

Legislative History for Connecticut Act

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Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate and House of Representatives Proceedings

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GEN. ASSEMBLY  
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General Law. Proposed S.B. No. 718 AN ACT CONCERNING THE DISCLOSURE OF REPORTS OF UNFAIR TRADE PRACTICES BY THE DEPARTMENT OF CONSUMER PROTECTION.

The bill was then referred to the Committee on Government Administration and Elections.

General Law. Proposed S.B. No. 951 AN ACT CONCERNING ALTERING SPEEDOMETERS.

The bill was then referred to the Committee on Judiciary.

General Law. Proposed S.B. No. 965 AN ACT CONCERNING RETURN DATES FOR ALCOHOLIC BEVERAGES TAXES.

The bill was then referred to the Committee on Finance, Revenue and Bonding.

General Law. Proposed S.B. No. 1009 AN ACT CONCERNING TAX EXEMPTIONS FOR CLUBS UNDER THE LIQUOR CONTROL ACT.

The bill was then referred to the Committee on Finance, Revenue and Bonding.

General Law. Proposed S.B. No. 1216 AN ACT CONCERNING AN APPROPRIATION FOR THE LAW LIBRARIES IN THE STATE.

The bill was then referred to the Committee on Appropriations.

General Law. Proposed S.B. No. 857 AN ACT CONCERNING OPEN-END CREDIT PLANS.

The bill was then referred to the Committee on Finance, Revenue and Bonding.

Appropriations. Proposed S.B. No. 853 AN ACT MAKING AN APPROPRIATION TO THE CLIFFORD BIERS CLINIC IN NEW HAVEN.

The bill was then referred to the Committee on Public Health.

Appropriations. Proposed S.B. No. 1113 AN ACT CONCERNING A FLOOD CONTROL PROJECT FOR THE FAIRVIEW AVENUE AREA OF HAMDEN, CONNECTICUT.

The bill was then referred to the Committee on Environment.

Appropriations. Proposed S.B. No. 1114 AN ACT CONCERNING A FLOOD CONTROL PROJECT ON THE PARDEE BROOK IN HAMDEN, CONNECTICUT.

The bill was then referred to the Committee on Environment.

CLERK:

Resolutions for the Consent Calendar.

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For those who are not, if the American Heart Association should be the charity of choice, people who are interested in sponsoring me can feel free to do so.

It's very small amounts.

Thank you.

SPEAKER ABATE:

Are there any additional points of personal privilege?

REP. FRANKEL: (121st)

Mr. Speaker.

SPEAKER ABATE:

Rep. Frankel.

REP. FRANKEL: (121st)

Will the record please note that Rep. Tulisano may have missed some votes earlier today, having to attend to an illness in the family.

SPEAKER ABATE:

The Journal will so note.

Clerk, please return to the Call of the Calendar.

CLERK:

Calendar 1174, File No. 532.

Substitute for Senate Bill 718

AN ACT CONCERNING THE DISCLOSURE OF REPORTS OF UNFAIR  
TRADE PRACTICES BY THE DEPARTMENT OF CONSUMER PROTECTION.

(As amended by Senate Amendment Schedule "A").

Favorable Report of the Committee on Government Administration and Elections.

REP. CARRAGHER: (5th)

Mr. Speaker.

SPEAKER ABATE:

Rep. Carragher of the 5th Assembly District.

REP. CARRAGHER: (5th)

Mr. Speaker, I move acceptance of the Joint Committee's Favorable Report and passage of the Bill in concurrence with the Senate.

SPEAKER ABATE:

The question is on acceptance of the Joint Committee's Favorable Report and passage of the Bill in concurrence with the Senate.

Will you remark, sir?

REP. CARRAGHER: (5th)

Mr. Speaker, the Clerk has Senate Amendment Schedule "A", LCO 7484.

I would ask that he call and that I be given permission to summarize.

SPEAKER ABATE:

The Clerk has Amendment LCO 7484, previously designated Senate Amendment Schedule "A".

Would the Clerk please simply call the Amendment?

CLERK:

LCO 7484, offered by Senator Baker of the 24th.

SPEAKER ABATE:

The gentleman is requesting leave of the Chamber to summarize this Amendment in lieu of Clerk's reading.

Is there objection?

Is there objection?

Hearing none, you may proceed with summarization,  
Rep. Carragher.

REP. CARRAGHER: (5th)

Mr. Speaker. Mr. Speaker, the Amendment would negate some changes that would have been made by the original file copy. Instead, it would require the Commissioner of Consumer Protection, the Attorney General or their employees to disclose on written request, specified information about complaints which are not under investigation at the time. No information would be available about complaints currently under investigation. The disclosed information would include the name and address of the alleged violator of the

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unfair trade practices that the total number of complaints filed against the specific person for the current and previous year, and a numerical break-down of the disposition of the complaint by category. I would add, Mr. Speaker, that the amendment in my judgement does tighten up considerably the original intent of the bill, the amendment was agreed to by all parties involved in this legislation, both those who were against the original bill and those who were for a stronger bill, so I would move its adoption.

SPEAKER ABATE:

The question is on the adoption of Senate Amendment Schedule "A". Would you remark further on its adoption? Will you remark further on the adoption of Senate Amendment Schedule "A". If not, all those in favor of its adoption please indicate by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER ABATE:

Opposed nay.

The Aye's have it the amendment have it and it is ruled Technical.

Will you remark further on the bill as amended by Senate "A".

REP. CARRAGHER: (5th)

Mr. Speaker.

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SPEAKER ABATE:

In effect Rep. Carragher.

REP. CARRAGHER: (5th)

Mr. Speaker, the bill as amended will permit the public disclosure of summarized investigatory reports of unfair trade practices once the investigation is completed. At the present time the Freedom of Information Act generally makes such reports at the time but the Unfair Trade Practice Acts makes unfair trade practices permanently confidential. Thereby, making it impossible for consumers to learn of unfair practices by business. As I said the amendment did tighten the bill considerably, it has been agreed to by all the parties and I move its passage.

SPEAKER ABATE:

Will you remark further? Will you remark further on the bill as amended by Senate "A"?

REP. MATTIES: (20th)

Mr. Speaker.

SPEAKER ABATE:

Rep. Charles Matties.

REP. MATTIES: (20th)

Thank you, Mr. Speaker. Question through you, if I may.

SPEAKER ABATE:

State your question, please sir.

REP. MATTIES: (20th)

Representative, I haven't had a chance to study the

amendment. The original file copies as I interpreted it, publishes in effect, or makes available names of people who have had complaints lodged against them whether founded or unfounded. Is that a correct interpretation?

SPEAKER ABATE:

Rep. Carragher, will you respond.

REP. CARRAGHER: (5th)

The file copy, through you Mr. Speaker, I believe the Gentlemen is correct. The amendment corrected that situation. Thank you.

SPEAKER ABATE:

Will you remark further on this bill as amended by Senate "A". Will you remark further on the bill as amended. If not would all the members please be seated, would all staff and guests please finally come to the Well of the House. The Machine will be opened. The House of Representatives is voting by roll at this time. Will the members please return to the House immediately. The House of Representatives is voting by roll at this time, will the members please return to the Chamber immediately.

Have all the members voted? Please check the roll call machine to determine if their vote is properly recorded. The machine will be locked, the Clerk will take the tally.

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SPEAKER ABATE:

Will the clerk please announce the tally.

CLERK:

Senate Bill 718 as amended by Senate Amendment

Schedule "A".

Total number voting 124

Necessary for passage 63

Those voting yea 124

Those voting nay 0

Those absent and not voting 27

SPEAKER ABATE:

The bill as amended passes.

Is there business on the Clerk's desk?

CLERK:

Senate Joint Resolution 157, RESOLUTION HONORING THE  
MARCH OF DIMES READING OLYMPIC PROGRAM.

SPEAKER ABATE:

Tabled for the Calendar.

CLERK:

Senate Joint Resolution 157, RESOLUTION EXPRESSING  
SYMPATNY ON THE DEATH OF THOMAS J. WHITE.

SPEAKER ABATE:

Tabled for the Calendar.

CLERK:

Senate Joint Resolution 158, RESOLUTION CONGRATULATING

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Friday, February 9, 1979

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Referred to Committee on Labor and Public Employees.

Judiciary. S.B. 927. AN ACT ESTABLISHING AN OFFICE OF PUBLIC ADVOCACY. Referred to Committee on Government Administration and Elections.

Labor and Public Employees. S.B. 777. AN ACT CONCERNING PRODUCTS LIABILITY. Referred to Committee on Judiciary.

Labor and Public Employees. S.B. 779. AN ACT PROHIBITING STATE CONTRACTS WITH EMPLOYERS HAVING NO AFFIRMATIVE ACTION POLICIES. Referred to Committee on Government Administration and Elections.

General Law. Proposed S.B. 718. AN ACT CONCERNING THE DISCLOSURE OF REPORTS OF UNFAIR TRADE PRACTICES BY THE DEPARTMENT OF CONSUMER PROTECTION. Referred to Committee on Government Administration and Elections.

General Law. S.B. 951. AN ACT CONCERNING ALTERING SPEEDOMETERS. Referred to Committee on Judiciary.

General Law. S.B. 965. AN ACT CONCERNING RETURN DATES FOR ALCOHOLIC BEVERAGE TAXES. Referred to Committee on Finance, Revenue and Bonding.

General Law. S.B. 1009. AN ACT CONCERNING TAX EXEMPTIONS FOR CLUBS UNDER THE LIQUOR CONTROL ACT. Referred to Committee on Finance, Revenue and Bonding.

General Law. S.B. 1216. AN ACT CONCERNING AN APPROPRIATION FOR THE LAW LIBRARIES IN THE STATE. Referred to Committee on Appropriations.

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support of both the Department of Economic Development and the Department of Aging and I would move adoption of the Amendment.

THE CHAIR:

Discussion on the Amendment? Hearing none, those in favor indicate by saying aye. Those in opposition to? Amendment A is adopted.

SENATOR CLOUD:

Mr. President, I would move passage of the Bill as amended.

THE CHAIR:

Question is on acceptance and passage as amended by Senate A. Is there further discussion on the Bill?

SENATOR CLOUD:

No Mr. President. If there is no objection, I would ask that it be placed on the Consent Calendar.

THE CHAIR:

The Motion is to place on Consent. Is there objection to the Motion? Hearing none, it is so ordered. The item is on the Consent Calendar.

THE CLERK:

Calendar 548, File 532, Favorable Report of the Joint Standing Committee on Government Administration and Elections, Substitute for Senate Bill 718, AN ACT CONCERNING THE DISCLOSURE REPORTS OF UNFAIR TRADE PRACTICES BY THE DEPARTMENT OF CONSUMER PROTECTION.

THE CHAIR:

Senator Baker.

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SENATOR BAKER:

Mr. President, I move for acceptance of the Joint Committee's Favorable Report and the passage of the Bill. I believe the Clerk has an Amendment.

THE CHAIR:

Question is on acceptance and passage. Do you have an Amendment, Madam Clerk.

THE CLERK:

Clerk has Senate Amendment, Schedule A, File 532, Substitute Senate Bill 718, offered by Senator Baker, LCO 7484. 7484.

SENATOR BAKER:

Mr. President, I would waive the reading of the Amendment and explain.

THE CHAIR:

The question is on adoption of Senate A and waiving of the reading. Is there objection to waiving of the reading? If not, proceed with the adoption of Senate A, Senator Baker.

SENATOR BAKER:

Mr. President, this Amendment was worked out as a compromise after the original Bill was reported out on a Joint Favorable with the various groups involved including the Department of Consumer Protection. Basically, it is the Bill and would negate most of the changes made by the original Bill. It would require the Commissioner of Consumer Protection, the Attorney General or their employees, to disclose on written request, specified information about complaints which are not under investigation at the time. No information would be available about complaints under investigation. Disclosed

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information would include the name and address of the alleged violator of the Unfair Trade Practices Act, the total number of complaints filed against the specific person for the current and previous year and a numerical breakdown of the disposition of the complaints by category. The Freedom of Information Act generally makes investigatory reports for the Unfair Trade Practices public at that time but there is a contradiction that the Unfair Trade Practices Act makes reports of Unfair Trade Practices primarily confidential, thereby making it impossible for consumers to learn of Unfair practices by businesses. Presently the Better Business Bureau gives out more information to consumers for pre-purchase judgment than the Department of Consumer Protection does. This is supported by the Better Business Bureau and it's not difficult to understand why. Reputable businesses have nothing to fear since they will not be investigated. It is a policy of the Department of Consumer Protection to release investigation files only to the person who made the complaint and not to a third party. This compromise would, I think Mr. President, open up things somewhat to the consumer and I would move adoption of the Amendment.

THE CHAIR:

Remark further on Senate A? Hearing no further remarks, those in favor indicate by saying aye. Those in opposition to? Senate A is adopted. Proceed Senator Baker.

SENATOR BAKER:

Mr. President on the Bill itself, as I indicated, the Amendment was the Bill and if there is no objection and if there are no questions, I would move

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it to the Consent Calendar.

THE CHAIR:

Objection to placing the item on Consent? Hearing none, it is so ordered. The item is on the Consent Calendar.

THE CLERK:

Turning to page 7 of the Calendar, top item on the page, Calendar 555, File 552, Favorable Report of the Joint Standing Committee on Planning and Development, Substitute for Senate Bill 1187, AN ACT ESTABLISHING A COMMISSION TO ANALYZE THE ECONOMY OF CONNECTICUT.

THE CHAIR:

Senator Cloud.

SENATOR CLOUD:

Mr. President, I move acceptance of the Joint Committee's Favorable Report and passage of the Bill. I believe there are several Amendments.

THE CHAIR:

Question is on acceptance and passage. Does the Clerk have an Amendment?

THE CLERK:

Clerk has Senate Amendment, Schedule A, File 552, Substitute Senate Bill 1187, offered by Senator Cloud. It's LCO 7827. 7827.

THE CHAIR:

Question is moving adoption of Senate A.

SENATOR CLOUD:

Mr. President, I would ask that this Amendment that has just been

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THE CHAIR:

Have all Senators voted? The machine will be closed. The Clerk will take a tally.

		HJ 170, HJ 171, HJ 172, HJ 164, HJ 165
		SB 1430, HB 7071, SB 1291, HB 6091, SB 384, SB 1354, SB 1561, SB 718, SB 1187, HB 6907, HB 5017, HB 5218, SB 303, HB 7537, SB 1314, SB 369, HB 6140, HB 5151, HB 6358, HB 6856, HB 7299, HB 7302, HB 7066, HB 5580, SB 1557, HB 6079, HB 6657, HB 7295, SB 227, SB 1186, SB 1612, SB 555, SB 1555, SB 1545, SB 1662, HB 5908, HB 5470, HB 6230, HB 6267, HB 6444, HB 7121, HB 7768, HB 7884, HB 7894, HB 7922, HB 5612, HB 6180, HB 7388,
34	YEA	
0	NAY	

The Consent Calendar passes. HB 7397, HB 7403, HB 7930, HB 7943, SB 640, SB 1225, SB 1558, SB 917, SB 1591, SB 503,

THE CLERK: HJ 151, HJ 152, HJ 153, HJ 154, HJ 155, HJ 156, HJ 157, HJ 158, HJ 159, HJ 160, HJ 161, HJ 162, HJ 163, HJ 166, HJ 167, HJ 168 HJ 169, Clerk has Senate Agenda that has been passed out today, May 9, 1979.

It's on the desks of the Senators.

SENATOR LIEBERMAN:

Mr. President, I move that the items on the Agenda be acted upon as indicated thereon and that the Agenda be incorporated by reference into the Senate Journal and the Senate Transcript.

THE CHAIR:

The question is on adopting the Senate Agenda. Will you remark? Hearing none, those in favor indicate by saying aye. Those in opposition to? The Senate Agenda is adopted. Senator Lieberman.

SENATOR LIEBERMAN:

Mr. President, the Senate Democrats and Republicans will caucus tomorrow as soon after 10:00 as we can muster a quorum and we will not convene until 1:30 tomorrow after the luncheon that the Members of the Circle of both parties are going to so I would urge these people to be here early for the caucus so we can get some work done in the caucus.

**JOINT  
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HEARINGS**

**GOVERNMENT  
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MR. PEARLMAN (continued):  
and the theory the Commission objected to that I sus-  
pected they would be in opposition to this bill as well.

Mr. Chairman, if I might ask your indulgence, I must go to  
a funeral and leave in about five minutes, so I would like  
not scheduled for hearing until 10 o'clock to  
comment on proposed Bill 718.

REP. CARRAGHER: That's fine; go ahead.

MR. PEARLMAN: This bill is obviously in reaction to a Freedom  
of Information Commission decision which the Commission took  
the position of Section 42-110d in the General Statutes  
superseded the disclosure provisions of the Freedom of  
Information Act, with respect to investigatory reports of  
unfair trade practices. The Commissioners did not like that  
decision at all, but they felt compelled, under Section 42-  
110d, to make that ruling. The Commission would therefore  
support legislation such as 718 which would help open the  
processes of government in an area which it is now presently  
closed. Thank you.

REP. CARRAGHER: Mr. Pearlman, regarding 6233, would you have any  
opinion as to the cost of that study that's outlined in 6233?

MR. PEARLMAN: It depends on how the Committee would want to. It  
says there shall be established a study commission to eval-  
uate. Now that study commission could be composed of people  
outside of government, composed of people inside of govern-  
ment. If it were composed of people inside of government,  
it can be done during normal working hours and would be very  
little extra appropriations. If it were by people outside  
of government, I would imagine there would be need for some  
additional appropriations, staff, perhaps paid for the time  
and the resources that were needed by the people on the  
study commission. My own personal opinion on this is that  
there should be a mix. I always think that our Commission  
has a great body of information based on some experience  
which is untapped by other State agencies in the executive  
or legislative branches, and it would seem to me that that's  
a good starting point, either having a Commissioner or the  
Chairman of the Freedom of Information Commission being part  
of it. Obviously, in the State system of records management,  
the State Librarian, there's a committee of records management

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REP. CARRAGHER (continued): signed up to speak on 5453, 6228, or 6233. Therefore, if there is anyone in the room who wishes to address any of those three bills, they should come forward now and testify. If not, we will now proceed with subject-matter hearing on proposed Bill 718, An Act Concerning the Disclosure of Reports of Unfair Trade Practices by the Department of Consumer Protection. Joseph Lembo.

Tape 3

MR. LEMBO: I am Joseph Lembo, legal officer to the Department of Consumer Protection. I am here today because Commissioner Heslin is in Washington, D.C.; she's attending a Consumer Products Safety Committee Meeting. She asked me to deliver a statement concerning Bill 718. Bill 718 would reduce the ability of the Department of Consumer Protection to administer effectively the Connecticut Unfair Trade Practices Act. Because of Section 42-110da, exempting information gathered under the Connecticut Unfair Trade Practices Act from public disclosure except for law enforcement purposes in the public interest, there presently exists an openness which permits consumers to register complaints without fear of reprisal or retaliation.

The nondisclosure provision, in addition, also protects businessmen in our State whose practices have been investigated and determined to be either not in violation of Chapter 735a, or not actionable. The mere registration with the Department of a complaint, coupled with the initiation of an investigation, is many times sufficient to injure the business competitively. Unless formal action is taken either by the Department of Consumer Protection or the Attorney General, such disclosure unfairly penalizes businesses which have not been found to be in violation of the law.

I wish to bring to the Committee's attention in closing the comments made by Judge Joseph Goldberg in the case of Heslin v. Liberty Bank for Savings in upholding the validity of an investigative demand against the savings bank, as part of the Department's industry-wide investigation of real estate appraisal practices. The court said that the disclosure to the department would not be harmful to the defendant because the investigation was confidential. The nondisclosure provision of the act certainly assisted the court in finding for the Department in that case. Thank you, and I will now answer any questions that you may have.

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REP. CARRAGHER: Are there any questions? Thank you very much. David Della-Bith, I believe it is.

MR. DELLA-BITH: Mr. Chairman and members of the Committee, I'm David J. Della-Bith, Vice President of Governmental Relations for the Connecticut Bankers Association. The Connecticut Bankers Association would like to go on record as opposing this proposed Bill 718. We would like to endorse the comments that were made by the Department of Consumer Protection. I think that if there's going to be a true due process -- it's like many of us being arrested; anyone can be arrested, but until there's an actual conviction, it shouldn't be held against you, and I think the same concept applies here. We would ask that this bill be boxed. Thank you.

REP. CARRAGHER: Thank you very much. Raphael Podolsky. SB718

MR. PODOLSKY: Representative Carragher and members of the Committee, my name is Raphael Podolsky, a lawyer with the Legal Services Legislative Office, which represents consumers. I want to speak in favor of this bill. I feel in some ways in a peculiar position because I think I have ordinarily when I come before a committee, I would come in support of the Commissioner of Consumer Protection. I think -- and I also recognize that the fact that the Commissioner is opposing this bill in a sense puts a heavy weight on the committee if it is to go against her recommendation. It seems to me, though, that the fears that the Commissioner has are completely unjustified, and that the response to this bill is a response to something else that is not ~~not~~ this bill.

The situation that we now have is we have a Freedom of Information Act; it applies to all agencies of the State; it has specific provisions that certain kinds of things are exempt from disclosure. For example, it says that matters dealing with negotiation and litigation of claims strategy -- litigation of claims while cases are pending are exempt from disclosure. In addition, however, there is an act called the Unfair Trade Practices Act, under the authority of which the Commissioner does most of her investigations of consumer complaints. That act has a special confidentiality provision of its own; it's above and beyond the Freedom of Information Act. So what the act does is it creates a special kind of confidentiality only for complaints that are filed by consumers to the Department of Consumer Protection,

MR. PODOLSKY (continued)

it doesn't apply to anything else. And what has happened is DCP, the Department of Consumer Protection, has given that a very broad interpretation that in effect says you can't really find out anything about complaints that are filed with them. You can't find out the number of complaints that have been filed against a business; it is very difficult, even, although not impossible, for difficult even to find out about the status of your own complaint with the Department of Consumer Protection. In the future, I think, very wisely going to shy away from. What this bill would do is it would take out the special confidentiality of the Unfair Trade Practices Act, which would mean what it would leave is the general provisions of the Freedom of Information Act and the privacy act, which would apply -- which apply now to other investigations by the Department of Consumer Protection, for example, dealing with what with anything else in the scope of their power to investigate, and what applies to all other agencies to do investigations, the Department of Environmental Protection, the Department of Transportation. In other words, what the bill would do is it would not say that the files are thrown open to the public; it would say the files are open to whatever extent any other agency's files are open, and to whatever extent files of the Department of Consumer Protection are open on other kinds of complaints that the Department receives.

What the Commissioner's testimony really is is testimony as if this were a bill which completely opened the files and said anybody could look at anything at any time. In effect, it ignores the fact that we have a Freedom of Information and Privacy Act, and that's the reason I think that the Commissioner's testimony is in a sense misdirected. The irony that I see about this is that the reason we have a Department of Consumer Protection is to protect consumers. I mean, we do it for a reason. You can go to a private organization like the Better Business Bureau and call them up and you can say, you know, I'm thinking of doing business with such and such a business; do they have any complaints on them. And the Better Business Bureau will tell you, we've had seven complaints on this business, but five of them have been resolved and two are unresolved. They don't try and tell you whether or not to buy from the business; you can file that information in your head and you can use it.

MR. PODOLSKY (continued):

And if you decide that you want to stay away from that business, fine. And those businesses that belong to the Better Business Bureau which are essentially more reputable businesses voluntarily permit this kind of disclosure. And of course it's true that having three unresolved complaints may look bad and may make a customer go somewhere else, but the fact is, if a business has a large number of complaints against them, and especially if they're unresolved complaints, you and I, in the rational course of our doing business, are, I think, very wisely going to shy away from going to that business, because a good business typically resolves its complaints on the premises. You don't file a complaint with G. Fox very -- I'm sure G. Fox has a miniscule number of complaints because they resolve them inhouse; you don't have to fight with Sears to the Department of Consumer Protection.

But the businesses that are hard-line will not meet a consumer halfway. They may resolve the complaint ultimately if push comes to shove, but that information is very relevant. In effect, what the Department forces you to do is go to the business, let the business rip you off, and then complain, rather than giving you the information in advance which would allow you to say, "I'm going to do my business somewhere else because this business has a very bad reputation."

Considering that you can get the information -- I mean, you get parallel information from the Better Business Bureau, the Department of Consumer Protection is our major repository of Consumer Complaints about businesses, and the notion that you shouldn't be able to find anything about that, I think, is silly. If you compare it with something like Housing Code complaints, for which there's a special provision in the Freedom of Information Act that says anybody can find out about housing code complaints and that's to protect the tenants. If you're going to rent from a landlord and he's had 35 complaints against him, you want to know that, because you know that his promises are not going to be very good. And the Freedom of Information Act actually expressly says those are public.

This bill wouldn't do that. It would just say there are no more public or no more private than any other analogous report. The arguments that I've heard opposing the bill go

MR. PODOLSKY (continued):

something like this: First of all, I've heard it interferes with the investigation. You've got an ongoing investigation, but the Freedom of Information Act protects the privacy of ongoing investigations, but not when they're finished, so that to the extent the concern is the Department couldn't do its investigation because people would be constantly coming saying, "Tell me this; tell me that; show me files," under the existing Freedom of Information Act, even if this section were repealed, they could protect themselves.

The second argument I've heard is it protects the privacy of the person who files the complaint. The person who files the complaint at Consumer Protection -- the only person they need privacy from perhaps is the business, which might retaliate against them. They can't investigate the complaint unless the business is allowed to be told that the consumer has made a complaint. I mean, it wouldn't make any sense to make a complaint to Consumer Protection and say, "Don't tell the business that I filed this complaint." They can't do anything with a piece of paper unless they can show it to the business and say, "How do you respond?" As a means of protecting the complainant, that's not a problem. The real reason turns out to be, and I expect this is the reason the bankers have testified against the bill is that it protects the business.

It says that, if there is no actual finding of a violation of law, then the business is protected from anybody finding out about it. The miniscule protection of consumer complaints ever reach the stage of an actual finding. First of all, it's very hard to file a complaint. You've got to file it in writing, they don't take it orally; there's already kind of an automatic screening process. Unless you're pretty determined, you're not going to get a complaint in to the Department of Consumer Protection.

But once you do file your complaint, the Department processes so few complaints to ultimate disposition that its approach would say that out of perhaps ten or 12 or 14,000 complaints a year, it's willing to reveal 30, or 40, or 50, by saying that unless it goes all the way to final disposition, it ought -- one of the difficulties is that you cannot even find out about the status of complaints, and that, in a sense, has become a kind of cover for the Consumer Frauds division of

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MR. PODOLSKY (continued): the Department, because they're not accountable to the public. You don't know to what extent they're doing investigatory work.

REP. CARRAGHER: Just let me interject -- are you saying that if I filed a complaint, that I cannot find out what the status of that investigation is if I'm the person who filed it?

MR. PODOLSKY: It is my understanding, no I am not saying that, and I guess I should make that clear. It is my understanding, although there has been some confusions about this, that the Department's approach is that the complainant himself can find out the status of an investigation. I don't believe, I'm not sure I don't believe the complainant can see any information that has been exchanged. For example, I don't know that he can see what the business has said -- I'm not 100% sure.

However, the Department has expressly taken a position that it will not show to a representative of the complainant anything about his complaints. For example, we had a case in Danbury where a lawyer, on behalf -- from Legal Services -- a lawyer on behalf of a client filed the complaint, filed the written complaint, signed the written complaint on behalf of the client. The Department took the position that while it would answer questions from the complainant, that is to say, the client, it would not give any information whatsoever to the attorney, and told the attorney "You get your client to contact us, and we will give them information and you can talk to your client if you want and you can sort of third hand you can find out what we told the client." And that does appear to be their policy as they won't do that.

They will not give any information to a third party, so that for example, if I want to find out whether a particular business has had complaints against it, and I have not filed the complaint, they will not tell me anything about complaints that have been filed by other businesses. Now I'm not even sure that that's a correct interpretation of the law. See, what they've done is they've interpreted this law very broadly to say that because we've got this special provision, we don't have to give out anything. There's an argument to be made that even with that law, you ought to be giving out certain

MR. PODOLSKY (continued):

kinds of grace information, in other words, the number of complaints against a business, even if you don't try the . . . . . What I think has happened is, the section that has this confidentiality provision is part of the section of the Unfair Trade Practices Act that gives to the Department certain compulsory powers, that is to say, the power to make investigatory demands, which means that the business must respond, the power to issue subpoenas to get records, and but it says that any information that came under this chapter is confidential.

It is conceivable to me that had that been looked at more closely, it would not have said "under this chapter," which includes all sorts of voluntary information that comes in to the department, but perhaps might have said "under the section." And that, in some sense, might match up with what Mr. Lembo told you about the court saying it's okay to give -- to respond to an investigatory demand because the information is confidential. I see two ways in which the committee could deal with the bill. One would be to draft the bill in full, that is to say, to draft the bill repealing the provision on confidentiality. The second, moderate approach, and perhaps more palatable to the Commissioner, would be to change the word chapter, you'll have to look at the exact section of the statute, but where it says "the information obtained under this chapter shall be confidential, change the word "chapter" to "section," and I think at least that might generate a reasonable argument that the only information, or perhaps to make clear, obtained by compulsory process under this section, and perhaps what that might say is, "The information that comes into the Department because of its power to subpoena or to compel someone against his will to give them information, that information would retain that special confidentiality status.

But information that comes in without that, which would include the complaint itself, which would include responses made to the complaint that were not made under subpoena, or under investigatory demand. Those would be accessible to the public, to whatever extent they would be accessible under the Freedom of Information Act. It seems to me that that might be a reasonable compromise. My guess is that the Commissioner would still oppose that, so I don't want to tell you I think the Commissioner would favor that. But it seems to me that by limiting it to matters obtained to compulsory

MR. PODOLSKY (continued):

process under the section, you would open up within the confines of the Freedom of Information Act the bulk of the information, at least that I think ought to be available to the public, at the same time leaving the Commissioner with protection for that information which he feels ought most to be confidential.

The one thing, though, I think you have to make a policy decision is whether a business should have the absolute right in effect to say that they don't want anybody to know about complaints against them unless they've gone to the hearing and become a matter of official public record, which is a practical matter and means no complaints to go to the Department of Consumer Protection. That seems to me simply a wrong policy decision and it's contrary to what they do voluntarily with the Better Business Bureau, where they allow that information to come out. So I just think that's not a protection that's needed; it defeats the point of having a consumer protection agency that's going to warn consumers against problem businesses. I see nothing wrong with the Department whenever it discloses something also discloses the result of the investigations. For example, it could say, as the Better Business Bureau does, we had 15 complaints on this business, on two we made a finding that they were in violation, on six there was a resolution between the customer and business, and on seven we chose to take no action.

That's okay; and I don't care if the Department always discloses that. It could do that by its own policy. It doesn't need a statute with any information about the fact that there were complaints filed. That's not a problem, and that's fair to everybody. But to say they won't do anything, I just think it undercuts what the statutes are about. So I guess, in spite of the opposition of the Commissioner, I would like to see the Committee draft and ultimately a bill or direct substitute bill.

REP. CARRAGHER: Thank you very much; are there any questions? Thank you very much.

MR. PODOLSKY: Thank you, I have a written copy of my testimony which I'd like to leave for each of you.

REP. CARRAGHER: We would appreciate your doing that. Mr. Lembo,

REP. CARRAGHER (continued):

I omitted to ask you, could we have a copy of the Commissioner's testimony? All right. Jane Nadel? Okay. Pat Claffey?

MS. CLAFFEY: Good morning, Pat Claffey, Consumer Consultant for SB 718 the Better Business Bureau of Greater Hartford. I'd like to endorse what Mr. Podolsky said. I'd also like to relate a recent situation which the Better Business Bureau was involved with. We had a Connecticut painting company who we believed to be in violation of the Unfair Trade Practice Act, and we believed this because we started receiving numerous complaints from consumers. Because this company was not responding to the consumers satisfactorily with us as mediator, we are not a law enforcement agency; we referred them to the Department of Consumer Protection. And after numerous months passed, we requested an answer to what's going to happen to this particular company and to the consumers.

The Department of Consumer Protection informed us that we could not this information; it was not for public knowledge. We therefore filed a complaint with the Freedom of Information Commission. After we had the hearing, because of Section 42-110b, we could not find out whatever happened to any form of investigation as well as the consumers were not knowledgeable of what was going on. Many consumers had never heard from the Department of Consumer Protection, and if they did, all they received was either a phone call or someone coming out to their home to look at this particular driveway that was done.

Now because of this, we still are in limbo. This all transpired over the past year, and we still don't know what happened to this particular, what's going to happen to this particular company, or to the consumers. The company has not been reprimanded, at least to public knowledge, we've never received any kind of news release from that Department saying that anything is being done to that particular company, and the consumers in the meantime are still calling to say, "We paid \$2,000 for a driveway that fell apart after two weeks. And because we don't know even if an investigation was performed, we are in favor of this particular bill.

We are in favor of it solely on the basis that a neutral third party in this particular case, the Freedom of Information Commission, be the outside party to make the decision whether

MS. CLAFFEY (continued):

it should or should not be public information. The Privacy Act was instituted for specific, good, sound reasons, and there are also reasons why people should know why, what, and if the Department of Consumer Protection has done in their behalf.

REP. CARRAGHER: Miss Claffey, when your agency or when the Better Business Bureau receives complaints about individual companies, do you conduct investigation of those complaints?

MISS CLAFFEY: No, not really --

REP. CARRAGHER: Just for your own person --

MISS CLAFFEY: No, the function of the Better Business Bureau is to act as a mediator when there's a problem between a consumer and a business. Because we don't have legal powers, we don't perform an investigation. We rely heavily on what the Department of Consumer Protection does enforcing their powers, and we will help relate this to the public by either telephone or through inquiry, things like that. But what we do is we have a form letter which we send to the company requesting their side of the story, and in this particular paving company's case, the company responded. We base our report on whether or not a company responds and, if a certain pattern does develop.

Some companies do respond; they never follow through on what they say. So our report to the public would be, basically, they handle their complaint satisfactorily, or they don't -- don't handle their complaint satisfactorily. And if they don't, why?

REP. CARRAGHER: Well, I have seen on television, for example, ads for the Better Business Bureau, saying before you make a contract with a paving company or whatever it may be, check the Better Business Bureau.

MISS CLAFFEY: Right.

REP. CARRAGHER: Okay, let's say that someone wants to come and pave my driveway, and I call your office and I say, "So and so company, I'm thinking of signing a contract for them to pave my driveway. What can you tell me about that company?"

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MISS CLAFFEY: Basically, we can tell you if we have a file, we don't always have a file, it's not mandatory that a company register with us or that we do have a file on a company. We, a file develops because of numerous inquiry, or because of numerous complaints, or because of few complaints. It takes, you know, just a little notation about a particular company, whether there was an article in the newspaper, that had filed. Now, if you wanted to know about a particular company, and we did have a file, we'd tell you whether or not they had a satisfactory or unsatisfactory record, or whether or not they were too new. The paving season happens to be a business, paving business happens to be the type of business where many people go in and out of it, change names from season to season, and many times we don't realize that a particular paving company was this company two years ago, which, you know, had an unsatisfactory record with us.

So we do a minor investigation to find out if name rings a bell, or if we have cross reference in files, track down whether or not that company was previously operated under another company name.

REP. CARRAGHER: I believe that you said you would tell me whether the record was satisfactory or unsatisfactory.

MISS CLAFFEY: That's correct.

REP. CARRAGHER: What if I said if I said to you, if you answered unsatisfactory, and I said why, would you tell me the specifics of why your agency feels that they're unsatisfactory.

MISS CLAFFEY: Yes, we would. A company gets an unsatisfactory rating from us if, number one, they do not answer us, we had forwarded a complaint to their attention with three letters and they never responded to us, and follow-up through the consumer indicates that the company never contacted them either. This is to indicate to you that if you should have a problem, we will also name the number of complaints that weren't answered, and if there's a specific pattern. For example, there's a company now doing carpet cleaning, and we have several complaints on file that have been answered; however, all the complaints state that the company saturates the carpeting to the point where it shrinks, and this type of information will be revealed to you if a specific pattern is formed.

MR. CARRAGHER: Well, what would prompt the Better Business Bureau to file a complaint against a company with the Department of Consumer Protection?

MISS CLAFFEY: If we receive, perhaps, three or more complaints of a serious nature indicating the same thing.

REP. CARRAGHER: Three or more. Okay, within the last year, how many complaints have you filed on companies with the Department of Consumer Protection?

MISS CLAFFEY: It's very, very difficult to say. On this particular paving company, we filed 28 in one year.

REP. CARRAGHER: You filed 28 complaints with the Department of Consumer Protection on this paving company?

MISS CLAFFEY: That's correct.

REP. CARRAGHER: Okay, how many companies would you suggest, or how many companies would your memory tell you which you may have filed with consumer protection about. How many companies?

MISS CLAFFEY: Thirty-eight or 40. This is myself personally that I'm aware of.

REP. CARRAGHER: This would be basically for the last calendar year.

MISS CLAFFEY: Right.

REP. CARRAGHER: And of those 38, have you made an effort to follow up with the Department regarding those?

MISS CLAFFEY: Yes, we have.

REP. CARRAGHER: All right, then your experience regarding those in general has been that the Department has said that we cannot release that kind of information to a third party.

MISS CLAFFEY: That's correct.

REP. CARRAGHER: And you, have you followed up then with the consumer to find out what has been done.

MISS CLAFFEY: That is correct.

REP. CARRAGHER: And what is your general finding then when you followed up with the consumer.

MISS CLAFFEY: In most instances, in fact, all instances, the consumer is, if it has heard from the Department of Consumer Protection, not satisfied with what happened, and the majority, I'd say, 88% of the complaints, more than likely have not heard from the Department of Consumer Protection.

REP. CARRAGHER: They haven't heard from the Department --

MISS CLAFFEY: Regarding the complaint. What I do is if I send a complaint to the Department of Consumer Protection asking them for their investigation on the matter, I will send a copy of that letter to the consumer indicating that I have referred this to that particular Department requesting the consumer to get back in contact with me if anything should be resolved. In most cases, I wait usually a number of months, and then if I have the time, I call them by telephone. If not, I send a letter and in most instances they're not happy, they forgot about it but it's too much of a hassle. The Department of Consumer Protection called and said they'd come out, and then never did. They'd stayed home; they'd lost a day of work, this type of thing.

And at that particular point, they're so disgusted that the problem is unresolved and we've had two agencies involved.

REP. CARRAGHER: Well, have you ever followed up with the Department to ask them why they did not follow up with these individuals? And if so, what kind of answer did you get?

MISS CLAFFEY: Usually, they don't know who's handling it, or the particular investigator is not in, the investigators that usually work on these particular cases are not always in. We leave messages; they're not returned. They cannot reveal if an investigation is going on; they cannot reveal how far into the investigation they've gone. They can't even really come out and say, "Yes, we are working on it, we need a little bit of information, can you help us, do you have any type?" They've never used our files. We have a tremendous amount of information in our files. They've never used our files. And it's usually a zero. And then, I would go to the consumer and say you're chances are better of trying to find us some sort of an answer with this Department.

REP. CARRAGHER: Have you ever sat down, has anyone from your agency ever sat down with someone in authority in the Department of Consumer Protection to discuss these kinds of problems.

MISS CLAFFEY: Yes, we are currently working out, I'm not familiar with what the system will be, but we're currently working out the problem.

REP. CARRAGHER: Is it fair to say that the Department is right now cooperating with you in trying to solve some of its problems?

MISS CLAFFEY: I can't fairly say they are. Not, see, I'm in a position where I receive the complaints and it's my judgment whether or not they should be forwarded to that Department. They are cooperating to an extent that, since, I'd say, since January at this past year, this new year, the Department has made a tremendous effort to stop a lot of businesses that are violating the Unfair Trade Practice Act. We find this out through a news release. We immediately put that in file with any complaints from us -- that come to us regarding that particular company or person, we will immediately forward it to them.

On that kind of an aspect, that Department is working cooperatively with us. But as far as forwarding complaints, or even getting a legal opinion, like you said, we're not a legal agency, and we have to rely on that Department for legal advice, and as far as what the laws say and what they don't say. We do not work on good terms in that manner.

REP. CARRAGHER: Are there any further questions? Thank you very much. Charles Mokriski.

MR. MOKRISKI: Mr. Carragher, and Mr. Morrisson, my name is Charles Mokriski; I'm the legislative counsel for the Connecticut Daily Newspaper Association. I'd like to speak briefly in support of Bill 718, where it can add much to what was said by Mr. Podolsky, and I too, like him, don't like to be on the other side of the fence from of Consumer Protection. I think, though, that whatever proceeding or whatever agency or court is involved, public confidence in it is diminished to the degree that it's proceedings and its records are not made available to the public. I think this

MR. MOKRISKI (continued):

goes -- it is certainly true with the courts and all the suspicion about plea-bargaining and whatever goes on behind closed doors has not enhanced public confidence in our courts. The very fact that investigatory files are not available at all in the Department of Consumer Protection, it seems to me, will likewise serve over the course of time to diminish public confidence in that office.

I urge the Committee to take steps, as recommended by Mr. Podolsky, to draft something that will protect the legitimate concerns and needs of the Department to protect the integrity of its investigating process, but at the same time not be such a solid, closed door to disclosure that the present statute is. Just briefly, I guess I hadn't signed up for the other bill, but I would like to briefly reflect on Bill 6228, which concerns the regional hearings of the Freedom of Information Commission. I heard Mrs. Wormser's testimony; I, too, am an official of the Housing Authority, and the Freedom of Information Law is a pain in the neck for Housing Authorities and any other public agencies. But this legislature's made the determination that the greater public interest is served by imposing upon agencies the obligation to comply with Freedom of Information to the degree that this bill would inhibit the ability of the Freedom of Information Commission to adequately enforce the statute, given its limited resources and staff, I'd oppose it.

however, other than for that, so I would note that, if a complaint, at least this is my approach, and I'd like to be corrected, by attorneys for the Commission or any other attorneys, if an agency doesn't contest any of the factual allegations in a complaint, and don't take issue with the law being applied and in fact admit that they should have gotten some information available -- they don't have to come up to a hearing; a simple letter to the Commission stating that they intend to comply with the law, that there was an inadvertent violation, or that there was no -- the minutes weren't available, or something of that sort, would be sufficient. The show-cause order is not a, not like a subpoena to court that you've got to respond to; it merely is an order to show cause why the Commission shall not order such relief as has been granted. And in many of the cases, with complaints that come up from Stamford, and I think that Mrs. Wormser testified they had no objection or

MR. MOKRISKI (continued):

no argument. For most of the cases, it's not necessary to appear. Comments on the other bill pertaining to the use of referees in Freedom of Information Appeals like in Mr. Pearlman's comments as well as the comments I made the other evening, that with a few changes I think that will be helpful in breaking the logjam in the courts.

REP. CARRAGHER: Thank you. Are there any questions? Thank you very much. Jane Nadell.

MS. NADEL: Good morning, my name is Jane Nadell; I'm representing Connecticut Citizen Action group in testifying for the Senate Bill number 718. I think there are two reasons why this legislation, or primarily two reasons why this legislation is necessary. At this point, the current policy of the Department is not to give the public information, as to the conclusions of investigations, as you're aware. And in doing so, they rely on the statute, Chapter 735a, Section 42-110d.

I think in reading that -- that statute, it's not clear that it does, in fact, preclude disclosure of information once the investigation is completed. And it appears, from looking at the statute, the intent is rather to protect information as the investigation is in process, and I think obviously there is good reason for that, and that type of information would be exempted under the Freedom of Information Act. However, other than for that reason, there seems to be no good reason why the outcome of these investigations should be withheld from the public. And in fact, I think there are several very good reasons why this information should be disclosed to the public, and why, in fact, it would even help the Department of Consumer Protection in its function to educate consumers.

I think that, as has been suggested in prior testimony, there can be a policy established as to what type of information is disclosed, which would not in any way impede or interfere with the investigatory or administrative process. There can be some rational way of telling people whether or not an investigation has been resolved satisfactorily. And this kind of information could be very helpful to the consumer. I think most complaint-handling agencies get a number of requests for information along those lines. In other words,

MS. NADEL (continued):

before they enter into a transaction, they will telephone a consumer complaint-handling agency, state or private, and CCAG has had this experience in the past, and we request some information about the reputation of any individual businessperson.

Now, if this information is given to them, they have a better basis on which to make an opinion whether or not they want to enter into a transaction with a particular party. And I think this can be very, very helpful to the consumer, and I see it as one of the traditional functions of a consumer protection agency, whether public or private, and I think that there has been a lot of commentary, people who have studied the functions of consumer complaint agencies, both in academic and practical sense, have come to the same conclusions. So I urge you to favor this legislation and enable the public to have information which I think is helpful to them.

REP. CARRAGHER: Thank you very much. Are there any questions? Thank you very much. That concludes those who have signed up to speak to this legislation. Is there anyone else present who wishes to testify? If there is no one else who wishes to testify, then the hearing is adjourned.

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March 26, 1979

## STATEMENT OF RAPHAEL L. PODOLSKY

### S.B. 718 -- Confidentiality of material gathered by the Department of Consumer Protection

This bill would repeal the special confidentiality for material obtained by the Department of Consumer Protection under the Unfair Trade Practices Act. It would not throw the Department's files open to the general public. What it would do is to make materials on consumer complaints as open to the public -- but no more so -- than comparable materials in other areas held by the Department of Consumer Protection and comparable materials obtained by other departments. In other words, it would subject Unfair Trade Practices complaints to the same standards applied to everybody else in state government by the Freedom of Information Act and the Privacy Act.

The Unfair Trade Practices Act (UTPA) is the law under which the Department of Consumer Protection (DCP) handles most complaints from consumers. DCP has interpreted §42-110d(a) broadly, so that it not only refuses to reveal the contents of a file but it will not even give out the number of complaints filed against a business. It is ironic that a consumer can call the Better Business Bureau -- a private organization -- and get information about the record of a business but that he cannot get the equivalent information from DCP, the very agency created by the General Assembly to protect the consumer. In effect, this means that a consumer cannot obtain information about disreputable businesses before he buys. In sharp contrast, the Freedom of Information Act affirmatively requires disclosure of housing code investigations, so that tenants can always find out about the compliance record of a potential landlord [C.G.S. §1-19(c)].

I have heard only two substantial arguments against this bill. The first is that it would interfere with on-going DCP investigations. This is simply incorrect. Even if this bill were passed, the Freedom of Information Act allows an agency to refuse disclosure of preliminary notes [§1-19(b)(1)] and to protect investigative files while the investigation is pending [§1-19(b)(4)]. Active investigations would in no way be disrupted by this bill.

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The second is that it would embarrass businesses against whom non-meritorious complaints were filed. This is not a good reason, however, since DCP can always disclose the disposition of the complaint along with the complaint (that is what the Better Business Bureau does). DCP's highly restrictive procedures for accepting complaints themselves screen out complaints of those who do not strongly feel that a business has wronged them. In addition, the many businesses which belong to the Better Business Bureau voluntarily permit disclosure of complaints, suggesting that reputable businesses do not fear such disclosure. Good businesses draw few complaints precisely because they resolve most disputes themselves. When a business has received many complaints, regardless of the results of the investigations, the wise consumer might well choose to do business elsewhere.

DCP's broad interpretation of C.G.S. §42-110d(a) also has the effect of immunizing its Consumer Frauds Division from public scrutiny. It is widely believed by those who deal with the Department that the Frauds Division does little active investigation. Existing law, which makes it impossible to find out how complaints are being processed, makes the division virtually unaccountable to the public.

If the Committee is unwilling to recommend this bill in full, it should consider as an alternative recommending that the special confidential treatment authorized by §42-110d(a) be limited to "information obtained pursuant to the powers conferred by this section...," instead of by this "chapter," as the law now states. The change of that single word would at least limit confidentiality to materials gained coercively by the Department (i.e., by subpoena, investigation, or investigative demand) and not to all information received by the Department under the UTPA.

Recommended committee action:

JOINT FAVORABLE