STATE OF NEW YORK

6317

2023-2024 Regular Sessions

IN SENATE

April 13, 2023

Introduced by Sen. HINCHEY -- read twice and ordered printed, and when printed to be committed to the Committee on Energy and Telecommunications

AN ACT to amend the public authorities law, in relation to establishing a do-not-solicit solar development statewide registry prohibiting solar solicitors from contacting persons who are included on such registry

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

Section 1. The public authorities law is amended by adding a new section 1885 to read as follows:

§ 1885. Solar solicitation; establishment of do-not-solicit solar development statewide registry. 1. As used in this section, the following terms shall have the following meanings:

(a) "President" means the president of the New York state energy research and development authority.

(b) "Solar developer" means a business that finances, installs, owns, operates and/or maintains solar panels for the purposes of generating electricity.

(c) "Solar solicitor" means any person who, for financial profit or commercial purposes in connection with solar development, makes solar marketing sales calls, electronic messaging, or on-premises sales appeals to a customer when the customer is in this state or any person who directly controls or supervises the conduct of a solar solicitor.

(d) "Commercial purposes" means the sale or offer for sale or lease of property for the purposes of constructing major solar energy generation projects.

(e) "Customer" means any natural person who is a resident of this state and who is or may be offered payment for portions of land for the purposes of the installation of solar panels for electricity generation.

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

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(f) "Doing business in this state" means conducting solar solicitation calls: (i) from a location in this state; or (ii) from a location outside of this state to consumers residing in this state.

(g) "Unsolicited solar development call" means any solar solicitation call, electronic messaging, or on-premises appeal other than a call, electronic message or on-premises appeal:

(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 solar solicitor that such customer no longer wishes to receive the solar solicitation calls of such solar solicitor.

(h) "Caller identification information" means information provided by a caller identification service regarding the telephone number and name of the person calling.

(i) "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.

(j) "Electronic messaging" 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; or an electronic message or an executable program or computer file that contains an image of a message that is transmitted between two or more computers or electronic terminals. Such term shall include electronic messages that are transmitted within or between computer networks.

(k) "On-premises sales appeals" means in-person communication taking place at or in the vicinity of the customer's residence or the land which the solar solicitor is offering to purchase or lease.

2. No solar solicitor shall engage in solar solicitation at any time other than between 8:00 A.M. and 7:00 P.M. at the location of the customer unless the customer has given their express consent to the call at a different time. Solar solicitors shall provide, in a clear and coherent manner using words with common and everyday meanings, at the beginning of each solar solicitation call all of the following information, provided that the information set forth in paragraphs (a) and (b) of this subdivision shall be given to the customer first:

(a) the solar solicitor's name and the person on whose behalf the solicitation is being made, if other than the solar solicitor;

(b) the option to be automatically added to the seller's entity specific do-not-solicit list, as required by subdivision three of this section;

(c) whether the call is being recorded; and

(d) the purpose of the telephone call.

2-a. It shall be unlawful for any solar solicitor to knowingly cause any caller identification service to transmit misleading, inaccurate, or false caller identification information, provided that it shall not be a violation of this section to substitute (for the name and phone number used in, or billed for, making the call) the name or telephone number of the person or seller on behalf of which a solar solicitation call is placed.

3. The authority is authorized to establish, manage, and maintain a do-not-solicit solar development statewide registry which shall contain

a list of customers who do not wish to receive unsolicited solar solicitation calls. The authority may contract with a private vendor to establish, manage and maintain such a registry, and such contract shall require the vendor to provide the no solar solicitation calls registry in a printed hard copy format and in any other format as prescribed by the authority.

4. No solar solicitor may make or cause to be made any unsolicited solar development call to any customer when such customer's telephone number, email address, address of the customer's residence or address of the land which the solar solicitor is offering to purchase or lease has been on the statewide do-not-solicit registry established by the authority for a period of thirty-one days prior to the date the call is made.

4-a. It shall be unlawful for any solar solicitor doing business in this state to knowingly make an unsolicited solar development call to any person in a county, city, town or village under a declared local state of emergency, pursuant to section twenty-four of the executive law, or state declared disaster emergency, pursuant to section twenty-eight of the executive law.

5. No solar solicitor shall initiate any solar solicitation call by means of a technology that delivers a pre-recorded message, unless the solar solicitor has obtained from the customer an express agreement, in writing that:

(a) the solar solicitor obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the developer to make solar solicitation calls to such customer;

(b) the solar solicitor obtained without requiring, directly or indirectly, that the agreement be executed as a condition of selling or leasing portions of land for the purposes of the installation of solar panels for electricity generation;

(c) evidences the willingness of the customer to receive solar solicitation calls by or made on behalf of a specific seller; and

(d) includes such customer's telephone number and signature.

6. In the case of any solar solicitation call made by a natural person, the solar solicitor shall inform the customer that they may request that their telephone number, email address, address of the customer's residence or address of the land which the solar solicitor is offering to purchase or lease be added to the seller's entity specific do-not-solicit registry. If the customer opts to do so, the solar solicitor shall immediately end the call and shall add the number called to such list or cause the number called to be added to such list.

7. No solar solicitor or developer shall transmit, share, or otherwise make available any customer's contact information, including name, telephone number, or email address, which has been provided to such solar solicitor or developer by such customer, to any person, corporation, or other entity without the express agreement of the consumer in writing or in electronic format, unless otherwise required by law, or pursuant to a lawful subpoena or court order.

8. Solar solicitors or developers shall keep records relating to its solicitation activities for a period of sixty months from the date the record is created.

9. (a) The authority shall provide notice to customers of the establishment of the statewide do-not-solicit registry. Any customer who wishes to be included on such registry shall notify the authority in the manner provided for by the authority.

(b) Any company that provides local telephone directories to customers in this state shall inform its customers of the provisions of this

section by means of publishing a notice in such local telephone directories.

10. When the authority has reason to believe a solar solicitor or developer has engaged in repeated unlawful acts in violation of this section, or when a notice of hearing has been issued pursuant to subdivision eleven of this section, the authority may request in writing the production of relevant documents and records as part of its investigation. If the person upon whom such request was made fails to produce the documents or records within thirty days after the date of the request, the authority may issue and serve subpoenas to compel the production of such documents and records. If any person shall refuse to comply with a subpoena issued under this section, the authority may petition a court of competent jurisdiction to enforce the subpoena and such sanctions as the court may direct.

11. (a) Where it is determined after hearing that any person has violated one or more provisions of this section, the president, or his or her designee, may assess a fine of eleven thousand dollars for each violation.

(b) Where it is determined after hearing that any person has, on a second, separate occasion violated one or more provisions of this section, the president, or their designee, may assess a fine of twenty-two thousand dollars for each violation.

(c) Where it is determined after hearing that any person has, on a third, separate occasion violated one or more provisions of this section, the authority in conjunction with the office for renewable energy siting, shall revoke any development permits for the solar developer and place their name on a public registry, created by the authority, of companies that have repeatedly violated the provisions of this section.

(d) Any proceeding conducted pursuant to paragraph (a) of this subdivision shall be subject to the state administrative procedure act.

(e) Nothing in this subdivision shall be construed to restrict any right which any person may have under any other law, rule or regulation.

12. The authority shall promulgate rules and regulations for the administration of this section.

13. Severability. If any clause, sentence, paragraph or part of this section shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered.

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