ASSEMBLY, No. 3468

STATE OF NEW JERSEY

219th LEGISLATURE

INTRODUCED FEBRUARY 25, 2020

Sponsored by:
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District 37 (Bergen)
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SYNOPSIS

Requires telemarketers making sales calls to display their name and telephone number on any caller identification service; prohibits certain caller identification service manipulation and provides additional penalty.

CURRENT VERSION OF TEXT

As introduced.

(Sponsorship Updated As Of: 1/3/2022)

AN ACT concerning certain telemarketing sales calls and caller identification service and amending P.L.2003, c.76.

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

1. Section 1 of P.L.2003, c.76 (C.56:8-119) is amended to read as follows:

1. a. The Legislature finds and declares that telemarketing calls:

(1) Have interrupted the public's privacy, family life, and home sanctity with unsolicited phone calls to sell products and services;

(2) Cannot be selectively ignored by recipients, since the calls are commonly made by means which do not enable the recipient to use a caller **[**I.D.**]** identification service to identify, in advance, a telemarketing call or an emergency, given that the telemarketer may intentionally use a method that manipulates what is displayed on a caller identification service, including using a technology or method that displays a telephone number or name not associated with the telemarketer or is intentionally designed to misrepresent the telemarketer's identity;

(3) May arrive at inconvenient times when a resident or family member is retired for the night;

(4) May arrive when a resident or family member is having a meal and the interruption disrupts valuable time when family members are together, where family members are more remote from a telephone and when food may, during the interruption, cool, melt, thicken, dry, or undergo a change in palatability;

(5) May arrive at inconvenient times when a resident or family member is engaged in entertainment, a compelling activity, or relaxation;

(6) Use a strategy called "predictive calling" which results in tens of thousands of call recipients rushing to answer phone calls, to find no one is on the line. This results in great aggravation and inconvenience to the public, merely to spare telemarketers (who won't identify themselves as the source of the aggravation) the inconvenience of finding no one home;

(7) Have been made to wireless phone lines resulting in cost to the recipient, and in some cases, endangering the recipient's safety when they may have been driving;

(8) Have been increasing in number, causing increased inconvenience, widespread public outrage and urgent appeals to protect the public from such calls;

(9) Are not the only means for marketers to promote their product or services to prospective customers, although marketers

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.

often claim it to be more economical and more productive than other means to provide the benefits of increased competition. Marketers have available printed mail, [email] electronic mail, [face to face] face-to-face personal solicitation, and various forms of advertising;

(10) Are in some cases beyond the regulatory jurisdiction of this Legislature and any New Jersey statute, because they are forms of speech protected by State and federal constitutional case law.

b. The Legislature further declares it to be the policy of this State to provide the broadest possible protection to protect public privacy and the sanctity of homes and to protect families and individuals from unsolicited interruptions. In furtherance of this policy, the establishment of a disorderly persons offense for the intentional use of a method that manipulates a caller identification service, including using a technology or method that displays a telephone number or name not associated with the telemarketer or is intentionally designed to misrepresent the telemarketer's identity, is necessary to reduce the number of circumstances where that intentional method is used to deceive the residents of this State.

c. It is not the intent of the State to restrict telemarketing activity where such activity is protected by State and federal case law, where such restriction is prohibited by State and federal constitutional case law or to restrict purely charitable activities.

(cf: P.L.2003, c.76, s.1)

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

2. As used in [this act] P.L.2003, c.76 (C.56:8-119 et seq.):

"Caller identification information" means information provided by a caller identification service regarding the telephone number, location, organization, or other information regarding the origination of a call or text message made using a voice telecommunications service.

"Caller identification service" means any service or device designed to provide the user of the service or device with the telephone number of, or other information regarding the origination of, a call or text message made using a voice telecommunications service, and includes automatic number identification services.

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

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

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

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

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

"No telemarketing call list" or "no call list" means a list of telephone numbers of customers in this State who desire not to receive unsolicited telemarketing sales calls.

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

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

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

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

(1) in response to an express written request of the customer called; or

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

<u>"Voice telecommunications service" means the offering of voice communications service, including Voice over Internet Protocol service as defined pursuant to section 3 of P.L.2007, c.195 (C.48:17-34) or commercial mobile service , using a public switched telephone network or a successor network, directly to the public or to those classes of users as to be effectively available directly to the public.</u>

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

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

10. a. **[**No**]** <u>A</u> telemarketer shall <u>not</u> make or cause to be made any unsolicited telemarketing sales call to any customer whose telephone number is included on the no telemarketing call list established pursuant to section 9 of **[**this act**]** <u>P.L.2003, c.76 (C.56:8-127)</u>, except for a call made within three months of the date

the customer's telephone number was first included on the no call list, but only if the telemarketer had at the time of the call not yet obtained a no call list which included the customer's telephone number and the no call list used by the telemarketer was issued less than three months prior to the time the call was made.

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

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

d. **[**A telemarketer shall not intentionally use any method that blocks a caller identification service from displaying caller identification information or otherwise circumvents a customer's use of a telephone caller identification service, including, but not limited to, the use of any technology or method which displays a telephone number or name not associated with the telemarketer or intentionally designed to misrepresent the telemarketer's identity.**]** When making or causing to be made any telemarketing sales call, a telemarketer shall transmit or cause to be transmitted the telemarketer's actual telephone number and, when made available by the telemarketer's telephone company, the name of the telemarketer, to any caller identification service in use by a recipient of a telemarketing sales call; provided, however, that it shall not be a violation of this subsection to substitute, for the name and telephone number used in or billed for making the call, the name of the seller on behalf of which a telemarketing sales call is placed and the seller's customer service telephone number that is answered during regular business hours.

e. (1) A telemarketer, in connection with any voice telecommunications service used within this State, shall not knowingly make, place, initiate, or otherwise transmit a call or text message, placed to a person within this State, or engage in conduct that results in the display of misleading, false, or inaccurate caller identification information on the receiving party's telephone or circumvent a caller identification service that is designed to allow the receiving party to identify caller identification information regarding the origin and nature of the call or text message with the intent to defraud, cause harm, or wrongfully obtain anything of value.

(2) Consistent with the provisions of the federal "Truth in Caller ID Act of 2009" (47 U.S.C. s.227(e)), or any other federal law, rule, regulation, or order as applicable, nothing in this subsection shall be construed to:

(a) prevent or restrict a person from blocking the capability of any caller identification service to transmit caller identification

information;

(b) prohibit the use of caller identification manipulation as authorized pursuant to a court order or as determined by the Federal Communications Commission;

(c) authorize or prohibit the use of caller identification manipulation during the course of any investigative, protective, or intelligence activities performed in connection with official duties and in accordance with all applicable laws, by any law enforcement agency or intelligence agency of the United States, a state, or a political subdivision of a state; or

(d) authorize any conduct prohibited pursuant to section 13 of P.L.2005, c.283 (C.45:17A-30.1) or any other law, rule, regulation, or order.

(3) The provisions of this subsection shall not apply to:

(a) a provider of voice telecommunications service acting solely as an intermediary for the transmission of voice telecommunications service between the caller and the recipient of the call; or

(b) a caller who, based on the telephone number called, reasonable believes the recipient of the call is not physically located within the State.

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

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

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

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

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

[c.**]** (3) the person maintains records demonstrating compliance with subsections a. and b. of this section and the requirements of **[**this act**]** P.L.2003, c.76 (C.56:8-119 et seq.); and

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

b. In addition to those penalties for which a person may be liable as provided in subsection a. of this section, any person who knowingly violates the provisions of paragraph (1) of subsection e. of section 10 of P.L.2003, c.76 (C.56:8-128) shall be guilty of a disorderly persons offense.

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

5. This act shall take effect on the first day of the fourth month next following the date of enactment, but the Director of the Division of Consumer Affairs in the Department of Law and Public Safety may take anticipatory administrative action in advance thereof as shall be necessary for the implementation of this act.

STATEMENT

This bill prohibits a telemarketer, when making or causing to be made any telemarketing sales call, from failing to transmit or cause to be transmitted the telephone number, and, when made available by the telemarketer's telephone company, the name of the telemarketer, to any caller identification (ID) service in use by a recipient of a telemarketing sales call. The bill permits the telemarketer to substitute, for the name and telephone number used in or billed for making the call, the name of the seller on behalf of which the call is placed and the seller's customer service telephone number that is answered during regular business hours.

This bill prohibits a telemarketer, in connection with any telecommunications service used within this State, to knowingly make, place, initiate, or otherwise transmit a call or text message or engage in conduct that results in the display of misleading, false, or inaccurate caller ID information on the receiving party's telephone or circumvent a caller ID service that is designed to allow the receiving party to identify caller ID information regarding the origin and nature of the call or text message with the intent to defraud, cause harm, or wrongfully obtain anything of value.

The bill provides, consistent with federal law or otherwise, several exceptions to the bill's prohibition on caller ID manipulation.

Further, the bill provides that a person who knowingly manipulates a caller ID service is guilty of a disorderly persons offense. A disorderly persons offense is ordinarily punishable by a term of imprisonment of up to six months or a fine of up to $1,000, or both.