

House of Representatives, March 19, 1998. The Committee on Government Administration and Elections reported through REP. BYSIEWICZ, 100th DIST., Chairman of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING A CONSUMER'S RIGHT TO PRIVACY.

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) "Retailer" means any person who sells  
3 goods used primarily for personal, family or  
4 household purposes to a person who is not in the  
5 business of reselling such goods;

6 (2) "Discount card" means any card issued by  
7 a retailer to a consumer that the consumer may use  
8 to obtain a discount when making purchases from  
9 the retailer, including, but not limited to, a  
10 scanner card; and

11 (3) "Consumer" means an individual who  
12 resides in this state.

13 (b) No retailer and no person who issues  
14 credit cards, debit cards or discount cards in  
15 this state may sell, lease or exchange any  
16 information concerning a consumer that identifies  
17 the consumer in any manner and is obtained by such  
18 retailer or person in the course of such  
19 retailer's or person's business, to any other  
20 person for marketing purposes, unless prior  
21 written notice has been provided to the consumer  
22 in accordance with subsection (c) of this section

23 and the consumer does not object to such sale,  
24 lease or exchange of information.

25 (c) Any notice required to be provided to a  
26 consumer under subsection (b) of this section  
27 shall include: (1) A statement that information  
28 identifying the consumer may be sold or leased to  
29 or exchanged with other businesses for marketing  
30 purposes; (2) a statement that consumers have a  
31 right to object to such sale, lease or exchange of  
32 information; and (3) a toll-free number, a form  
33 that may be given by the consumer to the retailer  
34 at the retailer's place of business, a preprinted  
35 postage paid form, or such other method as the  
36 Commissioner of Consumer Protection may prescribe  
37 by regulations adopted in accordance with chapter  
38 54 of the general statutes, that the consumer may  
39 use to exercise the consumer's right to object to  
40 such sale, lease or exchange of information. Such  
41 notice may be posted in a conspicuous location at  
42 the point of sale or may be mailed to the consumer  
43 not less than once annually. Any such notice that  
44 is mailed may be included with billing or account  
45 statements or any other information mailed to  
46 consumers.

47 (d) The provisions of this section shall not  
48 apply to (1) any exchange of information between  
49 subsidiary corporations having the same parent  
50 corporation, and (2) any financial institution  
51 subject to the provisions of section 42-133gg of  
52 the general statutes.

53 (e) A violation of any provision of this  
54 section shall be deemed an unfair or deceptive  
55 trade practice under subsection (a) of section  
56 42-110b of the general statutes.

57 Sec. 2. Section 52-570c of the general  
58 statutes is repealed and the following is  
59 substituted in lieu thereof:

60 (a) No person shall use a machine that  
61 electronically transmits facsimiles through  
62 connection with a telephone network or a device  
63 that automatically transmits a recorded telephone  
64 message to transmit unsolicited advertising  
65 material or an unsolicited telephone message which  
66 offers to sell goods or services.

67 (b) NO PERSON SHALL USE AN INTERACTIVE  
68 COMPUTER SERVICE TO SEND ANY UNSOLICITED  
69 ADVERTISEMENT DIRECTLY TO ANY PERSON, BY  
70 ELECTRONIC MAIL OR OTHERWISE, WITHOUT OBTAINING

71 THE PRIOR CONSENT OF EACH PERSON WHO IS TO RECEIVE  
72 SUCH ADVERTISEMENT. THIS SUBSECTION DOES NOT APPLY  
73 TO ADVERTISEMENTS THAT APPEAR AS PART OF ANY  
74 INTERACTIVE COMPUTER SERVICE OR ANY PROGRAM,  
75 INTERNET SITE OR SIMILAR ON-LINE COMMUNICATION  
76 THAT IS VOLUNTARILY ACCESSED THROUGH AN  
77 INTERACTIVE COMPUTER SERVICE BY ANY PERSON. AS  
78 USED IN THIS SUBSECTION, "INTERACTIVE COMPUTER  
79 SERVICE" MEANS ANY INFORMATION SERVICE, SYSTEM OR  
80 ACCESS SOFTWARE PROVIDER THAT ENABLES OR PROVIDES  
81 COMPUTER ACCESS BY MULTIPLE USERS TO A COMPUTER  
82 SERVER, INCLUDING ANY SERVICE OR SYSTEM THAT  
83 PROVIDES ACCESS TO THE INTERNET AND ANY SUCH  
84 SYSTEMS OPERATED OR SERVICES OFFERED BY LIBRARIES  
85 OR EDUCATIONAL INSTITUTIONS; AND "ADVERTISEMENT"  
86 MEANS ANY OFFER TO SELL GOODS OR SERVICES.

87 [(b)] (c) Any person aggrieved by a violation  
88 of the provisions of [subsection (a) of] this  
89 section may bring a civil action in the Superior  
90 Court to enjoin further violations and to recover  
91 the actual damages sustained by reason of such  
92 violation, together with costs and a reasonable  
93 attorney's fee, or two hundred dollars, whichever  
94 is greater. No such action shall be brought but  
95 within two years from the date of the act  
96 complained of.

97 (d) THE ATTORNEY GENERAL MAY BRING AN ACTION  
98 IN SUPERIOR COURT AGAINST ANY PERSON WHO COMMITS  
99 TWO OR MORE SEPARATE AND DISTINCT VIOLATIONS OF  
100 THE PROVISIONS OF THIS SECTION AND MAY RECOVER A  
101 CIVIL PENALTY OF NOT MORE THAN ONE THOUSAND  
102 DOLLARS PER VIOLATION. NO ACTION MAY BE BROUGHT  
103 UNDER THIS SUBSECTION MORE THAN TWO YEARS AFTER  
104 THE DATE OF THE MOST RECENT VIOLATION.

105 STATEMENT OF LEGISLATIVE COMMISSIONERS: In  
106 subsection (b) of section 2, "LIBRARIES AND  
107 EDUCATIONAL" was changed to "LIBRARIES OR  
108 EDUCATIONAL" for accuracy and, in subsection (d)  
109 of section 2, the definition of "PATTERN OR  
110 PRACTICE" was inserted in the first sentence for  
111 conciseness and clarity.

112 GAE COMMITTEE VOTE: YEA 15 NAY 2 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."

\* \* \* \* \*

**FISCAL IMPACT STATEMENT - BILL NUMBER SHB 5399**

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

**EXPLANATION OF ESTIMATES:**

The bill specifies that any businesses that sell, lease or exchange personally identifiable consumer information without giving the consumer prior written notice and the opportunity to object is an unfair trade practice. 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.

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 penalty that are imposed.

There will be a minimal workload increase for the Department of Consumer Protection associated with the adoption of regulations concerning Section 1 of the bill.

The bill permits the Attorney General to bring action against violators of the bill's provisions in Superior Court. The agency has indicated that it anticipates

handling this responsibility within its existing budgetary resources.

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### OLR BILL ANALYSIS

SHB 5399

#### AN ACT CONCERNING A CONSUMER'S RIGHT TO PRIVACY

**SUMMARY:** This bill makes it an unfair or deceptive trade practice for certain businesses to sell, lease, or exchange personally identifiable consumer information without giving the consumer prior written notice and the opportunity to object. It prohibits the businesses from releasing information about consumers who object. The applicable information must have been obtained in the course of business and released for marketing purposes.

It prohibits anyone from using a computer to send unsolicited advertisements without prior consent. It is already illegal to send these advertisements by fax or telephone message. As with unsolicited fax or telephone advertisements, the bill allows people aggrieved by unsolicited computer advertisements to bring a civil action to enjoin further violations and to recover actual damages, costs, and reasonable attorney's fees or \$200, whichever is greater.

The bill authorizes the attorney general to bring an action against anyone who sends unsolicited fax, telephone message, or computer advertisements on multiple occasions.

EFFECTIVE DATE: October 1, 1998

#### FURTHER EXPLANATION

##### Consumer Notification

The bill affects retailers and debit, discount, and out-of-state credit card issuers that distribute their cards in this state. But subsidiaries of the same parent corporation may exchange information without notice.

**Notice Requirements**

The bill requires consumer notices about the sale, lease, or exchange of personally identifiable information to include:

1. a statement that the information may be sold, leased, or exchanged for marketing purposes;
2. a statement of the consumer's right to object; and
3. a toll-free number, a form that the consumer may give to the retailer at his place of business, a preprinted postage paid form, or some other method the consumer may use to state his objection. The bill authorizes the consumer protection commissioner to prescribe other methods by regulation.

Businesses may post the notice in a conspicuous location at the point of sale or mail it to consumers at least once annually with billing or account statements or any other mailed information.

**Unsolicited Computer Advertisements**

The bill prohibits anyone from using an interactive computer service to send unsolicited advertisements directly to another person without his prior consent. "Interactive computer service" means any information service, system, or access service provider that enables multiple users to a computer server to have, or provides them with, computer access, including internet access. "Advertisement" means any offer to sell goods or services, but not an offer that a person voluntarily accesses, such as an internet site or similar on-line communication.

**Attorney General's Duty to Enforce the Law**

The bill authorizes the attorney general to bring a civil action in Superior Court against anyone who sends two or more separate and distinct unsolicited computer or fax advertisements in violation of the bill and current law, respectively. The action must be brought within two years after the date of the most recent violation. The court may order violators to pay a civil

penalty of up to \$1,000 per violation.

#### **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.

#### **COMMITTEE ACTION**

Government Administration and Elections Committee

Joint Favorable Substitute  
Yea 12      Nay 5