

GOVERNOR'S PROGRAM BILL

2012

MEMORANDUM

PROGRAM BILL # 36

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

Purpose:

This bill would protect New Yorkers by regulating all telemarketers who do business in New York, wherever they may be located, and would ensure that telemarketers comply with New York law. The bill would also prohibit all telemarketers doing business in New York from delivering prerecorded messages by telephone without the express consent of the call recipient.

Summary of Provisions:

Section 1 of the bill would repeal subparagraph 5 of paragraph (a) of subdivision 10 of General Business Law § 399-pp to ensure that all out-of-state telemarketers, as well as entities engaged in telemarketing but otherwise licensed, registered, chartered, certified or incorporated in any state, or by the federal government, are covered by New York's telemarketing law.

Section 2 of the bill would amend General Business Law § 399-z, New York's "Do Not Call" law, by, among other things: (1) prohibiting telemarketers from initiating sales calls that deliver prerecorded messages to recipients in New York except where the call recipient has affirmatively and explicitly consented to receipt of such calls; (2) requiring outbound telemarketing sales calls that deliver prerecorded messages and could be answered by a customer to allow the customer to assert by key-press or automated interactive voice a do-not-call request that would automatically add the customer's phone number to the telemarketer's do-not-call list and immediately disconnect the call; (3) requiring outbound telemarketing sales calls that deliver prerecorded messages and could be answered by a customer's voice mail service or answering machine to include in the prerecorded message a toll-free number that the customer can call to reach an automated service that will add the customer's phone number to the telemarketer's do-not-call list.; and (4) requiring telemarketers to keep records of their activities for a period of 36 months.

Section 3 of the bill would make the bill effective 90 days after it becomes law.

EXISTING LAW:

General Business Law §399-pp, the “Telemarketing and Consumer Fraud and Abuse Prevention Act”, currently exempts telemarketers otherwise registered, chartered, certified or incorporated by a state or Federal agency from the requirements of the law.

General Business Law §399-z establishes the “no telemarketing sales calls statewide” registry and authorizes the transfer of telephone numbers on the registry to the national “do-not-call” registry so that it can serve as the statewide registry.

STATEMENT IN SUPPORT:

These amendments will better protect New Yorkers from unwanted telemarketing calls by regulating all telemarketers – wherever they are located.

The Department of State (“DOS”) registers telemarketers pursuant to the “Telemarketing and Consumer Fraud and Abuse Prevention Act” but exempts from registration entities engaged in telemarketing that are otherwise registered, chartered, certified, or licensed by another state or a federal agency – “out-of-state” telemarketers. Without this legislation being enacted, these telemarketers could continue to do business in New York and not be subject to civil and criminal penalties established for violations of that law which include fines and criminal penalties, as well as the revocation, suspension, and denial of renewal of registration. This legislation puts out-of-state telemarketers on a level playing field with those telemarketers located in-state and protects New Yorkers from harassment from wherever it may come. This bill would also prohibit prerecorded telemarketing calls, also known as robo-calls, without the call recipient’s express written consent, and requiring that prerecorded calls provide an automated interactive key-press or voice-activated opt-out mechanism that would allow recipients to automatically add their phone number to the telemarketer’s do-not-call list and then terminate the call

At present, only 22 telemarketers are registered in New York. In contrast, in nearby states that require registration of out-of-state telemarketers calling into the state, the numbers are much higher. For example, 557 telemarketers are registered in New Jersey, 213 are registered in Pennsylvania, and 333 are registered in Vermont. These numbers do not reflect the true state of telemarketing.

New Yorkers have registered over 13 million phone numbers on the Do-Not-Call registry. From 2009 to the present, the DOS’s Division of Consumer Protection has received nearly 5,000 “Do Not Call” complaints and inquires; in just the first quarter of 2012, the Federal Trade Commission received 61,705 “Do Not Call” complaints from New Yorkers.

BUDGET IMPLICATIONS:

Potential fines resulting from broader enforcement powers would be added to the Consumer Protection Fund.

EFFECTIVE DATE:

This bill would take effect 90 days after becoming law.