



General Assembly

January Session, 2001

Raised Bill No. 6761

LCO No. 3797

Referred to Committee on General Law

Introduced by:

(GL)

AN ACT CONCERNING REGISTRATION OF EMPLOYEE ASSISTANCE PROFESSIONALS.

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

1 Section 1. (NEW) This act shall be known and may be cited as the
2 "Employee Assistance Professional Registration Act".

3 Sec. 2. (NEW) As used in sections 1 to 8, inclusive, of this act:

4 (1) "Confidential client communication" means (A) all oral and
5 written communications and records of such communications between
6 an employee client and an employee assistance professional in the
7 course of their relationship, provided such communications are made
8 in confidence and are not disclosed to third persons other than the
9 employee client's family members or those who are present during
10 such communications to further the interests of the employee client
11 during the consultation, (B) information that is disclosed to third
12 parties which is reasonably necessary to further the interests of the
13 employee client, (C) information that is disclosed to third parties,
14 including clerical staff working for the employee assistance
15 professional, which is reasonably necessary to accomplish the

16 purposes for which the employee assistance professional is consulted,
17 (D) all oral and written communications and records of such
18 communications between a third party and an employee assistance
19 professional in furtherance of the interests of the employee client, and
20 (E) all oral and written communications and records of such
21 communications from which, either alone or in combination with
22 publicly available information, the identity of an employee client can,
23 with reasonable accuracy, be determined.

24 (2) "Certified employee assistance professional" means an employee
25 assistance professional who has been certified by the Employee
26 Assistance Certification Commission.

27 (3) "Department" means the Department of Consumer Protection.

28 (4) "Employee client" or "client" means any person, including an
29 employee's family member or an employee covered by a union-
30 sponsored employee assistance program, who consults with an
31 employee assistance professional for assessment or to receive
32 employee assistance program services.

33 (5) "Employee Assistance Certification Commission" means the
34 administrative body that provides a nationally recognized program for
35 certification of employee assistance professionals.

36 (6) "Employee assistance program-related graduate degree" or
37 "employee assistance-related degree" means a graduate degree in one
38 of the following areas: Behavioral science; human resources; work
39 organization; management; administration or health care.

40 (7) "Employee assistance profession" means the provision of
41 employee assistance program core functions, as set forth in subdivision
42 (10) of this section, for remuneration, unless such core functions are
43 provided only incidentally to some other function, provided any
44 individual who regularly provides any four of the seven core functions
45 provided in subdivision (10) of this section, shall be deemed an

46 employee assistance professional, regardless of whether those
47 functions are provided only incidentally to some other function.

48 (8) "Employee assistance professional" means any practitioner of the
49 employee assistance profession, including any person who is required
50 by a job description or employment contract to provide employee
51 assistance core functions, or who has been hired by an entity to
52 provide employee assistance program core functions to employees
53 under a contract between that entity and a work organization for
54 whom those employees work.

55 (9) "Employee assistance program" means a worksite-based
56 program designed to assist (A) work organizations in addressing
57 productivity issues, and (B) employee clients in identifying and
58 resolving personal concerns including, but not limited to, health,
59 marital, family, financial, alcohol, drug, gambling, legal, emotional,
60 stress or other personal issues that may affect job performance.

61 (10) "Employee assistance program core functions" means the
62 following essential components of the employee assistance profession:

63 (A) Consultation with, training of and assistance to work
64 organization managers seeking to assist employees, enhance the work
65 environment and improve employee job performance, including
66 outreach to and education of employees and their family members
67 about the availability of employee assistance services;

68 (B) Confidential and timely problem identification or assessment
69 services for employee clients with personal concerns that may affect
70 job performance;

71 (C) Use of constructive confrontation, motivation and short-term
72 intervention with employee clients to address problems that affect job
73 performance;

74 (D) Referral of employee clients for diagnosis, treatment, assistance,
75 case monitoring and follow-up services;

76 (E) Consultation with work organizations to establish and maintain
77 effective relations with treatment and other service providers and in
78 managing provider contracts;

79 (F) Consultation with work organizations to encourage support for
80 employee access to health benefits covering medical and behavioral
81 problems including, but not limited to, alcoholism, drug abuse and
82 mental and emotional disorders; and

83 (G) Identification of the effects of employee assistance professional
84 services on a work organization and individual job performance.

85 (11) "Registered employee assistance professional" means an
86 employee assistance professional registered pursuant to this act.

87 (12) "Professional development hour" means an hour-long unit of
88 Employee Assistance Certification Commission approved training,
89 awarded by the Employee Assistance Certification Commission for
90 training in the seven employee assistance professional core functions.

91 (13) "Recipient of confidential client communications" means the
92 individual employee assistance professional and any third person who
93 is present in a consultation with the employee client to further the
94 interests of the employee client, to whom disclosures have been made
95 that are reasonably necessary for transmission of the information or
96 accomplishment of the purposes for which the employee assistance
97 professional is consulted.

98 (14) "Work organization" means any employer for which an
99 employee client works, either as an employee or under contract, any
100 union of which any employee client is a member or any representative
101 of such an employer or union.

102 Sec. 3. (NEW) The department is authorized to:

103 (1) Issue certificates of registration as an employee assistance
104 professional, as provided in this act, that permit and authorize

105 individuals to practice the employee assistance profession and
106 represent themselves to the general public as registered employee
107 assistance professionals;

108 (2) Adopt and enforce rules of conduct and appropriate sanctions
109 for registered members of the employee assistance profession;

110 (3) Approve educational programs required for certification as an
111 employee assistance professional under this act;

112 (4) Establish and collect fees for certificates of registration as an
113 employee assistance professional, as provided in this act;

114 (5) Assess civil penalties, as provided in this act; and

115 (6) Adopt regulations, in accordance with the provisions of chapter
116 54 of the general statutes, to carry out this act.

117 Sec. 4. (NEW) (a) A person is qualified to be registered as an
118 employee assistance professional and the department shall issue a
119 certificate of registration authorizing such person to practice as an
120 employee assistance professional to any applicant who:

121 (1) Has been certified by the Employee Assistance Certification
122 Commission as a certified employee assistance professional and has
123 submitted proof that such certification is in good standing dated not
124 more than thirty days prior to the date of application for a certificate of
125 registration as an employee assistance professional, provided, during
126 the twelve-month period following the effective date of this act, the
127 department may adopt a rule waiving the requirements of this
128 subdivision for any individual who (A) is able to demonstrate that
129 such individual practiced as an employee assistance professional prior
130 to the effective date of this act, and (B) meets the professional
131 development hour requirements for certification by the Employee
132 Assistance Certification Commission;

133 (2) (A) Holds an employee assistance professional-related graduate

134 degree and has completed two thousand hours of employee assistance
135 professional work experience within a two to seven-year period, or (B)
136 does not hold an employee assistance professional-related graduate
137 degree, but has completed three thousand hours of employee
138 assistance professional work experience within a two to seven-year
139 period, provided during the twelve-month period following the
140 effective date of this act, the department shall waive the requirements
141 of subparagraphs (A) and (B) of this subdivision for any individual
142 who has practiced in the employee assistance profession for at least
143 four years prior to the effective date of this act and continues to
144 practice such profession;

145 (3) Has met such other requirements as the department may deem
146 appropriate for registration as an employee assistance professional;

147 (4) Has completed a written application on forms prepared and
148 furnished by the department. Each application shall (A) contain proof
149 of the qualifications required of the applicant, (B) provide the details of
150 the applicant's training and experience in the practice of the employee
151 assistance profession, and (C) be signed by the applicant under penalty
152 of false statement; and

153 (5) Has submitted a nonrefundable application fee in the amount of
154 one hundred fifty dollars.

155 (b) The department shall issue a certificate of registration as an
156 employee assistance professional to any applicant who:

157 (1) Is registered as an employee assistance professional in any other
158 state, territory or foreign jurisdiction whose employee assistance
159 professional registration requirements are substantially equivalent to
160 the requirements set forth in this act and include certification by the
161 Employee Assistance Certification Commission;

162 (2) Has completed a written application on forms prepared and
163 furnished by the department. Each application shall (A) contain proof

164 of the qualifications required of the applicant, (B) provide details of the
165 applicant's training and experience in the practice of the employee
166 assistance profession, and (C) be signed by the applicant under penalty
167 of false statement; and

168 (3) Has submitted a nonrefundable application fee in the amount of
169 one hundred fifty dollars.

170 (c) (1) No person shall represent that such person is registered as an
171 employee assistance professional in this state unless such person is
172 registered in accordance with this act.

173 (2) No person shall hold out to the public by any title or provide any
174 description of services offered that incorporates the terms "registered
175 employee assistance professional" in this state unless such person is
176 registered in accordance with this act.

177 (d) The department may establish policies to permit waiver of the
178 qualifications for registration set forth in this act in cases involving
179 extreme hardship, including full-time service in the armed forces of the
180 United States, incapacitating illness, physical inability to travel to
181 training or other extenuating circumstances.

182 (e) (1) A certificate of registration as an employee assistance
183 professional issued by the department under this act shall be valid for
184 a period of two years from the date of issuance.

185 (2) A certificate holder who seeks to renew a certificate of
186 registration as an employee assistance professional shall file a written
187 application for renewal on forms prepared and furnished by the
188 department prior to the expiration of such certificate and submit a
189 renewal fee in the amount of one hundred dollars. Renewal shall
190 require proof of current and, when applicable, continuing certification
191 as an employee assistance professional in good standing.

192 (f) Failure to timely apply for renewal of a certificate of registration
193 as an employee assistance professional shall result in the suspension of

194 such certificate. The effective date of the suspension shall be the last
195 day of the two-year period following the date of issuance of such
196 certificate. Any certificate holder whose certificate as an employee
197 assistance professional has been suspended may make written
198 application for reinstatement of such certificate not later than sixty
199 days after the date such certificate expires. Reinstatement of a
200 certificate of registration as an employee assistance professional shall
201 be granted on the same terms as renewal of such certificate. Any
202 person whose certificate of registration has been suspended for more
203 than one year shall reapply to the department for registration as an
204 employee assistance professional.

205 (g) An applicant or certificate holder shall notify the department of
206 any change in the information provided in the application for
207 certification as an employee assistance professional under this act,
208 including any lapse in certification by the Employee Assistance
209 Certification Commission, not later than sixty calendar days after any
210 such change occurs.

211 (h) The department shall act upon a completed application for
212 certification, renewal, reinstatement or reapplication for registration as
213 an employee assistance professional not later than three months after
214 the submission of such application.

215 Sec. 5. (NEW) (a) The department shall withhold, deny, suspend or
216 revoke a certificate of registration as an employee assistance
217 professional upon finding that the applicant or certificate holder:

218 (1) Has fraudulently obtained or attempted to obtain a certificate of
219 registration as an employee assistance professional;

220 (2) Has violated any provision of this act or any rule or regulation of
221 the department, or has allowed or encouraged an employee, agent,
222 contractor or person under the certificate holder's supervision to
223 engage in such violation;

224 (3) Has violated the code of professional conduct for certified
225 employee assistance professionals adopted by the Employee
226 Assistance Certification Commission or any additional ethical
227 requirements adopted by the department;

228 (4) Has had a certificate of registration as an employee assistance
229 professional denied, suspended or revoked for cause by any other
230 state, territory or foreign jurisdiction; or

231 (5) Has had a certification suspended or revoked by the Employee
232 Assistance Certification Commission for unethical conduct, provided
233 the department determines that the rules under which that suspension
234 or revocation occurred were sound and the procedures employed were
235 fair and consistent with due process of law.

236 (b) Any individual who provides information to the department
237 which the individual believes, in good faith, indicates a certificate
238 holder is or may be in violation of this act shall be immune from any
239 civil or criminal liability for taking such action.

240 (c) If the department concludes that any matter before it involves
241 probable violation of law, the department shall refer the matter to the
242 appropriate state or federal law enforcement authority for possible
243 additional civil or criminal action.

244 Sec. 6. (NEW) (a) Except as provided in subsections (b) and (c) of
245 this section:

246 (1) No recipient of confidential client communications may disclose,
247 or be required to disclose, such communications;

248 (2) No recipient of confidential client communications may use the
249 information contained in such communications for any purpose other
250 than that for which it was communicated; and

251 (3) An employee client has the privilege of refusing to disclose, and
252 preventing any other person from disclosing, any confidential client

253 communications.

254 (b) Confidential client communications may be disclosed:

255 (1) By any recipient of such information if the employee client or the
256 employee client's legal representative gives prior written consent for
257 such disclosure. The person to whom such recipient makes such
258 disclosure shall not make any further disclosure of the confidential
259 client communications at issue without the written consent of the
260 employee client, the employee client's legal representative or as
261 otherwise permitted by this section. The written consent required by
262 this subsection shall include: (A) The name of the person permitted to
263 make the disclosure; (B) the name of the individual or organization to
264 which the disclosure is to be made; (C) the name of the employee
265 client; (D) a description of the amount and type of information to be
266 disclosed; (E) the purpose of the disclosure; (F) the signature of the
267 employee client or the employee client's legal representative; (G) the
268 date on which the consent is signed; and (H) the date of expiration of
269 the consent. If no such date is included, the written consent required
270 by this subsection shall be deemed to expire ninety days from the date
271 the consent is signed.

272 (2) By any recipient of such information when and to the extent
273 disclosure is necessary for the provision of emergency medical services
274 to an employee client who is unable to assert or waive such client's
275 rights under this section.

276 (3) By any employee assistance professional when, in the sole
277 discretion of the employee assistance professional, such professional
278 reasonably determines that disclosure is necessary to protect the
279 employee client or any other person from imminent risk of serious
280 physical or mental injury, disease or death.

281 (4) By any employee assistance professional when and to the extent,
282 such professional, in such professional's sole discretion, reasonably
283 determines that disclosure is necessary to warn or protect a specific

284 individual, including the work organization or another group, against
285 whom a client has made a specific threat of violence.

286 (5) By any employee assistance professional to the appropriate state
287 authorities when, and to the same extent, a physician would be
288 required to disclose the same information under state law regarding
289 the reporting of suspected incidents of child abuse and neglect,
290 provided the disclosure shall be limited to the reporting of suspected
291 incidences of abuse or neglect of a child from birth up to age sixteen.

292 (6) By any employee assistance professional to a direct supervisor,
293 to a consulting employee assistance professional or to any employee
294 assistance professional acting under the employee assistance
295 professional's supervision and control, when and to the extent
296 necessary for consultation or assessment of the employee assistance
297 professional's performance of duties, provided any information
298 disclosed pursuant to this subdivision shall itself be deemed
299 confidential client communications for purposes of this act.

300 (7) By any employee assistance professional to qualified personnel
301 to the extent necessary to conduct scientific research, management or
302 financial audits or program evaluations, provided such disclosure does
303 not identify or permit with reasonable accuracy the identification of an
304 employee client.

305 (8) With the employee client's written consent, by any employee
306 assistance professional to a third party payer, insurance carrier or
307 managed care organization, when disclosure is required by an
308 employer, third party payer, insurance carrier or managed care
309 organization in order for an employee client to obtain desired medical
310 or mental health benefits, including treatment of substance abuse.
311 Information disclosed pursuant to this subdivision shall not be used
312 for any other purpose and shall not be redisclosed.

313 (9) With the employee client's written consent, by any employee
314 assistance professional to a professional provider of medical or mental

315 health care services when disclosure is required by an employer, third
316 party payer, insurance carrier or managed care organization in order
317 for an employee client to obtain desired medical or mental health
318 benefits, including treatment of substance abuse, from that provider,
319 provided any information disclosed pursuant to this subdivision shall
320 not be used for any other purpose and shall not be redisclosed unless
321 otherwise permitted both by this section and by any confidentiality or
322 privilege law that would be applicable to confidential communications
323 between a patient and the individual to whom it is disclosed.

324 (10) With the employee client's written consent, by any employee
325 assistance professional to a professional provider of medical or mental
326 health care services to the employee client, when and to the extent the
327 employee assistance professional, in said professional's sole discretion,
328 determines that disclosure would be beneficial to the employee client,
329 provided any information disclosed pursuant to this subdivision shall
330 not be used for any other purpose and shall not be redisclosed unless
331 otherwise permitted both by this section and by any confidentiality or
332 privilege law that would be applicable to confidential communications
333 between a patient and the individual to whom it is disclosed.

334 (11) By any employee assistance professional to the employee client
335 if confidential client communications have been made by a third party
336 to the employee assistance professional in furtherance of the employee
337 client's interests, provided any information disclosed pursuant to this
338 subdivision shall itself be deemed confidential client communications
339 for purposes of this act.

340 (12) To the employee assistance professional or the employee client
341 by recipients who are third persons to whom confidential client
342 communications have been made, either because they were reasonably
343 necessary for transmission of the information, or because they were
344 reasonably necessary for accomplishment of the purposes for which
345 the employee assistance professional was consulted, provided any
346 information disclosed pursuant to this subdivision shall itself be

347 deemed confidential client communication for purposes of this act.

348 (c) A written consent executed pursuant to this section shall be
349 revocable by the employee client or the employee client's legal
350 representative at any time.

351 (d) Any disclosure of confidential client communications made by a
352 recipient of such communications with written consent pursuant to
353 this section shall be accompanied by a statement that the information
354 is subject to the restriction on disclosure contained in subdivision (1) of
355 subsection (e) of this section.

356 (e) A client or recipient of confidential client communications may
357 be required to disclose such communications:

358 (1) In a civil, criminal or administrative proceeding in which an
359 employee client introduced such client's mental, medical or emotional
360 condition or any aspect of the employee assistance services received by
361 such client as an element of such client's claim or defense. If and only
362 to the extent that the court in which the proceedings have been
363 brought or, in the case of an administrative proceeding, the court to
364 which an appeal or other action for review of an administrative
365 determination may be taken finds, after in-camera examination of the
366 testimony or other evidence at issue, that it is relevant, probative, not
367 unduly prejudicial or inflammatory and otherwise clearly admissible,
368 that other evidence is demonstrably unsatisfactory as evidence of the
369 facts sought to be established by such evidence, and that disclosure is
370 more important to the interests of substantial justice than protection
371 from injury of the relationship between the employee assistance
372 professional and the client, or of the client or another whom disclosure
373 is likely to harm. No confidential client communications shall be
374 deemed relevant for purposes of this section except the fact of the
375 consultation with the employee assistance professional, the number of
376 times the employee client met with the employee assistance
377 professional, and the ultimate conclusion of the employee assistance
378 professional concerning the source of the employee client's

379 productivity problem. For purposes of this act, no mental, medical or
380 emotional condition or any aspect of the employee assistance services
381 an employee client has received may be deemed to have been made an
382 element of a claim or defense in any action for divorce, child custody
383 or child support, or in which pain and suffering is in an element of the
384 claim, unless the employee client or a witness on such client's behalf
385 first testifies regarding the confidential client communication.

386 (2) When confidential client communications are relevant to a
387 matter in issue in any action brought under this act, provided any
388 information so disclosed shall be filed under seal from public scrutiny
389 and shall not be utilized for any other purpose, or be redisclosed
390 except in connection with such action.

391 (3) When confidential client communications are relevant to the
392 investigation or prosecution of the employee assistance professional,
393 provided any information so disclosed shall be filed under seal from
394 public scrutiny and shall not be utilized for any other purpose, or be
395 redisclosed except in connection with such action.

396 (f) No party and no attorney of a party to any proceeding described
397 under subdivision (1), (2) or (3) of subsection (e) of this section shall
398 serve a subpoena seeking access to confidential client communications
399 under this subsection unless the subpoena is accompanied by a written
400 order issued by a judge authorizing the disclosure of the information
401 or the issuance of the subpoena.

402 (g) The employee client privilege created by subdivision (3) of
403 subsection (a) of this section may be claimed by: (1) The employee
404 client; (2) a guardian or conservator of the employee client; (3) the
405 personal representative of a deceased employee client; and (4) the
406 employee assistance professional on behalf of the client. The employee
407 assistance professional's authority to claim such privilege on behalf of
408 the employee client shall be presumed in the absence of evidence to the
409 contrary.

410 (h) The confidentiality and privilege protections of this act do not
411 apply if the services of the employee assistance professional were
412 sought or obtained in order to enable or aid the employee client or any
413 other person to commit or plan to commit a crime or tort, or to escape
414 detection or apprehension after the commission of a crime or tort. The
415 burden of proving the intent with which the employee assistance
416 professional's services were sought shall rest upon the party seeking to
417 defeat the confidentiality and privilege protections of this act.

418 Sec. 7. (NEW) Nothing in this act shall preclude any registered or
419 certified physician, psychiatrist, nurse, psychologist, psychotherapist,
420 clinical social worker, social worker, family, marriage and child
421 counselor, alcohol and drug counselor or other counselor, attorney or
422 member of the clergy from practicing any such profession consistent
423 with accepted professional standards for its practice, provided nothing
424 in this section shall be construed to limit the applicability of
425 subdivision (1) of subsection (a) of section 3 of this act.

426 Sec. 8. (NEW) (a) Any person who wilfully misrepresents that such
427 person is a registered employee assistance professional shall be subject
428 to a civil penalty of not more than one thousand dollars.

429 (b) Any person who violates the confidentiality provisions of section
430 5 of this act shall be subject to a civil penalty of not more than five
431 thousand dollars.

432 (c) Any person aggrieved as a result of a violation of any provision
433 of this act or any regulation adopted by the department under this act
434 may bring a civil action in the superior court for the judicial district of
435 Hartford against the offender to obtain appropriate relief, including
436 actual and punitive damages, equitable relief, reasonable attorneys'
437 fees and court costs.

Statement of Purpose:

To require licensing of employee assistance professionals.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]