



Senate

General Assembly

February Session, 2000

File No. 136

Senate Bill No. 365

Senate, March 21, 2000

The Committee on General Law reported through SEN. COLAPIETRO of the 31st Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

An Act Concerning Telephone Solicitation.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

- 1 Section 1. (NEW) (a) As used in this section:
- 2 (1) "Commissioner" means the Commissioner of Consumer
- 3 Protection;
- 4 (2) "Consumer" means any individual who is a resident of this state
- 5 and an actual or prospective purchaser, lessee or recipient of consumer
- 6 goods or services;
- 7 (3) "Consumer goods or services" means any article or service that is
- 8 purchased, leased, exchanged or received primarily for personal,
- 9 family or household purposes, and includes, but is not limited to,
- 10 stocks, bonds, mutual funds, annuities and other financial products;
- 11 (4) "Department" means the Department of Consumer Protection;

12 (5) "Doing business in this state" means conducting telephonic sales
13 calls (A) from a location in this state, or (B) from a location outside of
14 this state to consumers residing in this state;

15 (6) "Marketing or sales solicitation" means the initiation of a
16 telephone call or message to encourage the purchase or rental of, or
17 investment in, property, goods or services, that is transmitted to any
18 person, but does not include a call or message (A) to any person with
19 that person's prior express invitation or permission, (B) by a tax-
20 exempt nonprofit organization, or (C) to promote the success or defeat
21 of (i) a candidate's campaign for nomination or election, or (ii) a
22 referendum question;

23 (7) "Telephonic sales call" means a call made by a telephone solicitor
24 to a consumer for the purpose of (A) engaging in a marketing or sales
25 solicitation, (B) soliciting an extension of credit for consumer goods or
26 services, or (C) obtaining information that will or may be used for the
27 direct marketing or sales solicitation or exchange of or extension of
28 credit for consumer goods or services;

29 (8) "Telephone solicitor" means any individual, association,
30 corporation, partnership, limited partnership, limited liability
31 company or other business entity, or a subsidiary or affiliate thereof,
32 doing business in this state that makes or causes to be made a
33 telephonic sales call;

34 (9) "Unsolicited telephonic sales call" means any telephonic sales call
35 other than a call made: (A) In response to an express request of the
36 person called; or (B) primarily in connection with an existing debt or
37 contract, payment or performance of which has not been completed at
38 the time of the call; and

39 (10) "Caller identification service or device" means any telephone
40 service or device which permits a consumer to see the telephone
41 number of incoming calls.

42 (b) The department shall establish and maintain a "no sales
43 solicitation calls" listing of consumers who do not wish to receive
44 unsolicited telephonic sales calls. The department may contract with a
45 private vendor to establish and maintain such listing, provided the
46 private vendor has maintained national "no sales solicitation calls"
47 listings for more than two years. The department shall provide notice
48 to consumers of the establishment of a "no sales solicitation calls"
49 listing. Any consumer who wishes to be included on such listing shall
50 notify the department in such manner and at such times as the
51 commissioner may prescribe. A consumer on such listing shall be
52 deleted from such listing upon the consumer's written request. The
53 department shall update such listing not less than quarterly and shall
54 make such listing available to telephone solicitors and other persons
55 upon request. The commissioner may charge a reasonable fee for
56 providing such listing and may make such listing available in printed
57 or electronic format, or both, in the commissioner's discretion.

58 (c) A telephone solicitor shall maintain a "do not call" list of
59 consumers who do not wish to receive the unsolicited telephonic sales
60 calls of that particular telephone solicitor. Any consumer receiving an
61 unsolicited telephonic sales call may state to the telephone solicitor
62 that the consumer no longer wishes to receive unsolicited telephonic
63 sales calls from the telephone solicitor. Such a statement by the
64 consumer is deemed a request to be placed on the telephone solicitor's
65 "do not call" list. When a consumer requests to be placed on a
66 telephone solicitor's "do not call" list, the telephone solicitor shall
67 provide the consumer with a confirmation number which shall
68 provide confirmation of the consumer's request to be placed on the
69 telephone solicitor's "do not call" list.

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

74 department under subsection (b) of this section, (2) if the consumer
75 previously requested to be placed on the telephone solicitor's "do not
76 call list" pursuant to subsection (c) of this section, (3) to be received
77 between the hours of nine o'clock p.m. and nine o'clock a.m. and
78 between five o'clock p.m. and seven o'clock p.m., local time, at the
79 consumer's location, (4) in the form of electronically transmitted
80 facsimiles, or (5) by use of an automated dialing or recorded message
81 device.

82 (e) No telephone solicitor shall knowingly use any method to block
83 or otherwise circumvent a consumer's use of a caller identification
84 service or device.

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

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

105 (g) The commissioner may adopt regulations, pursuant to chapter
106 54 of the general statutes, to carry out the provisions of this section.
107 Such regulations may include, but shall not be limited to, provisions
108 governing the availability and distribution of the listing established
109 under subsection (b) of this section, notice requirements for consumers
110 wishing to be included on the listing established under subsection (b)
111 of this section, and a schedule for the payment of fees paid by those
112 who wish to obtain the "no sales solicitation calls list".

113 (h) A violation of any of the provisions of this section shall be
114 deemed an unfair or deceptive trade practice under subsection (a) of
115 section 42-110b of the general statutes.

116 Sec. 2. (NEW) (a) There is established an account to be known as the
117 "no sales solicitation calls listing account". The account may contain
118 any moneys required by law to be deposited in the account. Any
119 balance remaining in the account at the end of any fiscal year shall be
120 carried forward in the account for the fiscal year next succeeding. The
121 account shall be used by the department to administer the provisions
122 of section 1 of this act.

123 (b) Notwithstanding any provision of the general statutes to the
124 contrary, the amount of any fees received by the commissioner or the
125 commissioner's legally authorized representative or agent pursuant to
126 section 1 of this act shall, upon deposit in the General Fund, be
127 credited to the account established by subsection (a) of this section.

GL Committee Vote: Yea 13 Nay 0 JF

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: Cost and Revenue Gain (“No Sales Solicitation Calls Listing Fund”)

Affected Agencies: Department of Consumer Protection

Municipal Impact: None

Explanation

State Impact:

The bill prohibits telephone solicitors from making certain unsolicited calls and requires the Department of Consumer Protection (DCP) to operate a “do not call” list, or to contract with a qualified organization to maintain such a list. Additionally the bill establishes a separate, non-lapsing account, known as the “No Sales Solicitation Calls Listing Account”, within the general fund. The bill authorizes the DCP commissioner to adopt regulations to establish a fee paid by telephone solicitors to obtain copies of the list, such fees will be deposited in the newly created fund. It is anticipated that maintaining the “do not call” list, or contracting to have such a list maintained, will result in a cost to the DCP. However, it is assumed that the DCP commissioner will adopt fees sufficient to pay for maintaining the list, thus no fiscal impact is anticipated. In the event the fees are insufficient, an indeterminate cost may result.

The bill requires the DCP to notify customers of the establishment of

the list, and to adopt implementing regulations, which can be handled within the agency's anticipated budgetary resources, thus there is no fiscal impact.

Violations of the bill are deemed to be an unfair trade practice. Under the Unfair Trade Practices Act, DCP has two methods for resolving complaints: 1) formal administrative hearings; or 2) forwarding the complaint to the Attorney General's office for litigation. If most of the cases are handled administratively by DCP, the workload increase to the Office of the Attorney General is expected to be minimal and can be handled within the agency's anticipated budgetary resources. Under the Unfair Trade Practices Act, civil penalties can be imposed for violations, the extent of the additional revenue cannot be determined, as it would depend upon the number of violations which occurred and the amount of the penalties that are imposed. There would be a minimal workload increase for the DCP associated with increased consumer inquiries and complaints and the possible hearings as a result of this bill.

OLR Bill Analysis

SB 365

AN ACT CONCERNING TELEPHONE SOLICITATION.**SUMMARY:**

This bill prohibits telephone solicitors from making, or causing to be made, unsolicited telephonic sales calls to consumers who have registered their wish not to receive them with (1) a state "do not call" list or (2) a company's own "do not call" list. It authorizes the Department of Consumer Protection (DCP) to operate the state "No Sales Solicitation Calls" list or to contract with an organization that has maintained a national list for at least two years to operate it.

The bill establishes a non-lapsing account that DCP may use to administer the program. It authorizes the DCP commissioner to adopt regulations that can include a fee to obtain the state "No Sales Solicitation Calls" list. It requires DCP to deposit fees charged to acquire the list into the account.

The bill prohibits telephone solicitors from calling before 9:00 a.m., between 5:00 p.m. and 7:00 p.m., and after 9:00 p.m. Federal law already prohibits calls before 8:00 a.m. and after 9:00 p.m.

The bill also prohibits telephone solicitors from (1) using automated dialing or recorded message devices, (2) sending electronically transmitted facsimiles, and (3) knowingly blocking or circumventing a consumer's use of Caller ID service or device.

It authorizes the DCP commissioner to adopt implementing regulations.

The bill requires list marketers to delete from their marketing lists and underlying databases the names, addresses, and telephone numbers of consumers whose names are on the state list. This requirement applies whether or not the names on it were obtained from published

telephone directories or from other sources. The bill exempts both telephone companies that publish telephone directories or cause them to be published and anyone publishing telephone directories under an agreement with a telephone company from its requirement relating to marketing lists.

It makes a violation of its provisions an unfair or deceptive trade practice.

EFFECTIVE DATE: October 1, 2000

TELEPHONE SOLICITORS DOING BUSINESS IN THIS STATE

Under the bill, a "consumer" is a state resident who is an actual or prospective purchaser, lessee, or recipient of consumer goods or services. "Consumer goods or services" include articles and services acquired primarily for personal, family, or household purposes, including financial products such as stocks, bonds, mutual funds, and annuities. A solicitor is "doing business in this state" when he is conducting sales calls (1) from a location in this state or (2) from outside of the state to consumers residing here.

The bill defines "telephone solicitor" as an individual or business doing business in this state that makes or causes to be made telephonic sales calls. A "telephonic sales call" is a telephone call made by a solicitor to (1) engage in a marketing or sales solicitation, (2) solicit an extension of credit for such goods or services, or (3) obtain information to use in the direct solicitation of a sale or credit extension. "Marketing or sales solicitation" means making a telephone call or sending a message to encourage the purchase or rental of, or investment in, property, goods, or services except those sent (1) with the consumer's prior express permission, (2) by a tax-exempt nonprofit organization, or (3) to promote the success or defeat of a political candidate or referendum question.

Such a call is an "unsolicited telephonic sales call" if it is not made (1) in response to an express request of the person called or (2) primarily in connection with an existing debt or contract that has not been paid or performed.

STATE "NO SALES SOLICITATIONS CALLS" LIST

The bill allows any consumer who wishes to be on the state list to notify DCP in the way and at the times the DCP commissioner prescribes. The bill requires DCP to notify consumers of the list. A consumer must be deleted from the list when he requests in writing. DCP must update the list at least quarterly and make it available on request. DCP may charge a reasonable fee for it and distribute it in printed or electronic formats, or both.

COMPANY "DO NOT CALL" LISTS

The bill requires telephone solicitors to establish a list of consumers who inform them that they do not wish to receive unsolicited telephone sales calls from them. Under the bill, telephone solicitors must place a consumer's name on their list whenever a consumer says that he does not wish to receive unsolicited telephone sales calls. The bill requires telephone solicitors to provide a consumer with a confirmation number that is proof that the consumer asked to be placed on the list.

FACSIMILES AND AUTODIALERS

The bill prohibits telephone solicitors from (1) using autodialers (2) using recorded messages and (3) soliciting via electronic facsimiles. A violator is subject to the Connecticut Unfair Trade Practices Act (CUTPA). Current law prohibits anyone from sending advertisement or unsolicited offers to sell through a machine that sends electronic facsimiles or one that automatically sends recorded telephone messages. The sole means of enforcement is private suit. The law also prohibits using any device that sends an unrecorded telephone message for a commercial purpose that continues after the called person hangs up and imposes a fine of up to \$500.

IMPLEMENTING REGULATIONS

The bill authorizes the DCP commissioner to adopt regulations that may include (1) provisions concerning the availability and distribution of the state list, (2) notice requirements for consumers who wish to put their names on the state list, and (3) a schedule of fees to obtain the

state list.

BACKGROUND

CONNECTICUT UNFAIR TRADE PRACTICES ACT

Under (CUTPA), the consumer protection commissioner may 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, accept voluntary statements of compliance, and issue regulations defining what constitutes an unfair trade practice. The act 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 up to \$5,000 for willful violations and \$25,000 for violating restraining orders.

COMMITTEE ACTION

General Law Committee

Joint Favorable Report

Yea 13 Nay 0