



OLR RESEARCH REPORT

August 2, 2012

2012-R-0355

-Revised-

TELEMARKETERS FOR ELECTRIC SUPPLIERS

By: Kevin E. McCarthy, Principal Analyst

You asked (1) whether telemarketers for competitive electric suppliers are subject to state and federal laws governing solicitations of people on “do-not-call” lists and (2) what remedies are available to people who are on such lists who contacted by suppliers.

SUMMARY

Telemarketers for competitive electric suppliers are subject to state and federal laws governing solicitations of people on “do-not-call” lists. Among the remedies available for people on the list who are called by telemarketers in violation of the law are various Department of Consumer Protection (DCP) enforcement actions, including injunctive relief and civil penalties and suing for damages for violations under the federal law.

APPLICABILITY OF TELEMARKETING LAWS

Electric suppliers and their telemarketers are subject to state and federal laws that generally prohibit businesses from making unsolicited calls to individuals who have placed their names on the state and federal do-not-call lists. State law (CGS § [42-288a](#)) requires DCP to establish and maintain a listing of consumers who do not wish to receive unsolicited telephone sales calls from firms offering goods or services. In practice, the state list is integrated with the national do-not-call list maintained by the Federal Trade Commission (FTC).

Another state law, CGS § [16-245](#), specifically requires electric suppliers to comply with the federal telemarketing regulations adopted pursuant to 15 USC § 6102. This federal law requires the FTC to adopt regulations prohibiting abusive and deceptive telemarketing practices. Under these regulations, abusive practices include, among other things, calling someone (1) who has stated that he or she does not wish to receive calls made by or on behalf of the seller whose goods or services are being offered or (2) whose telephone number is on FTC's do-not-call list (16 CFR Part 310).

There are a number of exceptions to the prohibitions on calling people on the do-not-call lists. For example, state law permits businesses to call people whose name is on the state list if the call is:

1. to an existing customer, unless he or she has informed the business that he or she no longer wishes to receive its calls;
2. primarily in connection with an existing debt or contract that has not been paid or performed; or
3. from a business that has operated in Connecticut for less than one year.

OLR Report [2003-R-0500](#) describes other exceptions.

Similarly, federal law permits calls to people on the list in several circumstances. For example, federal law allows businesses to call consumers with whom they have an established business relationship. FTC regulations define "established business relationship" in a way that allows a business to call for up to 18 months after a consumer's last purchase, payment, or delivery of goods or services.

In addition, federal law (47 U.S.C. § 227) prohibits:

1. making a call using any automatic telephone dialing system or an artificial or prerecorded voice to a cellphone, other than a call made for emergency purposes or made with the prior express consent of the called party or
2. calling a residential telephone line using an artificial or prerecorded voice to deliver a message without the prior express consent of the called party.

Telemarketers often use automated dialing system or an artificial or prerecorded voice as part of their marketing calls.

REMEDIES

There are a variety of remedies open to consumers who believe that a telemarketer has violated the state or federal law. For complaints regarding telemarketers in general, consumers can contact DCP or FTC. In addition, consumers in Connecticut can file complaints regarding electric suppliers, including complaints about their telemarketing, with the Public Utilities Regulatory Authority (PURA).

State

DCP's website, <http://www.ct.gov/dcp>, has a complaint [form](#) for people on the national do-not-call list who have complaint regarding calls from Connecticut companies. It recommends that people with complaints regarding out-of-state companies use the complaint form for the national list, and has a link to this form on its website.

Subject to the exceptions described above, calling someone on the state do-not-call list is a violation of the Connecticut Unfair Trade Practices Act (CUTPA). Under CUTPA, the DCP commissioner may 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.

CUTPA 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 violating a restraining order. Violators also must be fined up to \$11,000 for each violation. However, under CGS § [42-288a](#), these penalties do not apply if a telephone solicitor (the telemarketer or the firm that hired it) demonstrates that (1) it established and implemented written procedures and trained its employees to follow the law; (2) it deleted from its call list any consumer on the current do-not-call list; and (3) the call was made inadvertently. OLR Report [2011-R-0494](#) has additional information upon CUTPA and enforcement actions under it.

In addition, under CGS § [16-245o](#), electric suppliers that violate federal telemarketing regulations are subject CUTPA penalties. Suppliers must obtain licenses from PURA and as a condition of continued licensure they must comply with CUTPA. Any supplier that fails to comply with a license condition is subject to (1) a civil penalty of up to \$10,000, (2) the suspension or revocation of its license or (3) a prohibition on accepting new customers following a hearing.

CGS § [16-245t](#) requires PURA to receive and act on customer inquiries and complaints regarding suppliers and to establish a toll-free telephone number for this purpose. Under CGS § [16-245u](#), upon complaint or upon its own motion, for cause shown, PURA must investigate any unfair or deceptive trade practices. If it finds a violation of state or federal law, it must transmit its findings along with supporting information to DCP or other appropriate enforcement officials. The referral may recommend that further investigation be made or that immediate enforcement procedures be initiated. The results of the PURA investigations may also serve as a basis for sanctions, after notice and hearing.

Federal

Individuals on the national list can file complaints on a form available at <https://www.donotcall.gov/>. Complaints made to FTC are entered into its Consumer Sentinel system, an online database available to more than 1,000 civil and criminal law enforcement agencies. While the FTC does not resolve individual consumer problems, complaints help it investigate the companies that are the subject of complaints and can lead to law enforcement action. For example, FTC has imposed multi-million dollar fines on Craftmatic (a bed manufacturer) and ADT (an alarm services company) for violations of the federal do-not-call law and other telemarketing violations.

In addition, people who believe that a telemarketer has violated 47 U.S.C. § 227 regarding the use of automatic dialers or pre-recorded or artificial voices can file a suit in state court for injunctive relief, damages, or both. The damages are the greater of \$500 per violation or the actual monetary loss due to the violation. If the court finds that the defendant willfully or knowingly violated this law or its implementing regulations, the court can increase the amount of the award to up to three times these amounts.

Individuals can bring actions regarding alleged violations of 15 USC § 6101 et seq. in federal court, but only if the actual damages exceed \$50,000. Moreover, if the FTC or the Bureau of Consumer Financial Protection initiates an action for such violations, individuals cannot sue while that action is pending.

KM:ro/ts