



Senate

General Assembly

File No. 46

February Session, 2010

Substitute Senate Bill No. 187

Senate, March 16, 2010

The Committee on General Law reported through SEN. COLAPIETRO of the 31st Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT INCREASING PENALTIES FOR VIOLATIONS OF THE NO SALES SOLICITATION CALLS ACT.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 42-288a of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective January 1, 2011*):

3 (a) As used in this section:

4 (1) "Commissioner" means the Commissioner of Consumer
5 Protection;

6 (2) "Consumer" means any individual who is a resident of this state
7 and a prospective recipient of consumer goods or services;

8 (3) "Consumer goods or services" means any article or service that is
9 purchased, leased, exchanged or received primarily for personal,
10 family or household purposes, and includes, but is not limited to,
11 stocks, bonds, mutual funds, annuities and other financial products;

12 (4) "Department" means the Department of Consumer Protection;

13 (5) "Doing business in this state" means conducting telephonic sales
14 calls (A) from a location in this state, or (B) from a location outside of
15 this state to consumers residing in this state;

16 (6) "Marketing or sales solicitation" means the initiation of a
17 telephone call or message to encourage the purchase or rental of, or
18 investment in, property, goods or services, that is transmitted to any
19 consumer, but does not include a telephone call or message (A) to any
20 consumer with that consumer's prior express written or verbal
21 invitation or permission, (B) by a tax-exempt nonprofit organization,
22 or (C) to a consumer in response to a visit made by such consumer to
23 an establishment selling, leasing or exchanging consumer goods or
24 services at a fixed location;

25 (7) "Telephonic sales call" means a call made by a telephone solicitor
26 to a consumer for the purpose of (A) engaging in a marketing or sales
27 solicitation, (B) soliciting an extension of credit for consumer goods or
28 services, or (C) obtaining information that will or may be used for
29 marketing or sales solicitation or exchange of or extension of credit for
30 consumer goods or services;

31 (8) "Telephone solicitor" means any individual, association,
32 corporation, partnership, limited partnership, limited liability
33 company or other business entity, or a subsidiary or affiliate thereof,
34 doing business in this state that makes or causes to be made a
35 telephonic sales call;

36 (9) "Unsolicited telephonic sales call" means any telephonic sales call
37 other than a call made: (A) In response to an express written or verbal
38 request of the consumer called; (B) primarily in connection with an
39 existing debt or contract, payment or performance of which has not
40 been completed at the time of the call; or (C) to an existing customer,
41 unless such customer has stated to the telephone solicitor that such
42 customer no longer wishes to receive the telephonic sales calls of such
43 telephone solicitor; and

44 (10) "Caller identification service or device" means any telephone
45 service or device which permits a consumer to see the telephone
46 number of incoming calls.

47 (b) The department shall establish and maintain a "no sales
48 solicitation calls" listing of consumers who do not wish to receive
49 unsolicited telephonic sales calls. The department may contract with a
50 private vendor to establish and maintain such listing, provided (1) the
51 private vendor has maintained national "no sales solicitation calls"
52 listings for more than two years, and (2) the contract requires the
53 vendor to provide the "no sales solicitation calls" listing in a printed
54 hard copy format and in any other format offered at a cost that does
55 not exceed the production cost of the format offered. The department
56 shall provide notice to consumers of the establishment of a "no sales
57 solicitation calls" listing. Any consumer who wishes to be included on
58 such listing shall notify the department by calling a toll-free number
59 provided by the department, or in any other such manner and at such
60 times as the commissioner may prescribe. A consumer on such listing
61 shall be deleted from such listing upon the consumer's written request.
62 The department shall update such listing not less than quarterly and
63 shall make such listing available to telephone solicitors and other
64 persons upon request.

65 (c) No telephone solicitor may make or cause to be made any
66 unsolicited telephonic sales call to any consumer (1) if the consumer's
67 name and telephone number or numbers appear on the then current
68 quarterly "no sales solicitation calls" listing made available by the
69 department under subsection (b) of this section, unless (A) such call
70 was made by a telephone solicitor that first began doing business in
71 this state on or after January 1, 2000, (B) a period of less than one year
72 has passed since such telephone solicitor first began doing business in
73 this state, and (C) the consumer to whom such call was made had not
74 on a previous occasion stated to such telephone solicitor that such
75 consumer no longer wishes to receive the telephonic sales calls of such
76 telephone solicitor, (2) to be received between the hours of nine o'clock
77 p.m. and nine o'clock a.m., local time, at the consumer's location, (3) in

78 the form of electronically transmitted facsimiles, or (4) by use of a
79 recorded message device.

80 (d) No telephone solicitor shall intentionally cause to be installed or
81 shall intentionally use any blocking device or service to circumvent a
82 consumer's use of a caller identification service or device.

83 (e) (1) Any person who obtains the name, residential address or
84 telephone number of any consumer from published telephone
85 directories or from any other source and republishes or compiles such
86 information, electronically or otherwise, and sells or offers to sell such
87 publication or compilation to telephone solicitors for marketing or
88 sales solicitation purposes, shall exclude from any such publication or
89 compilation, and from the database used to prepare such publication
90 or compilation, the name, address and telephone number or numbers
91 of any consumer if the consumer's name and telephone number or
92 numbers appear in the then current quarterly "no sales solicitation
93 calls" listing made available by the department under subsection (b) of
94 this section.

95 (2) This subsection does not apply to (A) any telephone company, as
96 defined in section 16-1, for the sole purpose of compiling, publishing
97 or distributing telephone directories or causing the compilation,
98 publication or distribution of telephone directories or providing
99 directory assistance, and (B) any person, for the sole purpose of
100 compiling, publishing or distributing telephone directories for such
101 telephone company pursuant to an agreement or other arrangement
102 with such telephone company.

103 (f) The commissioner may adopt regulations, pursuant to chapter
104 54, to carry out the provisions of this section. Such regulations may
105 include, but shall not be limited to, provisions governing the
106 availability and distribution of the listing established under subsection
107 (b) of this section and notice requirements for consumers wishing to be
108 included on the listing established under subsection (b) of this section.

109 (g) A violation of any of the provisions of this section shall be

110 deemed an unfair or deceptive trade practice under subsection (a) of
 111 section 42-110b, except no telephone solicitor may be liable under this
 112 section for a call made in violation of subdivision (1) of subsection (c)
 113 of this section if such telephone solicitor demonstrates that: (1) Such
 114 telephone solicitor established and implemented written procedures
 115 and trained its employees to follow such procedures to comply with
 116 subdivision (1) of subsection (c) of this section; (2) such telephone
 117 solicitor deleted from its call list any listing of a consumer on the then
 118 current quarterly "no sales solicitation calls" listing maintained
 119 pursuant to subsection (b) of this section; and (3) such call was made
 120 inadvertently.

121 (h) In addition to any penalty imposed under chapter 735a, any
 122 telephone solicitor, who is liable under the provisions of subsection (g)
 123 of this section, shall be fined not more than eleven thousand dollars for
 124 each violation.

125 Sec. 2. Section 20-377l of the general statutes is repealed and the
 126 following is substituted in lieu thereof (*Effective from passage*):

127 No person shall use the title ["interior] "registered interior designer"
 128 or display or use any words, letters, figures, title, advertisement or
 129 other device to indicate that [he] such person is [an] a registered
 130 interior designer, unless [he] such person (1) has obtained a certificate
 131 of registration as provided in sections 20-377k to 20-377v, inclusive; or
 132 (2) is an architect licensed in this state; [; or (3) has used or was
 133 identified by the title of "interior designer" for at least one year
 134 immediately preceding October 1, 1983.]

| | | |
|---|------------------------|---------|
| This act shall take effect as follows and shall amend the following sections: | | |
| Section 1 | <i>January 1, 2011</i> | 42-288a |
| Sec. 2 | <i>from passage</i> | 20-377l |

GL *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

| Agency Affected | Fund-Effect | FY 11 \$ | FY 12 \$ |
|----------------------------|----------------------|-----------------------|-----------------------|
| Consumer Protection, Dept. | GF - Revenue Gain | Less than \$55,000 | Less than \$55,000 |

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill results in a minimal revenue gain to the state as it provides for an additional fine of not more than \$11,000 for violations of the *No Sales Solicitation Calls Act*. Fewer than five such violations are anticipated to result in any action by the Department of Consumer Protection and therefore the maximum revenue gain would be \$55,000.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation.

OLR Bill Analysis**sSB 187*****AN ACT INCREASING PENALTIES FOR VIOLATIONS OF THE NO SALES SOLICITATION CALLS ACT.*****SUMMARY:**

This bill adds a penalty of up to \$11,000 for each violation of the law prohibiting solicitors from making unsolicited telephone calls to people who have registered their wish not to receive them on a "Do Not Call" list. By law, a violation is an unfair trade practice.

The bill prohibits anyone not registered with the Department of Consumer Protection (DCP) as an interior designer or architect from using the title "registered interior designer." It also eliminates the exception for a person who used the title of "interior designer" for at least a year preceding October 1, 1983.

EFFECTIVE DATE: Upon passage for the interior designer provision; January 1, 2011 for the "Do Not Call" provision.

BACKGROUND***Do Not Call List***

State law allows any individual to register any telephone number with the "Do Not Call" list. It prohibits telephone solicitors from making unsolicited telephone calls to anyone on the list. The law applies to calls made by a solicitor to (1) engage in a marketing or sales solicitation, (2) solicit a credit extension for such goods or services, or (3) obtain information to use in the solicitation of a sale or credit extension.

The law does not apply to calls made or sent (1) with the consumer's prior express written or verbal permission or in response to a consumer's visit to a seller's establishment; (2) by a tax-exempt

nonprofit organization; (3) primarily in connection with an existing debt or contract that has not been paid or performed; or (4) to an existing customer, unless the customer has informed the solicitor that he or she no longer wishes to receive the solicitor's calls (CGS § 42-288a).

Connecticut Unfair Trade Practices Act (CUTPA)

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the DCP commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. It also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

Registered interior designer

In *Roberts et al. v. Farrell*, 630 F. Supp. 2d 242 (D. Conn. 2009), the court ruled the interior designer statute (CGS § 20-3771) was unconstitutional as it violated the plaintiff's First and Fourteenth Amendment rights by restricting their ability to be called an "interior designer." A remedy suggested by the court was to clarify the statute by using "registered interior designer" rather than simply "interior designer."

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute

Yea 15 Nay 2 (03/04/2010)