



Senate

General Assembly

January Session, 2007

File No. 143

Senate Bill No. 1041

Senate, March 27, 2007

The Committee on General Law reported through SEN. COLAPIETRO of the 31st Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT CONCERNING THE ENFORCEMENT OF CERTAIN PROFESSIONAL AND OCCUPATIONAL LICENSING, CERTIFICATION AND REGISTRATION LAWS.

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

1 Section 1. Subsection (c) of section 20-332 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2007*):

4 (c) If, after a hearing in accordance with the regulations adopted by
5 the Commissioner of Consumer Protection, it appears that the
6 provisions of this chapter or the regulations adopted under this
7 chapter have been violated, in addition to the penalties in this chapter,
8 the appropriate examining board, or the commissioner or the
9 commissioner's authorized agent, shall report such violation to the
10 office of the state's attorney for the [superior court for the] judicial
11 district in which such violation occurred.

12 Sec. 2. Section 20-341 of the general statutes is repealed and the

13 following is substituted in lieu thereof (*Effective October 1, 2007*):

14 (a) Any person who engages in or practices the work or occupation
15 for which a license is required by this chapter without having first
16 obtained an apprentice permit or a certificate and license for such
17 work, or who wilfully employs or supplies for employment a person
18 who does not have a certificate and license for such work or who
19 wilfully and falsely pretends to qualify to engage in or practice such
20 work or occupation, or who engages in or practices any of the work or
21 occupations for which a license is required by this chapter after the
22 expiration of [his] such person's license, or who violates any other
23 provision of this chapter, [unless the penalty is otherwise specifically
24 prescribed,] shall be [fined not more than two hundred dollars for each
25 such violation] guilty of a class B misdemeanor. Notwithstanding the
26 provisions of subsection (d) of section 53a-29 and subsection (d) of
27 section 54-56e, if the court determines that such person cannot fully
28 repay any victims of such person within the period of probation
29 established in subsection (d) of section 53a-29 or subsection (d) of
30 section 54-56e, the court may impose probation for a period of not
31 more than five years. The penalty provided in this subsection shall be
32 in addition to any other penalties and remedies available under this
33 chapter or chapter 416.

34 (b) The appropriate examining board or the Commissioner of
35 Consumer Protection may, after notice and hearing, impose a civil
36 penalty on any person who engages in or practices the work or
37 occupation for which a license or apprentice registration certificate is
38 required by this chapter, chapter 394 or chapter 482 without having
39 first obtained such a [certificate or] license or certificate, or who
40 wilfully employs or supplies for employment a person who does not
41 have such a license or certificate or who wilfully and falsely pretends
42 to qualify to engage in or practice such work or occupation, or who
43 engages in or practices any of the work or occupations for which a
44 license or certificate is required by this chapter, chapter 394 or chapter
45 482 after the expiration of the license or certificate or who violates any
46 of the provisions of this chapter, chapter 394 or chapter 482 or the

47 regulations adopted pursuant thereto. Such penalty shall be in an
48 amount not more than one thousand dollars for a first violation of this
49 subsection, not more than one thousand five hundred dollars for a
50 second violation of this subsection and not more than three thousand
51 dollars for each violation of this subsection occurring less than three
52 years after a second or subsequent violation of this subsection, except
53 that any individual employed as an apprentice but improperly
54 registered shall not be penalized for a first offense.

55 (c) If an examining board or the Commissioner of Consumer
56 Protection imposes a [fine or] civil penalty under the provisions of
57 subsection (b) of this section as a result of a violation initially reported
58 by a municipal official, the commissioner shall, not less than sixty days
59 after collecting such [fine or] civil penalty, remit one-half of the
60 amount collected to such municipality.

61 (d) A violation of any of the provisions of this chapter shall be
62 deemed an unfair or deceptive trade practice under subsection (a) of
63 section 42-110b.

64 Sec. 3. Section 21a-8 of the general statutes is repealed and the
65 following is substituted in lieu thereof (*Effective October 1, 2007*):

66 (a) The Department of Consumer Protection shall have the
67 following powers and duties [,] with regard to each board or
68 commission transferred to the Department of Consumer Protection
69 under section 21a-6:

70 (1) The department shall control the allocation, disbursement and
71 budgeting of funds appropriated to the department for the operation
72 of each board or commission transferred to said department.

73 (2) The department shall employ and assign such personnel as the
74 commissioner deems necessary for the performance of each [board]
75 board's or commission's functions.

76 (3) The department shall perform all management functions,
77 including purchasing, bookkeeping, accounting, payroll, secretarial,

78 clerical, record-keeping and routine housekeeping functions.

79 (4) The department shall conduct any necessary review, inspection
80 or investigation regarding qualifications of applicants for licenses or
81 certificates, possible violations of statutes or regulations, accreditation
82 of schools, disciplinary matters and the establishment of regulatory
83 policy, and make recommendations to the appropriate board or
84 commission. In connection with any such investigation, the
85 Commissioner of Consumer Protection, or the commissioner's
86 authorized agent, may administer oaths, issue subpoenas, compel
87 testimony and order the production of books, records and documents.
88 If any person refuses to appear, to testify or to produce any book,
89 record or document when so ordered, a judge of the Superior Court
90 may make such order as may be appropriate to aid in the enforcement
91 of this section.

92 (5) The department shall administer any examinations necessary to
93 ascertain the qualifications of applicants for licenses or certificates and
94 shall issue licenses or certificates to qualified applicants. The
95 department shall maintain rosters of licensees or registrants [updated]
96 and update such rosters annually, and may provide copies of such
97 rosters to the public for an appropriate fee.

98 (6) The department shall conduct any necessary investigation and
99 follow-up in connection with complaints regarding persons subject to
100 regulation or licensing by the board or commission.

101 (7) The department shall perform any other function necessary to
102 the effective operation of the board or commission and not specifically
103 vested by statute in the board or commission.

104 (8) The department shall receive complaints concerning the work
105 and practices of persons licensed, registered or certified by such boards
106 or commissions and shall receive complaints concerning unauthorized
107 work and practice by persons not licensed, registered or certified by
108 such boards or commissions. The department shall distribute monthly
109 a list of all complaints received within the previous month to the

110 chairperson of the appropriate board or commission. The department
111 shall screen all complaints and dismiss any in which the allegation, if
112 substantiated, would not constitute a violation of any statute or
113 regulation. The department shall distribute notice of all such
114 dismissals monthly to the chairperson of the appropriate board or
115 commission. The department shall investigate any complaint in which
116 the allegation, if substantiated, would constitute a violation of a statute
117 or regulation under its jurisdiction. In conducting the investigation, the
118 commissioner may seek the assistance of a member of the appropriate
119 board, an employee of any state agency with expertise in the area, or if
120 no such member or employee is available, a person from outside state
121 service licensed to perform the work involved in the complaint. Board
122 or commission members involved in an investigation shall not
123 participate in disciplinary proceedings resulting from such
124 investigation. The Commissioner of Consumer Protection may dismiss
125 a complaint following an investigation if the commissioner determines
126 that such complaint lacks probable cause. Notice of such dismissal
127 shall be given only after approval by the chairperson of the
128 appropriate board or commission. The commissioner may authorize a
129 settlement if the settlement is approved by the complainant, the
130 practitioner, and the board or commission. The commissioner may
131 bring a complaint before the appropriate board or commission for a
132 formal hearing if [he] the commissioner determines that there is
133 probable cause to believe that the offense alleged in the complaint has
134 been committed and that the practitioner named in the complaint was
135 responsible. The commissioner, or the commissioner's authorized
136 agent, shall have the power to issue subpoenas to require the
137 attendance of witnesses or the production of records, correspondence,
138 documents or other evidence in connection with any hearing of a
139 board or commission. All dispositions and final decisions by the
140 Department of Consumer Protection after an investigation into a
141 complaint has begun shall be forwarded to the chairperson of the
142 appropriate board or commission on a monthly basis.

143 (9) The department may contract with a third party, if the
144 commissioner deems it necessary and if the appropriate board or

145 commission consents, to administer licensing examinations and
146 perform all attendant administrative functions in connection with such
147 examination and to monitor continuing professional education
148 requirements, and may require the payment of a fee to such third
149 party.

150 (b) The Commissioner of Consumer Protection shall have the
151 following powers and duties with regard to each board or commission
152 transferred to the Department of Consumer Protection under section
153 21a-6:

154 (1) The commissioner may, in the commissioner's discretion, issue
155 an appropriate order to any person found to be violating any statute or
156 regulation within the jurisdiction of such board or commission
157 providing for the immediate discontinuance of the violation or
158 requiring the violator to make restitution for any damage caused by
159 the violation, or both. The commissioner may, through the Attorney
160 General, petition the superior court for the judicial district in which the
161 violation occurred, or in which the person committing the violation
162 resides or transacts business, for the enforcement of any order issued
163 by the commissioner under this subdivision and for appropriate
164 temporary relief or a restraining order. The commissioner shall certify
165 and file in the court a transcript of the entire record of the hearing or
166 hearings, including all testimony upon which such order was made
167 and the findings and orders made by the commissioner. The court may
168 grant such relief by injunction or otherwise, including temporary
169 relief, as the court deems equitable and may make and enter a decree
170 enforcing, modifying and enforcing as so modified, or setting aside, in
171 whole or in part, any order of the commissioner issued under this
172 subdivision.

173 (2) The commissioner may conduct hearings on any matter within
174 the statutory jurisdiction of such board or commission. Such hearings
175 shall be conducted in accordance with chapter 54 and the regulations
176 established pursuant to subsection (a) of section 21a-9, as amended by
177 this act. In connection with any such hearing, the commissioner may

178 administer oaths, issue subpoenas, compel testimony and order the
179 production of books, records and documents. If any person refuses to
180 appear, testify or produce any book, record or document when so
181 ordered, a judge of the Superior Court may make such order as may be
182 appropriate to aid in the enforcement of this subdivision.

183 (3) In addition to any other action permitted under the general
184 statutes, the commissioner may, upon a finding of any cause specified
185 in subsection (c) of section 21a-9, as amended by this act: (A) Revoke or
186 suspend a license, registration or certificate; (B) issue a letter of
187 reprimand to a practitioner and send a copy of such letter to a
188 complainant or to a state or local official; (C) place a practitioner on
189 probationary status and require the practitioner to (i) report regularly
190 to the commissioner on the matter which is the basis for probation, (ii)
191 limit the practitioner's practice to areas prescribed by the
192 commissioner, or (iii) continue or renew the practitioner's education
193 until the practitioner has attained a satisfactory level of competence in
194 any area which is the basis for probation. The commissioner may
195 discontinue, suspend or rescind any action taken under this
196 subdivision.

197 Sec. 4. Section 21a-9 of the general statutes is repealed and the
198 following is substituted in lieu thereof (*Effective October 1, 2007*):

199 (a) With regard to the boards and commissions within the
200 Department of Consumer Protection, the Commissioner of Consumer
201 Protection (1) shall adopt uniform rules of procedure, consistent with
202 chapter 54, for hearings and other proceedings to be conducted by the
203 boards or commissions or by the commissioner and for the giving of
204 notice to persons affected by such proceedings, and (2) may, where
205 authorized by statute, adopt regulations regarding any subject within
206 the jurisdiction of a board or commission.

207 (b) Any rules of procedure and regulations adopted pursuant to this
208 section shall be adopted in accordance with chapter 54. No regulation
209 shall be adopted pursuant to this section until the appropriate board or
210 commission has had reasonable opportunity to review the proposed

211 regulation and to offer comments thereon.

212 (c) Each such board or commission may act in accordance with the
213 provisions of subdivision (7) of section 21a-7, and the commissioner
214 may act in accordance with the provisions of subdivision (3) of
215 subsection (b) of section 21a-8, as amended by this act, in the case of a
216 practitioner who: (1) Engages in fraud or material deception in order to
217 obtain a license, registration or certificate issued by the board or
218 commission or to aid another in obtaining a license, registration or
219 certificate issued by the board or commission; (2) performs work
220 beyond the scope of the license, registration or certificate issued by the
221 board or commission; (3) illegally uses or transfers a license,
222 registration or certificate issued by the board or commission; (4)
223 performs incompetent or negligent work; (5) makes false, misleading
224 or deceptive representations to the public; (6) has been subject to
225 disciplinary action similar to that specified in subdivision (7) of section
226 21a-7 or subdivision (3) of subsection (b) of section 21a-8, as amended
227 by this act, by a duly authorized professional agency of the United
228 States, any state within the United States, the District of Columbia, a
229 United States possession or territory or a foreign jurisdiction; or (7)
230 violates any provision of the general statutes or any regulation
231 established thereunder, relating to the practitioner's profession or
232 occupation.

233 (d) As used in chapters 390, 391, 392, 393, 394, 396, 400g, 400j, 482
234 and 400l:

235 (1) "Certificate" includes the whole or part of any Department of
236 Consumer Protection permit which the department issues under
237 authority of the general statutes and which (A) authorizes practice of
238 the profession by certified persons but does not prohibit the practice of
239 the profession by others, not certified, (B) prohibits a person from
240 falsely representing that such person is certified to practice the
241 profession unless the person holds a certificate issued by the
242 department, and (C) requires as a condition of certification that a
243 person submit specified credentials to the department which attest to

244 qualifications to practice the profession.

245 (2) "License" includes the whole or part of any Department of
 246 Consumer Protection permit, approval, or similar form of permission
 247 which the department issues under authority of the general statutes
 248 and which requires (A) practice of the profession by licensed persons
 249 only, (B) demonstration of competence to practice by examination or
 250 other means and meeting of certain minimum standards, and (C)
 251 enforcement of standards by the department or regulatory board or
 252 commission.

253 (3) "Registration" includes the whole or part of any Department of
 254 Consumer Protection permit which the department issues under
 255 authority of the general statutes and which (A) requires persons to
 256 place their names on a list maintained by the department before they
 257 can engage in the practice of a specified profession or occupation, (B)
 258 does not require a person to demonstrate competence by examination
 259 or other means, and (C) may be revoked or suspended by the
 260 commissioner for cause.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2007</i>	20-332(c)
Sec. 2	<i>October 1, 2007</i>	20-341
Sec. 3	<i>October 1, 2007</i>	21a-8
Sec. 4	<i>October 1, 2007</i>	21a-9

GL *Joint Favorable*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either chamber thereof for any purpose:

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 08 \$	FY 09 \$
Consumer Protection, Dept.; Judicial Dept.	GF - Revenue Gain	Potential Minimal	Potential Minimal
Judicial Dept (Probation).; Correction, Dept.	GF - Cost	Potential	Potential
Criminal Justice, Div.	GF - None	None	None

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill requires the commissioner to refer matters for criminal prosecution if, after hearing, it appears that the licensing law has been violated. The bill also increases the criminal penalty for certain violations of the licensing law. To the extent that these changes increase the likelihood that offenders would be prosecuted or receive harsher penalties, a potential revenue gain from criminal fines and potential cost for incarceration and/or probation supervision in the community exist. It is anticipated that relatively few fines would be imposed on an annual basis, and, consequently, any revenue gain under the bill is expected to be minimal. On average, it costs the state approximately \$2,500 annually to supervise an offender on probation in the community as compared to \$41,600 to incarcerate the offender (note that both figures include fringe benefits).

It is anticipated that the Division of Criminal Justice could accommodate any workload increase under the bill without requiring additional appropriations.

This bill could also result in a minimal revenue gain due to violations of this bill under the Connecticut Unfair Trade Practices Act

(CUTPA), as imposed by the Department of Consumer Protection. In FY 06, CUTPA revenue for all types of violations was \$53,069.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to the number of violations.

OLR Bill Analysis**SB 1041*****AN ACT CONCERNING THE ENFORCEMENT OF CERTAIN PROFESSIONAL AND OCCUPATIONAL LICENSING, CERTIFICATION AND REGISTRATION LAWS.*****SUMMARY:**

This bill gives the commissioner of the Department of Consumer Protection (DCP) the same power currently held by the DCP professional and occupational licensing boards to hold disciplinary hearings, issue disciplinary orders, impose civil fines, and in other ways discipline holders of certain occupational and professional licenses. Under the bill, discipline may be meted out by either the commissioner or a licensing board or commission.

In addition to changes that affect all trade and professional boards and commissions within DCP, the bill increases the penalties for violating the occupational licensing law governing certain trades. It (1) requires the commissioner, as the law currently requires the occupational licensing boards, to refer certain matters for criminal prosecution; (2) increases the criminal penalty for certain violations of the licensing law; and (3) makes any violation of the occupational licensing law an unfair trade practice.

EFFECTIVE DATE: October 1, 2007

BOARDS AND COMMISSIONS AFFECTED

The bill affects the following boards and commissions.

1. Architectural Licensing Board;
2. Examining Boards for Electrical Work; Plumbing and Piping Work; Heating, Piping, Cooling, and Sheet Metal Work;

Elevator Installation, Repair and Maintenance Work; Fire Protection Sprinkler Systems Work; and Automotive Glasswork and Flat Glasswork;

3. Commission of Pharmacy;
4. State Board of Landscape Architects;
5. State Board of Examiners for Professional Engineers and Land Surveyors;
6. Connecticut Real Estate Commission;
7. Connecticut Real Estate Appraisal Commission;
8. State Board of Examiners of Shorthand Reporters;
9. Liquor Control Commission; and
10. Home Inspection Licensing Board.

DISCIPLINE

Currently, only the licensing boards and commissions may discipline credential holders. They have all of the same powers the bill gives to the DCP commissioner. The bill empowers the commissioner to impose discipline without referring cases to the boards.

Grounds for Discipline

The bill authorizes the commissioner to enforce licensing requirements by imposing sanctions if a credential holder has (1) engaged in fraud or material deception to obtain a credential or help another to obtain one; (2) worked outside of the scope of a credential; (3) illegally used or transferred a credential; (4) performed incompetent or negligent work; (5) made false, misleading, or deceptive representations about work to be done; (6) has been the subject of a disciplinary action in another jurisdiction; or (7) violated any statute or regulation related to the credential holder's trade or profession.

Hearings

The bill requires the DCP commissioner to adopt regulations establishing uniform procedural rules for the hearings he holds on matters within the jurisdiction of a licensing board or commission. The law prohibits adopting regulations until the appropriate licensing board or commission has had reasonable opportunity to review them and to offer comments. The bill authorizes the commissioner to hold hearings on matters within the jurisdiction of a licensing board or commission. Hearings must be held in accordance with the Uniform Administrative Procedure Act. The bill authorizes the commissioner to administer oaths, issue subpoenas, compel testimony, and order the production of books, records, and other documents. It authorizes the court to issue enforcement orders compelling compliance.

DCP Enforcement Orders

The bill authorizes the DCP commissioner to order to anyone found violating a law within the jurisdiction of a licensing board or commission to stop immediately, to require the violator to pay restitution for damage caused by the violation, or both. It allows the commissioner, through the attorney general, to seek temporary or permanent enforcement orders in court. It requires the commissioner to certify and file a complete transcript of the entire record of the hearing, including testimony, findings, and orders. The bill authorizes the court to grant relief, including temporary relief, as it deems equitable and to issue a decree enforcing, modifying, or setting aside all or part of the commissioner's order.

Disciplinary Powers

The bill authorizes the consumer protection commissioner, after a hearing, to

1. revoke or suspend a license, registration, or permit;
2. issue letters of reprimand; place licensees, registrants, or permittees on probation;
3. require licensees, registrants, or permittees to report regularly;

4. restrict the types of work a licensee, registrant, or permittee may perform; and
5. require licensees, registrants, or permittees to continue their education.

OCCUPATIONAL LICENSING BOARDS

The bill increases the penalties for violating the laws overseen by the occupational licensing boards. They are the: Examining Boards for Electrical Work; Plumbing and Piping Work; Heating, Piping, Cooling, and Sheet Metal Work; Elevator Installation, Repair and Maintenance Work; Fire Protection Sprinkler Systems Work; and Automotive Glasswork and Flat Glasswork.

Criminal Penalties for Violating the Occupational Licensing Law

The bill requires the commissioner, as the law currently requires the occupational licensing boards, to refer matters for criminal prosecution if, after hearing, it appears that the licensing law has been violated.

It also increases the criminal penalty for violating the licensing law overseen by these boards. Under current law the penalty is a fine of \$200 per violation for:

1. working without a license or apprentice permit;
2. willfully employing, or supplying for employment, someone who does not have a license or apprentice permit;
3. willfully pretending to qualify for a license or permit;
4. working after the expiration of a license or permit; or
5. violating any other provision of the licensing law.

The bill makes anyone who violates any of the prohibited acts guilty of a class B misdemeanor, which is punishable by up to six months imprisonment, a fine of up to \$1,000, or both. If the court imposes restitution and determines that a contractor cannot fully repay a victim

within the normal probationary period (up to two years for a class B misdemeanor), the law authorizes the court to impose a probationary period of up to five years. The bill provides that this criminal penalty is in addition to any other administrative penalties that may be imposed by the DCP commissioner or the licensing boards.

Administrative Penalties for Violating the Occupational Licensing Law

The law authorizes the licensing boards to impose civil fines on the same grounds that a criminal fine may be imposed. The fines are: (1) up to \$500 for a first offense, (2) up to \$750 for a second violation, and (3) up to \$1,500 for subsequent violations occurring less than three years after the previous violation. The law provides that improperly registered apprentices may not be penalized for a first offense. The bill gives the DCP commissioner the same power to impose the fines. It requires him, as the law requires the licensing boards, to send half the amount of a civil penalty imposed on a licensee to a municipality as a result of a violation initially reported by a municipality.

Violations Deemed to Be Unfair Trade Practices

The bill makes it an unfair trade practice to violate any of the occupational licensing laws.

BACKGROUND

Connecticut Unfair Trade Practices Act (CUTPA)

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the DCP commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. The act also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

Relationship between DCP and its Boards and Commissions

State law establishes a uniform system for DCP and its boards and commissions, which have the power to determine who qualifies for a license and to enforce standards by disciplining licensees. The law establishes DCP's duties to the boards, which include receiving complaints, carrying out investigations, and performing administrative tasks, such as physically issuing licenses and renewals.

Related Bill

HB 1043, favorably reported by the General Law Committee, makes the same increase in the criminal penalty for violating the occupational licensing law.

COMMITTEE ACTION

General Law Committee

Joint Favorable

Yea 19 Nay 0 (03/14/2007)