



# House of Representatives

General Assembly

**File No. 95**

February Session, 2012

Substitute House Bill No. 5089

*House of Representatives, March 26, 2012*

The Committee on General Law reported through REP. TABORSAK of the 109th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

***AN ACT PROHIBITING TELEMARKETERS FROM TRANSMITTING  
INACCURATE OR MISLEADING CALLER IDENTIFICATION  
INFORMATION.***

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 Section 42-288a of the general statutes is repealed and the  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 October 1, 2012*):

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. No  
83 telephone solicitor shall intentionally transmit inaccurate or  
84 misleading caller identification information.

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

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

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

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

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

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2012	42-288a

**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.

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**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 13 \$	FY 14 \$
Consumer Protection, Dept.	GF - Revenue Gain	less than \$5,000	less than \$5,000

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill results in no cost to the Department of Consumer Protection as the number of complaints concerning transmitting inaccurate or misleading caller identification information are anticipated to be few in number. Any violations would be subject to the Connecticut Unfair Trade Practice Act (CUTPA); only a few violations are anticipated, which would result in a potential revenue gain of less than \$5,000. Any civil penalties would be deposited into the General Fund.

**The Out Years**

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of violations.

**OLR Bill Analysis****sHB 5089*****AN ACT PROHIBITING TELEMARKETERS FROM TRANSMITTING INACCURATE OR MISLEADING CALLER IDENTIFICATION INFORMATION.*****SUMMARY:**

This bill prohibits telephone solicitors from intentionally transmitting inaccurate or misleading caller identification information. A violation of the bill is an unfair or deceptive trade practice. In addition, violators are subject to a fine of up to \$11,000.

EFFECTIVE DATE: October 1, 2012

**BACKGROUND*****Connecticut Unfair Trade Practices Act (CUTPA)***

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the Department of Consumer Protection 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.

**COMMITTEE ACTION**

General Law Committee

Joint Favorable Substitute

Yea 17 Nay 0 (03/13/2012)