



Senate

General Assembly

File No. 191

February Session, 2014

Substitute Senate Bill No. 209

Senate, March 31, 2014

The Committee on General Law reported through SEN. DOYLE of the 9th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT PROHIBITING UNSOLICITED COMMERCIAL TEXT MESSAGES AND INCREASING PENALTIES FOR VIOLATIONS OF THE DO NOT CALL REGISTRY.

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 Section 42-288a of the general statutes is repealed and the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, 2014*):

3 (a) As used in this section and section 2 of this act:

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, including, but not limited to, a text message,
18 to encourage the purchase or rental of, or investment in, property,
19 goods or services, that is transmitted to any consumer, but does not
20 include a telephone call or message, including, but not limited to, a
21 text message (A) to any consumer with that consumer's prior express
22 written or verbal invitation or permission, (B) by a tax-exempt
23 nonprofit organization, or (C) to a consumer in response to a visit
24 made by such consumer to an establishment selling, leasing or
25 exchanging consumer goods or services at a fixed location;
- 26 (7) "Telephonic sales call" means a telephone call made by a
27 telephone solicitor or a text message sent by or on behalf of a telephone
28 solicitor to a consumer, for the purpose of (A) engaging in a marketing
29 or sales solicitation, (B) soliciting an extension of credit for consumer
30 goods or services, or (C) obtaining information that will or may be
31 used for marketing or sales solicitation or exchange of or extension of
32 credit for consumer goods or services;
- 33 (8) "Telephone solicitor" means any individual, association,
34 corporation, partnership, limited partnership, limited liability
35 company or other business entity, or a subsidiary or affiliate thereof,
36 doing business in this state that (A) makes or causes to be made a
37 telephonic sales call, or (B) sends or causes to be sent a text message to
38 a consumer's mobile telephone or mobile electronic device;
- 39 (9) "Text message" means a written message sent electronically to a
40 mobile telephone or mobile electronic device telephone number, but
41 does not include electronic mail sent to an electronic mail address;
- 42 [(9)] (10) "Unsolicited telephonic sales call" means any telephonic

43 sales call or text message other than a call or text message made: (A) In
44 response to an express written or verbal request of the consumer who
45 is called or sent a text message; (B) primarily in connection with an
46 existing debt or contract, payment or performance of which has not
47 been completed at the time of the call or text message; or (C) to an
48 existing customer, unless such customer has stated to the telephone
49 solicitor that such customer no longer wishes to receive the telephonic
50 sales calls or text messages of such telephone solicitor; and

51 [(10)] (11) "Caller identification service or device" means any
52 telephone service or device which permits a consumer to see the
53 telephone number of incoming calls or text messages.

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

72 (c) No telephone solicitor may make or cause to be made any
73 unsolicited telephonic sales call to any consumer (1) if the consumer's
74 name and telephone number or numbers appear on the then current
75 quarterly "no sales solicitation calls" listing made available by the

76 department under subsection (b) of this section, unless (A) such call
77 was made by a telephone solicitor that first began doing business in
78 this state on or after January 1, 2000, (B) a period of less than one year
79 has passed since such telephone solicitor first began doing business in
80 this state, and (C) the consumer to whom such call was made had not
81 on a previous occasion stated to such telephone solicitor that such
82 consumer no longer wishes to receive the telephonic sales calls of such
83 telephone solicitor, (2) to be received between the hours of nine o'clock
84 p.m. and nine o'clock a.m., local time, at the consumer's location or on
85 the consumer's mobile telephone or mobile electronic device, (3) in the
86 form of electronically transmitted facsimiles, or (4) by use of a
87 recorded message device.

88 (d) No telephone solicitor [shall] may intentionally cause to be
89 installed or [shall] may intentionally use any blocking device or service
90 to circumvent a consumer's use of a caller identification service or
91 device. No telephone solicitor [shall] may intentionally transmit
92 inaccurate or misleading caller identification information.

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

105 (2) This subsection does not apply to (A) any telephone company, as
106 defined in section 16-1, for the sole purpose of compiling, publishing
107 or distributing telephone directories or causing the compilation,
108 publication or distribution of telephone directories or providing

109 directory assistance, and (B) any person, for the sole purpose of
110 compiling, publishing or distributing telephone directories for such
111 telephone company pursuant to an agreement or other arrangement
112 with such telephone company.

113 (f) The commissioner may adopt regulations, [pursuant to] in
114 accordance with chapter 54, to carry out the provisions of this section.
115 Such regulations may include, but shall not be limited to, provisions
116 governing the availability and distribution of the listing established
117 under subsection (b) of this section and notice requirements for
118 consumers wishing to be included on the listing established under
119 subsection (b) of this section.

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

132 (h) In addition to the requirements of subsections (b) to (g),
133 inclusive, of this section, if a consumer's mobile telephone or mobile
134 electronic device telephone number does not appear on the then
135 current quarterly "no sales solicitation calls" listing made available by
136 the department under subsection (b) of this section, no telephone
137 solicitor may send or cause to be sent a text message to such number
138 for the purpose of marketing or sales solicitation of consumer goods,
139 unless such telephone solicitor has received the prior written consent
140 of the consumer to receive such text message.

141 [(h)] (i) In addition to any penalty imposed under chapter 735a, any

142 telephone solicitor, who is liable under the provisions of subsection (g)
 143 or (h) of this section, shall be fined not more than [eleven] twenty
 144 thousand dollars for each violation.

145 Sec. 2. (NEW) (*Effective October 1, 2014*) Each telecommunications
 146 company, as defined in section 16-1 of the general statutes, that issues
 147 an account statement to a customer with respect to service for a mobile
 148 telephone or mobile electronic device shall include on or with such
 149 statement a conspicuous notice, in such form as the commissioner
 150 prescribes, regarding the "No Sales Solicitation Complaint" form on the
 151 Department of Consumer Protection's Internet web site.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2014</i>	42-288a
Sec. 2	<i>October 1, 2014</i>	New section

Statement of Legislative Commissioners:

In section 1, in section 42-288a(a)(9), "telephone" was added after "device" for consistency, and in section 2, "telecommunications" was substituted for "telephone" for accuracy.

GL *Joint Favorable Subst. -LCO*

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:** None**Municipal Impact:** None**Explanation**

The bill results in no fiscal impact as the Department of Consumer Protection currently acts on related complaints. It is anticipated that any additional complaints will result in solutions which will not result in any fines.

The Out Years**State Impact:** None**Municipal Impact:** None

OLR Bill Analysis**SB 209*****AN ACT PROHIBITING UNSOLICITED COMMERCIAL TEXT MESSAGES AND INCREASING PENALTIES FOR VIOLATIONS OF THE DO NOT CALL REGISTRY.*****SUMMARY:**

This bill explicitly prohibits telephone solicitors from sending unsolicited text messages to (1) anyone registered on the state "Do Not Call" registry and (2) a consumer's mobile telephone or electronic device between the hours of 9:00 p.m. and 9:00 a.m. It does so by including the sending of text messages among the registry's prohibited acts (see BACKGROUND). Under the bill, a text message is a written message sent electronically to a mobile telephone's or mobile electronic device's telephone number. It does not include electronic mail sent to an electronic mail address.

In addition to the registry requirements, the bill allows solicitors to send text messages for marketing or soliciting sales of consumer goods, or causes them to be sent, only if he or she has received the customer's prior written consent to receive such texts.

The bill also increases the maximum fine for each registry violation from \$11,000 to \$20,000. By law and under the bill, "Do Not Call" violations are also deemed an unfair and deceptive trade practice.

Under the bill, each telecommunications company that issues an account statement to a customer for providing service for a mobile telephone or mobile electronic device must include a conspicuous notice on or with the statement, on a Department of Consumer Protection (DCP) commissioner-approved form, about the "No Sales Solicitation Complaint" form located on DCP's website.

EFFECTIVE DATE: October 1, 2014

BACKGROUND

Do Not Call Registry

Connecticut Law. State law allows any individual to register a telephone number with the “Do Not Call” registry, and prohibits telephone solicitors from making unsolicited telephone calls to any number listed on it. The law applies to calls made 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 soliciting 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).

Federal Law. The Federal Communication Commission restricts telemarketers from sending text messages under the Telephone and Consumer Protection Act. These texts are banned unless (1) the recipient previously consented to receive the message or (2) the message is sent for emergency purposes. This ban applies even if a person has not placed his or her mobile phone number on the national Do Not Call list.

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.

COMMITTEE ACTION

General Law Committee

Joint Favorable

Yea 17 Nay 0 (03/13/2014)