



### **New York State Passes Bill That Applies Its Telemarketing Laws to Out-Of-State Telemarketers and Adds New Requirements for Prerecorded Messages**

New York Governor Andrew Cuomo has signed into law an amendment to Article 26 of New York's General Business Law which will limit the ability of out-of-state telemarketers to target New Yorkers at home. The new law prohibits out-of-state telemarketers from using prerecorded messages without the recipient's express written consent and requires telemarketers to provide consumers with the option of placing their phone numbers on a do-not-call registry. With this new legislation, the Department of State will have the authority to revoke, suspend, or ban out-of-state telemarketing companies that violate New York's telemarketing laws from doing business in the state and to assess fines of up to \$11,000 per violation. In-state and out-of-state telemarketers are also now required to maintain records of their telemarketing activities for two years.

Previously, telemarketers licensed outside of New York were able to target New York consumers, pay a negligible fine for any complaints, and continue to do business in the state. Now, out-of-state telemarketers will be bound by the same rules applicable to in-state telemarketers, including the requirement to register with New York's Secretary of State. Presently, fewer than 30 telemarketers are registered in New York, a relatively low number compared to neighboring states that require out-of-state telemarketers to register: Pennsylvania has 200, Vermont has over 300, and New Jersey has more than 500 out-of-state telemarketers registered.

The law also adds requirements for prerecorded messages under New York's Do-Not-Call law, enacted in 2000. It requires that recipients of prerecorded messages in New York affirmatively and explicitly consent to such calls. Specifically, telemarketers must obtain the consumer's signature and telephone number on an agreement

that indicates the consumer's willingness to receive telemarketing calls from or made on behalf of a specific seller. The agreement must disclose that the purpose of the agreement is to authorize the telemarketer to make such calls, and the telemarketer cannot require the consumer to sign the agreement as a condition of purchase.

Additionally, for telemarketing sales calls delivering prerecorded messages that could be answered by a consumer, the telemarketer must allow the consumer to automatically add his or her phone number to the telemarketer's do-not-call list by pressing a key or through an automated interactive voice system. Should the consumer opt out in this manner, the telemarketer must immediately disconnect the call. In the case of voicemail or an answering machine, telemarketers must include in the prerecorded message a toll-free number the consumer can call to reach an automated service that will add the consumer's telephone number to the telemarketer's do-not-call list.

The bill brings New York's telemarketing laws in line with the federal Telephone Consumer Protection Act ("TCPA"), which was strengthened earlier this year. The TCPA prohibits telemarketers using artificial or prerecorded voices from delivering telephone messages without the prior express consent of the called party. The TCPA requires, that at the beginning of all artificial or prerecorded telephone messages, the caller must state clearly the identity of the business, individual, or other entity initiating the call, as well as the telephone number or address of such business, other entity, or individual. Earlier this year, the Federal Communications Commission passed an order requiring that written consent from a consumer be signed

*This publication may constitute "Attorney Advertising" under the New York Rules of Professional Conduct and under the law of other jurisdictions.*

and sufficient to show that the consumer (1) was provided “clear and conspicuous disclosure” that the consumer will receive future telemarketing calls through prerecorded messages from or on behalf of a specific entity, and (2) unambiguously agrees to receive such calls. Written consent, as in New York’s law, cannot be a condition of purchase.

Both the TCPA and the New York law provide a safe harbor for businesses that can show they have established and implemented, with due care, routine business practices to effectively prevent unlawful telephone solicitations.

The new law takes effect on November 12, 2012. It can be accessed [here](#).

For more information about the content of this alert, please contact [Michael Mallow](#), [Christine Reilly](#) or [Jessica Lee](#).

*For more information about Loeb & Loeb’s Consumer Protection Department, please contact:*

ARTHUR W. ADELBERG	AADELBERG@LOEB.COM	202.618.5020
ROBERT M. ANDALMAN	RANDALMAN@LOEB.COM	312.464.3168
MARK D. CAMPBELL	MCAMPBELL@LOEB.COM	310.282.2273
CHRISTIAN D. CARBONE	CCARBONE@LOEB.COM	212.407.4852
TAMARA CARMICHAEL	TCARMICHAEL@LOEB.COM	212.407.4225
DARLENE M. CHO	DCHO@LOEB.COM	310.282.2168
AURELE A. DANOFF	ADANOFF@LOEB.COM	310.282.2398
THERESA L. DAVIS	TDAVIS@LOEB.COM	312.464.3188
PATRICK N. DOWNES	PDOWNES@LOEB.COM	310.282.2352
ERIC GUERRERO	EGUERRERO@LOEB.COM	310.282.2214
EMILY R. HAUS	EHAUS@LOEB.COM	312.464.3126
JESSICA M. HIGASHIYAMA	JHIGASHIYAMA@LOEB.COM	310.282.2072
DEREK K. ISHIKAWA	DISHIKAWA@LOEB.COM	310.282.2364
MICHAEL W. JAHNKE	MJAHNKE@LOEB.COM	212.407.4285
JENNIFER A. JASON	JJASON@LOEB.COM	310.282.2195
THOMAS P. JIRGAL	TJIRGAL@LOEB.COM	312.464.3150
BENJAMIN KING	BKING@LOEB.COM	310.282.2279

This alert is a publication of Loeb & Loeb and is intended to provide information on recent legal developments. This alert does not create or continue an attorney client relationship nor should it be construed as legal advice or an opinion on specific situations.

Circular 230 Disclosure: To ensure compliance with Treasury Department rules governing tax practice, we inform you that any advice contained herein (including any attachments) (1) was not written and is not intended to be used, and cannot be used, for the purpose of avoiding any federal tax penalty that may be imposed on the taxpayer; and (2) may not be used in connection with promoting, marketing or recommending to another person any transaction or matter addressed herein.

© 2012 Loeb & Loeb LLP. All rights reserved.

RICHARD M. LORENZO	RLorenzo@LOEB.COM	212.407.4288
MICHAEL MALLOW	MMALLOW@LOEB.COM	310.282.2287
DOUGLAS N. MASTERS	DMASTERS@LOEB.COM	312.464.3144
FIONA P. MCKEOWN	FMCKEOWN@LOEB.COM	310.282.2064
DANIEL G. MURPHY	DMURPHY@LOEB.COM	310.282.2215
JAY K. MUSOFF	JMUSOFF@LOEB.COM	212.407.4212
JERRY S. PHILLIPS	JPHILLIPS@LOEB.COM	310.282.2177
RACHEL RAPPAPORT	RRAPPAPORT@LOEB.COM	310.282.2367
CHRISTINE M. REILLY	CREILLY@LOEB.COM	310.282.2361
AMANDA J. SHERMAN	ASHERMAN@LOEB.COM	310.282.2261
MICHAEL B. SHORTNACY	MSHORTNACY@LOEB.COM	310.282.2315
MEREDITH J. SILLER	MSILLER@LOEB.COM	310.282.2294
DENISE A. SMITH-MARS	DMARS@LOEB.COM	310.282.2028
WALTER STEIMEL, JR.	WSTEIMEL@LOEB.COM	202.618.5015
MICHAEL A. THURMAN	MTHURMAN@LOEB.COM	310.282.2122
LAURA A. WYTSMA	LWYTSMA@LOEB.COM	310.282.2251
MICHAEL P. ZWEIG	MZWEIG@LOEB.COM	212.407.4960