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STATE OF CONNECTICUT

Testimony in Support of *Senate Bill No. 1058*,
An Act Concerning the Attorney General's Recommendations Regarding Consumer Protection and Financial Reporting by Charitable Organizations
General Law Committee
Tuesday, February 21, 2023

Thank you for the opportunity to submit testimony in support of *Senate Bill No. 1058*, *An Act Concerning the Attorney General's Recommendations Regarding Consumer Protection and Financial Reporting by Charitable Organizations*, which includes a number of proposals to strengthen Connecticut's privacy and consumer protection laws. The statutory changes that the Office of the Attorney General (OAG) recommends in this bill are based on our work enforcing the price gouging statute during the pandemic; preparing to enforce the new Connecticut Data Privacy Act, and assisting consumers who fall victim to data breaches; responding to consumer complaints about exorbitant fees tacked onto concert tickets right before a buyer hits 'purchase;' our multistate investigations of obnoxious and relentless robocallers and telemarketing scammers who commonly prey on seniors; and a recent challenge to Connecticut's Solicitation of Charitable Funds Act.

Section 1-3 would strengthen the price gouging and Connecticut Unfair Trade Practices Act (CUTPA) Statutes

During the pandemic, the Office of the Attorney General discovered that illegal price hikes were caused by sellers higher up the chain of distribution. However, we could not bring enforcement proceedings against the culpable parties because they were beyond the reach of the statute. **Section 1 modifies the price gouging statute, Conn. Gen. Stat. § 42-230, by extending liability for price gouging beyond retailers to bad actors up the chain of distribution.**

Price gouging at the retail level has been illegal in our state since 1986. Unfortunately, certain select bad actors will take advantage in a crisis, like the pandemic, and charge amounts they would never be able to obtain under normal circumstances. The current law presumes that the only bad actors are retailers. In fact, the opposite is true.

During the pandemic, a large number of the 750+ complaints (not including 200+ complaints we received in the past year related to alleged gas retailer price gouging or gas tax holiday violations) that we received during the Governor's emergency declarations concerned small retailers, often "Mom and Pop" store owners, who worked very hard to stock the shelves with items their customers desperately needed, like hand sanitizer and N95 masks. Time and again, these small business owners showed themselves to be caring, good people who sincerely wanted to help customers. Unfortunately, at times, these same people were often on the receiving end of public

displays of frustration about spiking prices. These retail sellers were *not* responsible for those spikes and were not price gouging. There is no question that charging $35 for 16 ounces of hand sanitizer is price gouging. In this scenario, we realized that it was a wholesaler, a supplier, or both who were

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jacking up the prices, forcing retailers to raise the price at the point of sale to obtain the same profit, or just come out even.

Similarly, we participated in a multistate investigation into high egg prices for a three month period at the outset of the pandemic. At the time, retail prices for eggs were extremely volatile and, at times exceptionally high. After an initial investigation, it became clear that grocery stores were not price gouging. They were passing along the increased cost charged by someone up the chain. At that point, our Office had to end the inquiry because retailers were not the cause of the spike. We were unable, under our current price gouging law, to determine whether producers, wholesalers, and/or suppliers were responsible for the egg price spikes. Minnesota and New York opened investigations and favorably resolved the cases. Notably, the list of defendants in the New York action against a mega egg producer and distributor had a subsidiary operating in Connecticut. **Despite knowing that Connecticut consumers were being gouged, our Office was not able to act on their behalf.**

The current price gouging statute has an Achilles heel: it *only* applies to retailers. It does not cover suppliers, wholesalers, and rental and leasing businesses. This bill would remedy that shortcoming to allow us to bring enforcement actions against the culpable parties within the chain of distribution. Price gougers should not be immune from liability when they victimize Connecticut consumers simply because they are not retailers. If the statute is not modified, and we are faced with a new emergency declaration, price gougers will be able to profit with impunity.

The bill also provides a better legal standard for price gouging because the current one is unclear. It states that any increase in price that exceeds the price in the ordinary course of business is prohibited. Law-abiding businesses need better guidance, so this bill prohibits price increases that are "unconscionably excessive." Some state price gouging statutes prohibit a percentage increase over the ordinary price. This is problematic because it provides would-be price gougers with a means to skirt the law and avoid prosecution. If a markup higher than 20% was the price gouging benchmark, violators could raise the price 19% and avoid liability. The "unconscionably excessive" standard will allow the Office of the Attorney General to be fair in enforcing the law.

This bill also updates the statutes so that when we are investigating allegations of unfair trade practices, including price gouging allegations related to suppliers, wholesalers, and others, as proposed in section 1, we are not forced to disclose businesses' sensitive records in the middle of an active investigation or enforcement action. The statute currently requires document disclosures that could be so premature that doing so jeopardizes our access to evidence and could impact the whole case outcome. We may also have to publicly disclose the identity of a target who we do not ultimately pursue, to the detriment of its business reputation. This change would put the OAG's statute on par with many states with whom we partner in multistate enforcement actions allowing us to economize office resources and maximize our negotiating leverage, as we advocate for Connecticut consumers.

Sections 4 and 5 propose minor updates to the Antitrust and Whistleblower Statutes
These sections make minor updates to the Antitrust and Whistleblower statutes, respectively, permitting our Office to erase, rather than "return" electronic records obtained during investigations pursuant to these statutes.

Section 6 though 9 revise Connecticut laws that protect consumer privacy
Each of the amendments proposed in these sections further promotes the protection of Connecticut residents' information—a mission that continues to be crucial in our data-driven world.

Section 6 of the bill would expand the definition of "Personal Information" in Connecticut's data breach notification statute, Conn. Gen. Stat. § 36a-701b, to include precise geolocation data—thereby requiring companies to notify Connecticut residents when their location data is compromised in a data breach. Geolocation data poses significant privacy and security concerns as it can reveal intimate details of an individual's routines, choices, and beliefs, such as one's personal health decisions. While new state consumer privacy laws like the recently enacted Connecticut Data Privacy Act ("CTDPA") acknowledge the sensitivity of this data and provide consumers with rights over how it may be processed and disclosed, these laws do not require that consumers be notified when their geolocation data may be at risk due to a data breach. By making this an explicit requirement under Connecticut's breach notification statute, consumers will be better situated to exercise their rights under the CTDPA—and companies will be further incentivized to ensure that any geolocation data they collect remains well-protected.

Section 6 would also revise subsection (e) of the statute to require that companies providing "substitute notice" of a data breach justify to the Attorney General that this less effective form of notice is appropriate based on criteria already established in the statute. Substitute notice is a generic form of notice communicated via a company's website or through the media that the statute permits only when the cost of providing "direct notice" by mail, email, or phone is excessive, or the breached company does not have the necessary contact information to do so. As affected individuals are much more likely to learn of a breach and take necessary precautions through a direct notice tailored to them and delivered to an established address, it is important that companies providing substitute notice sufficiently demonstrate to our Office—upon notifying us of a data breach—that providing direct notice would be unduly burdensome.

Section 7 of the Bill would amend Connecticut's "Safeguards Law"—Conn. Gen. Stat. § 42-471—to properly align the statute's penalty structure with that of Connecticut's data breach notification statute and the CTDPA by tying violations to the Connecticut Unfair Trade Practices Act. The Safeguards Law is consequential to most, if not all, of our Office's privacy and data breach work and provides the foundation for claims that companies have engaged in unreasonable information security practices. As such, the enforcement authority provided under the Safeguards Law should mirror Connecticut's other state data privacy and security frameworks.

Section 8 of the Bill is designed to operationalize the Privacy Guaranty and Enforcement Fund ("Privacy Fund") established by Conn. Gen. Stat. § 42-472a. The Privacy Fund was created to provide

relief to victims of identity theft and is unique amongst the states. As the Privacy Fund was modeled off other guaranty funds, it has several design flaws that make it inoperable. For example, the statute requires that consumers obtain a judgment to prove harm before they can secure relief—a nearly impossible hurdle—and does not offer an alternative claims process. It is also currently unfunded. The proposed changes to the statute are designed to achieve the legislature's original policy objectives by making it easier for identity theft victims to secure relief and ensuring that the Privacy Fund is appropriately funded.

Finally, Section 9 offers a technical correction to a liability standard articulated in the CTDPA regarding the processing of personal data relating to a consumer between the ages of 13 and 16. The current language conflates two standards of liability—actual knowledge "and" willful disregard—with respect to when a company must secure a consumer's consent to process data for the purposes of targeted advertising or sell such data. Revising the language to actual knowledge "or" willful disregard appropriately unbundles the two standards and aligns with the California Consumer Privacy Act ("CCPA")—the only other state law with corresponding protections for teenagers. As teens are uniquely vulnerable to privacy harms, it is important to accurately articulate this liability standard to avoid an unintended barrier to enforcement.

Section 10: Addressing abuses in ticket pricing

Section 10 is a first step in reforming unfair, anti-consumer ticketing practices in the live event industry and would revise Connecticut's disclosure law on ticketing surcharges, which has not been updated since 1991. This section is modeled on a law enacted in New York in 2022 and requires ticket sellers to disclose the "all-in" price of a ticket, inclusive of all fees and surcharges, from the time the ticket is selected for purchase. Disclosure of fees from the start of the ticket purchase process will save consumers valuable time selecting the perfect seat for a reasonable price only to discover a huge mark-up in fees and surcharges when they are about to click "purchase." Also, following New York's lead, this provision requires resellers to disclose how much they originally paid for the tickets they are selling. More can certainly be done to address the types of anti-consumer, anti-competitive, market manipulation that we have seen around high demand shows and events. Our Office is closely following the discussion of this topic nationally.

Section 11 – 16 and 20: Updates to Consumer Protections with regard to Telemarketing Abuses

The robocall-blocking company YouMail states that in 2022, Connecticut consumers received approximately 471 million robocalls. Of those, 26%, or about one out of every four robocalls, were scam calls.[1] Call centers establish themselves overseas to evade law enforcement and then troll for victims using technology like automated dialing systems, chatbots, and prerecorded calls to reach as many people as possible. While these con artists often target the elderly, they will prey upon anyone with who they can engage. The proposal before you would be a first step in holding these bad actors accountable and restoring consumer confidence in the telecommunications system we all rely upon.

[1] Monthly Robocalls for Connecticut | YouMail Robocall Index

These sections update Connecticut law with regard to the regulation of robocalls and telemarketing to account for current technology and tactics used by fraudsters, which are commonly based out of state. These sections expand the definition of communication to cover text messages and over-the-top (OTT) text messages sent through apps like WhatsApp and Facebook Messenger; update technology terms like automatic dialing and announcing device, consistent with caselaw; ban Voice over Internet Protocol (VoIP) providers from assisting scammers by permitting them access to the U.S. telecom network; make it clear that this statute is intended to protect Connecticut residents and consumers with Connecticut area codes, regardless of where the calls originate; bar telemarketers from contacting Connecticut residents before 9 a.m. and after 8 p.m.; strengthen the disclosures that telemarketers must make to enable call recipients to identify the callers and clarify the protections provided by the Federal Trade Commission's 'Do Not Call' list.

Importantly, this bill does not curtail communications made for noncommercial purposes, including calls, texts, or other messages related to religious, charitable, or political speech or solicitations or where the caller has a preexisting relationship with the consumer or the consumer has given express written consent to be contacted.

This legislation offers Connecticut consumers some relief, first by prohibiting U.S.-based telecommunications businesses called VoIP providers from providing essential assistance to overseas fraudsters by routing their calls through to unwitting recipients, effectively choking off illegal phone traffic at its point of entry to the United States. Similar efforts have seen success at the federal level.

Based on our Office's work with other states and an industry trade group that provides traceback information (at the request of Congress and the Federal Communications Commission), we know that a subset of American VoIP providers is willing to take illegal traffic and route it to consumers. Our investigations show that they choose to look the other way in order to remain on fraudsters' payrolls. But without willing American VoIP providers, these scam calls cannot get through to American consumers. Proposals like the one before you aim to ramp up a VoIP provider's legal liability and make working for bad actors less attractive.

Second, this proposal makes it clear that Connecticut's law covers and protects the contemporary ways we communicate—including through live calls, autodialing systems, chatbots, texts and OTT messaging apps like WhatsApp and Facebook Messenger. In particular, the bill updates the technology term "automated dialing system" in recognition of recent U.S. Supreme Court precedent to make it clear that our law covers not only robocallers who dial numbers in numeric or random

order, but the more common and effective approach of creating and buying lists (often easily found on the internet) to target particular individuals or groups of consumers.

Third, this bill establishes a rebuttable presumption that when a telecom company routes a scam call to someone in Connecticut or with a Connecticut phone number bearing a Connecticut area code, it is subject to Connecticut's laws. That may seem obvious, but one claim made by defendant VoIPs is

that there is no legal connection to our state even though they admit to routing calls to people in Connecticut, and we have evidence showing they know their client call centers are out to victimize Connecticut consumers. Florida recently enacted a robocall law with a similar rebuttable presumption that puts the onus on defendants to prove they should not be subject to Florida law despite the fact that the call was directed to a Floridian.

Fourth, the bill offers several commonsense updates on parameters for legal calls. These are in keeping with common types of restrictions across the country. Currently, under Connecticut law, telemarketers must have a signed contract before they can take a person's money. This bill updates the law to reflect that consumers have a variety of payment forms from which to choose: credit cards, debit cards, and peer-to-peer payment platforms like Venmo or PayPal, to name a few. The bill also prescribes a permissible calling window. Everyone needs a break from being contacted. It provides for a telemarketing "blackout period" at the time of day when most people are trying to sleep and allows communications only between 9:00 a.m. and 8:00 p.m.

Finally, this bill affirms existing language that contacting a Connecticut consumer on the 'Do Not Call' list maintained by the Federal Trade Commission without prior express written consent is also a violation of the Connecticut Unfair Trade Practices Act.

This will not be the last time we seek to amend our statutes to adapt to evolving technology and new scam schemes. Bad actors and their facilitators will continue to seek ways to skirt the law and troll victims.

Section 17: Bringing the Solicitation of Charitable Funds Act in line with a federal court order
Section 17 of this bill arose from a First Amendment challenge to several provisions of the Connecticut Solicitation of Charitable Funds Act relating to paid solicitor's right to engage in speech involving charitable fundraising. In July 2021, the U.S. District Court for the District of Connecticut issued a preliminary injunction that enjoined the Department of Consumer Protection (DCP) from enforcing the 20-day notice and literature requirements of Conn. Gen Stat. §21a-190f(c) and the donor record-keeping and inspection requirement of Conn. Gen Stat. §21a-190f(k). Subsequently, our Office negotiated a stipulated judgment on behalf of DCP. As part of that judgment, DCP was enjoined from enforcing the 20-day notice and literature requirements of §21a-190f(c), the disclosure requirement of §21a-190f(k) insofar as it applies to donor names and addresses, and the financial disclosure requirements in Conn. Gen. Stat. §21a-190f(e), which were previously found by the Supreme Court to be unconstitutional and which DCP no longer enforces.

Sections 18 and 19 propose some changes to the auditing obligations of charitable organizations
These sections have been proposed by the Connecticut Society of Certified Public Accountants and would enable certain charitable organizations to include with their annual financial statements a review report in lieu of an audit report. We take no position on these provisions.

For additional information, please contact Cara Passaro, Chief of Staff to the Attorney General at cara.passaro@ct.gov.