OLR Bill Analysis

sSB 1058

AN ACT CONCERNING THE ATTORNEY GENERAL'S RECOMMENDATIONS REGARDING CONSUMER PROTECTION AND FINANCIAL REPORTING BY CHARITABLE ORGANIZATIONS.

TABLE OF CONTENTS:

BACKGROUND

SUMMARY

A section-by-section analysis follows.

§§ 1-3 — INVESTIGATIVE DOCUMENTS IN THE POSSESSION OF STATE ENTITIES

Addresses state entities' handling of documents related to investigations of alleged CUTPA, antitrust, or health and human services violations

The bill addresses state entities' handling of documents related to investigations of alleged Connecticut Unfair Trade Practices Act (CUTPA), antitrust, or health or human services violations. It also makes technical changes.

CUTPA Investigations (§ 1)

By law, the Department of Consumer Protection (DCP) commissioner, attorney general, or their employees must publicly disclose records related to an investigation of an alleged CUTPA violation, in fulfillment of the state's Freedom of Information Act. This includes any complaint initiating the investigation and all records related to its disposition or settlement. While the investigation's completion is pending, the bill allows the commissioner to temporarily withhold from public disclosure any documents containing responses to investigative demands.

Antitrust and Health and Human Services Investigations (§§ 2 & 3)

By law, the attorney general, the attorney general's deputy, or any designated assistant attorney general must not make public any documents provided to them in association with an investigation of alleged (1) state antitrust act violations, provided on demand or voluntarily, or (2) false claims and other prohibited acts related to state-administered health or human services programs, provided on demand. When the investigation is complete, or when any action or proceeding has reached its final determination, the documents must be returned to the person who furnished them. Under the bill, if the documents or other information were provided electronically, they must be erased.

EFFECTIVE DATE: July 1, 2023, except the provisions on CUTPA investigations are effective upon passage.

§§ 4-7 — CONSUMER PRIVACY

Adds "precise geolocation data" to the types of personal information subject to data breach notice requirements; changes the penalty and enforcement mechanism for personal information safeguarding requirements; expands the purposes of the Privacy Protection Guaranty and Enforcement Account and creates separate processes for accessing funds; and changes the liability threshold for data controllers under a framework taking effect July 1, 2023

Personal Information and Breach Notices (§ 4)

By law, any person who owns, licenses, or maintains computerized data that includes personal information must comply with certain reporting and mitigation requirements when personal information is reasonably believed to have been breached. The bill adds "precise geolocation data" to the types of personal information subject to these requirements, when in combination with a person's (1) first name or first initial and (2) last name. By law, "precise geolocation data" means information derived from technology (e.g., GPS level latitude and longitude coordinates or other mechanisms) that directly identifies someone's specific location with precision and accuracy within a 1,750-foot radius. It excludes the content of communications and data related to utility metering systems.

Existing law generally requires the person or entity subject to the breach to notify (1) any state resident whose personal information was breached and (2) the attorney general. The law generally requires this notice in specific formats (i.e., written, by phone, or electronically), but creates an exception, allowing a "substitute notice" if the notifier demonstrates that the cost would exceed $250,000, the group to be notified would exceed 500,000 people, or the notifier lacks sufficient contact information. The bill specifies that the notifier must demonstrate that these substitute notice criteria are met in the notice of the breach provided to the attorney general. By law, substitute notice includes emailing affected people, posting on the notifier's website, and notifying major state-wide media of the breach.

Safeguarding Requirements (§ 5)

A separate existing law requires people in possession of other types of personal information to (1) safeguard the data, and computer files and documents containing it, from misuse by third parties and (2) destroy, erase, or make the data, computer files, and documents unreadable before disposing of them. These safeguarding requirements apply to information associated with a particular individual through one or more identifiers (e.g., Social Security numbers, driver's license numbers, state identification card numbers, account numbers, debit or credit card numbers, passport numbers, alien registration numbers, health insurance identification numbers, or any military identification information).

The bill changes the penalty and, in some cases, the enforcement mechanism for these safeguarding requirements. Under current law, violators are subject to a $500 civil penalty for each violation, up to $500,000 for a single event, and penalties only apply if the violation was intentional. The bill instead makes a violation an unfair trade practice under CUTPA. Among other things, CUTPA allows the DCP commissioner to investigate complaints, issue cease and desist orders, and order restitution in certain cases. 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 restraining order violations (CGS § 42-110a et seq.).

Under current law, DCP enforces safeguarding requirements, unless the person possessing data is supervised by another state agency under a license, registration, or certificate. In that case, the other state agency enforces them. The bill exempts the attorney general's actions from these provisions. Additionally, the bill allows, rather than requires, civil penalties to be deposited into the privacy protection guaranty and enforcement account (see below).

Privacy Protection Guaranty and Enforcement Account (§ 6)

By law, the privacy protection guaranty and enforcement account is a nonlapsing account in the General Fund. The DCP commissioner must use funds in the account to reimburse people hurt by violations of the

safeguarding requirements described above, among other things. The bill caps the total balance in the account at $250,000 and requires that any balance exceeding that amount be deposited in the General Fund.

The bill broadens the account's purposes to include reimbursing those harmed by violations of laws against (1) identity theft in the first, second, or third degree, (2) trafficking in personal identifying information, and (3) misrepresentation as an online business.

Current law has a process, for people who get court judgments against any person or entity for violating various laws on safeguarding personal information, to apply for a payment from the account in the amount of unpaid damages and costs taxed by the court against the violator, excluding punitive damages. By law, this process is available upon the judgment's final determination or after the time for appeal has expired. The bill expands eligibility for this process to those who obtain court judgements against any person or entity for violating laws against (1) identity theft in the first, second, or third degree, (2) trafficking in personal identifying information, and (3) misrepresentation as an online business. Current law requires the application to include a certified copy of the court judgment and requires the applicant to sign a notarized affidavit affirming that he or she has obtained a judgment. Under the bill, copies of, and affidavits referencing, court orders or decrees must also be included.

The bill similarly expands a provision allowing people to apply for payment from the account who have unpaid orders of restitution. Under current law, an individual who is awarded an order of restitution against someone for loss or damages sustained from violating various laws related to safeguarding personal information may apply. The bill expands eligibility for this process to those who obtain court judgements against any person or entity for violating laws against (1) identity theft in the first, second, or third degree, (2) trafficking in personal identifying information, and (3) misrepresentation as an online business.

The bill also allows the fund to be used to assign court-ordered restitution resulting from violations of laws on the following topics if

restitution is owed to someone residing in the state on the date of the order or violation:

1. misrepresenting, impersonating, or using false personal identifying information when applying for a license, registration, or certificate (CGS § 21-120);

2. physically altering a license, registration, or certificate to conceal or misrepresent a material fact (CGS § 21-121);

3. willful violation of laws that restrict posting, displaying, transmitting, and using Social Security numbers (CGS § 42-470(e));

4. diverting employee labor from the state (CGS § 53a-127);

5. identify theft in the first, second, or third degree, or trafficking in personal identifying information (CGS §§ 53a-129b to -129e);

6. criminal impersonation (CGS § 53a-130); and

7. federal laws on (a) fraud and related activity in connection with identification documents and (b) aggravated identity theft (18 U.S.C. §§ 1028 & 1028A).

The bill establishes a separate process for an identity theft victim who receives a restitution order for the violations listed above. Under the bill, in cases where the victim is a state resident on the date of the order or violation, the victim may apply to the DCP commissioner, on forms she prescribes, for an order directing payment from the account. The application must include (1) a copy of the court judgment, order, or decree obtained against the person or entity that committed identify theft and (2) a notarized affidavit, signed and sworn to by the victim, that states the amount owed on the judgement, award, or degree at the time of the application and affirms that the victim complied with the bill's requirements for this process and has been awarded an order of restitution.

Under the bill, the process for paying restitution to identity theft

victims is the same as under the existing process for court judgments. If the DCP commissioner determines the documents are complete and authentic and the individual has not been paid, she must order payment out of the account for the amount of unpaid damages and costs taxed by the court against the violator, excluding punitive damages.

The bill creates another separate process for identity theft victims who would not otherwise qualify for payment under the provisions described above. Under this process, a victim may apply to the DCP commissioner for an order directing payment from the account in the amount incurred or lost by the victim due to identity theft within the last three years. The bill limits the amount to (1) $5,000 to reimburse the victim for reasonable costs (e.g., documented lost wages, costs to resolve or mitigate identity theft effects) and (2) $15,000 for actual losses. Under this process, a victim must attest on a DCP-prescribed form that (1) he or she is a victim of identity theft and (2) the person or persons who committed identity theft (a) cannot reasonably be determined or identified or (b) have been identified but have not been prosecuted due to any reason other than the victim's noncooperation, unless the victim's noncooperation is due to domestic violence.

The bill requires the DCP commissioner or her designee to inspect the application and supporting evidence for veracity. If the commissioner or designee makes a reasonable determination that the applicant is likely an identity theft victim and the person or persons who committed identity theft have not been prosecuted for the reasons described above, the commissioner must issue an order directing payment from the account in the amount incurred or lost by the victim due to identity theft in the last three years, subject to the limits described above.

Existing law also requires the DCP commissioner to use funds in the account to enforce various laws on consumer privacy, including provisions establishing (1) the safeguarding requirements described above and (2) restrictions on posting, displaying, transmitting, and using Social Security numbers. The bill additionally requires her to use funds in the account to enforce the breach notice and mitigation requirements described above. The bill also expands the fund's uses to

include the attorney general's enforcement of laws on misrepresentation as an online business.

Lastly, the bill authorizes civil penalties collected for failure to comply with data breach provisions (see § 4 above) to be deposited into the privacy protection guaranty and enforcement account.

Personal Data Framework (§ 7)

Beginning July 1, 2023, existing law establishes a framework for controlling and processing personal data. The framework requires a controller (i.e., an individual or legal entity that determines the purpose and means of processing personal data) to limit the collection of personal data and establish security practices, among other things. Existing law prohibits controllers from processing a consumer's personal data for purposes of targeted advertising without the consumer's consent for consumers who are at least 13 years old, but under 16 years old. Under current law, for the prohibition to apply, the controller must have actual knowledge that the consumer's age is in this range and willfully disregard it. Under the bill, either actual knowledge or willful disregard of the consumer's age makes a controller subject to the prohibition.

Background — Related Bill

sSB 1103 (File 228), § 7, favorably reported by the General Law Committee, contains an identical provision prohibiting a controller that has actual knowledge or willfully disregards the consumer's age from processing the consumer's data for targeted advertising without the consumer's consent.

EFFECTIVE DATE: July 1, 2023, except provisions on security breach requirements and the privacy protection guaranty and enforcement account are effective October 1, 2023.

§ 8 — TICKET PRICING

Establishes disclosure requirements for anyone selling or reselling tickets for an entertainment event; requires operators that charge admission prices for places of entertainment to include certain related information on the ticket face; and prohibits false or misleading disclosures

For entertainment events where a service charge will be imposed, existing law requires advertisements to conspicuously disclose the total price for each ticket and what portion represents a service charge. Current law does not define "service charge," but the bill defines it as any additional fee or charge that is designated as an "administrative fee," "service fee," "surcharge," or another substantially similar term.

The bill additionally requires operators who charge an admission price for a place of entertainment to print or endorse on each ticket face for an event (1) the established ticket price and (2) the final auction price of the ticket if the operator or his or her agent sells or resells the ticket at auction.

The bill requires any person who facilitates ticket sales or resales for an entertainment event to disclose:

1. the total ticket price, including all service charges required to purchase the ticket; and

2. in a clear and conspicuous manner, to the ticket purchaser, the portion of the ticket price in dollars attributable to service charges charged to the purchaser for the ticket.

The bill requires these disclosures to be displayed in the ticket listing before the ticket is selected for purchase. It prohibits any increase of the total ticket price during the ticket purchasing process, other than a reasonable charge to deliver a nonelectronic ticket if the fee is (1) based on the delivery method selected by the ticket purchasers and (2) disclosed to the purchaser before purchase.

The bill prohibits (1) false or misleading disclosures and (2) disclosures from being presented more prominently than the total ticket price, or in a font size as large or larger than the font size of the total ticket price.

EFFECTIVE DATE: October 1, 2023

§§ 9-14 & 18 — TELEMARKETING AND DO NOT CALL REGISTRIES

Broadens applicability of the state's telemarketing laws, Do Not Call laws, and other restrictions; prohibits initiating a commercial transaction or telephonic sales call using various types of technology to contact a telephone number with a Connecticut area code; establishes rebuttable presumptions on call locations

Telemarketers, Contracts, and Payments

The bill broadens the applicability of the state's telemarketing laws. Under existing law, an oral agreement between a consumer and a telemarketer is not binding, valid, or enforceable unless the telemarketer receives a written, signed contract disclosing the agreement's full terms. If the telemarketer sends goods or services to the consumer without this written contract, they are considered an unconditional gift with no obligation to the consumer (CGS § 42-285). Under current law, a "telemarketer" is any person who initiates the sale, lease, or rental of consumer goods or services, or offers gifts or prizes with the intent to sell, lease, or rent consumer goods, by methods that include (1) telephone or (2) written notice that does not describe goods or services or disclose a price and instead includes a request to contact the seller by telephone. Under the bill, "consumer goods or services" are articles or services purchased, leased, exchanged, or received primarily for personal, family, or household purpose, including warrantees, gift cards, stocks, bonds, mutual funds, annuities, and other financial products.

Under the bill, telemarketers are also those who use the following methods or technologies:

1. automated dialing system or recorded message device, which is a device that (a) automatically dials a telephone number and plays a recorded message upon connection or (b) makes a connection to an end user through an automated system used to dial a telephone number and transmit a voice communication;

2. soundboard technology, which is a technology that allows someone to communicate with a call recipient in real-time by playing a recorded audio message instead of using his or her voice;

3. over-the-top message, which is a text-based communication on a

platform that uses existing Internet services to deliver messages (e.g., WhatsApp and Facebook Messenger); or

4. text or media message, which is a message consisting of text or any image, sound, or other information transmitted by or to a device identifiable through a 10-digit telephone number or N11 service code.

Emails sent to email addresses are not text or media messages under the bill. A "text or media message" includes a short message and multimedia message service that contains written, audio, video, or photographic contact sent electronically to a mobile telephone or mobile electric device telephone number.

The bill expands the information that the written contract must contain to include the telemarketer's headquarters location and home state or country for entity registration purposes. The bill specifies that the telemarketer's name on the contract must be the telemarketer's legal name.

The bill also expands the types of payment that are subject to requirements for a written contract. Current law prohibits telemarketers from accepting payments from a consumer or submitting a charge to a consumer's credit card unless the telemarketer has received a written and signed contract from the consumer. The bill also applies this prohibition to payment in any form and charges to a charge card, debit card, or electronic payment platform account. Under existing law, when the consumer pays a telemarketer who has not received a written signed contract from the consumer, the telemarketer must refund the consumer's payment or credit the consumer's account. The bill specifies that this obligation is for a full refund.

For purposes of applicability, under current law, any transaction occurring between a telemarketer and a consumer is considered to have taken place in Connecticut if either the telemarketer or the consumer is domiciled in Connecticut. The bill instead considers transactions to have taken place in Connecticut if the (1) telemarketer is a state resident or a business entity registered with the Secretary of State to do business in

Connecticut or (2) consumer is a state resident (see also rebuttable presumption provisions below).

Do Not Call Registries and Other Restrictions

The bill broadens the applicability of the state's laws on "Do Not Call" registries and establishes other restrictions. Both state and federal laws establish "Do Not Call" registries. In practice, the state registry is populated with information from the federal registry. Current law prohibits telephone solicitors from making unsolicited telephonic sales calls to any consumer if the consumer's name and telephone number appear on the state registry (i.e., the current quarterly "no sales solicitation calls" listing made available by DCP). Under current law, all telephonic sales calls are unsolicited unless they are (1) under a consumer's prior express written consent, (2) primarily in connection with an unpaid debt or uncompleted contract, or (3) to an existing customer, unless the customer has stated that he or she no longer wants to receive these calls. The bill instead applies to any telephonic sales calls and prohibits both telemarketers and telephone solicitors from making any telephonic sales calls to a consumer's residential, mobile, or telephone paging device telephone number if the consumer's name and telephone number appear on the federal registry. The bill requires DCP to include listings on the federal registry in the state registry, conforming to current practice. The bill also removes an exemption in current law from the prohibition for calls made by telephone solicitors that have been doing business in the state for less than a year when the consumer has not previously stated that the consumer no longer wishes to receive telephonic sales calls.

The bill shifts the scope of these laws by making changes to several definitions. By law, generally unchanged by the bill, a "telephone solicitor" is any individual, association, corporation, partnership, limited partnership, limited liability company, nonprofit corporation, or other business entity, or an entity's subsidiary or affiliate, doing business in the state that makes telephonic sales calls. Under current law, a telephone solicitor is doing business in the state if it conducts telephonic business calls from a location in this state or from a location

outside this state to consumers residing in this state. The bill broadens the types of activities that would be considered doing business in the state, expanding the scope of requirements under the bill and existing law for telephone solicitors. Under the bill, doing business in the state includes conducting telephonic sales calls or making calls using an automated dialing system or recorded message device or soundboard technology, or sending over-the-top messages or text and media messages from a location in this state or from a location outside of this state to consumers residing in the state (see also rebuttable presumption provisions below). Under current law, a text or media message is a message containing written, audio, or photographic content that is sent electronically to a mobile telephone or electronic device telephone number. Under the bill, a text or media message is as defined above.

The bill also expands the definition of a "telephonic sales call." Under current law, a 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 for the following purposes:

1. to engage in a marketing or sales solicitation;

2. to solicit a credit extension for consumer goods or services; or

3. to obtain information that will or may be used for a marketing or sales solicitation or exchange of, or credit extension for, consumer goods or services.

The bill establishes a more expansive definition of telephonic sales call that also applies (1) to telephone calls made on behalf of a telephone solicitor and (2) regardless of whether the calls are made using an automated dialing system or recorded message device, soundboard technology, or an over-the-top message or text or media message. It also includes as telephonic sales calls those made for the following purposes:

1. to encourage the consumer to share personally identifying information or purchase or invest in any property, goods, services, or other things of value if the consumer did not previously express interest in doing so or

2. to solicit the consumer to donate any money, property, goods, services, or other thing of value if the consumer did not previously express interest in doing so.

Under the bill, a "marketing or sales solicitation" is the initiation of a communication, including through the technologies described above, to encourage the purchase or rental of, or investment in, property, goods, or services transmitted to a consumer residing in the state. It excludes communication to these consumers with their prior express written consent or in response to a consumer's visit to an establishment selling, leasing, or exchanging consumer goods or services at a fixed location. The bill eliminates an additional exclusion under current law for calls or messages made by a tax-exempt nonprofit.

Under the bill, telephonic sales calls exclude the following types of calls or messages:

1. those made to respond to a request or inquiry from a consumer who resides in the state, including a call or message concerning an item the consumer purchased from the telephone solicitor during the previous 12-month period;

2. those made by a nonprofit organization to a consumer who is a state resident listed as a bona fide or active member of the organization;

3. those limited to polling, soliciting votes, or expressing an idea or opinion;

4. those made as part of a business-to-business contact;

5. those made to a consumer who resides in the state who granted prior express written consent (see below) to receiving a call or message;

6. those sent primarily in connection with an existing debt or contract that has not been completely paid or performed;

7. those sent to the telephone solicitor's existing customer unless the

customer informed the solicitor, orally or in writing, that he or she does not wish to receive calls or messages from the solicitor; and

8. those sent for a religious, charitable, political, or other noncommercial purpose.

Regardless of the registry, the bill prohibits telemarketers or telephone solicitors from making a telephonic sales call to a consumer without the consumer's prior express written consent. Current law only prohibits telephone solicitors from making these calls if they are unsolicited, automatically dialed, and recorded, and references a federal definition of prior express written consent applicable to calls made with an automatic dialing system or an artificial or previously recorded voice (47 C.F.R. § 64.1200). Under the bill, "prior express written consent" means a written agreement bearing the (1) consumer's signature clearly and conspicuously authorizing the telemarketer or telephone solicitor to deliver advertisements or telemarketing messages to the consumer using any of the technologies described above and (2) telephone number where these advertisements or messages can be sent.

Under the bill, people making permissible telephonic sales calls to a consumer's residential, mobile, or telephonic paging device telephone number must disclose, within the first 10 seconds of the call, the (1) caller's identity, (2) telephonic sales call's purpose, and (3) entity for which the person is making the call.

The bill requires telephone solicitors, when requesting donations or anything of value from a consumer during a telephonic sales call, to ask at the beginning of the call whether the consumer wishes to continue the call, end the call, or be removed from the telephone solicitor's list. Under the bill, for any telephonic sales call, telephone solicitors must end the call within 10 seconds after a consumer indicates his or her wish to end the call. If a consumer informs the telephone solicitor at any point during the call that the consumer does not wish to receive future telephonic sales calls or that the consumer wants the solicitor to remove his or her name, telephone number, or other contact information from

the telephone solicitor's list, the telephone solicitors must take the following actions:

1. inform the consumer that his or her contact information will be removed from the solicitor's list for at least one full year;

2. end the call within 10 seconds after the consumer expresses these wishes;

3. refrain from making any more telephonic sales calls to the consumer at any of their associated numbers for at least one full year; and

4. refrain from giving or selling the consumer's name, telephone number, or other contact information to any other entity, or receiving anything of value from any other entity in exchange for the consumer's name, telephone number, or other contact information.

Current law prohibits telephone solicitors from making unsolicited telephonic sales calls to any consumer between 9:00 p.m. and 9:00 a.m. local time at the consumer's location. The bill extends this period by one hour (8:00 p.m. to 9:00 a.m.) and applies the prohibition to telephonic sales calls (1) made to any consumer residential, mobile, or telephonic paging device telephone number and (2) not otherwise prohibited under the bill.

Current law prohibits telephone solicitors from intentionally using blocking devices to circumvent a consumer's use of caller identification services. The bill expands the prohibition by applying it to telemarketers in addition to telephone solicitors and applying it to all use of blocking devices rather than only intentional use. The bill also expands the type of caller identification systems subject to the protection to include those that permit a consumer to see the caller name or location of an incoming telephonic sales call, rather than just the telephone number. The bill eliminates a provision requiring the DCP commissioner to compensate anyone providing material information that results in an investigation of a telephone solicitor and enforcement of this blocking prohibition.

For consumers whose mobile telephone or mobile electronic device telephone number do not appear on the state registry, current law prohibits telephone solicitors from sending text or media message to the number to market or solicit sales of consumer goods without the consumer's prior express written consent. The bill expands this prohibition to apply to calls using soundboard technology, an over-the-top message, or a text or media message. Current law exempts from this prohibition text and media messages from a telecommunications company when the (1) company does not charge a fee and (2) message is connected to an existing unpaid debt, an existing contract between the company and the customer, a wireless emergency alert authorized by federal law, or the customer's previous request for customer service. The bill expands this exemption to also apply to over-the-top messages in the same circumstances. The bill eliminates a more general provision prohibiting telephone solicitors from making unsolicited telephonic sales calls to consumers (1) that are text or media messages to be received on a mobile telephone or mobile electronic device, (2) in the form of faxes, or (3) by using a recorded message device.

The bill references the federal registry rather than the state registry for an existing provision requiring any person who republishes or compiles names, addresses, or phone numbers to sell to telephone solicitors for marketing or sales solicitation purposes to exclude consumers who appear on the registry. Current law authorizes DCP to adopt regulations on provisions governing the availability and distribution of the state registry and notice requirements for consumers wishing to be included on it. The bill requires these regulations to be consistent with information on the federal registry.

Under existing law, violations of Do Not Call registry laws are CUTPA violations. The bill eliminates a provision exempting telephone solicitors from CUTPA liability for making telephonic sales calls to consumers on the Do Not Call registry if the telephone solicitor has demonstrated the following:

1. the telephone solicitor established and implemented written procedures and trained its employees to follow them to comply

with the law,

2. the telephone solicitor deleted from its call list any listing of a consumer on the state registry, and

3. the call was made inadvertently.

By law, unchanged by the bill, telephone solicitors liable under these provisions are subject to a $20,000 fine for each violation, in addition to any CUTPA penalty.

Rebuttable Presumption on Location

For both the telemarketing provisions and the Do Not Call provisions, the bill also establishes a rebuttable presumption that various types of communications have taken place in the state if the communication is made to a Connecticut area code or a to state resident. This rebuttable presumption applies to telephonic sales calls, calls using an automated dialing system or recorded message device, over-the-top messages, text or media messages, and calls using soundboard technology.

Calls to Connecticut Area Codes

The bill prohibits any person (e.g., an individual or legal entity) from initiating a commercial solicitation or telephonic sales call using various types of technology to contact a (1) telephone number with a Connecticut area code or (2) telephone registered to a state resident whose number appears on the federal Do Not Call registry. The provision applies to (1) automated dialing systems or recorded message devices, (2) technology to send an over-the-top message or text or media message, and (3) soundboard technology. (In separate provisions, the bill already prohibits telemarketers and telephone solicitors from making telephonic sales calls to a consumer's residential, mobile, or telephone paging device telephone number if the consumer's name and telephone number appear on the federal registry, regardless of the technology used (§ 13).)

A "commercial solicitation" under the bill is an unsought initiation of a telephone conversation or voice communication to (1) encourage a

consumer to purchase property, goods, or services or (2) obtain personal information or any other thing of value. Under the bill, a "consumer" is any individual who is a resident of this state and a prospective recipient of consumer goods and services. A "voice communication" is a communication made by an individual or an artificial or prerecorded message, including a voice message transmitted directly to a recipient's voicemail regardless of whether the recipient's phone rings as part of the transmission. Automated warnings required by law are not voice communications for these purposes. Similarly, commercial solicitations do not include communications with a consumer who provides advance written nonassignable consent to the communication. Or the consumer may provide electronic nonassignable consent if provided with a clear, conspicuous, detailed disclosure on the scope of this consent before providing it. And the consent only applies to conversations or communications initiated by the person seeking consent. Commercial solicitations also do not include any portion of an unsought voice communication that involves a live conversation between the recipient and someone with whom he or she has an established business relationship. These relationships are existing relationships, not previously terminated by either party, and formed by a voluntary two-way communication between a consumer and an entity or business, based on an application, purchase, or transaction for property, goods, or services the business or entity offers.

The bill also prohibits any person from providing substantial assistance or support to someone initiating a commercial solicitation or telephonic sales call that enables the initiator to initiate, originate, or transmit a commercial solicitation or telephonic sales call if the person knows, or avoids knowing, that the initiator is engaged or intends to engage in fraud or any practice that violates telemarketing and Do Not Call provisions under the bill and existing law.

The bill's provisions do not prohibit the following:

1. any person from designing, manufacturing, or distributing any component, product, or technology that has a commercially significant use other than circumventing or violating the bill's

provisions;

2. any telecommunications provider or other entity from providing Internet access to exclude initiation of a voice communication or text message; or

3. any terminating provider (a telecommunications provider upon whose network a voice communication terminates to a call recipient or end user) from taking any action concerning completion of a voice communication (e.g., restoring a dropped call).

The bill establishes a rebuttable presumption that a commercial solicitation, voice communication, or telephonic sales call made by using an automated dialing system or recorded message device or technology that sends an over-the-top message or text or media message to any telephone number with a Connecticut area code or to a consumer has taken place in the state.

The bill makes violations unfair trade practices under CUTPA and requires violators to be fined $20,000 in addition to any CUTPA penalties.

EFFECTIVE DATE: October 1, 2023

§ 15 — PAID SOLICITORS' DISCLOSURES

Makes several changes in the Connecticut Solicitation of Charitable Funds Act, generally codifying recent caselaw that deemed certain provisions regulating paid solicitors unenforceable on constitutional grounds

The bill makes several changes in the Connecticut Solicitation of Charitable Funds Act, generally codifying recent caselaw that deemed certain provisions regulating paid solicitors unenforceable on constitutional grounds (see *Background*). Regarding registered paid solicitors, the bill:

1. reduces, from 20 days to one business day, the prior notice a solicitor must give to DCP before starting a campaign (i.e., by filing his or her contract and solicitation notice form);

2. eliminates the requirement that copies of the charitable campaign solicitation literature, including the text of any proposed oral solicitations, be shared with DCP ahead of the campaign;

3. eliminates the requirement that a solicitor, before making an oral solicitation, disclose the percentage of the gross revenue that the organization will receive; and

4. correspondingly eliminates the requirement that a written confirmation of an oral pledge include information on the percentage of revenue the organization will receive.

Additionally, the bill eliminates the requirement that DCP publicize on its website the (1) terms of the contract between the solicitor and organization, (2) campaign dates, and (3) percentage of fundraising revenue the solicitor will keep. The bill also eliminates the DCP commissioner's authority to publicize this information elsewhere as she deems appropriate.

The bill narrows the solicitation campaign information solicitors must provide to DCP upon request. Under the bill, while solicitors must still maintain a record of contributors' names and addresses (if known), they are no longer required to share this information with DCP. As under current law, solicitors must still provide DCP, if requested, information on the dates and amounts of contributions. Current law prohibits the department from disclosing this information, except if necessary for investigative or law enforcement purposes. The bill eliminates this restriction on DCP's authority to disclose contributor information.

Background

Solicitation of Charitable Funds Act. By law, the Solicitation of Charitable Funds Act requires charitable organizations that solicit money or support in Connecticut to register with DCP, unless they are exempt (e.g., religious and parent-teacher organizations, certain organizations that normally receive less than $50,000 in contributions annually). Paid solicitors (and some fundraising counsel) are also

required to register, post a bond, and file certain reports (CGS §§ 21a-190d to 21a-190f).

Related Caselaw on Paid Solicitors. In 2021, the U.S. District Court for the District of Connecticut issued a preliminary injunction enjoining DCP from enforcing, on the grounds that they likely violated free speech rights, the Solicitation of Charitable Funds Act's requirements that solicitors:

1. give DCP 20 days' notice, and provide DCP copies of the text of any intended solicitation, before starting a campaign and

2. keep records of donors and donations for DCP to inspect.

Additionally, while the court found that the Act's requirement that solicitors disclose to prospective donors the percentage of a contribution that the charitable organization would receive did not appear to comport with the First Amendment and U.S. Supreme Court caselaw, it did not enjoin DCP from enforcing this requirement, as the department said that it had already stopped enforcing it (*Kissel* v. *Seagull,* 552 F. Supp. 3d 277 (2021)).

EFFECTIVE DATE: Upon passage

§§ 16 & 17 — CHARITABLE ORGANIZATIONS AUDIT REQUIREMENT

Raises the threshold above which a registered charitable organization must submit a formal audit report to DCP, while allowing smaller organizations to instead submit a CPA's financial "review report"

Currently, under the Connecticut Solicitation of Charitable Funds Act (see *Background* for § 15, above), charitable organizations with more than $500,000 in annual gross revenue must include a CPA's audit report in the annual financial report they submit as part of the DCP registration process. Under the bill, this is still a requirement for organizations with over $1 million in gross revenue, but organizations with gross revenues over $500,000 and not in excess of $1 million can instead include a CPA's financial review report.

EFFECTIVE DATE: Upon passage

BACKGROUND

Legislative History

The Senate referred the bill (File 204) to the Judiciary Committee, which reported a substitute that eliminates provisions on price gouging that (1) define price gouging as charging an unconscionably excessive price during certain declared emergencies, (2) expand the price gouging law's application during certain declared emergencies, and (3) give the attorney general exclusive authority to enforce this law.

COMMITTEE ACTION

General Law Committee

Joint Favorable
Yea 22 Nay 0 (03/07/2023)

Judiciary Committee

Joint Favorable Substitute
Yea 36 Nay 0 (04/19/2023)