



General Assembly

February Session, 2002

Raised Bill No. 5463

LCO No. 1444

Referred to Committee on Labor and Public Employees

Introduced by:
(LAB)

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) (*Effective October 1, 2002*) Sections 1 to 8, inclusive,
2 of this act shall be known and may be cited as the "Employee
3 Assistance Professional Registration Act".

4 Sec. 2. (NEW) (*Effective October 1, 2002*) As used in sections 1 to 8,
5 inclusive, of this act unless the context otherwise requires:

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

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

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

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

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

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

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

42 (7) "Employee assistance profession" means the provision of
43 employee assistance program core functions, as set forth in subdivision
44 (10) of this section, for remuneration, unless such core functions are
45 provided only incidentally to some other function, provided any

46 individual who regularly provides any four of the seven core functions
47 provided in subdivision (10) of this section, shall be deemed an
48 employee assistance professional, regardless of whether those
49 functions are provided only incidentally to some other function.

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

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

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

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

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

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

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

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

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

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

87 (11) "Registered employee assistance professional" means an
88 employee assistance professional registered pursuant to sections 1 to 8,
89 inclusive, of this act.

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

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

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

105 Sec. 3. (NEW) (*Effective October 1, 2002*) (a) The Department of
106 Consumer Protection may:

107 (1) Issue certificates of registration as an employee assistance
108 professional, as provided in sections 1 to 8, inclusive, of this act, which
109 permit and authorize individuals to practice the employee assistance
110 profession and represent themselves to the general public as registered
111 employee assistance professionals;

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

114 (3) Approve educational programs required for certification as an
115 employee assistance professional under sections 1 to 8, inclusive, of
116 this act;

117 (4) Establish and collect fees for certificates of registration as an
118 employee assistance professional, as provided in sections 1 to 8,
119 inclusive, of this act;

120 (5) Assess civil penalties, as provided in sections 1 to 8, inclusive, of
121 this act; and

122 (6) Adopt regulations, in accordance with the provisions of chapter
123 54 of the general statutes, to carry out sections 1 to 8, inclusive, of this
124 act.

125 Sec. 4. (NEW) (*Effective October 1, 2002*) (a) A person is qualified to
126 be registered as an employee assistance professional and the
127 Department of Consumer Protection shall issue a certificate of
128 registration authorizing such person to practice as an employee
129 assistance professional to any applicant who:

130 (1) Has been certified by the Employee Assistance Certification
131 Commission as a certified employee assistance professional and has
132 submitted proof that such certification is in good standing dated not
133 more than thirty days prior to the date of application for a certificate of

134 registration as an employee assistance professional, provided, during
135 the period from October 1, 2002, to October 1, 2003, the department
136 may adopt a rule waiving the requirements of this subdivision for any
137 individual who (A) is able to demonstrate that such individual
138 practiced as an employee assistance professional prior to October 1,
139 2002, and (B) meets the professional development hour requirements
140 for certification by the Employee Assistance Certification Commission;

141 (2) (A) Holds an employee assistance professional-related graduate
142 degree and has completed two thousand hours of employee assistance
143 professional work experience within a two to seven year period, or (B)
144 does not hold an employee assistance professional-related graduate
145 degree, but has completed three thousand hours of employee
146 assistance professional work experience within a two to seven year
147 period, provided during the period from October 1, 2002, to October 1,
148 2003, the department shall waive the requirements of subparagraphs
149 (A) and (B) of this subdivision for any individual who has practiced in
150 the employee assistance profession for at least four years prior to
151 October 1, 2002, and continues to practice such profession;

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

154 (4) Has completed a written application on forms prepared and
155 furnished by the department. Each application shall (A) contain proof
156 of the qualifications required of the applicant, (B) provide the details of
157 the applicant's training and experience in the practice of the employee
158 assistance profession, and (C) be signed by the applicant under penalty
159 of false statement; and

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

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

164 (1) Is registered as an employee assistance professional in any other
165 state, territory or foreign jurisdiction whose employee assistance
166 professional registration requirements are substantially equivalent to
167 the requirements set forth in this section and include certification by
168 the Employee Assistance Certification Commission;

169 (2) Has completed a written application on forms prepared and
170 furnished by the department. Each application shall (A) contain proof
171 of the qualifications required of the applicant, (B) provide details of the
172 applicant's training and experience in the practice of the employee
173 assistance profession, and (C) be signed by the applicant under penalty
174 of false statement; and

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

177 (c) (1) No person shall represent that such person is registered as an
178 employee assistance professional in this state unless such person is
179 duly registered in accordance with sections 1 to 8, inclusive, of this act.

180 (2) No person shall hold out to the public by any title or provide any
181 description of services offered which incorporates the terms
182 "registered employee assistance professional" in this state unless such
183 person is duly registered in accordance with sections 1 to 8, inclusive,
184 of this act.

185 (d) The department may establish policies to permit waiver of the
186 qualifications for registration set forth in this section in cases involving
187 extreme hardship, including full-time service in the armed forces of the
188 United States, incapacitating illness, physical inability to travel to
189 training or other extenuating circumstances.

190 (e) (1) A certificate of registration as an employee assistance
191 professional issued by the department under sections 1 to 8, inclusive,
192 of this act shall be valid for a period of two years from the date of
193 issuance.

194 (2) A certificate holder who seeks to renew a certificate of
195 registration as an employee assistance professional shall file a written
196 application for renewal on forms prepared and furnished by the
197 department prior to the expiration of such certificate and submit a
198 renewal fee in the amount of one hundred dollars. Renewal shall
199 require proof of current and, when applicable, continuing certification
200 as an employee assistance professional in good standing.

201 (f) Failure to timely apply for renewal of a certificate of registration
202 as an employee assistance professional shall result in the suspension of
203 such certificate. The effective date of the suspension shall be the last
204 day of the two-year period following the date of issuance of such
205 certificate. Any certificate holder whose certificate as an employee
206 assistance professional has been suspended may make written
207 application for reinstatement of such certificate not later than sixty
208 days after the date such certificate expires. Reinstatement of a
209 certificate of registration as an employee assistance professional shall
210 be granted on the same terms as renewal of such certificate. Any
211 person whose certificate of registration has been suspended for more
212 than one year shall reapply to the department for registration as an
213 employee assistance professional.

214 (g) An applicant or certificate holder shall notify the department of
215 any change in the information provided in the application for
216 certification as an employee assistance professional under sections 1 to
217 8, inclusive, of this act, including any lapse in certification by the
218 Employee Assistance Certification Commission, not later than sixty
219 calendar days after any such change occurs.

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

224 Sec. 5. (NEW) (*Effective October 1, 2002*) (a) The Department of
225 Consumer Protection shall withhold, deny, suspend or revoke a

226 certificate of registration as an employee assistance professional upon
227 finding that the applicant or certificate holder:

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

230 (2) Has violated any provision of sections 1 to 8, inclusive, of this act
231 or any rule or regulation of the department relating to employee
232 assistance professionals, or has allowed or encouraged an employee,
233 agent, contractor or person under the certificate holder's supervision to
234 engage in such violation;

235 (3) Has violated the code of professional conduct for certified
236 employee assistance professionals adopted by the Employee
237 Assistance Certification Commission or any additional ethical
238 requirements adopted by the department;

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

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

247 (b) Any individual who provides information to the department
248 that the individual believes, in good faith, indicates a certificate holder
249 is or may be in violation of sections 1 to 8, inclusive, of this act shall be
250 immune from any civil or criminal liability for taking such action.

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

255 Sec. 6. (NEW) (*Effective October 1, 2002*) (a) Except as provided in
256 subsections (b) and (c) of this section:

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

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

262 (3) An employee client has the privilege of refusing to disclose, and
263 preventing any other person from disclosing, any confidential client
264 communications.

265 (b) Confidential client communications may be disclosed:

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

283 (2) By any recipient of such information when and to the extent
284 disclosure is necessary for the provision of emergency medical services

285 to an employee client who is unable to assert or waive such client's
286 rights under this section.

287 (3) By any employee assistance professional when, in the sole
288 discretion of the employee assistance professional, such professional
289 reasonably determines that disclosure is necessary to protect the
290 employee client or any other person from imminent risk of serious
291 physical or mental injury, disease or death.

292 (4) By any employee assistance professional when and to the extent,
293 such professional, in such professional's sole discretion, reasonably
294 determines that disclosure is necessary to warn or protect a specific
295 individual, including the work organization or another group, against
296 whom a client has made a specific threat of violence.

297 (5) By any employee assistance professional to the appropriate state
298 authorities when, and to the same extent, a physician would be
299 required to disclose the same information under state law regarding
300 the reporting of suspected incidents of child abuse and neglect,
301 provided the disclosure shall be limited to the reporting of suspected
302 incidences of abuse or neglect of a child from birth to age sixteen.

303 (6) By any employee assistance professional to a direct supervisor,
304 to a consulting employee assistance professional or to any employee
305 assistance professional acting under the employee assistance
306 professional's supervision and control, when and to the extent
307 necessary for consultation or assessment of the employee assistance
308 professional's performance of duties, provided any information
309 disclosed pursuant to this subdivision shall itself be deemed
310 confidential client communications for purposes of sections 1 to 8,
311 inclusive, of this act.

312 (7) By any employee assistance professional to qualified personnel
313 to the extent necessary to conduct scientific research, management or
314 financial audits or program evaluations, provided such disclosure does
315 not identify or permit with reasonable accuracy the identification of an

316 employee client.

317 (8) With the employee client's written consent, by any employee
318 assistance professional to a third party payer, insurance carrier or
319 managed care organization, when disclosure is required by an
320 employer, third party payer, insurance carrier or managed care
321 organization in order for an employee client to obtain desired medical
322 or mental health benefits, including treatment of substance abuse.
323 Information disclosed pursuant to this subdivision shall not be used
324 for any other purpose and shall not be redisclosed.

325 (9) With the employee client's written consent, by any employee
326 assistance professional to a professional provider of medical or mental
327 health care services when disclosure is required by an employer, third
328 party payer, insurance carrier or managed care organization in order
329 for an employee client to obtain desired medical or mental health
330 benefits, including treatment of substance abuse, from that provider,
331 provided any information disclosed pursuant to this subdivision shall
332 not be used for any other purpose and shall not be redisclosed unless
333 otherwise permitted both by this section and by any confidentiality or
334 privilege law that would be applicable to confidential communications
335 between a patient and the individual to whom it is disclosed.

336 (10) With the employee client's written consent, by any employee
337 assistance professional to a professional provider of medical or mental
338 health care services to the employee client, when and to the extent the
339 employee assistance professional, in said professional's sole discretion,
340 determines that disclosure would be beneficial to the employee client,
341 provided any information disclosed pursuant to this subdivision shall
342 not be used for any other purpose and shall not be redisclosed unless
343 otherwise permitted both by this section and by any confidentiality or
344 privilege law that would be applicable to confidential communications
345 between a patient and the individual to whom it is disclosed.

346 (11) By any employee assistance professional to the employee client
347 if confidential client communications have been made by a third party

348 to the employee assistance professional in furtherance of the employee
349 client's interests, provided any information disclosed pursuant to this
350 subdivision shall itself be deemed confidential client communications
351 for purposes of sections 1 to 8, inclusive, of this act.

352 (12) To the employee assistance professional or the employee client
353 by recipients who are third persons to whom confidential client
354 communications have been made, either because they were reasonably
355 necessary for transmission of the information, or because they were
356 reasonably necessary for accomplishment of the purposes for which
357 the employee assistance professional was consulted, provided any
358 information disclosed pursuant to this subdivision shall itself be
359 deemed confidential client communication for purposes of sections 1
360 to 8, inclusive, of this act.

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

364 (d) Any disclosure of confidential client communications made by a
365 recipient of such communications with written consent pursuant to
366 this section shall be accompanied by a statement that the information
367 is subject to the restriction on disclosure contained in subdivision (1) of
368 subsection (e) of this section.

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

371 (1) In a civil, criminal or administrative proceeding in which an
372 employee client introduced such client's mental, medical or emotional
373 condition or any aspect of the employee assistance services received by
374 such client as an element of such client's claim or defense. If and only
375 to the extent that the court in which the proceedings have been
376 brought or, in the case of an administrative proceeding, the court to
377 which an appeal or other action for review of an administrative
378 determination may be taken finds, after in-camera examination of the

379 testimony or other evidence at issue, that it is relevant, probative, not
380 unduly prejudicial or inflammatory and otherwise clearly admissible,
381 that other evidence is demonstrably unsatisfactory as evidence of the
382 facts sought to be established by such evidence, and that disclosure is
383 more important to the interests of substantial justice than protection
384 from injury of the relationship between the employee assistance
385 professional and the client, or of the client or another whom disclosure
386 is likely to harm. No confidential client communications shall be
387 deemed relevant for purposes of this section except the fact of the
388 consultation with the employee assistance professional, the number of
389 times the employee client met with the employee assistance
390 professional, and the ultimate conclusion of the employee assistance
391 professional concerning the source of the employee client's
392 productivity problem. For purposes of sections 1 to 8, inclusive, of this
393 act, no mental, medical or emotional condition or any aspect of the
394 employee assistance services an employee client has received may be
395 deemed to have been made an element of a claim or defense in any
396 action for divorce, child custody or child support, or in which pain and
397 suffering is in an element of the claim, unless the employee client or a
398 witness on such client's behalf first testifies regarding the confidential
399 client communication.

400 (2) When confidential client communications are relevant to a
401 matter in issue in any action brought under sections 1 to 8, inclusive, of
402 this act, provided any information so disclosed shall be filed under seal
403 from public scrutiny and shall not be utilized for any other purpose, or
404 be redisclosed except in connection with such action.

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

410 (f) No party and no attorney of a party to any proceeding described

411 under subdivision (1), (2) or (3) of subsection (e) of this section shall
412 serve a subpoena seeking access to confidential client communications
413 under this section unless the subpoena is accompanied by a written
414 order issued by a judge authorizing the disclosure of the information
415 or the issuance of the subpoena.

416 (g) The employee client privilege created by subdivision (3) of
417 subsection (a) of this section may be claimed by: (1) The employee
418 client; (2) a guardian or conservator of the employee client; (3) the
419 personal representative of a deceased employee client; and (4) the
420 employee assistance professional on behalf of the client. The employee
421 assistance professional's authority to claim such privilege on behalf of
422 the employee client shall be presumed in the absence of evidence to the
423 contrary.

424 (h) The confidentiality and privilege protections of sections 1 to 8,
425 inclusive, of this act do not apply if the services of the employee
426 assistance professional were sought or obtained in order to enable or
427 aid the employee client or any other person to commit or plan to
428 commit a crime or tort, or to escape detection or apprehension after the
429 commission of a crime or tort. The burden of proving the intent with
430 which the employee assistance professional's services were sought
431 shall rest upon the party seeking to defeat the confidentiality and
432 privilege protections of sections 1 to 8, inclusive, of this act.

433 Sec. 7. (NEW) (*Effective October 1, 2002*) Nothing in sections 1 to 8,
434 inclusive, of this act shall preclude any registered or certified
435 physician, psychiatrist, nurse, psychologist, psychotherapist, clinical
436 social worker, social worker, family, marriage and child counselor,
437 alcohol and drug counselor or other counselor, attorney or member of
438 the clergy from practicing any such profession consistent with
439 accepted professional standards for its practice, provided nothing in
440 this section shall be construed to limit the applicability of subdivision
441 (1) of subsection (a) of section 3 of this act.

442 Sec. 8. (NEW) (*Effective October 1, 2002*) (a) Any person who wilfully

443 misrepresents that such person is a registered employee assistance
444 professional shall be subject to a civil penalty of not more than one
445 thousand dollars.

446 (b) Any person who violates the confidentiality provisions of section
447 5 of this act shall be subject to a civil penalty of not more than five
448 thousand dollars.

449 (c) Any person aggrieved as a result of a violation of any provision
450 of sections 1 to 8, inclusive, of this act or any regulation adopted by the
451 Department of Consumer Protection under sections 1 to 8, inclusive, of
452 this act may bring a civil action in the superior court for the judicial
453 district of Hartford against the offender to obtain appropriate relief,
454 including actual and punitive damages, equitable relief, reasonable
455 attorneys' fees and court costs.

This act shall take effect as follows:	
Section 1	<i>October 1, 2002</i>
Sec. 2	<i>October 1, 2002</i>
Sec. 3	<i>October 1, 2002</i>
Sec. 4	<i>October 1, 2002</i>
Sec. 5	<i>October 1, 2002</i>
Sec. 6	<i>October 1, 2002</i>
Sec. 7	<i>October 1, 2002</i>
Sec. 8	<i>October 1, 2002</i>

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.]