

ASSEMBLY, No. 5400

STATE OF NEW JERSEY 218th LEGISLATURE

INTRODUCED MAY 20, 2019

Sponsored by:

Assemblywoman VALERIE VAINIERI HUTTLE

District 37 (Bergen)

SYNOPSIS

Prohibits automated telephone calling and text messaging and requires telecommunications service providers to provide call mitigation technology to subscribers.

CURRENT VERSION OF TEXT

As introduced.



A5400 VAINIERI HUTTLE

2

1 AN ACT concerning automated telephone calling and text
2 messaging and amending and supplementing P.L.2003, c.76.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. Section 2 of P.L.2003, c.76 (C.56:8-120) is amended to read
8 as follows:

9 2. As used in **【this act】** P.L.2003, c.76 (C.56:8-119 et seq.):

10 "Autodialed telephone call" means:

11 a. a telephone call made using equipment that makes a series of
12 telephone calls to stored telephone numbers, including numbers
13 stored on a list, or to telephone numbers produced using a random
14 or sequential number generator, except that the term does not
15 include a telephone call made using only equipment that the caller
16 demonstrates requires substantial additional human intervention to
17 dial or place a telephone call after a human initiates the telephone
18 call or series of telephone calls;

19 b. a telephone call made using an artificial or prerecorded voice
20 message; or

21 c. a text message made using equipment that issues 20 or more
22 text messages at a time, or sends a series of nearly identical texts to
23 telephone numbers on a list, or to telephone numbers produced
24 using a random or sequential number generator, except that the term
25 does not include texts that the sender demonstrates were sent to the
26 sender's personal acquaintances.

27 "Autodialed telephone call" shall not mean a telephone call or
28 text message made for bona fide political, religious, or charitable
29 activities of a nonprofit corporation, trust, or organization
30 established exclusively for political, religious, or charitable
31 purposes.

32 "Customer" means an individual who is a resident of this State
33 and a prospective recipient of a telemarketing sales call.

34 "Director" means the Director of the Division of Consumer
35 Affairs in the Department of Law and Public Safety.

36 "Division" means the Division of Consumer Affairs in the
37 Department of Law and Public Safety.

38 "Local exchange telephone company" means a
39 telecommunications carrier authorized by the Board of Public
40 Utilities to provide local telecommunications services.

41 "Merchandise" means merchandise as defined in subsection (c)
42 of section 1 of P.L.1960, c.39 (C.56:8-1), including an extension of
43 credit.

44 "No telemarketing call list" or "no call list" means a list of
45 telephone numbers of customers in this State who desire not to

EXPLANATION – Matter enclosed in bold-faced brackets **【thus】** in the above bill is
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 receive unsolicited telemarketing sales calls whether the
2 telemarketer is a human initiating an unsolicited telemarketing sales
3 call or the telemarketer uses another means of making an
4 unsolicited telemarketing sales call, including, but not limited to,
5 making an autodialed telephone call.

6 "Prior express consent" means an agreement provided by a called
7 customer to allow the caller to make an autodialed telephone call to
8 the called customer's telephone, in relation to the specific subject
9 matter for which the telephone call is made.

10 "Telemarketer" means any entity, whether an individual
11 proprietor, corporation, partnership, limited liability corporation,
12 or any other form of business organization, whether on behalf of itself
13 or others, who makes residential telemarketing sales calls to a
14 customer when the customer is in this State or any person who
15 directly controls or supervises the conduct of a telemarketer.

16 "Telemarketing" means any plan, program, or campaign which is
17 conducted by telephone to encourage the purchase or rental of, or
18 investment in, merchandise, but does not include the solicitation of
19 sales through media other than a telephone call.

20 "Telemarketing sales call" means a telephone call, including an
21 autodialed telephone call, made by a telemarketer to a customer as
22 part of a plan, program, or campaign to encourage the purchase or
23 rental of, or investment in, merchandise, except for continuing
24 services. A telephone call made to an existing customer for the sole
25 purpose of collecting on accounts or following up on contractual
26 obligations shall not be deemed a telemarketing sales call.

27 "Telephone call mitigation technology" means technology that
28 identifies an incoming telephone call as being, or as likely being, an
29 autodialed telephone call and blocks the telephone call, diverts the
30 telephone call to the called person's answering system, or otherwise
31 prevents the telephone call from being completed to the called
32 person, except that the technology permits a telephone call so
33 identified to be completed when the telephone call is identified as
34 being made by a law enforcement or public safety entity, or when
35 the telephone call is identified as originating from a caller with
36 respect to whom the called person has provided prior express
37 consent to receive a telephone call and has not revoked that consent.

38 "Telecommunications service" means the electronic
39 transmission, conveyance, or routing of voice, data, audio, video, or
40 other information to a point, or between or among points, regardless
41 of the telecommunications infrastructure used.

42 "Telecommunications service provider" or "provider" means any
43 person, business, or organization that provides a subscriber with a
44 telecommunications service for a fee.

45 "Unsolicited telemarketing sales call" means any telemarketing
46 sales call other than a call made:

47 **[(1)]** a. in response to an express written request of the customer
48 called; or

1 **[(2)]** b. to an existing customer, which shall include the ability
2 to collect on accounts and follow up on contractual obligations,
3 unless the customer has stated to the telemarketer that the customer
4 no longer desires to receive the telemarketing sales calls of the
5 telemarketer.

6 (cf: P.L.2003, c.208, s.1)

7
8 2. Section 10 of P.L.2003, c.76 (C.56:8-128) is amended to
9 read as follows:

10 10. a. **[No]** A telemarketer shall not make or cause to be made
11 any unsolicited telemarketing sales call to any customer whose
12 telephone number is included on the no telemarketing call list
13 established pursuant to section 9 of **[this act]** P.L.2003, c.76
14 (C.56:8-127), except for a call made within three months of the date
15 the customer's telephone number was first included on the no call
16 list but only if the telemarketer had at the time of the call not yet
17 obtained a no call list which included the customer's telephone
18 number and the no call list used by the telemarketer was issued less
19 than three months prior to the time the call was made.

20 b. A telemarketer making a telemarketing sales call shall,
21 within the first 30 seconds of the call, accurately identify the
22 telemarketer's name, the person on whose behalf the call is being
23 made, and the purpose of the call.

24 c. A telemarketer shall not make or cause to be made any
25 unsolicited telemarketing sales call to any customer between the
26 hours of **[9]** 9:00 p.m. and **[8]** 8:00 a.m., local time, at the
27 customer's location.

28 d. A telemarketer shall not intentionally use any method that
29 blocks a caller identification service from displaying caller
30 identification information or otherwise circumvents a customer's
31 use of a telephone caller identification service, including, but not
32 limited to, the use of any technology or method which displays a
33 telephone number or name not associated with the telemarketer or
34 intentionally designed to misrepresent the telemarketer's identity.

35 e. In addition to the prohibitions described in P.L.1993, c.252
36 (C.48:17-27 et seq.), P.L.1991, c.416 (C.56:8-54 et seq.), and
37 P.L.2003, c.76 (C.56:8-119 et seq.), and to the extent consistent
38 with federal law, it shall be unlawful for a person to make an
39 autodialed telephone call, other than a telephone call made for
40 emergency purposes or made with the prior express consent of a
41 customer, to any telephone number owned by a customer in this
42 State. A customer shall be allowed to revoke any prior express
43 consent at any time and in any reasonable manner, as determined by
44 the director, regardless of the context in which the owner or user of
45 the telephone provided initial consent.

46 (cf: P.L.2005, c.289, s.1)

1 3. (New section) To the extent consistent with federal law, a
2 telecommunications service provider that provides
3 telecommunications service to subscribers residing in the State
4 shall, upon request of the subscriber and at no additional charge:

5 a. make telephone call mitigation technology available to any
6 subscriber receiving a telecommunications service from the
7 provider; and

8 b. allow a subscriber receiving telecommunications service
9 from the provider to have the provider prevent telephone calls and
10 text messages identified as originating from a particular telephone
11 number from being completed or delivered to the person receiving
12 telecommunications service from the provider.

13

14 4. Section 14 of P.L.2003, c.76 (C.56:8-132) is amended to
15 read as follows:

16 14. a. A violation of any provision of **【this act】** P.L.2003,
17 c.76 (C.56:8-119 et. seq.) shall be an unlawful practice subject to
18 the penalties applicable pursuant to section 1 of P.L.1966, c.39
19 (C.56:8-13) and section 2 of P.L.1999, c.129 (C.56:8-14.3), except
20 that a person may not be held liable for violating **【this act】**
21 P.L.2003, c.76 (C.56:8-119 et. seq.) if:

22 **【a.】** (1) the person has obtained a copy of, and updated
23 quarterly, the no call list and has established and implemented
24 written policies and procedures related to the requirements of **【this**
25 **act】** P.L.2003, c.76 (C.56:8-119 et. seq.);

26 **【b.】** (2) the person has trained telemarketers in the person's
27 employ in the requirements of **【this act】** P.L.2003, c.76 (C.56:8-
28 119 et. seq.);

29 **【c.】** (3) the person maintains records demonstrating
30 compliance with **【subsections a. and b.】** paragraphs (1) and (2) of
31 this 【section】 subsection and the requirements of **【this act】**
32 P.L.2003, c.76 (C.56:8-119 et. seq.); and

33 **【d.】** (4) any unsolicited telemarketing sales call is an isolated
34 call made no more than one time in a 12-month period.

35 b. In addition to the penalties provided in subsection a. of this
36 section, any person harmed by a violation of the provisions of
37 subsection e. of section 10 of P.L.2003, c.76 (C.56:8-128), section 3
38 of P.L. , c. (C.) (pending before the Legislature as this bill),
39 or of any rule or regulation promulgated by the director relating to
40 the implementation of P.L. , c. (C.) (pending before the
41 Legislature as this bill), may bring an action in any court of
42 competent jurisdiction to:

43 (1) enjoin the violation; and

44 (2) recover for actual monetary loss from a violation, as
45 described in this subsection, or to receive \$500 in damages for the
46 violation, whichever is greater.

1 c. If a court finds that a person willfully or knowingly violated
2 the provisions of subsection e. of section 10 of P.L.2003, c.76
3 (C.56:8-128), section 3 of P.L. , c. (C.) (pending before the
4 Legislature as this bill), or any rule or regulation promulgated by
5 the director relating to the implementation of P.L. , c. (C.)
6 (pending before the Legislature as this bill), the court may, in its
7 discretion, increase the amount of the monetary award to an amount
8 equal to not more than three times the amount available pursuant to
9 subsection b. of this section.

10 d. No action to recover damages for a violation of the
11 provisions of P.L. , c. (C.) (pending before the Legislature
12 as this bill) may be brought more than four years after the alleged
13 violation occurred.

14 (cf: P.L.2003, c.76, s.14)

15
16 5. Section 16 of P.L.2003, c.76 (C.56:8-134) is amended to
17 read as follows:

18 16. The division, pursuant to the provisions of the
19 "Administrative Procedure Act," P.L.1968, c.410 (C.52:14B-1 et
20 seq.), shall promulgate rules and regulations necessary to
21 implement this act, which shall include, but not be limited to:

22 a. provisions governing the availability and distribution of the
23 no call list established pursuant to section 9 of **【this act】** P.L.2003,
24 c.76 (C.56:8-127);

25 b. any other matters relating to the no call list established
26 pursuant to section 9 of **【this act】** P.L.2003, c.76 (C.56:8-127) that
27 the division deems necessary; **【and】**

28 c. such procedures as may be most effective to ensure that the
29 no call list is up-to-date and accurately reflects the telephone
30 numbers of persons wishing to be on the no call list and procedures
31 to identify telephone numbers that have been reallocated to persons
32 other than those who have indicated that they wish to be on the no
33 call list. Such procedures may include, but not be limited to,
34 establishing a means of matching the no call list with the names and
35 numbers of persons with current listings supplied by the local
36 exchange telephone companies, or establishing a requirement for re-
37 enrollment to the list from time to time;

38 d. procedures for addressing incidents in which a telephone call
39 wanted by a customer is prevented from reaching the customer; and

40 e. provisions that may provide for a reasonable delay in
41 requiring a telecommunications service provider to provide
42 telephone call mitigation technology to subscribers.

43 (cf: P.L.2003, c.208, s.5)

44
45 6. This act shall take effect on the 30th day after enactment, but
46 the Director of the Division of Consumer Affairs in the Department
47 of Law and Public Safety may take such anticipatory administrative
48 action in advance thereof as shall be necessary for the
49 implementation of this act.

STATEMENT

This bill prohibits persons from making automated telephone calling and text messaging through automated means to any telephone number owned by a telecommunications service subscriber in this State, other than for emergency, political, religious, or charitable purposes or with the prior express consent of a customer. The bill further specifies that a customer is allowed to revoke any prior express consent at any time and in any reasonable manner, as determined by the Director of the Division of Consumer Affairs in the Department of Law and Public Safety (director).

With certain exceptions, the bill specifically prohibits: 1) telephone calls made using equipment that makes a series of calls to stored telephone numbers, including numbers stored on a list, or to telephone numbers produced using a random or sequential number generator; 2) telephone calls made using an artificial or prerecorded voice message; and 3) text messages made using equipment that issues twenty or more text messages at a time, or sends a series of nearly identical texts to telephone numbers on a list, or to telephone numbers produced using a random or sequential number generator.

Under the bill, a telecommunications service provider is also required to make telephone call mitigation technology available to any subscriber receiving a telecommunications service from the provider, upon request and at no additional charge. The bill further requires telecommunications service providers to allow any person receiving telecommunications service from the provider to have the provider prevent certain calls and text messages from being completed or delivered to the person receiving the telecommunications service from the provider. The bill requires the director to adopt rules and regulations to implement the bill's requirements. The rules and regulation are required to include procedures for addressing incidents in which a telephone call wanted by a customer is prevented from reaching the customer and may provide for a reasonable delay in requiring implementation and offering of call mitigation technology.

The bill specifies that any person harmed by a violation of the provisions of the bill, or of any rule or regulation promulgated by the director relating to the implementation of the bill, may bring an action in any court of competent jurisdiction to enjoin continued violations and to recover for actual monetary loss from a violation or to receive \$500 in damages for the violation, whichever is greater. The bill also provides that the court may increase the monetary award associated with a violation if the violation was made willfully or knowingly. The bill prohibits actions to recover damages for a violation of the bill from being brought more than four years after the alleged violation occurred.