



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

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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](#).

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