

Q&A on Unsolicited Calls and Texts

By: Julia Singer Bansal, Senior Legislative Attorney
October 7, 2021 | 2021-R-0164

Issue

This report provides, in a Q&A format, information on Connecticut and federal regulation of unsolicited telemarketing calls and texts.

The Office of Legislative Research is not authorized to give legal opinions, and this report should not be considered one.

Does Connecticut law prohibit unsolicited calls and texts?

“Do Not Call” Registry

With certain exceptions, state law prohibits telephone solicitors from making unsolicited sales calls, including sending texts and media messages, to consumers on the state “Do Not Call” registry (see Background) unless they receive a consumer’s prior express written consent. “Do Not Call” violations are generally (1) subject to a fine of up to \$20,000 per violation and (2) deemed an unfair and deceptive trade practice (see Background) ([CGS § 42-288a\(c\), \(g\), & \(k\)](#)).

Texts

Regardless of whether a consumer is on the registry, solicitors may only send, or cause to be sent, text or media messages for marketing or soliciting sales of consumer goods if the solicitor has received the consumer’s prior express written consent ([CGS § 42-288a\(i\) & \(j\)](#)). (There are certain exceptions for telecommunications companies texting their customers.) Violations are (1) subject to a fine of up to \$20,000 per violation and (2) deemed an unfair and deceptive trade practice ([CGS § 42-288a\(g\) & \(k\)](#)).

Robocalls

Regardless of whether a consumer is on the registry, the law generally prohibits solicitors, without express written consent, from making unsolicited, automatically dialed, recorded telephonic calls (“robocalls”) for sales purposes. Violations are (1) subject to a fine of up to \$20,000 per violation and (2) deemed an unfair and deceptive trade practice ([CGS § 42-288a\(g\), \(h\), & \(k\)](#)). Another law makes it a violation, subject to a fine of up to \$1,000, to robocall a consumer for any commercial, business, or advertising purpose ([CGS § 16-256e](#)).

Spoofing

Regardless of whether a consumer is on the registry, it is a class A misdemeanor (punishable by up to 364 days imprisonment, up to a \$1,000 fine, or both) for a person to intentionally use a blocking device or service to circumvent a consumer’s caller identification service or device (“spoofing,” see Background) to transmit a robocall ([CGS § 16-256e](#)). Spoofing for purposes other than a robocall is also prohibited and deemed an unfair and deceptive trade practice ([CGS § 42-288a\(d\) & \(g\)](#)).

Enforcement Challenges

According to the state Department of Consumer Protection (DCP), it lacks the jurisdiction to pursue most telemarketers that contact Connecticut residents because they often call from outside the United States, and many spoof their number, making it hard to determine who is actually calling. The department has previously noted in correspondence that because of these jurisdictional challenges, the issue is more easily addressed at the federal level. (As described below, the federal government is currently working to implement various consumer protections against unsolicited telemarketing calls. For a recent discussion of federal measures aimed at stopping robocalls originating overseas, see this September 2021 National Law Review [article](#).)

What is being done at the federal level?

The two main laws that currently regulate unsolicited calls and texts at the federal level are the Telephone Consumer Protection Act (TCPA) of 1991 ([47 U.S.C. § 227](#); [47 C.F.R. § 64.1200](#)) and the Pallone-Thune Telephone Robocall Abuse Criminal Enforcement and Deterrence (TRACED) Act of 2019 ([PL 116-105](#)).

The TCPA, enforced by the Federal Communications Commission (FCC) among others, generally prohibits the following:

1. calling or texting cell phones using an autodialer or an artificial or prerecorded voice without appropriate consent (depends on whether there is a marketing or sales purpose);
2. calling a residential line using an artificial or prerecorded voice to deliver a commercial message without prior express written consent; and
3. making telemarketing calls to consumers (even if not a robocall) who list their residential or cell phone numbers on the federal Do Not Call Registry.

Additionally, the federal government is working to [implement](#) 2019 legislation, the TRACED Act, which in part amends the TCPA and also provides additional consumer protections against robocalls and unsolicited texts by, among other things:

1. expanding the FCC's enforcement authority against robocall offenses by [creating](#) a longer statute of limitations and expanding civil penalties;
2. requiring voice service providers to implement the STIR/SHAKEN caller authentication framework, a system using digital fingerprints or tokens to help determine if a number from which a call is placed is the same as the number that shows up on a caller ID (i.e., checks for spoofing) (the largest providers are [already](#) using this framework);
3. requiring the FCC to study and report on various telecommunication issues, including: implementation of the [reassigned number database](#) (aimed at reducing the number of mistaken calls to reassigned numbers) and efforts taken by voice service providers to determine the source of suspected robocalls;
4. requiring the FCC to initiate proceedings or workgroups on robocall-related issues, including initiating proceedings on [one-ring scams](#) and reducing robocallers' [access](#) to phone numbers and a task force with the Attorney General to [study](#) robocall-related prosecutions; and
5. requiring additional FCC regulations on issues such as unwanted calls and texts from [unauthenticated phone numbers](#) and streamlining a carrier's ability to [provide the FCC with information](#) on robocall and spoofing violations.

Has legislation to enhance enforcement been proposed in Connecticut?

Yes, since the most recent unsolicited telemarketing legislation passed in 2018, several additional bills have been proposed or drafted, as summarized in Table 1.

Table 1: Telemarketing Bills in Connecticut (2019-2021)

Year	Bill	Proposal	Last Action
2021	SB 256	Impose a fine against a telecommunications company when telephone solicitors use its services to communicate in violation of the Do Not Call registries (amend CGS § 42-284 et seq.)	Proposed bill (Energy and Technology Committee)
2021	HB 5303	Require DCP to study methods of strengthening prohibitions on unsolicited and predatory telemarketing, including for automobile warranties	Favorably reported by the General Law Committee
2021	HB 6410	Increase the penalty for violations related to the Do Not Call Registry, spoofing, and robocalls; establish a minimum fine of \$5,000 for each violation and increase the maximum fine per violation to \$42,530 under CGS § 42-288a	Favorably reported by the Energy and Technology Committee
2020	SB 252	Require telemarketers to inform consumers that they may request their numbers be placed on the Do Not Call Registry (amend CGS § 42-288a)	Favorably reported by the General Law Committee (legislative session cut short by COVID pandemic)
2019	SB 225	Make it a violation of the robocalling law (CGS § 16-256e) even if the delivered message does not continue when the consumer hangs up the receiver	Energy and Technology Committee public hearing
2019	HB 5121	Make a violation of the prohibition on spoofing robocalls (CGS § 16-256e) a class E felony	Proposed bill (Judiciary Committee)
2019	HB 5434	Increase penalties for violations of CGS § 42-288a ; prohibit calling an individual from multiple numbers for purposes of automated sales solicitation calls	Change of Reference from Labor Committee to General Law Committee (proposed bill)
2019	HB 5701	Same as HB 5434	Proposed bill (General Law Committee)
2019	HB 6041	Require social media platforms to offer users an opt-out option regarding the platform accessing their personal contact list for unsolicited marketing (amend CGS § 42-288a)	Proposed bill (General Law Committee)

Does the federal Telephone Consumer Protection Act (TCPA) preempt state legislative action concerning telemarketing?

We found conflicting interpretations from the FCC and federal and state courts about whether the TCPA preempts state laws addressing telemarketing. These interpretations differ on whether the TCPA limits state law to imposing restrictions and requirements on *intrastate* telemarketing calls or whether state authority extends to *interstate* calls as well.

TCPA and Preemption

As described above, the TCPA imposes restrictions on robocalls, among other things. The TCPA's preemption savings clause enumerates categories of state laws that are not preempted. It states that it does not “preempt any State law that imposes more restrictive *intrastate* requirements or regulations on, or which prohibits—

- (A) the use of telephone facsimile machines or other electronic devices to send unsolicited advertisements;
- (B) the use of automatic telephone dialing systems;
- (C) the use of artificial or prerecorded voice messages; or
- (D) the making of telephone solicitations” (emphasis added, [47 U.S.C. § 227\(f\)\(1\)](#)).

The TCPA's preemption savings clause has been interpreted differently by the FCC and courts—resulting in some ambiguity over what types of state laws concerning interstate activity are preempted. There is general agreement that states may legislative requirements for intrastate activity.

For example, in 2003 the FCC stated that state laws concerning interstate telemarketing calls that differ from the TCPA “almost certainly would conflict with and frustrate the federal scheme and almost certainly would be preempted” ([FCC 03-153](#), p. 51). However, in subsequent years the FCC's guidance has been met with the opposite court interpretation in several instances: that state laws governing certain interstate calls are not preempted (see, e.g., *Patriotic Veterans, Inc. v. Indiana*, 736 F.3d 1041 (7th Cir. 2013), cert. denied, 137 S.Ct. 2321 (2017); *State ex rel. Stenehjem v. FreeEats.com, Inc.*, 712 N.W.2d 828 (N.D. 2006), cert. denied, 549 U.S. 953 (2006)).

For example, the North Dakota Supreme Court held in *FreeEats.com* that the TCPA does not preempt state laws prohibiting interstate actions in items A-D in the savings clause (above) in addition to any intrastate requirements or regulations (*FreeEats.com* at 834).

Background

Do Not Call Registries

Both [federal](#) and [state](#) laws establish “Do Not Call” registries (in practice, the state registry is populated with information from the federal registry). Under federal law, commercial telemarketers generally may not make telemarketing calls to landline or cell phone numbers on the national Do Not Call Registry, unless an exception applies. The law covers most types of telemarketing calls to consumers, including calls to offer goods and services, sweepstakes and prize promotions, and investment opportunities. Additionally, under federal law, if a consumer asks a telemarketer not to call, the telemarketer must place the consumer on the soliciting company’s internal do not call list. Connecticut has a telemarketing law that generally mirrors federal law and makes DCP responsible for enforcement.

Further information about the “Do Not Call” registries can be found in OLR Report [2020-R-0182](#).

Connecticut Unfair Trade Practices Act (CUTPA)

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the 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 \$10,000, 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 attorney’s fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order ([CGS § 42-110a et seq.](#)).

Spoofing

[According to the FCC](#), “spoofing” is when a caller deliberately falsifies the information transmitted to one’s caller ID display to disguise his or her identity. Scammers often use neighbor spoofing so it appears that an incoming call is coming from a local number or spoof a number from a company or a government agency that one may already know and trust. FCC rules prohibit anyone from transmitting misleading or inaccurate caller ID information (spoofing) with the intent to defraud, cause harm, or wrongly obtain anything of value.

Further Information

Industry Led Initiatives

In addition to the government-led responses summarized above, an April 2020 Congressional Research Service (CRS) [report](#) explains, among other things, how telecommunications companies are targeting unwanted calls (e.g., call traceback).

Proposals in Other States

For a summary of proposals to combat unsolicited texts and calls in other states, see this National Conference of State Legislatures [page](#).

Glossary and Common Scams

The FCC provides a glossary of robocall-related terms and outlines common scam themes [here](#).

Filing a Complaint

Consumers can use the following websites to file complaints about telemarketers or robocalls:

1. FCC's Consumer Complaint Center [Phone Complaint Form](#)
2. DCP's [website](#) on Do Not Call Registry violations, including information on filing a complaint with DCP

JSB:kl