

NY Telemarketing Law Goes Into Effect: Huge Fines To Close A Loophole That Doesn't Exist

Article By:

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On March 1, New York's Nuisance Call Act went into effect (full text available [HERE](#)). The Act requires live telemarketers to give call recipients the option to be added to the telemarketer's internal "do not call" list. Meaning, when a telemarketer calls YOU, he/she must ask YOU if you want to be added to their Do Not Call List.

The law also includes *incredible* fines up to \$11,000 **for each violation** of the Act. (Update: the statute does not provide a private right of action). If that isn't a deterrence, I simply don't know what is.

As background, in 2001, New York's Do Not Call Law took effect, allowing consumers to opt-out of receiving pre-recorded voice messages. *Governor Cuomo Signs Legislation Enacting the Nuisance Call Act*, Dec. 2, 2016, available at <https://www.governor.ny.gov/news/governor-cuomo-signs-legislation-enacting-nuisance-call-act> (last visited on Mar. 5, 2020). In contrast, the new Nuisance Call Act targets live telemarketing, previously exempt from NY's Do Not Call Law. *Id.* Governor Cuomo previously stated, "This loophole [was] a license to annoy New Yorkers that telemarketers have taken advantage of for far too long . . . With these new protections, we can help ensure New Yorkers receive fewer unwanted calls and their privacy is protected once and for all." *Id.*

But, the question on my mind (and I'm sure on your mind as an avid TCPAWorld reader), is what loophole is Governor Cuomo even referring to?

In 2003, the FTC established the Do Not Call Registry for telemarketing calls to residential lines, later expanding the Do Not Call list to wireless lines. See 47 C.F.R. 64.1200 (c)(2), (e). Telemarketers, for almost 20 years now, shouldn't call phone numbers on the Federal Do Not Call Registry. The distinction between prerecorded telemarketing messages and live telemarketing is obsolete – the Federal Do Not Call Registry already applies to both.

So, in reality, what change will this statute convey? This statute (in subtle anti-consumerism fashion) requires telemarketers to put forth an effort to actively lose their potential customers, by asking all consumers if they want to be placed on the seller's internal Do Not Call List.

If the issue is so pervasive, as you say Governor, wouldn't those who wish to avoid telemarketing altogether (regardless of a live or prerecorded method of delivery) already place their phone numbers on the Federal Do Not Call list? Is the goal to absolve the world of all telemarketing entirely?

For the sake of our readers, I hope not.

Note: The statute also requires telemarketers to obtain written consent before sharing or selling a consumer's contact information.

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