

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 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
3 Consumer Protection;

4 (2) "Consumer" means any individual who is a
5 resident of this state and an actual or
6 prospective purchaser, lessee or recipient of
7 consumer goods or services;

8 (3) "Consumer goods or services" means any
9 article or service that is purchased, leased,
10 exchanged or received primarily for personal,
11 family or household purposes, and includes, but is
12 not limited to, stocks, bonds, mutual funds,
13 annuities and other financial products;

14 (4) "Department" means the Department of
15 Consumer Protection;

16 (5) "Doing business in this state" means
17 conducting telephonic sales calls (A) from a
18 location in this state or (B) from a location
19 outside of this state to consumers residing in
20 this state;

21 (6) "Telephonic sales call" means a call made
22 by a telephone solicitor to a consumer, including
23 calls made by use of automated dialing or recorded
24 message devices, for the purpose of (A) soliciting

25 a sale, lease or exchange of any consumer goods or
26 services, (B) soliciting an extension of credit
27 for consumer goods or services, or (C) obtaining
28 information that will or may be used for the
29 direct solicitation of a sale, lease or exchange
30 of or extension of credit for consumer goods or
31 services;

32 (7) "Telephone solicitor" means any
33 individual, association, corporation, partnership,
34 limited partnership, limited liability company or
35 other business entity, or a subsidiary or
36 affiliate thereof, doing business in this state
37 that makes or causes to be made a telephonic sales
38 call;

39 (8) "Unsolicited telephonic sales call" means
40 any telephonic sales call other than a call made:
41 (A) In response to an express request of the
42 person called; (B) primarily in connection with an
43 existing debt or contract, payment or performance
44 of which has not been completed at the time of the
45 call; or (C) to any person with whom the telephone
46 solicitor making the call has a prior or existing
47 business relationship; and

48 (9) "Marketing or sales solicitation" means
49 the initiation of a telephone call or message to
50 encourage the purchase or rental of, or investment
51 in, property, goods or services, that is
52 transmitted to any person, but does not include a
53 call or message (A) to any person with that
54 person's prior express invitation or permission,
55 (B) to any person with whom the caller has an
56 established business relationship, or (C) by a
57 tax-exempt nonprofit organization.

58 (b) The department shall establish and
59 maintain a "no sales solicitation calls" listing
60 of consumers who do not wish to receive
61 unsolicited telephonic sales calls. Any consumer
62 who wishes to be included on such listing shall
63 notify the department in such manner and at such
64 times as the commissioner may prescribe and pay an
65 initial listing fee of ten dollars and an annual
66 renewal fee of five dollars. A consumer who has
67 paid the initial listing fee and is included on
68 such listing shall be deleted from such listing
69 upon the consumer's written request or if the
70 consumer does not pay any annual renewal fee when
71 due. The department shall update such listing not
72 less than quarterly and shall make such listing

73 available to telephone solicitors and other
74 persons upon request. The commissioner may charge
75 a reasonable fee for providing such listing and
76 may make such listing available in printed or
77 electronic format, or both, in the commissioner's
78 discretion.

79 (c) No telephone solicitor may make or cause
80 to be made any unsolicited telephonic sales call
81 to any consumer if the consumer's name and
82 telephone number or numbers appear in the then
83 current quarterly "no sales solicitation calls"
84 listing made available by the department under
85 subsection (b) of this section.

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

102 (2) In the case of any consumer whose name
103 and telephone number or numbers does not appear in
104 the then current quarterly "no sales solicitation
105 calls" listing made available by the department
106 under subsection (b) of this section, any person
107 who obtains the name, residential address or
108 telephone number of such consumer from published
109 telephone directories or from any other source and
110 republishes or compiles such information,
111 electronically or otherwise, and sells or offers
112 to sell such publication or compilation to
113 telemarketers, as defined in section 42-284 of the
114 general statutes, or to any other person for
115 marketing or sales solicitation purposes, shall
116 delete the name, address and telephone number of
117 such consumer from the database used to prepare
118 such publication or compilation, and from any
119 unsold publication or compilation, not later than
120 thirty days following receipt of a written request

121 for such deletion from such consumer. The name,
122 residential address and telephone number of any
123 such consumer who submits such written request for
124 deletion shall not be included in any future
125 publication or compilation sold or offered for
126 sale by any such person without the prior written
127 consent of such consumer.

128 (3) This subsection does not apply to (A) any
129 telephone company, as defined in section 16-1 of
130 the general statutes, that compiles, publishes or
131 distributes telephone directories or causes the
132 compilation, publication or distribution of
133 telephone directories or provides directory
134 assistance, and (B) any person who compiles,
135 publishes or distributes telephone directories for
136 such telephone company pursuant to an agreement or
137 other arrangement with such telephone company.

138 (e) The commissioner may adopt regulations,
139 pursuant to chapter 54 of the general statutes, to
140 carry out the provisions of this section. Such
141 regulations may include, but shall not be limited
142 to, provisions governing the availability and
143 distribution of the listing established under
144 subsection (b) of this section, notice
145 requirements for consumers wishing to be included
146 on the listing established under subsection (b) of
147 this section, a schedule for the payment of annual
148 renewal fees by consumers, and conditions for the
149 waiver of consumer fees based on income.

150 (f) A violation of any of the provisions of
151 subsections (c) or (d) of this section or any
152 regulation adopted by the commissioner under
153 subsection (e) of this section to carry out
154 subsections (c) or (d) of this section shall be
155 deemed an unfair or deceptive trade practice under
156 subsection (a) of section 42-110b of the general
157 statutes.

158 Sec. 2. (NEW) (a) There is established an
159 account to be known as the "no sales solicitation
160 calls listing account". The account may contain
161 any moneys required by law to be deposited in the
162 account. Any balance remaining in the account at
163 the end of any fiscal year shall be carried
164 forward in the account for the fiscal year next
165 succeeding. The account shall be used by the
166 Department of Consumer Protection to administer
167 the provisions of section 1 of this act.

168 (b) Notwithstanding any provision of the
169 general statutes to the contrary, the amount of
170 any fees received by the Commissioner of Consumer
171 Protection or his legally authorized
172 representative or agent pursuant to section 1 of
173 this act shall, upon deposit in the General Fund,
174 be credited to the account established by
175 subsection (a) of this section.

176 GL COMMITTEE VOTE: YEA 16 NAY 0 JF

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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 HB 5220

STATE IMPACT	Minimal Cost, Potential Revenue Gain (No Sales Solicitation Calls Listing Account), see explanation below
MUNICIPAL IMPACT	None
STATE AGENCY(S)	Department of Consumer Protection, Office of the Attorney General

EXPLANATION OF ESTIMATES:

STATE IMPACT: The requirement that the Department of Consumer Protection (DCP) adopt regulations will result in minimal additional costs, which can be handled within the anticipated budgetary resources of the DCP.

Additionally, it is expected that the enforcement of the regulations will result in a minimal workload increase which can be handled within the existing staff resources of the agency. The workload increase which is expected to result is related to handling consumer complaints in this area, and periodically updating the list.

Under the Unfair Trade Practices Act, the Department of Consumer Protection had 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, a minimal workload increase is anticipated to result for the Office of the Attorney General which can be handled within agency's anticipated budgetary resources.

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 penalty imposed.

Since the bill establishes a separate non-lapsing account that can be used by DCP to administer the no solicitation program, this aspect of the bill will not have a fiscal impact on the agency. However, it is not certain whether the consumer listing fee will be sufficient to support the program. The agency anticipates the need for additional staff resources in order to administer and monitor the program.

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OLR BILL ANALYSIS

HB 5220

AN ACT CONCERNING TELEPHONE SOLICITATION

SUMMARY: This bill requires the Department of Consumer Protection (DCP) to establish a "No Sales Solicitation Calls" list. Consumers who do not wish to receive sales solicitations may have their names placed on the list for a fee. The bill prohibits businesses from calling listed people and from including their names on lists compiled for sale to others for marketing purposes.

The bill authorizes DCP to charge a fee for a copy of the list, adopt implementing regulations, and enforce the bill by making a violation an unfair trade practice. All fees must be deposited into the "No Sales Solicitation Calls Listing Account" the bill establishes.

EFFECTIVE DATE: October 1, 1998

FURTHER EXPLANATION

No Sales Solicitation List

The bill requires DCP to establish the list and include the names of consumers who pay an initial \$10 listing fee and an annual \$5 renewal fee. A name must be

deleted if a consumer asks in writing or fails to pay the renewal fee. 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.

DCP must update the list at least quarterly and make it available on request. DCP may charge a reasonable fee and may make it available in printed or electronic formats, or both. DCP must deposit the fees into the "No Sales Solicitations Calls Listing Account," and use them to administer the program.

Solicitation Prohibition

The bill prohibits telephone solicitors from making, or causing to be made, unsolicited telephonic sales calls to consumers on the current list. A "telephone solicitor" is defined as an individual or business doing business in this state. "Doing business in this state" means making telephonic sales calls from (1) a location in this state or (2) from a location outside of this state to consumers residing here. A "telephonic sales call" is a telephone call made by a solicitor to (1) solicit a sale of consumer goods or services, (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. An "unsolicited call" is any call other than one made (1) in response to an express request of the person called, (2) primarily in connection with an existing debt or contract that has not been paid or performed, or (3) to someone with whom the caller has a prior or existing business relationship.

Marketing Lists

The bill requires anyone who sells or offers to sell publications or compilations to telephone solicitors for marketing or sales solicitations purposes to exclude the names, addresses, and telephone numbers of everyone on the current list. The requirement applies whether or not the list was obtained from published telephone directories or from other sources. The list maker must also delete such consumer information from

the database used to compile the list. Similarly, these requirements apply if someone whose name is not on the list makes a written request for deletion. In this case, the list maker must delete the name within 30 days after receiving the request.

The bill defines "marketing or sales solicitations purposes" as 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) by a tax-exempt nonprofit organization or (2) to a person with prior permission or with whom the caller has an established business relationship.

The bill exempts telephone companies which publish telephone directories or cause them to be published. Similarly, it exempts anyone publishing telephone directories under an agreement with a telephone company.

Regulations

The bill authorizes DCP to adopt implementing regulations, which may include notice requirements for consumers wishing to be listed, a payment schedule for the annual renewal, and conditions for waiving the fees based on income.

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

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File No. 153

General Law Committee

Joint Favorable Report
Yea 16 Nay 0