

TESTIMONY OF ROBERT M. LANGER

CONCERNING RAISED BILL NO. 922

“AN ACT CONCERNING THE CONNECTICUT UNFAIR TRADE PRACTICES ACT”

GENERAL LAW COMMITTEE PUBLIC HEARING

FEBRUARY 26, 2013

My name is Robert M. Langer. I am a partner in the Hartford office of the law firm, Wiggins and Dana LLP. However, I appear before the General Law Committee today on my own accord, and not for any client. I appear here today to explain why I oppose Raised Bill No. 922.

By way of brief background, prior to entering private practice in 1994, I served as an Assistant Attorney General for the Connecticut Attorney General's Office beginning in 1973. In 1976, I was selected by Attorney General Carl R. Ajello to head the Consumer Protection Department of that Office. My clients were the Connecticut Department of Consumer Protection and Commissioner of Consumer Protection, Mary M. Heslin. I continued to serve as the Assistant Attorney General in charge of consumer protection for 18 years, until I joined my current firm. To be clear, I do not speak today on behalf of either agency.

In 1976, on behalf of Attorney General Ajello and Commissioner Heslin, I drafted the language that was introduced by Representative Raymond C. Ferrari and became Public Act No. 76-303. The amendment added the language now found in Conn. Gen. Stat. § 42-110b(b), and it is that very language that Raised Bill No. 922 now seeks to eliminate. Raised Bill No. 922 also seeks to eliminate the language in Conn. Gen. Stat. § 42-110b(c), language added in 1975 in Public Act No. 75-618, that links the Commissioner's regulation-making authority to the FTC Act.

This is the 40th anniversary of the adoption of the Connecticut Unfair Trade Practices Act ("CUTPA"). CUTPA is known as a "Little FTC Act," in that it is tethered to the Federal Trade Commission Act. As stated in Conn. Gen. Stat. § 42-110b(b), interpretations given by the Federal Trade Commission and the federal courts to Section 5(a)(1) of the Federal Trade Commission Act shall serve as a "guide" to both the Commissioner of Consumer Protection and the courts of our state with regard to interpreting the meaning of the elusive terms "unfair" and "deceptive," as well as the phrase "unfair methods of competition."¹

During the 40 year history of CUTPA, both the judiciary and practitioners have come to rely upon FTC interpretations of both "unfairness" and "deception." I am acutely aware of CUTPA's heavy reliance upon FTC interpretations because, in addition to my 40 combined years in the Attorney General's Office and in private practice, I also co-author a treatise on CUTPA entitled, "Unfair Trade Practices, Business Torts and Antitrust," volume 12 of the Connecticut Practice Series published by Thomson Reuters. The current edition exceeds 1600 pages, and includes over 5000 decisions. Moreover, for the past 34 years, I have served as an Adjunct Professor in UConn's MBA Program in Hartford teaching consumer protection, antitrust and constitutional law.

I respectfully urge the Committee to consider the following - simply untethering CUTPA from any connection to the FTC Act may have quite unexpected or unanticipated consequences. How will members of the judiciary respond? What sources will practitioners and the judiciary utilize as a guide? Frankly, one cannot predict whether those consequences will benefit or harm

¹ The "guided by" language in Conn. Gen. Stat. § 42-110b(b), or substantially similar language, is also contained in the Little FTC Acts of the following states: Alabama, Alaska, Arizona, Florida, Georgia, Hawaii, Idaho, Illinois, Maine, Maryland, Massachusetts, Montana, New Hampshire, New Mexico, Ohio, Rhode Island, South Carolina, Tennessee, Texas, Vermont, Washington, and West Virginia. See ABA Section of Antitrust Law, CONSUMER PROTECTION LAW DEVELOPMENTS 378 (2009).

consumers. Importantly, I should add that since CUTPA provides a remedy for injured businesses, when I use the term “consumer” I do not mean to exclude business plaintiffs.

As I am sure this Committee is well aware, since its adoption, some practitioners, academicians and jurists have raised concerns about CUTPA’s extraordinary scope or reach, precisely because the meaning of the terms “unfair” and “deceptive” are so imprecise. However, with the Federal Trade Commission Act as a guide, as CUTPA has matured into adulthood, the abuses I personally witnessed have diminished. Thus, two diametrically different outcomes are quite possible if Raised Bill No. 922 becomes law – both of which would be very bad for public policy. On the one hand, untethering CUTPA from the FTC Act could result in severely curtailing remedies for consumers depending upon how the judiciary responds to the change in the law. On the other hand, untethering CUTPA from the FTC Act could also result in a dramatic increase in the misuse of the statute. We could easily return to the early days of CUTPA when the modes of analysis were far less well defined, and as a result, claims were asserted solely for the purpose of raising the stakes in the litigation, because as you well know, CUTPA provides for punitive damages in addition to attorney’s fees to the winning plaintiff.

Please do not permit this bill to become law.

Thank you.