



**Substitute Senate Bill No. 209**

**Public Act No. 14-53**

**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:

Section 1. Section 42-288a of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2014*):

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

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

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

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

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

(5) "Doing business in this state" means conducting telephonic sales calls (A) from a location in this state, or (B) from a location outside of

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this state to consumers residing in this state;

(6) "Prior express written consent" has the meaning provided in 47 CFR 64.1200, as amended from time to time;

~~[(6)]~~ (7) "Marketing or sales solicitation" means the initiation of a telephone call or message, including, but not limited to, a text or media message, to encourage the purchase or rental of, or investment in, property, goods or services, that is transmitted to any consumer, but does not include a telephone call or message, including, but not limited to, a text or media message (A) to any consumer with [that] such consumer's prior express written [or verbal invitation or permission] consent, (B) by a tax-exempt nonprofit organization, or (C) to a consumer in response to a visit made by such consumer to an establishment selling, leasing or exchanging consumer goods or services at a fixed location;

~~[(7)]~~ (8) "Telephonic sales call" means a telephone call made by a telephone solicitor, or a text or media message sent by or on behalf of a telephone solicitor, to a consumer for the purpose of (A) engaging in a marketing or sales solicitation, (B) soliciting an extension of credit for consumer goods or services, or (C) obtaining information that will or may be used for marketing or sales solicitation or exchange of or extension of credit for consumer goods or services;

~~[(8)]~~ (9) "Telephone solicitor" means any individual, association, corporation, partnership, limited partnership, limited liability company or other business entity, or a subsidiary or affiliate thereof, doing business in this state that makes or causes to be made a telephonic sales call, including, but not limited to, sending or causing to be sent a text or media message to a consumer's mobile telephone or mobile electronic device;

(10) "Text or media message" means a message that contains

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written, audio, video or photographic content and is sent electronically to a mobile telephone or mobile electronic device telephone number, but does not include electronic mail sent to an electronic mail address;

[(9)] (11) "Unsolicited telephonic sales call" means any telephonic sales call other than a telephonic sales call made: (A) [In response to an express written or verbal request] Pursuant to the prior express written consent of the consumer who is called or sent a text or media message; (B) primarily in connection with an existing debt or contract, payment or performance of which has not been completed at the time of the telephonic sales call; or (C) to an existing customer, unless such customer has stated to the telephone solicitor that such customer no longer wishes to receive the telephonic sales calls of such telephone solicitor; and

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

(b) The department shall establish and maintain a "no sales solicitation calls" listing of consumers who do not wish to receive unsolicited telephonic sales calls. The department may contract with a private vendor to establish and maintain such listing, provided (1) the private vendor has maintained national "no sales solicitation calls" listings for more than two years, and (2) the contract requires the vendor to provide the "no sales solicitation calls" listing in a printed hard copy format and in any other format offered at a cost that does not exceed the production cost of the format offered. The department shall provide notice to consumers of the establishment of a "no sales solicitation calls" listing. Any consumer who wishes to be included on such listing shall notify the department by calling a toll-free number provided by the department, or in any other such manner and at such times as the commissioner may prescribe. A consumer on such listing

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shall be deleted from such listing upon the consumer's written request. The department shall update such listing not less than quarterly and shall make such listing available to telephone solicitors and other persons upon request.

(c) No telephone solicitor may make or cause to be made any unsolicited telephonic sales call to any consumer (1) if the consumer's name and telephone number or numbers appear on the then current quarterly "no sales solicitation calls" listing made available by the department under subsection (b) of this section, unless (A) such call was made by a telephone solicitor that first began doing business in this state on or after January 1, 2000, (B) a period of less than one year has passed since such telephone solicitor first began doing business in this state, and (C) the consumer to whom such call was made had not on a previous occasion stated to such telephone solicitor that such consumer no longer wishes to receive the telephonic sales calls of such telephone solicitor, (2) for telephone calls, to be received between the hours of nine o'clock p.m. and nine o'clock a.m., local time, at the consumer's location or, for text or media messages, to be received on the consumer's mobile telephone or mobile electronic device at any time, (3) in the form of electronically transmitted facsimiles, or (4) by use of a recorded message device.

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

(e) (1) Any person who obtains the name, residential address or telephone number of any consumer from published telephone directories or from any other source and republishes or compiles such information, electronically or otherwise, and sells or offers to sell such publication or compilation to telephone solicitors for marketing or

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sales solicitation purposes, shall exclude from any such publication or compilation, and from the database used to prepare such publication or compilation, the name, address and telephone number or numbers of any consumer if the consumer's name and telephone number or numbers appear in the then current quarterly "no sales solicitation calls" listing made available by the department under subsection (b) of this section.

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

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

(g) A violation of any of the provisions of this section shall be deemed an unfair or deceptive trade practice under subsection (a) of section 42-110b, except that no telephone solicitor may be liable under this section for a call made in violation of subdivision (1) of subsection (c) of this section if such telephone solicitor demonstrates that: (1) Such telephone solicitor established and implemented written procedures and trained its employees to follow such procedures to comply with subdivision (1) of subsection (c) of this section; (2) such telephone solicitor deleted from its call list any listing of a consumer on the then

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current quarterly "no sales solicitation calls" listing maintained pursuant to subsection (b) of this section; and (3) such call was made inadvertently.

(h) No telephone solicitor may make or cause to be made an unsolicited, automatically dialed, recorded telephonic sales call to a consumer without such consumer's prior express written consent.

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

(j) Notwithstanding the provisions of subsections (c) and (i) of this section, a telecommunications company, as defined in section 16-1, may send a text or media message to an existing customer, provided: (1) Such telecommunications company does not charge the customer a fee for such text or media message, and (2) such text or media message is primarily in connection with (A) an existing debt, payment of which has not been completed at the time the text or media message is sent, (B) an existing contract between the telecommunications company and the customer, (C) a wireless emergency alert authorized by federal law, or (D) a prior request for customer service that was initiated by the customer.

~~[(h)]~~ (k) In addition to any penalty imposed under chapter 735a, any telephone solicitor, who is liable under the provisions of ~~[subsection (g)]~~ subsections (g) to (i), inclusive, of this section, shall be fined not more than ~~[eleven]~~ twenty thousand dollars for each violation.

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Sec. 2. (NEW) (*Effective October 1, 2014*) Each telephone and telecommunications company, as defined in section 16-1 of the general statutes, that issues an account statement to a consumer with respect to service for a telephone, mobile telephone or mobile electronic device shall, not less than two times per year, include on or with such statement a conspicuous notice, informing the consumer with respect to: (1) The prohibitions placed on telephone solicitors pursuant to section 42-288a of the general statutes, as amended by this act, (2) how to place the consumer's telephone number, mobile telephone number or mobile electronic device telephone number on the "no sales solicitation calls" listing established pursuant to subsection (b) of section 42-288a of the general statutes, as amended by this act, and (3) how to obtain a "no sales solicitation complaint" form on the Department of Consumer Protection's Internet web site.

Approved May 28, 2014