

Legislative History for Connecticut Act

SB 1965	PA 615	1973
Gen Law 690-756, 1169 -		68
Sen: 3589-92, 3597a		5
House 7319-7326		8
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Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate and House of Representatives Proceedings

JOINT
STANDING
COMMITTEE
HEARINGS

GENERAL LAW
PART 3
851-1289

1973

MARCH 28, 1973

Committee Members Present: Representatives: Yudkin, Webber, Newman, Holdsworth, Dzialo, Mannix, DeMatteis, Kablik, Matties, Maletto,

Senators: Page, Ciarlone, Zisk.

Rep. Howard Newman, presiding

Rep. Newman: The public hearing of the Joint Legislative Committee on General Law. Sen. Stanley Page is the Senate Chairman. I'm Rep. Howard Newman I'm the House Chairman. Up for today we have bill number 1965 AN ACT CONCERNING UNFAIR TRADE PRACTICES which we commonly call the baby FCC bill. Anyone here that wishes to speak? Commissioner Dunn.

Commissioner Barbara Dunn: Commissioner Barbara Dunn of the Department of Consumer Protection and with me today is Attorney Robert Sils of the Department. We would like to comment on bill 1965 an act concerning unfair trade practices. It is my opinion that this bill probably is one if not the most important bill before the General Assembly this Session. It is our opinion that at the present time the consumers of the State of Connecticut do not have sufficient control against unfair business practices and the Statutes that we have now we feel are absolutely badly in need of a major overhaul.

We have prepared a memorandum which will be given to the Clerk. The memorandum in support of House Bill 1965 supplanting existing Connecticut Statues regulatory of untrue and misleading statements and certain deceptive trade practices in the promotion and sale of products and services.

House Bill No. 1965 came down with the uniform Unfair Trade Practices and Consumer Protection Law recommended by the Council of State Governments and popularly known as the little FTC Act. Currently nine States, Massachusetts, Maine, Vermont, Washington, Hawaii, North Carolina, South Carolina, Louisiana and Wisconsin have enacted such a law. Fifteen other states have enacted language reaching unitemized unfair or deceptive practices. Twenty six States have reimbursement procedures for deceived consumers. Forty one States now have laws providing greater regulatory protection for consumers than does Connecticut. The questions demanding an answer in this memorandum are, What is inadequate about our present laws? and How does this bill meet these inadequacies?

Section 1 of the proposed bill contains five definitions, Documentary material as now defined in 42-115a C.G.S. is limited to forms of advertising. As defined in the bill it reaches among

WEDNESDAY

MARCH 28, 1973

Commissioner Barbara Dunn continued: other instruments any paper or communication beyond the limiting words of the present statute. Of course such instruments must relate to a matter under investigation. As we will be seen in Section 2a of the bill, unfair methods of competition has been added, an investigation of which will include documents not related to advertising.

The definition of examination in the proposed bill fills a gaping void existing in the present statute 42-112. The new language provides the power to require the testimony of witnesses. Presently the power of discovery is limited to the production of documents only. Trade and commerce are now defined for the first time.

Section 2 presents two basic departures from the existing Connecticut Statutes regulatory of unlawful marketing practices. Unfair methods of competition will now be subject to regulations. In this day of consumerism, the emphasis has been placed on the protection of the consumer. That implies a confrontation between the businessman and the consumer. Therein lies the great fallacy upon which some approaches to trade regulation have been based. The real confrontation is between the consumer and the great majority of honest businessmen on the one hand and the unscrupulous businessman on the other.

Rep. Newman: Commissioner you are going very fast. It might be more helpful if you slowed down a little. For two reasons Rep. Webber wants to have an opportunity to question now and then.

Rep. Webber: Commissioner you are explaining the bill and explaining it well in and you are too fast for my limited mental capacity coupled with the fact that the questions that I would like to ask relating to the bill are the, by the time you get to the completion of your statement I will have lost my trend.

Commissioner Dunn: We can go back after I have finished or we can do it intermittantly whichever you choose.

Rep. Webber: I've got permission from the Chairman to ask you questions.

Commissioner Dunn: Well let me finish this sentence and we can go back to the- the elimination of unfair methods of competition serves to protect the honest businessman. That is the end of a paragraph. Do you want to go back to any of this.

Section 2 which I had not completed. Do you want to go back?

Rep. Webber: Since we don't have any other bills Mr. Chairman do you mind if we go over this again and take it slowly?

Rep. Newman: Is that what you would like to do Commissioner or what?

Commissioner Dunn: It doesn't make any difference to me.

Rep. Webber: Let's start again. Let's go through it again and summarize what you have said.

Commissioner Dunn: Section 1 is a definition. Documentary material is defined. Then examination at the present time we have the power to supena papers but we don't have the power to supena people. With this bill you will.

Rep. Webber: Documentary material which also relates to newspaper advertising I assume.

Commissioner Dunn: Yes sir, that is correct.

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Mr. Robert Sils: The difficulty is Mr. Webber in the present statutes is limited to advertising material. As will be pointed out later, we will show you why it is necessary to have-

Rep. Webber: Oh I'm for the bill, please don't misunderstand me. I just want to make sure Mr. Sils-

Mr. Sils: I'm just trying to point out the difference between the present bill and this bill.

Rep. Webber: Hopefully everything is covered. Hopefully this is an umbrella kind of a measure that will you know take care of all deceptive and fraudulent practices.

Commissioner Dunn: Yes sir. This is what this would do. To go on with that first section definitions are made. These are defined for the first time. They were not defined in the previous bill. Only one section to go.

Section 2 presents two basic departures from the existing Connecticut Statutes regulatory of unlawful marketing practices. Unfair methods of competition.

Rep. Webber: Stop right there Commissioner. Unfair methods of competition. That -

Sen. Page: Could you give me an example as to what you might mean as to being unfair competition?

Commissioner Dunn: While, Mr. Sils can.

Mr. Sils: First of all there is a vast void in legislation in this State in one respect. Unfair methods of competition fill it. The Interstate Sherman Act administered by the Attorney General reaches combinations in restraint of trade and combinations with

Mr. Sils continued: monopoly. Next in line is Mrs. Dunn's Department and calls from misleading advertising. In between those two are many unfair methods of competition. They cannot be reached today by an Statute except under the Common Law and that is doubtful.

Let me illustrate a couple of instances of an unfair method of competition. Four people operating gasoline service stations are paying different tank wagon prices to the same refiner. That is price discrimination. The Supreme Court has held that such an act is an unfair method of competition within the meaning of the Fair Trade Commission Act. We could reach such a practice. It cannot be reached today.

Commercial bribery is another. There are many acts and practices that fall into this category.

Rep. Webber: Would trade price fixing such as the fair trade act be construed in some areas as unfair competition?

Mr. Sils: In answer to that Mr. Webber, if the Congress has excluded fair trade contracts as the purview of the Sherman Act. In other words the fair trade act the manufacturer has the right to establish a minimum floor under which his product cannot be sold. That is really vertical price fixing. The manufacturing company fixing the price down the line. Under the Sherman Act that would be illegal. They have excluded that.

Rep. Webber: You made a very good point and I'm glad you did in terms of various tank wagon prices for the same product within a given area. You may or may not be aware of the fact that the Commission was just appointed or a study committee by the Legislature to study just that area. Now if we are going to step on each other's toes I'd like to know it. And if in fact this bill will give you the authority to deal with what we are hoping to undue then I'll make it clear to our Committee this afternoon when we meet. We don't want to you know come up with another bill.

Mr. Sils: I can only say to that that if this bill, Commissioner Dunn could have the power to investigate discriminatory price of the sale of a gasoline.

Sen. Page: If the refiner in this hypothetical continues to discriminate after the order is issued, she can refer it to the Attorney General for to go into court and have this order enforced in the judgement of the court. And then if he continues to discriminate he is subject to civil penalties under this act. And second and most important every one of the service station operators who are discriminated against can obtain damages for discrimination.

694

5cap
WEDNESDAY

GENERAL LAW

MARCH 28,

Sen. Page continued: No the court would have discretion, as we
further on in the bill you will see.

Rep. Newman: There is a blanket statement in here that unfair dece,
tive practices have covered interpretation in Federal Trade
Commission Act, as amended by the Federal Trade Commission for
the Federal Court. Can you give us some more examples of what
might be covered there in the Federal?

Mr. Sils: Well the purpose of them including that in the language of
this bill is that Connecticut case law is doubly silent in this
field. There is no case law. Unfair methods of competition,
unfair deceptive acts are practices. What we have done with
this language is to build into Connecticut case law, the 60 years
of Federal jurisprudence interpreting the Federal Trade Act and
the Sherman Act as well as the Robinson Act. So the courts shall
be guided by those decisons. That is the purpose of it. Thank
you.

Commissioner Dunn: Continue on to the bottom paragraph on page 1.
Which is then further discussion of Section 2. The objection
might arise that the words unfair method of competition and
unfair or deceptive acts or practices are too indefinite and
vague and that the practices to be condemned should be defined
with specificity. The objection was met and rejected by the
Federal Courts.

This issue first emerged nearly 60 years ago at the time the
Congress of the United States explored the nature of the language
to be used in the proposed Federal Trade Commission Act, ultimately
approved September 26, 1914. The Congress recognized that count-
less activities which by their nature were unfair methods of
competition could not be reached by the Sherman Anti-Trust Act
of 1890. Rather than attempt by delineation to declare each of
the practices of which the Congress was then aware to be unlawful
they chose the broader course.

The first judicial test of this language arose in Sears Roebuck
and Co. v. Federal Trade Commission, 258 Fed. 307 in which the
court stated: Petitioner urges that the declaration of Section 5
must be held void for indefiniteness unless the words unfair
methods of competition be so construed to embrace no more than
acts which on Septmeber 26, 1914 when Congress spoke, were
identifiable as acts of unfair trade then condemned by the common
law as expressed in prior cases. But the phrase is no more
indefinite than due process of law. The general idea of that
phrase as it appears in Constitutions and statutes is quite well
known. But we have never encountered definition that would bar
the continuing processes of judicial inclusion and exclusion based

Commissioner Dunn continued: upon accumulating experiences. If the expression unfair methods of competition is too uncertain for use, then under the same condemnation would fall the innumerable statutes which predicate rights and prohibitions upon unsound mind, undue influence, unfaithfulness, unfair use, unfit for cultivation, unreasonable rate, unjust discrimination and the like. This statute is remedial and orders to desist are civil but even in criminal law convictions are upheld on statutory prohibitions of rebates or concessions or of schemes to defraud without any schedule of acts or specific definition of forbidden conduct, thus leaving the courts free to condemn new and ingenious ways that were unknown when the Statutes were enacted. Why? Because the general ideas of dishonesty and fraud are so well widely and uniformly understood that the general term rebates or concessions and schemes to defraud are sufficiently accurate measures of conduct.

With the increasing complexity of human activities many situations arise where governmental control can be secured only the board or commission form of legislation. In such instances Congress declares the public policy fixes the general principles that are to control, and charges an administrative body with the duty of ascertaining within particular fields from time to time the facts which bring into play the principles established by Congress. Though the action of the Commission in finding the facts and declaring them to be specific offenses of the character embraced within the the general definition by Congress may be deemed to be quasi legislative, it is so only in the sense that it converts the actual legislation from a static into a dynamic condition. But the converter is not the electricity. And though the action of the commission in ordering desistance may be counted quasi judicial because a judicial determination is only that which is embodied in a judgment or decree of a court and enforceable by execution or other writ of the court.

It is to be noted that the original Federal Trade Commission Act did not include the words and unfair or deceptive acts or practices in commerce. As we pointed out, the intent of Congress in 1914 was to stamp out unfair methods of competition, that is practices that adversely affected competitors of the merchant employing the unfair practice. In 1931 the Supreme Court of the United States in Federal Trade Commission v Raladam Co 282 Us. 829 reversed the order of the Commission. Raladam marketed an obesity cure and the advertising used in the promotion of the product was alleged to be calculated to mislead and deceive the purchasing public into the belief that the preparation is safe, effective, dependable and without danger of harmful results. The Court agreed with the findings supporting the order to cease and desist from such action in stating if the necessity of protecting the public against dangerously misleading advertisements of a remedy sold in intrastate commerce

Commissioner Dunn continued: could not successfully be assailed.

But this is not all, the record disclosed no competitor offering a similar product and the court held the Commission laced jurisdiction because there was no evidence of the existence of competition and consequently there was no competition to injure.

It was not until 1938 that the Congress in the enactment of the Wheeler Tea Act amended the Federal Trade Commission Act by adding the words unfair or deceptive acts or practices in commerce.

Rep. Webber: Excuse me you point out here Commissioner are civil. Now I have to assume that in our bill it goes beyond a civil right.

Mr. Sils: It is a civil penalty only at the discretion of the court.

Rep. Webber: But you do have the power to issue a cease and desist order? So if Mr. X is selling a product that injured me financially and I complained to the Commissioner and upon her investigation she finds that my complaint is valid, she can issue a cease and desist order, is that right?

Mr. Sils: I don't quite follow all the facts Mr. Webber. If I understand you correctly if she investigates a complaint of yours and after hearing she issues a cease and desist order that is not final at that time until the time for review has expired. 30 days. Now at that time the order does become final. And again if the merchant continues to violate that order she has no power at this point she must refer to the Attorney General for enforcement in the courts. And if the court chooses to adopt this order as a judgment of the court then a violation with of that judgment could be subjected to a contempt proceeding. So it is civil in nature not criminal.

Rep. Webber: That is exactly-you've answered my question. And this could take you know with proper legal advice on the part of the accused as it was, this would take many, many months. And he could-

Rep. Newman: You know this record has to transcribed by a stenographer and those talking and I might note that this is a colloquy between Commissioner Barbara Dunn, Robert Sils, Counsel for Commissioner Dunn, Rep. Webber. Each of you will speak into the microphone when you ask or answer a question, it will be helpful to have a proper record.

Rep. Webber: Thank you Mr. Chairman. Yes I think you are right. But however I was, I would like to think that perhaps and you know more about it than I do Mr. Sils because you worked for FTC

MARCH 28, 1973

Rep. Webber continued: and you are an attorney. Can we give the Commission the power to issue a cease and desist order that would take an immediate effect, have immediate effect once it has been demonstrated to her department that the product is in fact defective or fraudulent or the practice or whatever.

And literally refrain that merchant from continuing to sell that service or that product until the court decides. If I understand you he can continue until the court decides that it is illegal.

Mr. Sils: A short answer to that Mr. Webber is our whole system of jurisprudence in this country is based upon the right of any man to have his day in court. You must understand that the proceeding before Mrs. Dunn is an administrative hearing. It is quasi judicial in nature and he still hasn't had his day in court, even though under the administrative procedure act as exists in this State today the hearing held before her would have to be conducted be within the requirements established by that act.

Even the Congress can know the corporation against whom the Federal Trade Commission has issued an order to have a possibility of review of those proceedings before a Circuit Court of Appeals. And I would hate to deny any businessman that right even though I personally might not like him as a merchant.

Rep. Webber: Thank you.

Commissioner Dunn: It was not until 1938 that the Congress in the enactment of the Act amended the Federal Trade Commission Act by adding the words unfair or deceptive acts or practices in commerce. Again the breadth of this language was approved by the Supreme Court of the United States in the Atlantic Refining Co. v. Federal Trade Commission 381 U.S.357 June 1, 1965. Justice Clark speaking for the majority stated: Section 5 of the Federal Trade Commission Act declared unfair methods of competition in commerce and unfair acts or practices in commerce unlawful. In a broad delegation of power it empowers the Commission in the first instance to determine whether a method of competition or the act of practice complained of is unfair. The Congress intentionally left development of the term unfair to the Commission rather than attempting to define the many and variable unfair practices which prevail in commerce. S.Rep. No.595 63rd Cong. 2d Sess., 13. As the conference report stated unfair competition could best be prevented through the action of an administrative body of practical men who will be able to apply the rule enacted by Congress to particular business situations, so as to eradicate evils with the least risk of interfering with legitimate business operations. H. Conf. Rep. No 1142, 63rd Cong., 2d Sess., 19

9cap
wednesday

GENERAL LAW

march 28, 1973

Rep. Webber: It's really not important Barbara.

Commissioner Dunn: In thus divining that there is no limit to business ingenuity and legal gymnastics the Congress displayed much foresight. See Federal Trade Commission v Cement Institute and again the reference is given. Where the Congress has provided that an administrative agency initially apply a broad statutory term to a particular situation our function is limited to determining whether the Commission's decision has warrant in the record and a reasonable basis in law. Labor Board v Hearst.

It has been advocated that the same result could be reached in Connecticut by simply requesting additional legislation to cope with acts or practices as they arise and not currently defined. Actually under existing State law an equally effective procedure is available. The Commissioner under our proposed 2b may make rules and regulations interpreting the provisions of section 2a of this act within the provisions of P.A. 854 of the Connecticut General Statutes. So with the broad grant of interpretation of what constitutes an unfair or deceptive act or practice it would appear that too great a power is invested in the Commissioner. However under the provisions of Sec. 4-170 and 4-171 Connecticut General Statutes " There shall be a standing legislative committee to review all regulations of the several state departments and agencies following the proposal thereof and no adoption, amendment or repeal of any regulation shall be effective until one copy has been presented to the standing legislative regulation review committee by the agency proposing such regulation and approved by the committee. Therefore the legislative function determinative of exactly what is an unfair method or deceptive practice always resides in the General Assembly as represented by this committee. Not even the Congress retained this restraint over the Federal Trade Commission.

There is a certain wisdom in the fifty states ultimately employing the same language to reach deception such as motivated the enactment of a Uniform Negotiable Instrument Law throughout the nation. Further, the body of law created by 60 years of Federal jurisprudence can be used to fill the vacuum of state law noticeably silent in this area.

There is a real advantage to the businessman in the promulgation of regulations rather than leaving to him a reading of the prohibited act. The regulation can state specifically the conditions under which an act may become unlawful. To illustrate the Federal Trade Commission in Part 239 of the Code of Federal Regulations recites in detail and by example the conditions under which the advertising

Commissioner Dunn continued: of guarantee may become deceptive.

Rep. Newman: Are there any questions by members of the Committee?
Rep. Yudkin do you have any questions? Rep. Dzialo, Rep. Holdsworth? Thank you Barbara.

Rep. Webber: I have some. This bill was given to me this morning Commissioner and I'm reading it and although I certainly as you wellknow over the years endorse it with all the vigor at my command this kind of an act and this kind of power in your Department. I have some reservations as to the effectiveness in terms of immediate relief which I think we can discuss by changing some of the language. And you can find out whether or not you know I'm within my legal - Barbara if you don't mind my calling you that. Do you have the assurances of the Governor's office that this bill will be signed if passed by the General Assembly in view of the unfortunate problem we encountered in the last Session?

Rep. Newman: Rep. Webber I don't know whether that is a fair question to ask the Commissioner. The Governor would have to see the bill as we finally pass it perhaps with amendments.

Rep. Webber: Mr. Chairman I would-

Rep. Newman: We are not going to give you a blank promise, let me say this that the bill was vetoed last year because there was no provision in the budget for its enforcement. I understand that this year there is a provision in the budget for some enforcement. If a proper bill is drawn up whether it is this bill or this bill as amended, some amendments that may come as a result of this hearing, I imagine the bill will be looked upon favorably.

Commissioner Dunn: I would say though that I have had the general discussion with the Governor, not since that this bill has been printed. And certainly he as I and I'm sure you too Mr. Webber are seriously concerned with the rights of the consumer. The part that the Governor in the discussion was the most pleased about was the section that would grant restitution to a person who the courts felt to be aggrieved.

Rep. Webber: Well then let me Mr. Chairman rephrase that question. Having gone through what we did in the last Session I imagine I naturally have a very personal and profound interest in the bill and you know that Mr. Chairman. It is my understanding that and it is an obvious thing that your department is getting additional responsibility. To name one, boxing and many other things. Is your Department being beefed up financially? Are you

MARCH 28, 1973

Rep. Webber continued: getting additional funds or additional staff?
You see what bothers me Commissioner is the fact that the passage of this bill because it is so important will take staff will take time and those will take concentration and effort from your Department.

Commissioner Dunn: We have discussed that with the Governor and other members of the staff of the Governor's Office and we are assured that this will, we will have an additional appropriation if this bill is passed. One more point I would like to point out that we did hope that your report would read immediately upon passage. We certainly wouldn't want to be October or January.

Rep. Webber: I'm satisfied Mr. Chairman. Both Sen. Page and Rep. Newman that the bill will in fact become law if it comes out of this Committee favorably and is passed by the Assembly. And I don't think my question is out of line. I think she has discussed it-

Rep. Newman: Well let me say this Rep. Webber, if the Governor is enthusiastic about passing an act that will control unfair trade practices and deceptive advertising and so on. And hercertainly is in back of such a bill. Wether it be this bill or some other bill, at the moment I don't know. Commissioner do you feel that this bill will give added muscle to your department? And is there a void now?

Commissioner Dunn: Yes sir. The biggest problem at the present time is one the present statute has a laundry list if you of what would be an unfair business practice and as soon as you devise 11 reasons you certainly are going to find someone who is going to find another. Another problem that we have is while we have the power to supena papers we have no power to supeana people and the it is impossible to have the documents in front of you to supeana anyone to explain them or to testify or whatever you need to have explained about the papers. I haven't the power to supeana people.

Most important of all is the restitution required. And this would not be granted by me. This would be at the discretion of the Court.

Rep. Newman: How do you handle a complaint now of deceptive trade practice? What remedy do you give the complainer?

Commissioner Dunn: Well there is such a wide variety of types of complaints that I don't know-Im not trying to doge the issue I don't know if it would be easy to give you a simple example.

Mr. Sils: Mr. Chairman today as you know no matter how badly anyone deceives in Connecticut there is no power in this Department to obtain restitution of what they have lost. We understand that. I also understand there is difference between administering trade

12cap
WEDNESDAY

GENERAL LAW

MARCH 28, 1973

Mr. Sils continued: regulatory laws at the Federal level and at the State level. And I think it important to Committee. A State level is a little of the relationships very impersonal. FTC in Washington, the corporation in Chicago. When you get to the State level you are dealing with people which are very intimate and closer to you. We make every effort to either by persuasion or conjolory or any other weapons that our at our command, to induce or persuade a merchant to make restitution or an adjustment. Particularly, I'll give you an example, many sales and the products are off the shelf. There wasn't enough there and they had the disputes over rain checks. You have disputes over price, well this isn't the price you advertised.

In most instances you'd be amazed at the number of merchants that will make corrections. And we can't make them. And again in answer to Mr. Webber's statement that this is the same bill that the Governor vetoed. It is not. This is a much stronger bill. And a much better bill. Not only for the consumer but for the businessman. There are many unfair methods of competition that damage a businessman that do not deceive the consumer.

Sen. Page: Commissioner you said that there are now eleven areas under the Federal statutes where your existing statutes-

Commissioner Dunn: Under Connecticut statutes I think there are eleven, a laundry list and I'm almost sure it is eleven-

Sen. Page: O.K. so this is one important aspect of this bill. This will broaden that. The second will be the restitution which you now do not have the power to enforce.

Commissioner Dunn: If a case goes into court, the court at its descretion could grant restitution.

Sen. Page: O.K. and the third important area you cannot supeana people you can supeana records. The passage of this bill would give you the power to supeana people. So these are three main reasons for this bill. Three of the more important reasons.

Mr. Sils: I'd like to point out another one if I may Mr. Chairman That your Connecticut Statute reads today as far as advertising is concerned it must be on a formative act. We use words such as this- might contain, passes off, causes liklihood, represents, benefits, respensits desparigies, makes, all acts of determanitive action. The Federal Courts have held that many advertisements on their face have literal truth, but because of the failure to disclose the certain information they are deceptive.

I'll give you a perfect example we went through it last year

13cap
WEDNESDAY

GENERAL LAW

MARCH 28, 1973

Mr. Sils continued: with a man who advertises motor oil for your car, 10cents a quart. He sells it to you for 10 cents a quart. That is literally true. But it is reprocessed oil. Used oil that was done over again. The Federal Courts would require him to disclose that fact. Connecticut can't. So even in the field of advertising injecting into the case law this Federal interpretation that I talked about you will have this new approach to deceptiveness.

Rep. Yudkin: If that were done on the radio or television would the Federal Trade Commission or Federal Communications Commission be able to step in that particular case?

Mr. Sils: There is a former trade commission attorney back here and I think you might agree, the FCC has never taken a position that they a can regulate the content of advertising. And the Federal Trade Commission of course a can. I think that in renewing a license of a media, I think they could take into consideration the extent, the type, and character and every advertising they use. But that's a field I'd rather not discuss.

Rep. Newman: What happens if you get a complaint and you can't get both sides to agree. You can't get the respondent to agree to desist, to court or what do you do?

Commissioner Dunn: We have the power of cease and desist now. We can go into Court now. You can do that. The problem is that we are having at the present time is that you just can't reach so much of that which Mr. Sils has described, it is too easy to define, you got into court and make a good as case as you could under this type of law. With that kind of thing in mind, Mr. Sils has not only been a very fabulous attorney and counsel to the Department. But with the Federal Trade Commission his years have given him needless to say great expertise in that area as well as being a tremendous help in being familiar with many people there.

What we do in many instances especially in anything that is traded around the Country, we will refer the case to the Federal Trade Commission because lots of time they can proceed where we can't. Sometimes they will already have a similar case or the same product or service or whatever under investigation and we will cooperate with them. There have been times when they have been involved with an investigation concerning a company domiciled in Connecticut and in that case we have worked with them in order to establish the facts for them to proceed. It has been a two way street and we have relied on them very very heavily in cases that we felt they should touch a that we couldn't under our present Statutes.

Rep. Newman: Are you able to have any criminal prosecution under the

WEDNESDAY

MARCH 28, 1973

Rep. Newman continued: existing law? Violators?

Commissioner:Dunn: Well we have had several in the Department where we have, well one company finally went out of business after many elderly women have had difficulty with companies dealing with furnaces. And of course again there is no restitution possible in this State and we have had hearings on this many times. But we have had not gone into court with a full blown thing in this particular area. We have had difficulty with this Statute.

Mr. Sils: I'd like to answer that Mr. Chairman if I may. You may remember a spare heating case. Where the Department issued an order and while the facts of that case the salesman frightened elderly women into believing that the furnace would blow up in their face if they didn't spend \$10,000. Now let's compare what we've got there and what we could do under this act. What we did then was issue a cease a desist order. Enjoining them from not doing this again. They elected not to review. All we had was a final order. Under this bill if they did that we could refer it to the Attorney General, issue the order, the court might under this bill, might in its descretion appoint a receiver and collect such monies as the court deemed necessary to reimburse these elderly ladies. Now that is really boiling down the difference.

Rep. Newman: Any questions?

Rep. Webber: My involvement that the consumer problems, lead me to believe that most of the culprits if I can use that word are not as you referred to a minute ago local native people but people who have come into the State in recent years to literally make a kill. And the State of Massachusetts passed that very tough home solicitation act before we attached ours. Those guys came into the State of Connecticut and were reaping the harvest. As a result of the very difficult and strict condominium measure passed by the New York State Attorney General's Office in terms of condominiums construction those people came into Connecticut until we will do something and hopefully our Committee will.

So I'm not too concerned about hurting these so called merchants although I am very cognizant of the fact that the merchant is a very important part of our society. And we certainly don't want to come out with consumer legislation at the expense of the merchant. My belief 99% of the merchants are honest people but unfortunately that 1 or 2% make a it bad for others.

But I would like to think that this bill would give you and this is what disturbs me, would give you the right once you, it has been demonstrated to you very clearly that the individual or the

MARCH 28, 1973

- Rep. Webber continued: businessman or whatever is in fact operating under a deceptive and fraudulent a manner. That you can stop him immediately without having to wait until it goes to court. You know and if you can't do that and if the law just isn't written where you have that right, I'm wondering if you do have a right to embarass him or let the public make, let the public be aware of what he is doing. With a glare of publicity, or some other method.
- Mr. Sils: Well of course we can disclose anything under the public disclosure act in this State as a matter of public record. The issuance of a complaint is a matter for media. We can distribute copies of the complaint as is a matter of public record. Anything prior to that of course isn't.
- Rep. Yudkin: Just as a comment Mr. Webber I don't think that I personally would want to have either Mrs. Dunn or anyone else be so strong -
- Rep. Newman: I have a question of either you Barbara or Mr. Sils. What would be the effect of this article on other consumer legislation that may come before this Committee? For example we have a bill before us requiring publishing houses to give the expiration date of the magazine subscription when they send a renewal notice. As the law is presently practiced it is in hyroglyphics and on the label. Would you be passing such?
- Commissioner Dunn: It is my understanding that anything like that could be done reached by the validation of a regulation in accordance with going the whole route of an administrative procedure act coming to the Attorney General and coming to the General Assembly Legislative Review Committee.
- Rep. Newman: Except Section 2 of this proposed bill states that you follow the practices that have been held to be bad by the Federal Trade Commission. What if this hasn't been held to be bad by that Commission?
- Commissioner Dunn: That would be-
- Rep. Webber: The question is that we passed bills from time to time which we in our wisdom feel will benefit the consumer in hitting in some deceptive trade practice, under this bill I ask Mrs. Dunn whether such legislation would no longer be necessary and whether she could cover that by regulation or something of the sort and she said that she would.
- Rep. Newman: My second question was well in Section 2 of this proposed

MARCH 28, 1973

- Rep. Newman continued: bill states that she has jurisdiction over deceptive trade practices as such forced by the Federal Trade Commission and the case law, 60 years of a case law as she referred to these acts that the Federal Trade Commission has held to be illegal.
- Mr. Sils: I was in and around Congress for some 30 years, as a member of the staff in consumer legislative work. There has been hundreds of bills introduced in the Congress trying to implement the language of the Federal Trade Commission act. Not once was it found necessary. And I can assure you that there is no practice unfair method of competition, or unfair deceptive act or practice that cannot be reached by this bill.
- Rep. Newman: Any further questions of Commissioner Dunn. If not I is there a stay of execution Mr. Sils under Section 5 while the Commissioner cease and desist order is being appealed to the Court of Common Pleas? Is there provision that sets a stay of execution?
- Mr. Sils: Having elected Mr. Newman to take his judicial review of the order the proceedings would remain in limbo until the court decides.
- Rep. Webber: Let me answer Rep. Newman's question. You do not have a cease and desist right under the terms of this bill if I understand it.
- Mr. Sils: When any order is issued any businessman in this country has the right under due process if nothing else, to have a court review these proceedings. You are affecting a business right. And I would not leave it to the decision of an administrative hearing of our Department Head. And that's the purpose of this. In other words he has the rights given to him under the Constitution.
- Rep. Holdsworth: Commissioner if this bill is passed how many additional people so far would you be required to administer it?
- Commissioner Dunn: It is difficult to say. We have had a discussion and I would think that we would hope that there would be at least three more people hopefully, attorneys or else someone tremendously experienced in bills involving investigatory work. We think probably somewhere around \$45 or \$50 thousand dollars we could hire those three additional people. I think that even if it was not, we'd still be able to do an awful lot with the staff we had. But we would feel much better if there were additional people.
- Rep. Holdsworth: Basically you are talking about 50 and 100 thousand

WEDNESDAY

MARCH 28, 1973

Rep. Holdsworth continued: dollars additional.

Commissioner Dunn: You are talking about 45 to 50.

Rep. Holdsworth: 45 to 50 thousand dollars additional for appropriation for your Department.

Mr. Sils: Could I add to Mrs. Dunn's answer? This bill is not only going to give us new powers in the Department. It is going to provide the vehicle for a completely new and I think a far more intelligent approach to consumer protection than we have now. And let me illustrate. It isn't the number of people which is needed. It's the newer approach that is needed. And a hundred investigators operating under this current Statute case by case step by step, inch by inch will never nail anybody. Now I'll give you an illustration. We get a price this year, or last year rather. We called people in a whole market into the office. Everybody engaged in this particular market and pointed out aspects of their advertising were misleading. And I'm going to tell you the market, it wouldn't be fair, but because if we did that we would never have the opportunity to do it again.

Within thirty minutes the advertising was corrected in the whole State of Connecticut. And there are two basic reasons involved here. When I was with the Federal Trade Commission many times the businessman would tell me what are you giving my salesman the devil for Mr. Sils, my competitor uses it, I borrowed it from him. He seems to be doing all right. And most businessmen will drop it on the assurance that their competitors will too. That is the proper approach.

That doesn't mean of course that there won't be some that won't go along with the agreement. We did that in two markets and cured two abysses. And we didn't even leave the office.

Rep. Newman: To follow up Commissioner you have great hopes, that if we pass this bill you have great hopes for more effective consumer protection and increased power to obtain this consumer protection. And it would be much more effective, the Department. Is that summarizing what you need?

Commissioner Dunn: Yes sir. It is very very difficult for us at the present time to proceed in certain cases. It is just impossible without the power to sue people, even when we get all through and a court case would go through and it was won. We still have not given apperson who is aggrieved any relief and that is the saddest part of it all to me.

Sen. Page: Question Commissioner; on page 3 Section b line 78 and a half I guess we will call it. You have a right under this

MARCH 28, 1973

Sen. Page continued: particular proposal to enter a place or an establishment. No problems with that. Check the invoices and records pertaining to cost and other transactions of commodities. Does this mean, or what this does mean is that your organization can go in and just go into the record keeping section and in any business at any time of day and just sit down and start to go over all the records and invoices and everything. Would this not disrupt some of these businesses perhaps?

Mr. Sils: The last part of your question I imagine it would disrupt any way. But the purpose of this you always read into any supeana a request for documents relating to a matter under investigation, the purpose of this was going back to my hypothetical in the service stations. We would have to go into the office of the distriubtorship of the refiner in this State. And check his pricing activity. His pricing behavior and that's only reflected by documents. To see if he in fact was discriminating.

Sen. Page: Would you do this through supeana power?

Mr. Sils: Or supeana. First of all we always send a letter reciting the documents we wish to look at. Now 99 time out of 100 there is compliance with it. Yes. Absent that we then have to issue a supeana.

Sen. Page: My question is if you had the right to go in and check invoices do you need that if you have the supeana power under Section 4 of Item b. That you referred to.

Mr. Sils: It isn't a question of, and I know what you mean, and I'm not too sure I know what to say, to be honest about it. But the test of it is when you receive documents, seek them, from anyone, you must prove relevancy. Number one. And you must prove it that they are available. And in that connection it would be the same test that would comply I mean that would be applied to the enforcement of a supeana. In other words we would have no power to go in and look at any documents, the court has already decided and I know with the old American Tobacco Case the Supreme Court will never put anybody to conduct a fishing trip. That's the word they use. You must recite chapter and verse which documents you want to supeana and why you are entitled to them.

Sen. Page: Is that under a supeana?

Mr. Sils: It is the same rule that applies even under to a letter.

Sen. Page : Well then you don't need Section 2 if you have Section 4 on that same page. On page 3 talking between lines 75 and 82,

WEDNESDAY

MARCH 28, 1973

Sen. Page continued: line 78 I don't know what you call it, Section 2, check the invoices and records pertaining to costs and other transactions of commodities. And then you go down to Section 4 right under that it says subpoena invoices, records, papers, and documents. Do you need both of these powers?

Mr. Sils: Well the purpose of it, is that there would be many pieces of material, documents that we wouldn't wish to subpoena. But we would have the right, like to have the right to select which one and if we didn't have that right we would never reach for it. First you have the power to examine, then the examination comes the power to lift out and select. And then you say, these I wish to have. What happens?

Sen. Page: O.K. You are reading the bill, I interpret it as that any reasonable time you can go in and start the check of invoices and records of any business establishment.

Mr. Sils: Right. Not any relating to an investigation, relating to a charge against you. Now go back to the hypothetical. We are charging a refinery with discriminating in price. I'm not interested in his production documents. I'm interested in correspondence documents except as they relate to the establishment of price to the service stations in Connecticut. That is all I'm entitled to see. Now having examined those, there certain of these documents that we may wish to look at and keep for our record in the event that we issue a complaint. At that time we wish to be given the power to subpoena those documents in case you would refuse. That's all.

Sen. Page: What would happen if you went into a business establishment and said here we are investigating a complaint and we would like to see the following records and what if you said gee you know you couldn't have picked a worse time because it is our busiest time and maybe the bookkeeper is out to lunch and everything. I know in America we are innocent until proven guilty. And I would think that this in some respects might be, although it is inconvenient and I realize that you have to get to the bottom of your investigation. What would happen if you said, gee right now is a bad time and I'm sorry I just don't have time to let you come in and do this.

Mr. Sils: As a legal matter we written where reasonable in here. Now reasonable covers a great number of activities as a practical matter, if the man told me I have an attorney and I tell the attorney, could you hold this out for three or four days, of course I would.

Sen. Page:

Mr. Sils: There is no question because it is all wrapped up within the word reasonable.

Rep. Newman: The word reasonable Mr. Sils is a vague term as you know and I mean in various circumstances the Court has to take and interpret what reasonable means under the facts that are presented. You are getting a lot of bureaucratic power here, your Department, if I may read this. The whenever the Commissioner has reason to believe that any person using, has used or is about to use any method, act or practice declared by Section 2 of this Act to be unlawful, and it appears to the Commissioner that proceedings would be in the public interest, the Commissioner shall order an appropriate investigation and examination made. The Commissioner and his or her authorized representatives shall have the right to enter any place of establishment with the State at a reasonable time for the purpose of making an investigation, check the invoices and records pertaining to costs and other transactions of commodities, take samples of commodities for evidence upon tendering the market price therefore to the person having such commodity in his custody and supoena invoices, records, papers, and documents relating to such investigation.

As I read this you can go into there without a court order, without any kind of a search warrant or anything else, go through a man's records, files, and take samples of his merchandise and he may be criminally responsible for something he is doing there and yet you have gone in and garnered all of these documents and samples and all this may be used against him in criminal prosecution. Which goes to give the Commissioner the right without any check or balance by a court or anyone else just to go in and have a fishing expedition perhaps and look around and see if they can gather evidence. This flies in the face of the Supreme Court decision against unreasonable search and seisure in my opinion. What do you have to say on that?

Mr. Sils: Well there is very short answer to that Mr. Newman. If a businessman elects to resist giving his records to this Department he can recall us to issue a stand. Now when he issued a supoena he has his day in court. He can move the question. If it is an unreasonable search and seisure, and as for matter not relevant to the proceeding and ect. He is in court. If the court enforces however he has had his day in court and justice continues. Would not it be more reasonable to get a supoena out first. And then if the man doesn't bring in what you want, go to court and ask him for an order allowing you to get the rest.

MARCH 28, 1973

Mr. Sils continued: I would never assume Mr. Newman that every businessman wouldn't be delighted to cooperate with the Department.

Commissioner: But under one of the other Statutes that we have know, we have the right to go into food stores, everything else to do in Sections having at a reasonable time, having to do with inspections. It isn't an unusual phrase in legislation at all.

Sen. Page: How about if you notified someone in advance by letter. You know it is very easy to say that the establishment has the right to go into court but you know everyone says let's go to court, let's go to court, and they are bogged down enough as it is. And I would think that we might be able to come up with some language that we could avoid all that happening and just to let the fellow know that you know on Thursday someone is coming in and maybe you are afraid he will remove certain records from the premises. And that would ruin your investigation, I don't know. But it would just seem to me to avoid going into court all the time that something might be worded to eliminate the possibility to make the language a little clearer.

Mr. Sils: Is predicated upon this. And I'm sure Barbara would have no objection if you wrote in, and in exercising this visitorial search that there be a letter describing chapter and verse what you are seeking. That is the practice whether you write in there or not. But because it is the practice now, it might not be four years from now. As a matter of practice we write a letter to a businessman stating the charge that is made against him. There is a notice that on such and such a day you ran an ad that contain deceptive statements. And we would like to examine those advertisement, the justification for their writing, whether or not they are true, whether or not you live up to the promises of the ad. Any document relating thereto. You give them a letter to that effect. But you could build that into this statute if you want. But prior to any investigation a written request must be made.

Rep. Newman: You are a very capable lawyer, I have lots of respect for your ability. In your fairness, a good guy and all that, but you may not be around four, five years from now and the this act will be effectively passed, we don't know whether your successor will be fair and equitable in handling these matters as you may be. So we've got to provide for all the things I would think.

Rep. Yudkin: Mrs. Dunn I was wondering do you care to settle that problem? Could we change the reasonable time to a time agreeable to both parties?

Commissioner Dunn: If you had a businessman who really never wanted you in there, you'd never get those records. You just never would be able to see them at all.

Rep. Yudkin: Within a certain length of time, I thought about. Say 60 days or something like that. I'm sure that within 60 days, or 30 days we should be able to have a plan that would be agreeable to-

Commissioner Dunn: Well you can certainly do it that way. There is no question you have the authority to do so. But I would hate to see anyone hands tied to the point where something could not be settled within 2 days or 7 days. Let's say for instance that you found that you went to the company and there was something and you were in the middle of an enormous investigation over certain company and if the records that you looked at would lead you to believe that you'd better look at the company Y also, well if you have to go through 30 days for each one, or 60 days for each one you could have something tied up which would be a possible really tremendous effect upon the consumer or upon another business. I just hate to see it tied up to the point where you really would go years and years and years and you can do that if you get into that.

You certainly have the power to do it that way. We wouldn't recommend it.

Mr. Yudkin: I understand what your problem is but what happens when you come into a store and five days before Christmas and you want to come into a retail store five days before Christmas, well I'm sure this man doesn't want to speak to you whether you write letters. Or he doesn't want to have you disrupt his office. Or his books. Now we have to look at both sides of this- also.

Commissioner Dunn: I agree with you there is no question about it. And the word reasonable, I don't know, we just never had any difficulty at all that I know of with anything like that at all.

Rep. Yudkin: Well I can understand maybe you handle any difficulty. But happens if we get an inspector or someone that comes on the job that might have a little bit of animosity toward the merchant and the person that runs the office. There is a possibility of a problem. This will give you an open end with reasonable, I don't think that will take care of everyone.

Commissioner Dunn: No it won't take care of everyone if you say reasonable time instead of, horrendous flood, and you've got two

MARCH 28, 1973

Commissioner Dunn continued: days left to go. And then the building gets flooded. I don't care what you put into any Statute. You couldn't possibly build into any Statute no matter what you try and pass every possible contingency that may happen. It is just impossible. You've either got to make a reasonable to offer and I don't mean that as a pun going back to this word. And leave it up to the discretion of the person who is concerned or responsible for administrating that particular law. And when you try to legislate every single thing. There is a point where the most unreasonable person will come in with the most unreasonable request at the most unreasonable time. That person shouldn't be there and should be removed there anyway and you better find out dogone why. And I'm not trying to - because nothing could be worse. But you just don't, find that most business, you have that difficulty. We have to think of some way to make it more simple.

I'm not trying to hold you up on it, but just don't set us so tied up that we can't proceed either. That is all we ask. And I think again there is a place in between.

Rep. Newman: What do you think of the suggestion requiring the Department to go into court for an x party that is one side for an order and if you show in getting that order from the Courts that explain the circumstance that you have reasonable cause to think that there are these documents are in possible violation and have the Court give you an order directing, allowing you to go in there and do this.

Mr. Sils: That is the reason that the Federal Government has established the administrative procedure where thousands of thousands of cases that they did not want in the Courts. And that's why they established the administrative hearings and examiner at the Federal level. I would like to see that done here in Connecticut to set up independent hearing examiners to hear the complaints that Mrs. Dunn may issue. I have never liked the idea of judge jury, and prosecutor all wrapped up into one. And yet in the technical sense that the position of the Federal Trade Commission here.

But to get back to your question, if we went in on every deceptive practice in this State. And as for x party ruling in the Court, do you think the Courts are cluttered up now, it would be a holy disaster.

Rep. Newman: You know and I know that these primus performa, you go there with an affidavit, the judge signs it, the order. We get search warrants that way, it is not too difficult. Or cumbersome. Our only concern is we want to draw up a bill here that is fair

MARCH 28, 1973

Rep. Newman continued: to the consumer and fair to the respondent. And there is an all fair treatment. Still arriving at the same point that we stop all these practices.

Mr. Sils: If in fact in the administration of this bill, anyone charged with this enforcement is arbitrary and unreasonable a court will certainly tell them.

Rep. Kablik: A quick drafting question if you will on that line 76 through 82. I presume that the at a reasonable time should also be included in number 2 and number 3 as far as checking invoices and taking samples. Am I correct? So that we could repeat that. I would think that that would be inferred but it is not in the bill and it could make a difference at a later date.

Commissioner Dunn: We'd have no problem with that at all.

Rep. Newman: If there are no further questions?

Rep. Webber: I have a question. I think before I raise my question I think the suggestion by Senator Page that you write in by written request as was suggested in this paragraph and also by suggestion of Rep. Kablik that the word reasonable used through other situations, or throughout the entire. But I would raise this question, if you do in fact, or if you are denied these wide powers as was brought up by some of the members of this Committee. Is it possible that you might get into a problem where in a food product is being sold, where there is a question as to the content and how it might effect the health of our people. And if you were delayed with your investigation or your right to go into this place of business, could there in fact be serious problems with our consumers until such a time that you did have the right to go in?

Commissioner Dunn: Well that would come under the FDA I think. We have the right of embargo. I wouldn't think that this would negate that at all.

Mr. Sils: We can also withdraw food from the shelves without a court order or anything. Pending an examination and investigation. We don't have-

Commissioner Dunn: We wouldn't have any trouble with food products Rep. Webber, at all. I don't think that there would be anything that could possibly be construed so that this would in any way pre, superceed the Statutes in fact when the bill comes on the floor of the Legislative intent might be abundantly clear it might be very well if there is any question. That certainly never occurred. Because both Statutes, the right of embargo, there is just no problem with that at all.

25cap
WEDNESDAY

GENERAL LAW

MARCH 28, 1973

- Mr. Sils: May I make one suggestion Mr. Chairman, or both Mr. Chairmen. In answer to the objection here that Section 4b could be written this way, that after the word shall in line 77, said Commissioner or his or her authorized representative shall at a reasonable time and after written request enter and go on.
- Sen. Page: And after written request what if you get a letter back saying I'm sorry we deny you your request. And I think we are all headed in the right direction. How about if we, my only concern is that or maybe I will follow, what do you think Howard? Yeah in advance so that the fellow can have some prior warning that you're going to -
- Rep. Newman: I don't think that's the answer to the problem. It oversimplifies it.
- Mr. Sils: I would never try to over simplify any of the problems connected with it.
- Rep. Newman: If there are no further questions thank you very much Barbara. Sorry to have held you so much, but we feel this is a very important bill.
- Commissioner Dunn: This to us is the most important bill that we have been involved with since I have been there. And there is just one or two little pulling up things. We appreciate the time of the Committee, we are available needless to say especially Mr. Sils for any technical or problems and so forth. And we most anxious that this bill go through. So we would be more than happy to take any more time to that the Committee needs.
- Sen. Page: Does this mean that we can forget all about all the other bills you have before us?
- Commissioner Dunn: You don't know me so well do you Senator?
- Sen. Page: I think I do.
- Rep. Newman: People who want to speak step forward and identify yourself please.
- Mr. Joseph Donahue: Mr. Chairman, Members of the Committee, it is difficult to follow Barbara Dunn and Bob Sils, but I shall be brief. My name is Joseph P. Donahue. I live in Naugatuck and I am employed by the Connecticut Retail Merchants Association with offices at 410 Asylum Street in Hartford.

The Connecticut Retail Merchants Association favors the purpose of Committee Bill 1965, an act concerning unfair trade practices.

Mr. Joseph Donahue continued: We favor the intent of CB 1965 which is a very broad proposal in the style of the Little Federal Trade Commission Act.

The proposal is however unclear in part to some members of the Connecticut Retail Merchants Association and we do request permission and time to offer clarifying amendments now under study but not completed. We would of course comply with any committee time schedule in submitting suggested amendments immediately.

Just briefly however we feel that this legislation should spell out in some detail the prohibited practices. It appears that CB1965 in its present form delegates considerable authority to the Commissioner of Consumer Protection, authority formerly in the hands of the Attorney General. And this could cause some confusion between the office of the Attorney General and that of the Commissioner of Consumer Protection.

As the Chairman has commented Section 4 gives the Commissioner power to act on language such as that a person is about to use, and it appears to the Commissioner. There is also some question which was referred to earlier, whether the General Assembly should surrender so much of its authority to any agency or commission as is indicated in Section 2 b of the bill which states that the Commissioner may make make rules and regulations interpreting the provisions of the act.

Therefore we respectfully request time to present suggested amendments to the language and also a study of Section 13 of the bill which repeals existing statements without apparent safeguard replacements.

Now we have moved with some dispatch Mr. Chairman, I have expected. We have with us this morning and you have before you I think, a statement prepared by Attorney Nancy Buck who happily is formerly with the FTC, has served as Assistant Director Bureau of Consumer Protection and is attorney advisor to the Chairman. And Miss Buck is here to present here statement.

Rep. Newman: Mr. Donahue I see your request time to present suggested amendments. I'm sure there will be objection to granting you a reasonable time. Which is about a couple of days, because we have a deadline here of April 17 that we send all our bills in.

Mr. Donahue: Any deadline you have we will comply with and appreciate the opportunity. May I present Miss Buck?

GENERAL LAW

WEDNESDAY

MARCH 28, 1973

- Miss Nancy Buck: I'm an attorney from New York representing the Connecticut Retail Merchants Association. The comments that I believe you have before you are rather lengthy and with your permission I will skip the specific language.
- Rep. Newman: We'd very much appreciate it if you would summarize it and leave us a copy of the statement which we will make a part of the record.
- Miss Buck: The bill before you would provide the Commissioner of Consumer Protection with the power to adjudicate unfair methods of competition and unfair or deceptive acts or practices and issue a cease and desist order with respect to such acts or practices. The bill further provides for private actions based upon violation of the act in which recovery may be had of either actual damages or \$200, whichever is greater. In addition, a private class action may be brought to recover such damages.

The Connecticut Retail Merchants oppose the bill in its present form. And I emphasize in its present form. We are not opposed to the purposes of the bill nor the intent of the bill. As Mr. Donahue said. Particularly disturbing are the particular private remedies in this bill. A minimum recovery of \$200 even when there may be only \$1 actual damages; seems to me to be completely unwarranted. Such a provision is not needed to make it worthwhile for a person with little or no damages to sue since his attorney's fees will be recoverable in any event under Section 7d.

Moreover the inclusion of class actions seems inappropriate in the context of this bill. Class action proposal contains no guidelines as to how such class actions are to be conducted, no provision specifying what kinds of notice, unity of claimants, potential class members, unity of interest, who would be bound by a judgement, or any similar question.

Under such circumstances it is certain I think that a myriad of legal questions will arise and provide very little protection and very much confusion in the context of a class action.

In any event class actions are opposed because they are a threat to the operation of legitimate and I stress legitimate businessmen in this State. Class action authorization would allow every plaintiff merely by typing the words class action on his complaint to magnify virtually every alleged grievance a thousand fold and perhaps a million fold, depending upon how broadly he construes his own class. The legitimate businessman must either settle or litigate the claims which are perhaps the invention perhaps may be the wrong word, but in the imagination of the one who says I am

WEDNESDAY

MARCH 28, 1973

Miss Buck continued: a class representative. Who may not even other members of his alleged class may not even think that they have been wronged. This is the very nature of a class action.

Limited experience with Federal Rule 23 which has been in its present form since 1956 I think has demonstrated the manageability of class actions. General speaking it seems to me that the Federal experience and experience in other States has shown that class actions that have been brought against a larger firms not the fly by night operators who are unlikely to have enough money to pay the damages of class actions anyway, and very often as the Committee well knows cannot be found. And the kind of legislation that encourages the suing of good guys if I may put it that way, because they can be served and because they are thought to have enough money to pay settlements does not strike me as the way to deal with the people who I believe you are really after. The fly by night operators. Class actions will impose a problem on the Courts of this State. There is an example on page 4 of the kinds of testimony that would have to be taken in one Federal Class Action and that the matter of roughly the time it would take to try this case on page 5. An estimate of 6 hours a day, 2300 days or about 11 years. And this is in one class action, in the Federal District New York.

On particular comments and I'm now on page 5 of my prepared statement. Just a few suggestions. It seems to me that the bill should be limited to activities within the State, Section 1 where Connecticut perhaps ought not to consider the suppoena act of the discussion earlier of documents far removed from this State.

Number 2 comment, this has been the discussion of great deal of significance in light of the colliquys this morning between Mr. Sils and the members of the Committee. They way Section 2 is now phrased talks in terms of the interpretations of the Courts and the Federal Trade Commission. As far as the Courts are concerned I believe that this is permissable. There are no advisory opinions issued by the Courts in the United States.

But we would suggest that the word interpretations be replaced by the word rules, regulations or decisions of the Federal Trade Commission. The Commission as many of you may now issues all kinds of statement no all of which are public and many of which might be included under the term interpretation. The words rules regulations and decisions are the kinds of actions by the Federal Trade Commission which have been made public, which those who are party to them have received notice and have had opportunity to appear in. The kinds of things that courts could additionally take

Miss Buck continued: traditionally take cognizance of and are the kinds of things that it seems to me ought to be limited, that the Commissioner ought to be limited too, when it comes to talking about the Federal Trade Commission.

We recommend that the rule making power formerly with the Commissioner be deleted from this bill once the Federal Trade Commission's pronouncements are included clearly within the reach of Section 2. The rule making power would not be necessary. And by the way I note that Section 2b speaks in terms of rules that are not inconsistent with. I believe that that leaves the Commissioner with real leeway and subjects businessmen with possible conflicting rules, than what the Federal Trade Commission says may not be inconsistent with what the Connecticut Commissioner says, and yet a businessman who does business in this State will have to comply with both sets of rules with a great deal of difficulty in some cases in which is superior.

On comment 4 this is Section 3, there are now liabilities under this act for people who disseminate advertising even though they themselves do not know that it is false. We believe that any person who acts in good faith and does not know that the ad is false is not the one who ought to be liable under this act.

But by the same token I believe that the financial interest requirement in Section 3 ought to be deleted.

It was said earlier this morning that the Commissioner has no power to disclose the subject of the investigation unless he begins a cease order proceedings by the issuance of a complaint. As I read this bill that is not quite the case since the Commissioner is free to disclose anything in the public interest for law enforcement purposes. We recommend that the language that I just mentioned be deleted so that the Commissioner may indeed disclose when he or she issues a complaint. They cannot go around bandying the names of those companies that are merely under investigation and who may not be culpable at all under this act or any other.

Section 4c provides the time of 15 days to respond to a complaint from the Commissioner. It seems to me that that in an unduly short period of time that at least 30 days ought to be allowed to apply to a formal complaint in the liability that is present in this act is about to be imposed. This is particularly so for any company which it is at all large since the complaint itself may not reach the company or the right person in the company, the right lawyers in the company within 15 days. I would think 30 days would be about the minimum of due process.

Section 4d allows for the appointment of a receiver and revocation

Miss Buck continued: of a license to do business for any violation under this act. And that seems to be a rather stringent penalty even within the discretion of the Court unless the violation is willful. There fore we recommend that such stringent remedies be conditioned on willful violations. Businessmen who know perfectly well what they are doing in violating the law perhaps should be subject to these kinds of penalties. But an innocent mistake is not the kind of thing that ought to give rise to a revocation of a license to do business. By the same token in Section 4d the word appointer and receiver also to be conditioned on a situation where there is a danger that a person would flee the State. Receivership is an unusual remedy. It is not the kind of thing that ought to be bandied about lightly. It is one thing to put in receivership a business where the businessman is likely to be the kind of fly by night operator I mentioned before and it is another thing to put a business into receivership simply because there is money at stake. That is a very unusual kind of remedy. And I would have some problem with the due process with that kind of situation.

The standar of review that the court imposes upon the Commissioner is Section 5 130 (line) is simply evidence. We believe that this should be changed to substantial evidence in the record considered as a whole. Which is the standard under which the Connecticut Administrative Procedure Act standard as I understand it, certainly the Federal standard. The reason for it is obvious, the court can affirm a Commissioner's decision on any evidence means a shred, in the record even though everything goes the other way. Anything else goes the other way. It would be enough to affirm the decision and we think that is not really enough and not perhaps what the Committee had in mind.

On the question of damages, Section 7a. I mention again the notion of this \$200 damages even where the violation is not willful. Actual damages that is the amount that the consumer is actually been hurt would seem to be adequate when if this bill does, there is a provision for attorney's fees so that this is not it seems to me a situation where consumer could not afford to vindicate his own rights without some kind of punitive damage for reason of this \$200 provision seems to be. On the other hand where there is a willful violation as I mentioned before, the kind of situation where to put it bluntly somebody is asking for it, just as a receivership might be appropriate perhaps the \$200 minimum damages might be appropriate.

Now in Section 7b it seems that the word on line 162 which I believe is a reference to the kinds of damages that could be recovered in a class action again the term actual action damages. It seems to me that the purpose of this bill is not to punish but

WEDNESDAY

MARCH 28, 1973

Miss Buck continued: to assure that businessmen who violate the law stop from doing so and the consumer's rights are vindicated. Actual damage is enough to vindicate both of those rights. On the question of what kinds of notice should be used for the class action procedures. As I mentioned before as above the be deleted entirely for the reasons that are in the statement. But if it is to be retained let me suggest that the bill include the following sentence. "In such action notice shall be sent to all class members and the action shall proceed only as to those who have affirmatively indicated their desire to be included in the class and who have submitted a claim."

That language is usually known as the opt-in procedure. It assures that those who are involved in a transaction or those who think they have been damaged and who are willing to go forth into the action and be bound by it. It has two kinds of protection for both the businessmen and consumers. As to the businessman it makes a class that they know about, that they can deal with, that they can explore the realities of the claim. To settle if it is appropriate and generally make it mandatory, or manageable, and also it has the advantage of not binding to the judgment those consumers who think that they can do better for themselves or who are not interested. So that those consumers who didn't get the notice or for some reason where not able to participate in the action are not bound by action in which they did not participate.

Section 7d again in a litigation situation, we believe that an award of attorney's fees in these cases should in fairness should in fairness be a two way street. Again we come back to willfully in Section 10 a for what kinds of penalties there are. Who violates for violating an injunction. \$25,000 and again forfeiture of the right to do business is extraordinary penalty for for maybe warranted if at all for willful violation. By the same token the definition of willful in Section 10c which says the knew or should have known. Should have known is not usually standard for defining willfu. Somebody knows what he is doing, and knows that he is violating an injunction that is one thing. But if he should have known, well I'm a lawyer but who among you knows what you should have known. When it comes to injunctions or certain other kinds of things which may not be written terribly clearly. It is time enough after he has violated the injunction once perhaps for you to say, look listen you are not supposed to do this. Then he knows. But the first time, these kinds of penalties without a provision that the violation be willful seems to be quite unusual.

And finally, almost finally, we propose a new Section 14. Which would read as follows: "If a defendant shows by a preponderance of

Miss Buck continued: of the evidence that a violation of this Act resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid violations of this Act, no liability shall be imposed."

This section is designed to guard against imposing liability or punishing someone for the inadvertent act of an employee where the employer has taken reasonable steps to insure that no violation will be committed.

It seems only common sense to write something like that to prevent the situation where the employee does something which the employee does something that the employer has told him before not to do. And perhaps the employee may be fired immediately after the commission of the offense. And to hold the employer in a bill of this kind can be perhaps unreasonable.

Just one that would suggest that the State Legislature preempt the localities and municipalities from enacting their own rules and regulations. Again so there is some certainty as to what a businessman must comply with.

Sen. Page: Getting back to Section 10, Subsection c, are you saying that most large businesses, I guess I would have to disagree with you. I think that most businesses know when they are trying to pull the wool over some consumers eyes.

Miss Buck: Well I think the situation needs to be divided into two categories. For legal for analytical purposes. The single businessman obviously is responsible for himself only and in any acts that are committed in his business, he commits and yet he may be the one who should have known that his conduct is unlawful and the one who does not have legions of lawyers to advise him. And he can be acting in good faith. That is one situation. If he knows and I suggest that it is proper to hold him. But if he should have known I say perhaps not.

Sen. Page: Isn't there an old term ignorance is no defense?

Miss Buck : That's right but ignorance is no defense is a part of a law certainly but it doesn't say that you have to impose that kind of standard on a businessman. An option and we are suggesting against it. The problem is compounded again I might say in large businesses where the one to be held is not the one who is acting. And when he should have known, that is if he has no procedure then you can say well he knew. If he knows his employees are acting illegally and in violation of an injunction.

Rep. Newman: You say a willful act requires knowledge. The word should have known are part of the willful standard. I don't

Rep. Newman continued: agree with you when you say that is not usual. This means that either he has actual knowledge or he should have known through circumstances that something is happening. And many men in the penitentiary have for felonies because they may not have had an actual knowledge, but they should have known and I think I can't go along with you on that part of it.

Miss Buck: Well you are the Chairman but -

Rep. Newman: Well I only have one vote on the committee. Any further questions of Miss Buck. Yes.

Rep. Kablik: As far as your suggestion that it may be limited to actual damages, you indicated that an action might take a long period of time. Or even a day or two, don't you feel that there should be compensation, of course I'm looking at other cases and other types of actions where people are effectually deterred from bringing action because they have to spend inordinate amounts of time away from their jobs which is not paid for. To me this would seem to be the purpose and I would have two other questions. But I would like to ask if you have any comment on that.

Miss Buck: For one thing a \$200 penalty and it is that forces and of course is only relevant to the smaller cases. Above \$200 and I see you saying yes and those are exactly the ones that ought to be vindicated. And that may be so but if the damage is abolished to a single consumer then and it resulted from a relevantly inadvertent act of a business. It can happen, no one is saying that business is perfect. All we are saying is that \$199 penalty for \$1 violation is not going to be enough to pay the consumer for days and days and days in court anyway. It is only a penalty not damages.

Rep. Kablik: All right now that we have a difference of opinion I won't pursue the matter. I'd rather ask you questions. Rep. Kablik again. So we know who we are talking about. Let me come back to it.

Sen. Zisk: I have a question, Sen. Zisk from the 6th District. You have serious objections to the provisions of Section 4c and Section 4d. I'm interested in your comment that you feel the appointment of receiver might in some cases violate the due process clause. As I read those two sections they seem to provide very clear and very fair process to be followed when a complaint is received including the provisions for hearing and certification of finding to the alleged violator and then a process for a Court action or granting of injunctive relief. Any appointment of a receiver. What would be the alternative suggestion where in the case a violator continued

GENERAL LAW

WEDNESDAY

MARCH 28, 1973

Sen. Zisk continued: to practice unfair practices and doesn't adhere to the rules of either the Commissioner to cease and desist or to a court order. How else would we protect the monies that have been obtained by such factors in practice?

Miss Buck: Unless I misread my own statement I was only suggesting that receivership and revocation of a license be limited to those situations where the violating was willful and I believe that is exactly the situation you described. I have no problem with the situation that you described where somebody repeatedly violated an injunction and finally the court says it is time to impose a receivership.. You've had all the notice that anybody could reasonably expect and that was not my idea of due process violation. I was concerned about the situation where since the Statute provides not willful, no willfulness as a standard that a receivership could be imposed without that kind of conditioning.

Sen. Zisk: Well I would disagree with you in that interpretation but I think we would rely on the wisdom of the Court in that situation that they would look for something more than this incidental violation. A continuing violation which I think would constitute willfulness in the eyes of the court. We have in 4 c and 4 b I think adequate provision for guaranteeing the due process be followed in cases of this type and I mentioned also in your comments the way this section reads, 4c at least 15 days notice after complaint. You don't think that is adequate you suggest 30 days.

Miss Buck: Yes sir. Well there is no reason to use the Federal Trade Commission's procedure necessarily because those are nationwide. But this is a sweeping law the liability is significant and I see no reason not to allow 30 days to prepare defense which is what we are talking about in a case where we incorporating all of the law under the Federal Trade Commission. After all the Commission has had weeks perhaps months to refer to. But the potential respondent hasn't.

Sen. Zisk: One final thing I noticed your comment you were a little concerned about the Commissioner being able to make rules which would not be inconsistent with the present rules and regulations of the Federal Trade Commission, do I understand that you believe the Federal Trade Commission Act to be completely exhaustive of possibilities then that if we discover one here in Connecticut that ought to be a rule or regulation you'd be against that?

Miss Buck: No I'm not arguing that the Federal Trade Commission is exhaustive in its treatment of all the potential problems. But I am suggesting that there are many many businessmen, and businesswomen who do business in a situation where Connecticut either

35cap
WEDNESDAY

GENERAL LAW

MARCH 28, 1973

Miss Buck continued: Connecticut is not their only source of business or Connecticut though is the only place of business they aren't involved or rather they are involved in interstate commerce. And which is the jurisdictional for the FDC. What I'm trying to suggest is that one set of rules, where Connecticut has broad enforcement power to vindicate the rights of the FDC which for one reason or another does not vindicate is enough but that one set of rules is so extremely important to somebody who is trying to be honest.

Rep. Newman: Any further questions by any members of the Committee? If not, thank you very much. Will you identify yourself sir.

Stuart Dear: I am a member of the Board of Directors of the Connecticut Consumer Association. And I'm here today to speak in favor of this bill. I think that the bill is a superb bill and I haven't said that about many bills that I've seen. And I think that the way it is drafted shows a wonderful balance between the need for businessmen to know what they are, to know what the rules are and to know that they, what the limits are of conduct and the need for the consumer of this State to have meaningful protection.

One of the most important aspects of any consumer bill as we found out is that there has to be both administrative and private enforcement. A bill without enforcement mechanisms is not worth the candle that it takes the bill to get passed. And in this bill the enforcement mechanism I think strike a balance that not only will assist the consumer in redressing the problems, assist the businessman in not losing out to those members of the business community who won't play fair. But also provides the business man and the consumer with the protection of that they need. The businessman who we all know needs to know what the limits of his liability are going to be and I think this bill allows him to figure it out.

Barbara Dunn did not point out to this Committee that this bill really is a bill that has been around for two years. It has really gone through the crucible of tests and testing before the form that you have before you was arrived at. I know that Mr. Sils and Mrs. Dunn have discussed the bill with many consumer groups. I think with Representatives of the business community and they've absorbed I think most of the information which they've gathered and they've really attempted to work out a compromise that protects the consumers as well as giving the businessman the protection that he needs from liability that is undeserved. If I can call the Committee's attention to Section 2a, I believe that Section 2a could be improved by the addition of language at the very end of the Section, along the lines of or by the consumer, pardon me or by the Commissioner pursuant to the provisions of this act.

36cap
WEDNESDAY

GENERAL LAW

MARCH 28, 1973

Mr. Stuart Dear continued: As it stands now unfair and deceptive acts and practices are defined totally in terms of Federal law and it is my hope and belief that the Department of Consumer Protection will also contribute to the filling out of what is unfit and deceptive acts and practices.

I think that Sections 4b, 4c, and 4d do strike a good balance between the need for the businessman and the need for the consumer to have an effective remedy carved out for their protection. I trust the judges of this State to do what's right. I have not seen any judge that is going to put a businessman, hurt one. I've not seen any judge that I know of that would put a going business out of operation. I also trust the Department of Consumer Protection and I think that's really the question before the Committee right now. The ultimate question is knowing that Mrs. Dunn and Mr. Sils have spent two years on a bill. Knowing Mr. Sils' expertise, is this Committee going to give the Department of Consumer Protection the chance that they need to protect the consumers of the State. I don't think that there is anything in this bill that is unnecessary. And if there were I think that it wouldn't have been here. I think that two years is a long enough time to really come up with a workable bill and that's why I say both this, I think the question really is will this Committee trust the administration branch, the Department of Consumer Protection to do what is necessary and will this Committee give them the tools that they need to do what is necessary and proper.

As to Section 7 I think Section 7 is really one of the most crucial parts of the bill. As I said before a bill without means of enforcement is not worth anything to the consumers of this State. I think the bill Section 7 draws from the best part of the Connecticut Truth and Lending Act which was passed by the Connecticut Legislature in 1969.

It certainly does not go beyond anything that this Legislature has considered and passed before. As to the problem with class action, the out of State lobbyist who spoke previously to me had any knowledge of Connecticut law she would know that Connecticut has a very strict general class action rule. And one of the parts of that class action rule is that in any action requesting of a declaratory judgment notice must be given to each and every member of the class. And that is the best motive possible. So there is no problem there. I think that the bill if passed in this form by this Committee would definitely protect the consumers in a way that they haven't been protected before. It would save the consumers of the State millions of dollars that they have been cheated of in the past and would without this bill unfortunately

MARCH 28, 1973

Mr. Stuart Dear continued: will be cheated out of in the future. Without making any judgment as to whether or not something is wrong, I would just call the Committee's attention to the there to be great holiday magic type problem that has already cost the Connecticut consumer millions of dollars. Many people could have been protected I think there and in other similar areas because we had a bill such as this.

As I, if this Committee does see fit to extend the time between the issuance of a complaint and the hearing I would recommend that the Commissioner of Consumer Protection be given the power to issue a temporary cease and desist order pending concerning the specific practice in question, pending the hearing. It, if it is necessary to have a longer time for the hearing then the consumers of this State should have protection by Mrs. Dunn and her successor's ability to issue a temporary cease and desist order.

As this bill is drafted and as it would be enforced by the Department of Consumer Protection I don't think and I'm sure that any which limits this in this State and that's 99% of the businessmen would not have one thing to worry about. Any problems which might conceivably and I say conceivably fall within this area, are going to be rectified by the legitimate businessman. No legitimate businessman is going to get this far. Any problems that are questionable are going to be worked out. Most likely the Department of Consumer Protection is going to serve a conciliation function rather than in many cases rather than a aggressive prosecution function. And it is for those reasons that I'd recommend that this bill be passed in the form that it is. It is a balanced bill. It is a good bill. On behalf of the Consumers of this State I can say that it is probably one of the most important pieces of consumer legislation before this Committee in the last four years.

And I would heartily recommend its passage.

Rep. Newman: Thank you. Are there any questions? If not any more speakers on this matter for all time? Miss Madgeco.

Miss Madeline Madgeco: Mr. Chairman, members of the Committee my name is Madeline Madgeco I'm Political Education Director for the AFL CIO. Because of the previous eloquent speakers giving proper testimony on the bill, I'll make a very short statement. As you all know labor and consumer groups and many legislators worked very hard for almost this same kind of piece of legislation that you have before you now, just to have the Governor veto it. For the reasons given that the appropriation wasn't available at the time. We consider this bill to be a very reasonable and

Miss Madeline Madgeco continued: realistic approach to the problems of fraud and product misrepresentation in Connecticut. Bill number 1965 is a bill the people of this State desire and need desparately. A bill we urge you to report favorably with the hope that an appropriate can be made available and I was very happy to hear that Mrs. Dunn say that the Governor would provide the appropriate for such a very important piece of legislation and we urge your support of it. Thank you.

Rep. Newman: Thank you very much. Any questions? Who else?

Marty Rogol: Mr. Chairman, members of the Committee my name is Marty Rogol I am Legislative Coordinator for the Connecticut Citizen Action Group. The Connecticut Citizens Action Group basically supports Committee Bill 1965. We supported SB-41 last year and testified. We worked with the Commissioner on this General Assembly for enactment of that almost over riding a veto. The, we hope the same thing does not occur this year. My concern is that in terms of the budget document that has been released to the public information has not been shown that in fact the money is available for the staff implementing it. We would like you the Committee to make sure that such is available before you act on it.

Additionally we would recommend that this Committee perform in the future when looking at this legislation what is known as the over sight function. That material be presented to ths Committee how this legislation is in force? If the Commissioner is enforcing? What kind of action is she taking in behalf of the Consumer? I think this is an important role for the Committee to play and I think that it is one for that the Committee has not played previously. I also find it intriguing that-

Rep. Newman: Mr. Rogol would our function be any different from the Legislative Review Committee that is in existence now?

Mr. Rogol: The Legislative Review Committee does it basically on a fiscal manner Mr. Chairman. I would suggest that you review it more in terms of performance beyond just how a couple of dollars and cents a year.

Rep. Newman: I think the Legislative Committee, Review Committe, I don't think they confine themselves to fiscal matters, I think it has jurisdiction , an overview of all of our programs.

Mr. Rogol: Right but you are the ones that have the expertise in consumer legislation and you are the ones that asked for this legislation and you are the ones that the Commissioer comes and suggests new legislation to. And you are the ones that will have

Mr. Rogol continued: therefore the expertise to do a proper review. I would suggest that rather than just performance ordered which is basically the role of the Legislative Review Committee which it has established for itself, that we go beyond that in this Committee to a serious review of what is going on.

In terms of the presentations we've heard previously there is certain agreements that we have with the Connecticut Consumers Association in terms of changes. I find it intriguing that we have a rather long and detailed statement by the Connecticut Retail Merchants Association. Business always seem to come off in a closed consumer legislation that really requires accountability.

All this bill does is say you've got to be accountable for your actions. You make individual citizens accountable for their actions with the criminal laws. We can make the corporation which is a person equally accountable for its actions. And equally accountable and responsible for the actions of those that it employs. I think this is a good bill in terms of providing that accountability.

In terms of a couple of sections before you, basically we agree with the suggestions just put forward by Mr. Dear on Section 2 and in terms of giving Connecticut the power to go beyond the actions of the Federal Trade Commission if it so desires. Section 4 discusses the hearing procedure. Just a question for the Committee for its review. Would this hearing be a contested hearing under the APA and allow the citizens or citizens' groups to have come forward and intervene in the proceeding before the Department. And if they can what are their appellate rights. I think this is an area where we feel strongly, we've have intervened in many cases before the PUC and we'd like to see consumers have the right to assist the Department in terms of furthering what will be presented at that hearing.

In Section 7 it relates to any person who purposely leasing goods or services from a seller or a lessor. We have known the manufacturer, there are many packages that the manufacturer gives as a total package to the seller. And if the unfair practice occurs due to the absence of the manufacturer, I think they would be equally responsible.

One other point in terms of and we agree that the procedure set out in 7 and the rights of the citizens to actively go out and seek their own redress are important. Just a possible point of confusion and additional language might be helpful.

Section 8 provides the Commissioner with the right to seek voluntary compliance. With that voluntary compliance would it foreclose the right of citizens to bring suit under Section 7?

WEDNESDAY

MARCH 28, 1973

Mr. Rogol continued: We would think not but it might be helpful in the future for language to be drafted into this showing the citizens suit is not foreclosed by voluntary compliance nor is that necessarily evidence that something has occurred where the citizen should not recover. Thank you Mr. Chairman.

Rep. Newman: Any questions? Thank you Mr. Rogol. Any other speakers?

Mr. Leonard Duby: Mr. Chairman, members of the Committee, my name is Leonard Duby and I'm president of the Connecticut United Auto Workers Community Action Program Council. The UAW supports Committee Bill 1965. We also supported Senate Bill 41 last year and will support it again under this new billnumber.

Our members were very dissappointed when the bill was vetoed last time and we are happy to hear that arrangements have been made by the Commissioner to ensure that the Governor will not pull the rug out from under us again.

Prior to the passage of this bill last year the average worker had no recourse against deceptive practices. Now the worker has another opportunity to be protected. Workers can now demand that the Commissioner investigate alledged or suspected deceptive and unfair trade practices and to obtain court injunctions when the violations exist. Additionally the court allows the court not only to stop the practice but reimburse the consumer for the the cost of the product and the trouble in obtaining a fair resolution of the complaint. Although we endorse the bill it should not be interpreted as an endorsement of the lack of protection that has gone on in the past year.

We know complaints to the Department of Consumer Protection have gone unanswered and we would like to see that this Committee recommend additional funding for the CDP to properly implement such important measures. Thank you.

Sen. Page: Any questions of the Committee? If not thank you very much. The next speaker?

Mr. Rep. Newman: Pardon me, how many speakers do we have?

Mr. Neil Ossen: Ladies and Gentlemen of the Committee, I'm Neil Ossen the attorney speaking for the low income consumers in the State. I need not bother you with the hard work that this Committee put in last year on this bill and the work that you have put in this year. Let us say that if you make a list of all the bills that were introduced before this Committee, seeking to address the problems and the wrongs to the consumer this

Mr. Neil Ossen continued: is number one. This is the one bill that the consumers honestly feel that they need to have. We would like to suggest that Mr. Dare's suggestion on Section 2, an appropriate amendment that should be made and just briefly to the Connecticut Retailer's allegedly speaking against the legitimate concern which present the old classical tale stories of class action. I dare say just briefly that there is one case that they report probably not a class action against retailers but probably a FTC class action.

I suggest to you that legitimate businesses benefit from a bill like this that put out the illegitimate business because when they are out legitimate business is able to forge ahead.
Thank you.

Sen. Page: Any questions?

Sen. Zisk: Attorney Ossen, first of all who is it that you represent?

Mr. Ossen: Low income consumers.

Sen. Zisk: Low income consumers, is that an organization that has standing in the State of Connecticut, is it an corporate entity?

Mr. Ossen: It is not a corporate entity. It is various associations?

Sen. Zisk: Could we have a list of those associations?

Mr. Ossen: That would be the Community Renewal Teams, Consumer Protection Division, which handles minor consumer protection.

Mr. Zisk: In other words this group has no formal organization, has a formal organizational structure, right?

Mr. Ossen: as you well know there is various community action programs and each one has a some sections in it.

Sen. Zisk: Well I'm interested in getting to know the specific make-up of this group.

Mr. Ossen: This would be the community renewal team, consumer protection. Consumer protection section.

Sen. Zisk: And how many people are represented?

Mr. Ossen: There are eight people who work in that Section handling low income consumers and their problems.

42cap
WEDNESDAY

GENERAL LAW

MARCH 28, 1973

Sen. Zisk: Well who do you speak for in terms of numbers of people?

Mr. Ossen: For those 8 people and the people who come to them with their problems.

Sen. Zisk: Now you are the third speaker that has said that you would like to see something added on to Section 2 to give the Commissioner some additional power there. Don't you think that 2b covers that particular area?

Mr. Ossen: It seems to cover it, however it would be nice to allow the commissioner to give him the specific power.

Sen. Zisk: Well if we add some language of 2a won't we in fact be confusing the meaning of 2b?

Mr. Ossen: I don't believe so.

Sen. Zisk: You don't think so. Thank you.

Mr. Baer: 2a looks really toward I think a substantive definition you are defining unfair deceptive acts or practices or unfair methods of competition and you are defining your just in Federal terms. 2b is really procedural. You are saying that the Consumer, that the Commissioner can promulgate rules and regulations but I can let, unless 2a is clarified that those regulations are going to be unfair and deceptive practices within the meaning of 2a. I can conceive of a judicial problem of interpretation along the way. That is the only reason I might suggest the change.

Sen. Zisk: I understand your suggestion but you are not concerned although the Commissioner might pick up a lot of discretionary power here in making supplemental issues, additions to the Federal Trade Commission Act. N

Mr. Baer: No because 2b specifically says that you can't do anything that is inconsistent with the Federal law. And that body of Federal Law really is going to you know set out parimeters, I can't see that being a problem at all.

Sen. Zisk: Thank you.

Sen. Page: Are there any further speakers? If there are no further speakers, I'll declare this hearing closed.

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732

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OFFICES: CCAG, CEAG — 57 FARMINGTON AVENUE

Mr. Chairmen, members of the Committee, my name is Marty Rogol and I am Legislative Coordinator for the Connecticut Citizen Action Group (CCAG). I appear before you today to offer our support for enactment of Committee Bill 1965. We would urge that you give it a joint favorable after certain modifications.

It is fair to say that we have already wasted a year, that consumers have not had the benefit of this measure due to a veto last year. The bill was vetoed according to the accompanying message due to a lack of appropriations. We find, however, that the recommended budget of the Department of Consumer Protection is the same as that spent in the last fiscal year. It would be helpful if the apparent discrepancy were explained.

Additionally, we would urge this Committee to perform the function known as "oversight". For example, does anyone here know to what extent Commissioner Dunn and her predecessors have used the powers already on the books? Does the DCP have the necessary staff to properly implement the powers you are granting? As responsible legislators it is your duty to evaluate past, present and future performance. We support this bill as our research has shown that what was outstanding and farsighted legislation

legislation in 1959 is in need of repair. Our oversight has shown that the additional powers will be of value to the consumer. I would suggest that the Committee do some needed oversight and determine for yourself whether we are correct.

There are certain sections of the bill which warrant a second look and possible revision. We are concerned that Section 2 may foreclose a stronger position than that taken by the Federal Trade Commission (FTC). In subsection (b) it states that "(s)uch rules and regulations shall not be inconsistent...." This may at some point create a problem if Connecticut decides that the FTC has stepped back from its present advocacy position.

Section 4 discusses the procedure regarding hearings before the department and the ensuing appellate rights. Would these hearings be "contested cases" under the Administrative Procedures Act, and would the citizen have the right to intervene and participate as a full party? If so, provision should be made for citizen appeals. If there is no present intention of allowing citizens to participate as parties in the hearings, then the language should be changed to provide that right.

Our other concern with the statutory language is Section 7. We would recommend that you include the manufacturer, as well as the seller or lessor. Additionally, we would like to see information which justifies \$200 as the appropriate ceiling. How would that protect someone who had been subject to a deceptive

practice regarding the sale of a large appliance?

734

There may be another problem with Section 7. If the Commissioner settles the action with an "assurance of voluntary compliance", does that foreclose action by citizens under subsections (a) or (b)? It would be helpful if the Committee added language to the affect that citizen suits would not be prejudiced by such a settlement.

With these changes and the establishment of proper monitoring procedures over the implementation of this law by department, we would offer our support to this measure.

March 28, 1973

Submitted by Atty. Buch

735

Connecticut C.B. 1965

This bill would provide the Commissioner of Consumer Protection with the power to administratively adjudicate unfair methods of competition and unfair or deceptive acts or practices and issue a cease and desist order with respect to such acts or practices. The bill further provides for private actions based upon violation of the act in which recovery may be had of either actual damages or \$200, whichever is greater. In addition, a private class action may be brought to recover such damages.

We oppose the bill in its present form. Particularly disturbing are the private remedies. A minimum recovery of \$200 even where there is only \$1 damages is completely unwarranted. Such provision is not needed in order to make it worthwhile for a person with little or no damages to sue since such person may recover attorneys' fees under Section 7(d).

Moreover, the inclusion of class actions is completely inappropriate. The class action proposal (Section 7(b)) contains no guidelines as to how such class actions are to be

conducted, i.e. notice, unity of interest, who is bound, etc. Under such circumstances a myriad of legal questions will arise from such a provision.

In any event, we strongly oppose class actions since they are a threat to the operation of every legitimate businessman in the state. Class action authorization would allow every plaintiff, merely by typing the words "class action" on his complaint, to magnify virtually every alleged grievance a thousand-fold and perhaps a million-fold, depending on how broadly such plaintiff chooses to define the class he purports to represent. The legitimate businessman must either settle with the class or litigate the "claims" of thousands, or perhaps millions, of class members who may not even believe themselves wronged.

Class actions will deter and jeopardize lawful business action and would make procedural changes which would encroach on the substantive rights of the parties. Further, class actions are ineffective against the types of abuses which are often cited by proponents as requiring use of class actions.

Even limited experience with Federal Rule 23 has demonstrated the unmanageability of class actions and their potential for what numerous courts have characterized as staggering, possibly annihilating penalties. One commentator has labeled

the class action as a vehicle of "legalized blackmail" while another had termed it an engine of destruction.

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With respect to the bill we offer the following suggestions:

1. Page 1, Section 1(5), lines 36 and 37, delete the words beginning with the words "wherever situate . . ." and insert the words "in this state".

The bill should be limited to activities within the state. Connecticut should not purport to act with respect to things outside the state. The provision which would reach activities indirectly affecting residents of Connecticut is far too broad.

2. Page 2, Section 2, line 43, delete the word "interpretations" and insert the words "rules, regulations or decisions".

The word "interpretations" is too broad because it may include such things as advisory opinions, guides and non-official actions and even non-public positions of the Commission. Such actions of the Commission are unilateral statements of position.

Such statements should not be relied upon by this bill since persons affected by such statements do not have the opportunity to present their views. Rules, regulations and decisions of the FTC, in contrast, are articulated only after hearing and opportunity to be heard in conformity with due process requirements.

3. Delete Section 2(b) on page 2.

There is no need for rule-making power in the Commissioner since the rules, regulations and decisions of the Federal Trade Commission are definitive.

4. Page 2, Section 3, line 55, insert after the word "station" the words "or other person", and delete in lines 57 and 58 the words beginning with "and did not have . . .".

The act should not apply to any person who merely disseminates advertising prepared by others where such person does not have knowledge that it is false. A person is acting in good faith whether or not he has a financial interest in the sale. Moreover, the lack of financial interest requirement would include owning a share of stock in a broadcasting company.

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The Commissioner or Attorney General should not disclose the subject of an investigation unless he brings a prosecution. The deleted words would allow him to do so under the vague standard of "public interest". Any disclosures should be limited to the types of practices which he believes are an immediate danger, without specifying the name of the person being investigated.

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Fifteen days is too short a time to prepare for a hearing. The time problem is particularly acute where a large company is involved and it may take a number of days for a complaint to reach the proper person.

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Appointment of a receiver and revocation of a license to do business should be limited to cases of willful violations. Further, there should be no restitution unless the act or practice was committed after it had been declared to be a violation by the Federal Trade Commission.

8. Page 4, Section 4(d), line 112, insert after the word "receiver" the words "where there is a danger that such person will flee the state".

Appointment of a receiver is a drastic remedy which should be limited to situations in which there will be no chance for recovery unless such drastic step is taken.

9. Page 5, Section 5, line 130, delete the word "evidence" and insert the words "substantial evidence in the record considered as a whole".

The standard of review is unduly narrow and different than the standard for review under the Administrative Procedure Act, 4-183(g). The standard in the bill is inappropriate since there may be some small item of "evidence" in the record, although the record is completely contrary to the one particular item. In such circumstances, the court should reverse rather than affirm.

10. Page 6, Section 7(a), line 155, insert after the word "or" the words ", in the case of willful violation, actual damages or".

Two hundred dollars should not be awarded where the violation was not willful. Actual damages, together with the attorneys' fees provision, are adequate to insure that a consumer will be able to bring suit if he has a legitimate grievance. Minimum penalties of \$200 are unwarranted except where there is a willful violation.

11. Page 6, delete Section 7(b) which provides for class actions for the reasons stated above. In the event the section is not eliminated, the following changes should be made:

(1) On line 162, insert the word "actual" before the word "damages" and delete the words "as provided for in subsection (a) of this section"; and

(2) Insert the following sentence -- "In such action notice shall be sent to all class members and the action shall proceed ^{as} only/to those who have affirmatively indicated their desire to be included in the class and who have submitted a claim.

The first change is made so that it is clear that the \$200 minimum penalty does not apply in class actions. \$200 per person will result in devastating penalties. The second change is to make clear that the class action is by "opt-in". That is, a person is part of the class only if he expresses an interest in the lawsuit. The "opt-in" concept would alleviate many of the procedural problems such as clogging the Courts, expensive notice, infeasibility of discovering and

counterclaiming against a nebulous class action, res judicata and pressures to eliminate substantive rules of law.

12. Page 7, Section 7(d), line 170, insert after the word "award" the words "to either party".

The award of attorney's fees should in fairness be a two-way street.

13. Page 8, Section 10(a), line 199, insert after the word "who" the word "willfully" and in Section 11, lines 215-216, insert after the words "corporation which" the word "willfully".

Section 10(a) and 11 provide penalties of \$25,000 and forfeiture of the right to do business for violation of an injunction. Such severe penalties may be warranted, if at all, for willful violations, and not for innocent mistakes.

14. Page 8, Section 10(c), line 211, delete the words "or should have known".

A willful act requires knowledge. The words "or should have known" are not part of a willful standard.

15. Add a new Section 14 to read as follows, "If a defendant shows by a preponderance of the evidence that a violation of this Act resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid violations of this Act, no liability shall be imposed."

This section will guard against punishing someone for the inadvertant act of an employee where the employer has taken reasonable steps to insure that no violation will be committed.

16. Add a new Section 15 to read as follows, "This Act shall preempt any local laws relating to unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce."

This section is needed to prevent business from being subject to multiple standards which may be in conflict.

Connecticut C.B. 1965

This bill would provide the Commissioner of Consumer Protection with the power to administratively adjudicate unfair methods of competition and unfair or deceptive acts or practices and issue a cease and desist order with respect to such acts or practices. The bill further provides for private actions based upon violation of the act in which recovery may be had of either actual damages or \$200, whichever is greater. In addition, a private class action may be brought to recover such damages.

We oppose the bill in its present form. Particularly disturbing are the private remedies. A minimum recovery of \$200 even where there is only \$1 damages is completely unwarranted. Such provision is not needed in order to make it worthwhile for a person with little or no damages to sue since such person may recover attorneys' fees under Section 7(d).

Moreover, the inclusion of class actions is completely inappropriate. The class action proposal (Section 7(b)) contains no guidelines as to how such class actions are to be

conducted, i.e. notice, unity of interest, who is bound, etc. Under such circumstances a myriad of legal questions will arise from such a provision.

In any event, we strongly oppose class actions since they are a threat to the operation of every legitimate businessman in the state. Class action authorization would allow every plaintiff, merely by typing the words "class action" on his complaint, to magnify virtually every alleged grievance a thousand-fold and perhaps a million-fold, depending on how broadly such plaintiff chooses to define the class he purports to represent. The legitimate businessman must either settle with the class or litigate the "claims" of thousands, or perhaps millions, of class members who may not even believe themselves wronged.

Class actions will deter and jeopardize lawful business action and would make procedural changes which would encroach on the substantive rights of the parties. Further, class actions are ineffective against the types of abuses which are often cited by proponents as requiring use of class actions.

Even limited experience with Federal Rule 23 has demonstrated the unmanageability of class actions and their potential for what numerous courts have characterized as staggering, possibly annihilating penalties. One commentator has labeled

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**JOINT
STANDING
COMMITTEE
HEARINGS**

**GENERAL LAW
PART 3
851-1289**

1973

right at the outset once you have got an idea they're marked and planned and they're marked in program and what representation that are made for the ,,.....You don't have to wait for somebody in debt and suffers a loss.

The second good aspect of this bill which I think is very commendable is that it provides for strong andpowers on the part of the department of consumer protection. We don't have to go into court under this type of bill and take a chance and hope that our projections and our estimates are true. We can do our homework before we move and it's equivalent to a grand jury type of investigation where the government gets the facts before we apply whether to file suit and of course this would protect innocent companies because we would be able to check this out thoroughly before taking any legal action.

Thirdly it provides for a very essential element and that is restitution refunds. We do not have this under present statutory law. It is arguable when you have it under common law. We are trying to make that argument now in the Superior Court. We feel it has merit to it, but again this is something you have to argue and you hope the Judge goes along with this.

However, this bill makes it clear that there is no question, but that the state does have the power to seek restitution. So, in these three areas specifically.....the pyramid chain letter fraud, secondly providing for enforcement and investigatory powers and a joint effort by the department of Consumer Protection and the state Attorney General, a joint co-operative effort which I think would bear fruit in the future and thirdly the authority to keep restitution for who have been defrauded and very often when you move against them no matter how fast you move, people have already beenon this type of outfit. So, on these three areas, we recommend this and we think it has merit and we feel that this deserves the favorable action in our own opinion.

REPRESENTATIVE MATTIES: If you recall, I don't recall the bill number, but Commissioner Dunn thought that a prior bill would be sufficient, I think it was bill #1965. do you...

DANIEL SCHAFFER: I'm aware of the Commissioner's feelings on that and I think that she also feels that this bill too has merits. The reason and I think I tried to indicate why we feel that this bill is necessary is this: your other bill merely talks in terms of unfair trade practices or words to that effect. It has a general definition and in many cases a general definition is necessary because you can't begin to start writing specifics. Nevertheless, you have no specific definition under that bill to deal with a chain letter type operation. This chain letter type fraud we consider to be the number one consumer fraud in the state of Connecticut and if more complication with consumer protection committee or The National Association of Attorney Generals, I think this is true throughout every other state. So, the advantage of this bill over the other one is that it specifically says, a pyramid chain letter type fraud such as Coscott is illegal perse'. We don't have to argue that it's an unfair trade practice and say that geometrical progressions becomes illegal. We don't have to wait for somebody to get injured and suffers

S-97

CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1973

VOL. 16
PART 8
3473-4003

Tuesday, May 15, 1973

117.

THE CLERK:

roc

Cal. 985, File 959. Sub. for S.B. 1965, AN ACT CONCERNING UNFAIR TRADE PRACTICES. Favorable report of the Committee on General Law. The Clerk has amendments.

THE CHAIR:

Senator Page.

SENATOR PAGE:

Mr. President, I urge acceptance of the Joint Committee's favorable report and passage of the bill. I would move on the amendments now and ask that the Clerk not read them. They are really technical in nature and I would explain them, if you like.

THE CHAIR:

Is there any objection to waiving the reading of the amendment.

SENATOR PAGE:

There are three of them, Mr. President. They are merely technical corrections in language, one spelling error and one related to the fine involved and I ask that they be adopted.

THE CHAIR:

All in favor. Any further remarks. All in favor of adoption of the amendments, signify by saying Aye. Opposed Nay. The Ayes have it. This is truly a technical amendment. It is so ruled and you may now speak on the bill as amended, or do you press to move to a vote on that.

Tuesday, May 15, 1973

118.

SENATOR PAGE:

roc

Mr. President, this bill outlaws unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce in accordance with definitions set down by the Federal Trades Commission and the Federal Court. Also, it gives new investigative injunctive powers to the Commissioner of Consumer Protection and provides for private consumer remedies including consumer class action and reimbursement relief within the courts discretion. Forty-one states now have this law and I think it would be in our best interest if we were to pass the law and I ask that it be put on the Consent Calendar.

THE CHAIR:

It was my understanding from your explanation, Senator, that there were three technical parts to one amendment. I have been informed by the Clerk that there are three separate amendments. May we take up the first amendment because we thought there were three in one.

SENATOR PAGE:

The first amendment merely inserts the word "injured" instead of insured. It is a typographical error.

THE CHAIR:

In order to clear the record, is there any objection to erasing our previous action. I thought there were three technical amendments in one. So ordered. We will now take up the first amendment. Senate Amendment Schedule A which substitutes one word for another. All in favor say Aye. Opposed Nay. The Ayes

Tuesday, May 15, 1973

119.

have it. That amendment is ADOPTED.

roc

THE CHAIR:

What is the second amendment.

SENATOR PAGE:

The second amendment really adheres the bill to the administrative procedures act and I would ask that that be ruled technical and acted upon. I move its adoption.

THE CHAIR:

Will you remark further on Senate Amendment Schedule B. Hearing none, all in favor Aye. Opposed Nay. The Ayes have it. Senate Amendment Schedule B is ADOPTED.

SENATOR PAGE:

The third amendment merely clarifies the fine involved should there be a deceptive trade infringement and I ask that that be acted upon favorably.

THE CHAIR:

And in each case the original motion for the waiving of the reading is considered to apply to each of these amendments. Will you remark further on this amendment. Hearing none, all in favor Aye. Opposed Nay. The Ayes have it. This amendment is ADOPTED. All three are ruled technical in nature. You may now discuss the bill as amended by A, B, and C.

SENATOR PAGE:

I have already discussed the bill and moved for consent Mr. President.

THE CHAIR:

Will you remark further on the bill as amended by

Tuesday, May 15, 1973

120.

roc

A, B, and C. Hearing none, all in favor Aye. Opposed Nay. The Ayes have it. THE BILL AS AMENDED IS PASSED, on the Consent Calendar, there being no objection.

THE CLERK:

Cal. 1002, File 981, Sub. for S.B. 2205, AN ACT CONCERNING ELECTION TO CERTAIN OFFICES. Favorable report of the Committee on Elections.

THE CHAIR:

Senator Scalo.

SENATOR SCALO: (22nd)

Mr. President, I move acceptance of the Committee's favorable report and passage of the bill.

THE CHAIR:

Question is on acceptance and passage. Will you remark.

SENATOR SCALO:

This bill eliminates registrars of voters from those people being elected. It allows for the same nomination process but it removes them from the ballot. This was felt as a necessary improvement of the election laws because where registrar of voters are elected, their nomination is tantamount to election. I would move that this matter be placed on the Consent Calendar.

THE CHAIR:

Is there any objection? Senator Alfano.

SENATOR ALFANO: (7th)

There is an objection to placing this bill on the Consent Calendar. Through you, Mr. President, I ask the Senator

These bills were passed on the Consent Calendar:

SB-2204, SB-1843, SB-1820, SB-2189, SB-2019, SB-2375, SB-2478, SB-2051,
SB-2170, HB-8547, SB-2179, SB-1965, SB-2471, SB-2013, SB-1957, SB-1545,
SB-2361, SB-2479, SB-1571, HB-8095, HB-9074, HB-8993, HB-9097, HB-8215,
HB-8687, HB-9186, HB-8692, HB-8888, SB-2135, HB-8815, HB-9364, HB-8989,
HB-8122, HB-9374, HB-8262, HB-8540, HB-8643, HB-8330, HB-8725, HB-8889,
HB-8398, HB-8452, HB-8105, HB-8473, HB-8984 and HB-8186.

H-144

CONNECTICUT
GEN.ASSEMBLY
HOUSE

PROCEEDINGS
1973

VOL.16
PART 14
6887-7446

Thursday, May 17, 1973 202

MR. SPEAKER:

The Joint Committee's Favorable Report is accepted and the bill is passed as amended by Senate Amendment Schedule "A".

THE CLERK:

Page 15 of your Calendar. Calendar #1054, File #959. Sub. S.B. No. 1965. AN ACT CONCERNING UNFAIR TRADE PRACTICES (as amended by Senate Amendments Schedules "A", "B", "C") Favorable Report of the Committee on General Law.

REP. NEWMAN (137th):

I move for acceptance of the Joint Committee's favorable report.

MR. SPEAKER:

Question is on suspension. If there is no objection the rules are suspended. The gentleman from the 137th.

REP. NEWMAN (137th):

Thank You, I move for acceptance of the Joint Committee's Favorable Report and passage of the bill in concurrence.

MR. SPEAKER:

Question is on acceptance and passage in concurrence with the Senate. Will the Clerk please read Senate "A".

THE CLERK:

Senate Amendment Schedule "A". In section 7, line 236 strike out insured and insert injured.

REP. NEWMAN (137th):

I move for acceptance. This corrects a small apparently typographical error. I move for acceptance.

Thursday, May 17, 1973 203

MR. SPEAKER:

Any further remarks? If not, the question is on adoption of Senate "A". All those in favor indicate by saying aye. Opposed. Senate "A" is adopted and the Chair rules the amendment technical.

THE CLERK:

The Clerk is in possession of Senate "B"

MR. SPEAKER:

Please read Senate "B".

THE CLERK:

In line 263, after the word "add" insert the following language "provided that this section shall not apply to consent order or judgement entered before any testimony has been taken"

REP. NEWMAN (137th):

I move for acceptance of Senate Amendment "B". This is merely to protect the parties to any law suit.

MR. SPEAKER:

Any further remarks? Question is on adoption of Senate "B" All those in favor indicate by saying aye. Opposed. the amendment is adopted and the Chair rules the amendment technical.

THE CLERK

The Clerk is in possession of Senate Amendment "C". In line 226 after the word damages insert a period and delete the words "or two hundred dollars." In line 227 delete the words which ever is greater.

REP. NEWMAN:

Thursday, May 17, 1973

204

Presently in a private suit. The original wording of the bill, the plaintiff could recover actual damages of two hundred dollars or punitive damages whichever is greater. Under the amendment he can only recover two hundred dollars.

MR. SPEAKER:

Are there any other remarks? If not all those in favor of adoption of Senate Amendment "C" signify by saying aye. Opposed. The amendment is adopted and the Chair will rule the amendment technical. Question is now on acceptance and passage of the bill as amended by Senate "A", "B" and "C". The gentleman from the 137th.

REP. NEWMAN (137th):

This bill is known as the baby FTC act a small FTC act. It is modeled after the federal trade commission act and the provisions, it is a long bill but I will briefly try to tell you what's in it. It outlaws unfair methods of competition and unfair deception of acts or practices in the conduct of any trade or commerce in accordance with definitions set down by the federal trade commission and the federal courts. It gives new investigative and injunctive powers to the commissioner of Consumer Protection. It provides for private consumer remedies including consumer class action and reimbursement relief within the court's discretion. In section 1, it has various definitions what is a sale, what is commerce etc. Section 2a outlaws unfair methods of competition or unfair or deceptive practices. It doesn't describe every method of unfair or deceptive practices

but it follows a federal trade commission act and relies on the case law that has been promulgated under the federal trade commission act which I will mention when I discuss the bill a little further. Section 1b powers the commissioner to promulgate regulations subject to legislative review. In section 4, there are the conditions under which the consumer protection commission can investigate, the discovery powers to be used in these investigations and formal action that can be taken after investigation and in Section 4d the power of the court in enforcing an order to make additional orders like revocation of license, appointment of a receiver and so on. Section 5 of the bill, authority is given a respondent to a judicial review of an order. Section 6 tells what happens to it when a receiver is appointed. It provides for agreeing parties to make application to the receiver for reimbursement. Section 7 permits private actions. Describes the parties that may bring in action. The procedural requirements for private class action and the final order of the Department of Consumer Protection and provides for class actions under certain circumstances. It gives a definition of the conditions under which a class action may be brought. It permits a defendant in a class action to file a written offer of settlement and the Commissioner may accept assurance of voluntary compliance. If certain sanctions of the subpoena is not obeyed. Certain sanctions in injunctions that are not obeyed and various additional sanctions. That in substance is the skeleton of the bill. Mr. Speaker if I could have a little

Thursday, May 17, 1973

206

AG

quiet here, I'd like to proceed. This bill received a favorable report from the General Law Committee, it passed the Senate last Tuesday on their Consent calendar by unanimous consent. In summary, Mr. Speaker, the bill outlaws unfair methods of competition and unfair or deceptive acts of practices in the conduct of any trade or commerce in the state. The prohibitive activity is defined in accordance with the experience of the rules and decisions of the Federal Trade Commission and the Federal Courts. Heretofore, if a person was aggrieved, ^{by a deceptive trade practice} they had to bring suit in the Federal Courts. Under this bill they can go to the courts of their own state. There's very little case law in Connecticut on this subject of deceptive trade practices under an act like the Federal Trade Commission. This bill would enable the courts of this state to use the Federal cases that have been decided under the Federal Trade Commission Act and Regulations as the basis for lawsuits in this state. But most important, Mr. Speaker, the bill provides for private enforcement by individual consumers who have been injured by prohibited acts. It provides for class action by individual consumers...it provides for class action and as soon as practical after commencement of the action, the court must make a judicial determination whether the class action shall be maintained. This is all in conformity with the Federal Court procedures. This act gives honest businessmen great protection in deceptive or unscrupulous competitors who by unfair methods of competition and deceptive advertising, etc. unlawfully divert trade away from law abiding businessmen. Mr. Speaker, Maine, Rhode Island, South Carolina and many other states have enacted similar deceptive practices acts. This bill has been studied and restudied and approved by the Federal Trade Commission and the Council of State Governments. At present 41 states now have stronger deceptive practice acts. In Connecticut the

Thursday, May 17, 1973

207

passage of this bill together with the state anti-trust act passed in 1971 and the anti-referral sales bill that we passed here will hopefully put Connecticut in the forefront of state consumer protection and for these reasons, Mr. Speaker, I strongly urge passage of this bill which is a very important piece of legislation. (APPLAUSE)

THE SPEAKER:

The Chair wishes to commend the gentleman from the 137th for all the hours he put in preparing this short, short resume and presentation. Gentleman from the 137th has the floor.

REP. NEWMAN, 137th:

Mr. Speaker, we have a 12 page bill and I thought perhaps some of the members wouldn't have time to read it so I

REP. JAMES J. KENNELLY, 1st:

Mr. Speaker, during the course of the gentleman's remarks it was very difficult to hear him here on the floor and I wonder if he'd be kind enough to repeat everything that he just said. (laughter)

THE SPEAKER:

Are there any further remarks? The gentleman from the 92nd I'm sure will be brief.

REP. ALBERT R. WEBBER, 92nd:

I would defy anyone in this room to repeat even a part of what Mr. Newman reported. I can only tell you this. This same bill came in very late in the session last year, almost the same time. It was stymied inasmuch as the appropriation for the bill had not been definitely decided upon. This has been cleared. It's a very good bill. It's a bill that's wanted very badly by the office of Consumer Protection. It's an all encompassing bill that will protect

Thursday, May 17, 1983

208

the consumer and the honest business man, and I just sincerely hope..... AG
(APPLAUSE). Now a very important line, if you listened to the statements of
Mr. Newman and read the bill, you will find that the bill ".....
(I can't understand him)(laughter).... I dare you to repeat that.

REP. HERBERT V. CAMP, 111th:

I yield to Mr. Stolberg.

REP. IRVING STOLBERG, 93rd:

Thank you, Mr. Speaker. This is a good bill and I just would like to
associate myself with the remarks of Rep. Darrow and Bryan. (laughter)

REP. HERBERT V. CAMP, 111th:

Mr. Speaker, through you a question to Mr. Newman, please. Mr. Newman,
does the bill provide for any civil penalties which the department can impose
before going to court?

REP. NEWMAN, 137th:

It provides for for sanctions and consent orders and stop and desist
orders and if respondent disobeys one of these orders, there are penalties.

REP. CAMP, 111th:

Mr. Speaker, can these enforcement proceedings by way of any civil
penalties or any other monetary or other penalties be imposed by the Depart-
ment of Consumer Protection without the court?

REP. NEWMAN, 137th:

The Department of Consumer Protection can agree to take cease and desist
statements and agreements and penalties are imposed by the court after.

THE SPEAKER:

Are you ready to vote? Will all the aisles be cleared...staff members
come to the well of the House. No point of personal privileges to the gantle-

Thursday, May 17, 1973

209

man of the 59th 'till after we take the vote.

AG

REP. THOMAS H. DOOLEY, 59th:

No privilege, Mr. Speaker. I rise to let the Chamber know that it took Bob Sills who works for the Consumer Protection Dept. 25 years while he was employed with the Federal Trade Commission to draft this legislation and we're lucky Howard only took 10 minutes.

THE SPEAKER:

Will all members take their seats, please. Machine will be opened. Chair would like to rule Amendment "C" technical. Everyone voted? Machine will be locked. The Clerk please take a tally. Clerk will please announce the tally.

Total number voting 139

Necessary for passage 70

Those voting YEA 139

Those voting NAY..... 0

Absent and not voting 12

THE SPEAKER:

The Joint Committee's Favorable Report is accepted and the bill is passed in concurrence with the Senate as amended by Senate Amendments A, B & C.

THE CLERK:

Page 16 of your calendar, top of the page, Cal. No. 1060, File 1016....

REP. DAVID J. SULLIVAN, 124th:

Mr. Speaker, at this time we would like to move for suspension of the rules in order to transmit to the Senate those House items which have been passed and those Senate bills which we've acted on their amendments.

THE SPEAKER:

Question's on suspension. No objection - the rules are suspended and all