the telephone number, and, where available,  
17 name of the calling party transmitted contemporaneously with the tele-  
18 phone call, and displayed on a device in or connected to the subscrib-  
19 er's telephone[~~er~~]; and

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

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