



Department of State
Consumer Protection

Consumer Protection Law

Do Not Call

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New York State
DEPARTMENT OF STATE
Division of Consumer Protection

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Consumer Protection Law

Do Not Call

State Do Not Call Law

General Business

§ 399-z. Telemarketing; establishment of no telemarketing sales calls statewide registry; authorization of the transfer of telephone numbers on the no telemarketing sales calls statewide registry to the national call registry.

1. As used in this section, the following terms shall have the following meanings:
 - a. "Department" shall mean the department of state.
 - b. "Secretary" shall mean the secretary of state.
 - c. "Customer" means any natural person who is a resident of this state and who is or may be required to pay for or to exchange consideration for goods and services offered through telemarketing;
 - d. "Doing business in this state" means conducting telephonic sales calls: (i) from a location in this state; or (ii) from a location outside of this state to consumers residing in this state;
 - e. "Goods and services" means any goods and services, and shall include any real property or any tangible personal property or services of any kind;
 - f. "Negative option feature" means, in an offer or agreement to sell or provide any goods or services, a provision under which the customer's silence or failure to take an affirmative action to reject such goods or services or to cancel the agreement is interpreted by the seller as acceptance of the offer.
 - g. "Person" means any natural person, association, partnership, firm, corporation and its affiliates or subsidiaries or other business entity;
 - h. "Telemarketer" means any person who, for financial profit or commercial purposes in connection with telemarketing, makes telemarketing sales calls or electronic messaging texts to a customer when the customer is in this state or any person who directly controls or supervises the conduct of telemarketer. For the purposes of this section, "commercial purposes" shall mean the sale or offer for sale of goods or services;
 - i. "Telemarketing" means any plan, program or campaign that is conducted to induce payment or the exchange of any other consideration for any goods or services that involves more than one telephone call or electronic messaging texts by a telemarketer in which the customer is located within the state at the time of the call. Telemarketing does not include the solicitation of sales through media other than by telephone calls or electronic messaging texts and does not include calls or electronic messaging texts intended to implement or complete a transaction to which the customer has previously consented;
 - j. "Telemarketing sales call" means a telephone call or electronic messaging texts made directly or indirectly by a telemarketer or by any outbound telephone calling technology that delivers a prerecorded message to a customer or to a customer's voicemail or answering machine service in which such telephone call or electronic messaging text for the purpose of inducing payment or the exchange of any other consideration for any goods or services;
 - k. "Unsolicited telemarketing sales call" means any telemarketing sales call or electronic messaging text other than: (i) in response to an express written or verbal request by the customer; or (ii) in connection with an established business relationship, which has not been terminated by either party, unless such customer has stated to the telemarketer that such customer no longer wishes to receive the telemarketing sales calls of such telemarketer;
 1. "Caller identification information" means information provided by a caller identification service regarding the telephone number and name of the person calling;
 - m. "Caller identification service" means a service that allows a telephone subscriber to have the telephone number, and, where available, name of the calling party transmitted contemporaneously with the telephone call and displayed on a device in or connected to the subscriber's telephone;
 - n. "Electronic messaging text" means real-time or near real-time non-voice messages in text form over communications networks, and includes the transmission of writing, signs, signals, pictures, and sounds of all kinds by aid of wire, cable or other like connection between the points of origin and reception of such transmission.
2. No telemarketer or seller shall engage in telemarketing at any time other than between 8:00 A.M. and 9:00 P.M. at the location of the customer unless the customer has given his or her express consent to the call at a different time. Telemarketers shall provide, in a clear and coherent manner using words with common and everyday meanings, at the beginning of each telemarketing sales call all of the following information, provided that the information set forth in paragraphs a and b of this subdivision shall be given to the customer first:
 - a. the telemarketer's name and the person on whose behalf the solicitation is being made, if other than the telemarketer;
 - b. the option to be automatically added to the seller's entity specific do-not-call list, as required by subdivisions seven, eight, and nine of this section;
 - c. whether the call is being recorded;
 - d. the purpose of the telephone call; and

- e. the identity of the goods or services for which a fee will be charged.
- 2-a. It shall be unlawful for any telemarketer or seller to knowingly cause any caller identification service to transmit misleading, inaccurate, or false caller identification information, provided that it shall not be a violation to substitute (for the name and phone number used in, or billed for, making the call) the name or telephone number of the person or seller on behalf of which a telemarketing call is placed.
 3. Prior to the purchase of any good or service, telemarketers shall disclose to the customer the cost of the goods or services that are the subject of the call and if the offer includes a negative option feature, all material terms and conditions of the negative option feature, including, but not limited to the fact that the customer's account will be charged unless the customer takes an affirmative action to avoid the charges, the dates the charges will be submitted for payment, and the specific steps the customer must take to avoid the charge.
 - 4.a. The department is authorized to establish, manage, and maintain a no telemarketing sales calls statewide registry which shall contain a list of customers who do not wish to receive unsolicited telemarketing sales calls. The department may contract with a private vendor to establish, manage and maintain such registry, provided the private vendor has maintained national no telemarketing sales calls registries for more than two years, and the contract requires the vendor to provide the no telemarketing sales calls registry in a printed hard copy format and in any other format as prescribed by the department.
 - b. The department is authorized to have the national "do-not-call" registry established, managed and maintained by the federal trade commission pursuant to 16 C.F.R. Section 310.4 (b) (1) (iii) (B) serve as the New York state no telemarketing sales calls statewide registry provided for by this section. The department is further authorized to take whatever administrative actions may be necessary or appropriate for such transition including, but not limited to, providing the telephone numbers of New York customers registered on the no telemarketing sales calls statewide registry to the federal trade commission, for inclusion on the national "do-not-call" registry.
 5. No telemarketer or seller may make or cause to be made any unsolicited telemarketing sales call to any customer when that customer's telephone number has been on the national "do-not-call" registry, established by the federal trade commission, for a period of thirty-one days prior to the date the call is made, pursuant to 16 C.F.R. Section 310.4(b)(1)(iii)(B).
 - 5-a. It shall be unlawful for any telemarketer doing business in this state to knowingly make an unsolicited telemarketing sales call to any person in a county, city, town or village under a declared state of emergency or disaster emergency as described in sections twenty-four or twenty-eight of the executive law.
 6. No telemarketer or seller shall initiate any telemarketing sales call by means of a technology that delivers a pre-recorded message, unless the telemarketer or seller has obtained from the customer an express agreement, in writing that:
 - a. the telemarketer or seller obtained only after a clear and conspicuous disclosure that the purpose of the agreement is to authorize the seller to make telemarketing sales calls to such customer;
 - b. the telemarketer or seller obtained without requiring, directly or indirectly, that the agreement be executed as a condition of purchasing any good or service;
 - c. evidences the willingness of the customer to receive telemarketing sales calls by or made on behalf of a specific seller; and,
 - d. includes such customer's telephone number and signature.
 7. In the case of any telemarketing sales call delivered by means of a technology that delivers a pre-recorded message that could be received by a customer who can use an automated interactive voice and/or keypress activated opt-out mechanism to assert a do-not-call request, such call shall include a mechanism that allows the customer to automatically add the number called to the seller's entity specific do-not-call list, and which mechanism, once invoked, immediately ends the call.
 8. In the case of any telemarketing sales call delivered by means of a technology that delivers a pre-recorded message that could be answered by an answering machine or voicemail service, that the call include a toll-free number that must connect the customer directly to an automated interactive voice or keypress activated opt-out mechanism that allows the consumer to automatically add the number called to the seller's entity specific do-not-call list, and which mechanism, once invoked, immediately ends the call.
 9. In the case of any telemarketing sales call made by a natural person, the telemarketer or seller shall inform the customer that he or she may request that his or her telephone number be added to the seller's entity specific do-not-call list. If the customer opts to do so, the telemarketer or seller shall immediately end the call and shall add the number called to such list or cause the number called to be added to such list.
 10. No telemarketer or seller shall transmit, share, or otherwise make available any customer's contact information, including name, telephone number, or email address, which has been provided to such telemarketer or seller by such customer, to any person, corporation, or other entity without the express agreement of the consumer in writing or in electronic

- format, unless otherwise required by law, or pursuant to a lawful subpoena or court order.
11. Telemarketers and sellers shall keep for a period of twenty-four months from the date the record is created records relating to its telemarketing activities.
 - 12.a. The department shall provide notice to customers of the establishment of the national "do-not-call" registry. Any customer who wishes to be included on such registry shall notify the federal trade commission as directed by relevant federal regulations.
 - b. Any company that provides local telephone directories to customers in this state shall inform its customers of the provisions of this section by means of publishing a notice in such local telephone directories.
 13. When the department has reason to believe a telemarketer has engaged in repeated unlawful acts in violation of this section, or when a notice of hearing has been issued pursuant to subdivision fourteen of this section, the department may request in writing the production of relevant documents and records as part of its investigation. If the person upon whom such request was made fails to produce the documents or records within thirty days after the date of the request, the department may issue and serve subpoenas to compel the production of such documents and records. If any person shall refuse to comply with a subpoena issued under this section, the department may petition a court of competent jurisdiction to enforce the subpoena and such sanctions as the court may direct.
 - 14.a. Where it is determined after hearing that any person has violated one or more provisions of this section, the secretary, or any person deputized or so designated by him or her may assess a fine not to exceed twenty thousand dollars for each violation.
 - b. Any proceeding conducted pursuant to paragraph "a" of this subdivision shall be subject to the state administrative procedure act.
 - c. Nothing in this subdivision shall be construed to restrict any right which any person may have under any other statute or at common law.
 15. A person shall not be held liable for violating this section if:
 - a. the person has obtained a version of the "do-not-call" registry from the federal trade commission no more than thirty-one days prior to the date any telemarketing call is made, pursuant to 16 C.F.R. Section 310.4(b)(1)(iii)(B), and the person can demonstrate that, as part of the person's routine business practice at the time of an alleged violation, it has established, implemented and updated written policies and procedures related to the requirements of this section prior to the date any telemarketing call is made;
 - b. the person has trained his or her personnel in the requirements of this section; and
 - c. the person maintains and can produce records demonstrating compliance with paragraphs a and b of this subdivision and the requirements of this section.
 16. The department shall prescribe rules and regulations to administer this section.
 17. Severability. If any clause, sentence, paragraph or part of this section shall be adjudged by any court of competent jurisdiction to be invalid, such judgment shall not affect, impair or invalidate the remainder thereof, but shall be confined in its operation to the clause, sentence, paragraph or part thereof directly involved in the controversy in which such judgment shall have been rendered.

State Do Not Call Regulations

19 NYCRR Part 220 General Provisions

§ 220.1 Authorization of transfer of telephone numbers to federal registry.

- (a) The New York State Department of State is authorized to have the national "do-not-call" registry, established, managed and maintained by the Federal Trade Commission pursuant to 16 CFR, Section 310.4(b)(1)(iii)(B) (herein referred to as the national "do-not-call" registry) serve as the New York State "do-not-call" registry.
- (b) Consumer telephone numbers listed on the New York State no telemarketing sales calls statewide registry will be transferred to the Federal Trade Commission for inclusion in its national "do-not-call" registry as established by 16 CFR Section 310.4(b)(1)(iii)(B).
- (c) The registry is open to all natural persons who:
 - (1) reside in this state; and
 - (2) have telephone service in this state that receives incoming calls.

§ 220.2 Definitions

This part shall use all terms as defined in section 399-z of the General Business Law, with the following additions:

- (a) Consumer shall have the same meaning as the term customer as defined in section 399-z of the General Business Law.
- (b) Established business relationship shall mean a prior or existing relationship formed by a voluntary two-way communication between a consumer and a telemarketer with or without an exchange of consideration, on the basis of the consumer's purchase or transaction with the telemarketer within the 18 months immediately preceding the date of the telephone call or on the basis of the consumer's inquiry or application regarding products or services offered by the telemarketer within the three months immediately preceding the date of the call, which relationship has not been previously terminated by either party.

- (c) Goods and services shall have the same meaning as defined in section 399-z of the General Business Law. In addition: (1) the term goods shall include, but not be limited to, goods as defined under section 2-105 of the New York Uniform Commercial Code; and (2) the term services shall include, but not be limited to, the duty, labor, obligation, act, or commitment to be rendered by one person to another for profit, whereby the telemarketer offers, seeks to offer, or contracts to offer any performance of labor or other such act for the benefit of the consumer, or at the consumer's direction or authority.
- (d) Hearing means an administrative proceeding instituted at the request of the telemarketer as part of an adjudicatory proceeding as defined in subdivision three of section 102 of the State Administrative Procedure Act.
- (e) Knowingly or knowledge means acting with actual knowledge, deliberate ignorance or reckless disregard, except that where VoIP or other technology is used by or at the request of a telemarketer or seller for a call that transmits misleading, inaccurate or false identification information there shall be a rebuttable presumption of knowledge.
- (f) Telemarketer shall have the same meaning as defined in section 399-z of the General Business Law, except that charitable organizations as defined in section 171-a(1) of the Executive Law and registered pursuant to section 172 of the Executive Law, religious corporations as defined in section two of the Religious Corporations Law, political parties as defined in section 1-104(3) of the Election Law, and political committees as defined in section 14-100(1) of the Election Law, are deemed not able to conduct any act or activity for commercial purposes and are deemed not to be operating for financial profit for the purposes of this Part.

§ 220.3 Violations

- (a) No telemarketer or seller doing business in this state shall engage in any action that is prohibited by section 399-z of the General Business Law or this Part.
- (b) All telemarketers and sellers doing business in this state shall, as applicable, comply with all affirmative requirements in this state shall, as applicable, comply with all affirmative requirements imposed by section 399-z of the General Business Law or this Part.
- (c) Each failure to act in accordance with subdivision (a) or (b) of this section shall constitute a separate violation.

§ 220.4 Enforcement procedures

- (a) When the department has reason to believe a telemarketer has engaged in repeated unlawful acts that violate section 399-z of the General Business Law or this Part, or in connection with an administrative hearing initiated pursuant to subdivision (f) of this section, the department may request in writing the

production of relevant documents and records as part of its investigation. If the person upon whom such request was made fails to produce the documents or records within 30 days after the date of the request, the department may issue and serve subpoenas to compel the production of such documents and records. If any person shall refuse to comply with a subpoena issued under this section, the department may petition a court of competent jurisdiction to enforce the subpoena and such sanctions as the court may direct.

- (b) Upon allegation(s) of non-compliance with applicable law, or upon its own initiative, the department may conduct an inquiry into any potential violation. If the department finds any grounds to indicate that one or more violations may have occurred, the department may, as the public interest demands, initiate an adjudicatory proceeding by sending a notice of apparent liability to the alleged violator seeking a response.
- (c) The department shall serve a copy of the notice of apparent liability by certified and regular mail to the last known business address of the alleged violator, or through any means authorized by the Civil Practice Law and Rules and the Business Corporation Law. Mailing of the notice shall be deemed receipt thereof.
- (d) The alleged violator shall respond to the notice no later than 35 days from the date on which the notice was mailed or otherwise served and shall provide any objection to the facts or law as alleged in the notice.
- (e) The department will conduct a review of the response provided by the alleged violator and mail its decision within 60 days of receipt of the response. Mailing of the decision shall be deemed receipt thereof.
- (f) If the alleged violator disputes the department's decision issued in accordance with subdivision (e) of this section, such violator may file a written request for an administrative hearing within 35 days of service of the decision. The administrative hearing shall be subject to article three of the State Administrative Procedure Act and Part 400 of this Title, with the exception of the appeal provisions set forth in subdivisions (j), (k) and (l) of section 400.2 of this Title.
- (g) If the alleged violator fails to respond to the notice of apparent liability served in accordance with subdivision (c) of this section within 35 days after the notice has been mailed, or fails to request an administrative hearing in writing within 35 days of service of the decision issued by the department in accordance with subdivision (e) of this section, the notice of apparent liability or decision of the department is deemed the final decision and the alleged violator shall remit to the department a fine payable to the "New York State Department of State, Division of Consumer Protection," in the manner specified in the notice of apparent liability or decision, as applicable, within 10 days of the date upon which the decision has become final.

- (h) If an administrative hearing is requested in accordance with subdivision (f) of this section, the department shall stay any fine pending the decision of such hearing.
- (i) During the hearing proceeding, the department may establish evidentiary rebuttable presumption(s).
- (j) Any facts or evidence received by the department may be used in any proceeding and shall be afforded appropriate consideration by the presiding officer. All evidence shall be kept in the custody of the presiding officer.
- (k) Where it is determined after the administrative hearing that the alleged violator has violated one or more provisions of this Part or section 399-z of the General Business Law, the presiding officer may assess a fine not to exceed the maximum amount provided for by section 399-z of the General Business Law for each violation.
- (l) If the alleged violator requests an administrative hearing pursuant to subdivision (f) of this section and a hearing is held, the administrative hearing decision shall constitute the department's final decision. Parties found in violation of the law shall remit to the department any fine assessed pursuant to subdivision (k) of this section, payable to the "New York State Department of State, Division of Consumer Protection," within 10 days of the receipt of such decision.
- (m) An aggrieved party shall have the right to challenge any final agency determination by filing a petition pursuant to Article 78 of the Civil Practice Law and Rules.

§ 220.5 Severability and authorization to act

- (a) If any portion of this Part or the application thereof to any person or circumstances is adjudged invalid by any court of competent jurisdiction, such judgment shall be confined in its operation to the specific portion or application directly involved in the controversy in which such judgment shall have been rendered. Such controversy or judgment shall not affect or impair the validity of the remainder of this Part or the application thereof to other persons or circumstances.
- (b) For purposes of this Part, any act or activity of the executive director of the agency, any person designated by him or her, or other such employee of the agency shall be deemed an act or activity of the agency.