

IN SENATE

Senate introducer's signature

The senators whose names are circled below wish to join me in the sponsorship of this proposal

s20 Adams	s44 Farley	s58 Kennedy	s54 Nozzolio	s28 Serrano
s15 Addabbo	s02 Flanagan	s34 Klein	s53 O'Mara	s51 Seward
s55 Alesi	s08 Fuschillo	s26 Krueger	s37 Oppenheimer	s09 Skelos
s11 Avella	s59 Gullivan	s24 Lanza	s21 Parker	s14 Smith
s40 Ball	s12 Gianaris	s39 Larkin	s13 Peralta	s25 Squadron
s42 Bonacic	s22 Golden	s01 LeValle	s30 Perkins	s16 Stavisky
s46 Breslin	s47 Griffo	s52 Libous	s61 Ranzenhofer	s35 Stewart-
s38 Carlucci	s60 Grisanti	s45 Little	s48 Ritchie	Cousins
s50 DeFrancisco	s06 Hannon	s05 Marcellino	s33 Rivera	s49 Valesky
s32 Diaz	s36 Hassell-	s07 Martins	s56 Robach	s57 Young
s17 Dilan	Thompson	s62 Mazlarz	s41 Saland	s03 Zeldin
s29 Duane	s10 Huntley	s43 McDonald	s19 Sampson	s27
s31 Espallat	s04 Johnson	s18 Montgomery	s23 Savino	

S. -----
Senate

PROGRAM BILL #36

IN SENATE--Introduced by Sen

--read twice and ordered printed,
and when printed to be committed
to the Committee on

----- A.
Assembly

IN ASSEMBLY--Introduced by M. of A.

with M. of A. as co-sponsors

--read once and referred to the
Committee on

GENEBULA
(Relates to telemarketing; repealer)

Gen Bus L. tlmrkt

AN ACT

to amend the general business law,
in relation to telemarketing; and to
repeal certain provisions of such
law relating thereto

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

IN ASSEMBLY

Assembly introducer's signature

The Members of the Assembly whose names are circled below wish to join me in the multi-sponsorship of this proposal:

a049 Abbate	a085 Crespo	a042 Jacobs	a121 Miller, D.	a067 Rosenthal
a092 Abinanti	a107 Crouch	a095 Jaffee	a102 Miller, J.	a118 Russell
a105 Amedore	a014 Curran	a057 Jeffries	a038 Miller, M.	a144 Ryan
a084 Arroyo	a063 Cusick	a135 Johns	a052 Millman	a012 Saladino
a035 Aubry	a045 Cymbrowitz	a112 Jordan	a015 Montesano	a113 Seyward
a124 Barclay	a034 DenDekker	a099 Katz	a132 Morelle	a029 Scarborough
a103 Barrett	a081 Dinowitz	a074 Kavanagh	a039 Moya	a016 Schimmel
a040 Barron	a114 Duprey	a145 Kearns	a003 Murrey	a140 Schimminger
a082 Benedetto	a004 Englebright	a065 Kellner	a037 Nolan	a064 Silver
a122 Blankenbush	a054 Espinal	a129 Kolb	a128 Oaks	a027 Simanowitz
a055 Boyland	a071 Farrell	a025 Lancman	a069 O'Donnell	a036 Simotas
a008 Boyle	a123 Finch	a091 Latimer	a051 Ortiz	a100 Skartados
a026 Braunstein	a007 Fitzpatrick	a013 Lavine	a136 Palmesano	a146 Smardz
a044 Brennan	a137 Friend	a050 Lentol	a088 Paulin	a079 Stevenson
a116 Brindisi	a143 Gabryszak	a125 Lifton	a141 Peoples-	a011 Sweeney
a131 Bronson	a090 Galef	a072 Linares	Stokes	a110 Tedisco
a046 Brook-Krasny	a133 Gantt	a127 Lopez, P.	a058 Perry	a115 Tenney
a147 Burling	a077 Gibson	a053 Lopez, V.	a087 Pretlow	a002 Thiele
a117 Butler	a149 Giglio	a001 Losquadro	a073 Quart	a061 Titone
a101 Cahill	a066 Glick	a126 Lupardo	a021 Ra	a031 Titus
a096 Calhoun	a023 Goldfeder	a111 Magee	a097 Rabbitt	a062 Tobacco
a043 Camara	a150 Goodell	a120 Magnarelli	a009 Raia	a148 Walter
a106 Canestrari	a075 Gottfried	a059 Maisel	a006 Ramos	a041 Weinstein
a089 Castelli	a005 Graf	a060 Malliotakis	a134 Reilich	a020 Weisenberg
a086 Castro	a098 Gunther	a030 Markey	a109 Reilly	a024 Weprin
a138 Ceretto	a130 Hanna	a093 Mayer	a178 Rivera, J.	a070 Wright
a033 Clark	a139 Hawley	a019 McDonough	a080 Rivera, N.	a094 Zebrowski
a047 Colton	a083 Heastie	a104 McNeny	a076 Rivera, P.	
a010 Conte	a028 Hevesi	a017 McEwitt	a119 Roberts	
a032 Cook	a048 Hikind	a108 McLaughlin	a056 Robinson	
a142 Corwin	a018 Hooper	a022 Meng	a068 Rodriguez	

1) Single House Bill (introduced and printed separately in either or both houses). Uni-Bill (introduced simultaneously in both houses and printed as one bill. Senate and Assembly introducer sign the same copy of the bill).

2) Circle names of co-sponsors and return to introduction clerk with 2 signed copies of bill and 4 copies of memorandum in support (single house); or 4 signed copies of bill and 8 copies of memorandum in support (uni-bill).

1 Section 1. Subparagraph 5 of paragraph a of subdivision 10 of section
2 399-pp of the general business law is REPEALED, subparagraph 6 of para-
3 graph a is renumbered subparagraph 5, and a new subdivision 10-a is
4 added to read as follows:

5 10-a. The following persons are exempt from the fee and bonding
6 requirements set forth in paragraph f of subdivision three and subdivi-
7 sion four of this section: A person engaged in a business or occupation
8 which is licensed, registered, chartered, certified or incorporated with
9 or by any state or federal agency. Provided, however, any person not
10 licensed, registered, chartered, certified or incorporated with any New
11 York state or federal agency, shall submit evidence to the secretary of
12 state, in a form and manner to be prescribed by the secretary, of any
13 license, registration, charter, certification or incorporation issued by
14 an agency or governmental entity in this or any other state.

15 § 2. Section 399-z of the general business law, as amended by chapter
16 344 of the laws of 2010, paragraphs a and b of subdivision 1 as added by
17 section 39, subdivision 4 as amended by section 40 and subdivisions 6, 7
18 and 8 as amended by section 41 of part A of chapter 62 of the laws of
19 2011, is amended to read as follows:

20 § 399-z. Telemarketing; establishment of no telemarketing sales calls
21 statewide registry; authorization of the transfer of telephone numbers
22 on the no telemarketing sales calls statewide registry to the national
23 "do-not-call" registry. 1. As used in this section, the following terms
24 shall have the following meanings:

25 a. "Department" shall mean the department of state.

26 b. "Secretary" shall mean the secretary of state.

1 c. "Customer" means any natural person who is a resident of this state
2 and who is or may be required to pay for or to exchange consideration
3 for goods and services offered through telemarketing;

4 d. "Doing business in this state" means conducting telephonic sales
5 calls: (i) from a location in this state; or (ii) from a location
6 outside of this state to consumers residing in this state;

7 e. "Goods and services" means any goods and services, and shall
8 include any real property or any tangible personal property or services
9 of any kind;

10 f. "Negative option feature" means, in an offer or agreement to sell
11 or provide any goods or services, a provision under which the customer's
12 silence or failure to take an affirmative action to reject such goods or
13 services or to cancel the agreement is interpreted by the seller as
14 acceptance of the offer.

15 g. "Person" means any natural person, association, partnership, firm,
16 corporation and its affiliates or subsidiaries or other business entity;

17 h. "Telemarketer" means any person who, for financial profit or
18 commercial purposes in connection with telemarketing, makes telemarket-
19 ing sales calls to a customer when the customer is in this state or any
20 person who directly controls or supervises the conduct of a telemarket-
21 er. For the purposes of this section, "commercial purposes" shall mean
22 the sale or offer for sale of goods or services;

23 [.] i. "Telemarketing" means any plan, program or campaign [which]
24 that is conducted to induce payment or the exchange of any other consid-
25 eration for any goods or services [by use of one or more telephones and
26 which] that involves more than one telephone call by a telemarketer in
27 which the customer is located within the state at the time of the call.
28 Telemarketing does not include the solicitation of sales through media

1 other than by telephone calls and does not include calls intended to
2 implement or complete a transaction to which the customer has previously
3 consented;

4 j. "Telemarketing sales call" means a telephone call made by a tele-
5 marketer or by any outbound telephone calling technology that delivers a
6 prerecorded message [either] to a customer or to [their] a customer's
7 voicemail or answering machine service for the purpose of inducing
8 payment or the exchange of any other consideration for any goods or
9 services;

10 k. "Unsolicited telemarketing sales call" means any telemarketing
11 sales call other than a call made:

12 (i) in response to an express written or verbal request [of] by the
13 customer [called]; or

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

18 2. No telemarketer or seller shall engage in telemarketing at any time
19 other than between 8:00 A.M. and 9:00 P.M. [local time] at the location
20 of the customer unless the [consumer] customer has given his or her
21 express consent to the call at a different time[, and]. Telemarketers
22 shall provide, in a clear and coherent manner using words with common
23 and everyday meanings, at the beginning of each telemarketing sales call
24 all of the following information:

25 [(i)] a. the telemarketer's name and the person on whose behalf the
26 solicitation is being made, if other than the telemarketer;

27 [(ii)] b. the purpose of the telephone call; and

1 [(iii)] c. the identity of the goods or services for which a fee will
2 be charged.

3 3. Prior to the purchase of any good or service, telemarketers shall
4 disclose to the customer the cost of the goods or services that are the
5 subject of the call and if the offer includes a negative option feature,
6 all material terms and conditions of the negative option feature,
7 including, but not limited to the fact that the customer's account will
8 be charged unless the customer takes an affirmative action to avoid the
9 charges, the dates the charges will be submitted for payment, and the
10 specific steps the customer must take to avoid the charge.

11 4. a. The department is authorized to establish, manage, and maintain
12 a no telemarketing sales calls statewide registry which shall contain a
13 list of customers who do not wish to receive unsolicited telemarketing
14 sales calls. The department may contract with a private vendor to
15 establish, manage and maintain such registry, provided the private
16 vendor has maintained national no telemarketing sales calls registries
17 for more than two years, and the contract requires the vendor to provide
18 the no telemarketing sales calls registry in a printed hard copy format
19 and in any other format as prescribed by the department.

20 b. The department is authorized to have the national "do-not-call"
21 registry established, managed and maintained by the federal trade
22 commission pursuant to 16 C.F.R. Section 310.4 (b) (1) (iii) (B) serve
23 as the New York state no telemarketing sales calls statewide registry
24 provided for by this section. The department is further authorized to
25 take whatever administrative actions may be necessary or appropriate for
26 such transition including, but not limited to, providing the telephone
27 numbers of New York customers registered on the no telemarketing sales

1 calls statewide registry to the federal trade commission, for inclusion
2 on the national "do-not-call" registry.

3 5. No telemarketer or seller may make or cause to be made any unsolic-
4 ited telemarketing sales call to any customer when that customer's tele-
5 phone number has been on the national "do-not-call" registry, estab-
6 lished by the federal trade commission, for a period of thirty-one days
7 prior to the date the call is made, pursuant to 16 [CFR] C.F.R. Section
8 310.4(b)(1)(iii)(B).

9 6. No telemarketer or seller shall initiate any telemarketing sales
10 call by means of a technology that delivers a pre-recorded message,
11 unless the telemarketer or seller has obtained from the customer an
12 express agreement, in writing that:

13 a. the telemarketer or seller obtained only after a clear and conspic-
14 uous disclosure that the purpose of the agreement is to authorize the
15 seller to make telemarketing sales calls to such customer;

16 b. the telemarketer or seller obtained without requiring, directly or
17 indirectly, that the agreement be executed as a condition of purchasing
18 any good or service;

19 c. evidences the willingness of the customer to receive telemarketing
20 sales calls by or made on behalf of a specific seller; and,

21 d. includes such customer's telephone number and signature.

22 7. In the case of any telemarketing sales call delivered by means of a
23 technology that delivers a pre-recorded message that could be received
24 by a customer who can use an automated interactive voice and/or keypress
25 activated opt-out mechanism to assert a do-not-call request, such call
26 shall include a mechanism that allows the customer to automatically add
27 the number called to the seller's entity specific do-not-call list, and
28 which mechanism, once invoked, immediately ends the call.

1 8. In the case of any telemarketing sales call delivered by means of a
2 technology that delivers a pre-recorded message that could be answered
3 by an answering machine or voicemail service, that the call include a
4 toll-free number that must connect the customer directly to an automated
5 interactive voice or keypress activated opt-out mechanism that allows
6 the consumer to automatically add the number called to the seller's
7 entity specific do-not-call list, and which mechanism, once invoked,
8 immediately ends the call.

9 9. Telemarketers and sellers shall keep for a period of thirty-six
10 months from the date the record is created records relating to its tele-
11 marketing activities.

12 10. a. The department shall provide notice to customers of the estab-
13 lishment of the national "do-not-call" registry. Any customer who wishes
14 to be included on such registry shall notify the federal trade commis-
15 sion as directed by relevant federal regulations.

16 b. Any company that provides local telephone directories to customers
17 in this state shall inform its customers of the provisions of this
18 section by means of publishing a notice in such local telephone directo-
19 ries.

20 [7.] 11. When the department has reason to believe a telemarketer has
21 engaged in repeated unlawful acts in violation of this section, or when
22 a notice of hearing has been issued pursuant to subdivision [eight]
23 twelve of this section, the department may request in writing the
24 production of relevant documents and records as part of its investi-
25 gation. If the person upon whom such request was made fails to produce
26 the documents or records within thirty days after the date of the
27 request, the department may issue and serve subpoenas to compel the
28 production of such documents and records. If any person shall refuse to

1 comply with a subpoena issued under this section, the department may
2 petition a court of competent jurisdiction to enforce the subpoena and
3 such sanctions as the court may direct.

4 [8.] 12. a. Where it is determined after hearing that any person has
5 violated one or more provisions of this section, the secretary, or any
6 person deputized or so designated by him or her may assess a fine not to
7 exceed eleven thousand dollars for each violation.

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

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

13 [9.] 13. A person shall not be held liable for violating this section
14 if:

15 a. the person has obtained a version of the "do-not-call" registry
16 from the federal trade commission no more than thirty-one days prior to
17 the date any telemarketing call is made, pursuant to 16 C.F.R. Section
18 310.4(b)(1)(iii)(B), and the person can demonstrate that, as part of the
19 person's routine business practice at the time of an alleged violation,
20 it has established, implemented and updated written policies and proce-
21 dures related to the requirements of this section prior to the date any
22 telemarketing call is made;

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

25 c. the person maintains and can produce records demonstrating compli-
26 ance with paragraphs a and b of this subdivision and the requirements of
27 this section.

1 [10.] 14. The [board] department shall prescribe rules and regulations
2 to administer this section.

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

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

