

House of Representatives, March 26, 1998. The Committee on General Law reported through REP. FOX, 144th DIST., Chairman of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE USE OF THE NAMES OF MUNICIPALITIES IN ASSUMED OR FICTITIOUS BUSINESS NAMES CONTAINED IN PRINTED ADVERTISEMENTS.

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

1 Section 35-1 of the general statutes is
2 repealed and the following is substituted in lieu
3 thereof:

4 (a) No person, except as [hereinafter]
5 provided IN THIS SUBSECTION, shall conduct or
6 transact business in this state, under any assumed
7 name, or under any designation, name or style,
8 corporate or otherwise, other than the real name
9 or names of the person or persons conducting or
10 transacting such business, unless there has been
11 filed, in the office of the town clerk in the town
12 in which such business is or is to be conducted or
13 transacted, a certificate stating the name under
14 which such business is or is to be conducted or
15 transacted and the full name and post-office
16 address of each person conducting or transacting
17 such business or, in the case of a corporation or
18 limited liability company using such an assumed
19 name, its full name and principal post-office
20 address. Such certificate shall be executed by all
21 of such persons or, in the case of a corporation

22 or limited liability company, by an authorized
23 officer thereof, and acknowledged before [some] AN
24 authority qualified to administer oaths. Each town
25 clerk shall keep an alphabetical index of the
26 names of all persons filing such certificates and
27 of all names or styles assumed as [hereinbefore]
28 provided IN THIS SUBSECTION and, for the indexing
29 and filing of each such certificate, shall receive
30 the statutory filing fee for documents established
31 in section 7-34a, to be paid by the person filing
32 such certificate. A copy of any such certificate,
33 certified by the town clerk in whose office the
34 same has been filed, shall be presumptive
35 evidence, in all courts in this state, of the
36 facts [therein] contained IN SUCH CERTIFICATE. The
37 provisions of this [section] SUBSECTION shall not
38 prevent the lawful use of a partnership name or
39 designation if such partnership name or
40 designation includes the true surname of at least
41 one of the persons composing such partnership.
42 This [section] SUBSECTION shall not apply to: (1)
43 Any limited partnership, as defined in section
44 34-9, provided such limited partnership (A) has
45 (i) filed a certificate as provided for in section
46 34-10, or (ii) registered with the Secretary of
47 the State as provided in section 34-38g and (B)
48 conducts or transacts business under the name
49 stated in the certificate or registered with the
50 Secretary of the State, or (2) any limited
51 liability company, as defined in section 34-101,
52 AS AMENDED BY SECTIONS 1 AND 2 OF PUBLIC ACT
53 97-70, provided such limited liability company (A)
54 has (i) filed articles of organization as provided
55 for in section 34-120, or (ii) registered with the
56 Secretary of the State as provided in section
57 34-223 and (B) conducts or transacts business
58 under the name stated in the articles of
59 organization or registered with the Secretary of
60 the State. Any person conducting or transacting
61 business in violation of the provisions of this
62 [section] SUBSECTION shall be fined not more than
63 five hundred dollars or imprisoned not more than
64 one year. Failure to comply with the provisions of
65 this [section] SUBSECTION shall be deemed to be an
66 unfair or deceptive trade practice under
67 subsection (a) of section 42-110b.
68 (b) NO PERSON SHALL USE, IN ANY PRINTED
69 ADVERTISEMENT, AN ASSUMED OR FICTITIOUS NAME FOR

70 THE CONDUCT OF SUCH PERSON'S BUSINESS THAT
71 INCLUDES THE NAME OF ANY MUNICIPALITY IN THIS
72 STATE IN SUCH A MANNER AS TO SUGGEST THAT SUCH
73 PERSON'S BUSINESS IS LOCATED IN SUCH MUNICIPALITY
74 UNLESS: (1) SUCH PERSON'S BUSINESS IS, IN FACT,
75 LOCATED IN SUCH MUNICIPALITY; OR (2) SUCH PERSON
76 INCLUDES IN ANY SUCH PRINTED ADVERTISEMENT THE
77 ACTUAL BUSINESS ADDRESS OF SUCH PERSON, INCLUDING
78 THE CITY OR TOWN AND, IF LOCATED OUTSIDE OF
79 CONNECTICUT, THE STATE IN WHICH SUCH PERSON'S
80 BUSINESS IS LOCATED. THIS SUBSECTION SHALL NOT
81 APPLY TO THE USE OF (A) ANY TRADEMARK OR SERVICE
82 MARK REGISTERED UNDER THE LAWS OF THIS STATE OR
83 UNDER FEDERAL LAW, (B) ANY SUCH NAME THAT, WHEN
84 APPLIED TO THE GOODS OR SERVICES OF SUCH PERSON'S
85 BUSINESS, IS MERELY DESCRIPTIVE OF THEM, OR (C)
86 ANY SUCH NAME THAT IS MERELY A SURNAME. A
87 VIOLATION OF THE PROVISIONS OF THIS SUBSECTION BY
88 A PERSON CONDUCTING BUSINESS UNDER AN ASSUMED OR
89 FICTITIOUS NAME THAT INCLUDES THE NAME OF A
90 MUNICIPALITY IN THIS STATE SHALL BE DEEMED AN
91 UNFAIR OR DECEPTIVE TRADE PRACTICE UNDER
92 SUBSECTION (a) OF SECTION 42-110b. NOTHING IN THIS
93 SUBSECTION SHALL BE CONSTRUED TO IMPOSE ANY
94 LIABILITY ON ANY PUBLISHER THAT RELIES ON THE
95 WRITTEN ASSURANCES OF A PERSON PLACING SUCH
96 PRINTED ADVERTISEMENT THAT SUCH PERSON HAS
97 AUTHORITY TO USE ANY SUCH ASSUMED OR FICTITIOUS
98 NAME.

99 GL COMMITTEE VOTE: YEA 16 NAY 0 JFS

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"THE FOLLOWING FISCAL IMPACT STATEMENT AND BILL ANALYSIS ARE PREPARED FOR THE BENEFIT OF MEMBERS OF THE GENERAL ASSEMBLY, SOLELY FOR PURPOSES OF INFORMATION, SUMMARIZATION AND EXPLANATION AND DO NOT REPRESENT THE INTENT OF THE GENERAL ASSEMBLY OR EITHER HOUSE THEREOF FOR ANY PURPOSE."

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FISCAL IMPACT STATEMENT - BILL NUMBER SHB 5305

STATE IMPACT	See Explanation Below
MUNICIPAL IMPACT	None
STATE AGENCY(S)	Department of Consumer Protection, Office of the Attorney General, Judicial Department

EXPLANATION OF ESTIMATES:

The bill makes using an assumed or fictitious business name, that includes the name of a Connecticut municipality in an advertisement in a way that implies the business is located in that municipality, a violation of the Unfair Trade Practices Act.

Under the Unfair Trade Practices Act, the Department of Consumer Protection has basically 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.

If these cases are brought to court, there would also be an absorbable workload increase for the Judicial Department.

Under the Unfair Trade Practices Act, civil penalties can be imposed for violations, thus, a revenue gain to the General Fund is anticipated. 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.

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OLR BILL ANALYSIS

SHB 5305

AN ACT CONCERNING THE USE OF THE NAMES OF MUNICIPALITIES IN ASSUMED OR FICTITIOUS BUSINESS NAMES CONTAINED IN PRINTED ADVERTISEMENTS

SUMMARY: This bill prohibits anyone from using an assumed or fictitious business name that includes the name of a Connecticut municipality in a printed advertisement in a way that implies the business is located in that municipality unless (1) the business is located in that municipality; (2) the advertisement includes the actual business address, including its municipality and; (3) if it is located in another state, the state. A violation is an unfair trade practice.

The provision does not apply to (1) registered trademarks; (2) names that, when applied to the goods being sold, are descriptive; or (3) names that are surnames.

The bill provides that it is not to be construed to impose liability on a publisher that relies on the written assurances of the person placing the advertisement that the person has the authority to use an assumed or fictitious name.

EFFECTIVE DATE: October 1, 1998

BACKGROUND

Connecticut Unfair Trade Practices Act

Under the Unfair Trade Practices Act, 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 bring suit. 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 violating restraining orders.

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute
Yea 16 Nay 0