



Senate

General Assembly

File No. 162

January Session, 2011

Substitute Senate Bill No. 863

Senate, March 23, 2011

The Committee on General Law reported through SEN. DOYLE of the 9th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE LICENSING OF SWIMMING POOL INSTALLERS.

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

- 1 Section 1. (NEW) (*Effective from passage*) (a) As used in this section,
2 (1) "swimming pool" means a permanent spa or any in-ground or
3 partially above-ground structure intended for swimming that is
4 greater than twenty-four inches in depth, and (2) "swimming pool
5 builder" means a person who, for financial compensation, excavates
6 and grades for and constructs and installs a swimming pool, including,
7 but not limited to, tiling, coping, decking and installation of associated
8 circulation equipment such as pumps, filters and chemical feeders.
- 9 (b) On or after the adoption of regulations required pursuant to
10 subsection (c) of this section, no person shall build a swimming pool
11 unless such person holds a swimming pool builder's license issued by
12 the Commissioner of Consumer Protection.
- 13 (c) Not later than July 1, 2012, the Commissioner of Consumer

14 Protection shall adopt regulations, in accordance with the provisions of
15 chapter 54 of the general statutes, to implement the provisions of this
16 section, including establishing the amount and type of experience,
17 training, continuing education and examination requirements for a
18 person to obtain and renew a swimming pool builder's license.

19 (d) Any person who builds a swimming pool on residential
20 property owned by such person shall be exempt from the provisions of
21 this section.

22 (e) The holder of a swimming pool builder's license issued pursuant
23 to this section shall comply with the provisions of chapter 400 of the
24 general statutes regarding registration as a home improvement
25 contractor.

26 (f) A person licensed as a swimming pool builder pursuant to this
27 section shall not perform electrical work, plumbing and piping work
28 or heating, piping and cooling work, as defined in section 20-330 of the
29 general statutes, unless such person is licensed to perform such work
30 pursuant to chapter 393 of the general statutes.

31 (g) On and after the adoption of regulations required pursuant to
32 subsection (c) of this section, any person applying to the Department
33 of Consumer Protection for a swimming pool builders' license shall be
34 issued such license without examination upon demonstration by the
35 applicant of experience and training equivalent to the experience and
36 training required to qualify for examination for such license, if such
37 applicant makes such application to the department not later than
38 January 1, 2014.

39 (h) The initial fee for a swimming pool builder's license shall be one
40 hundred fifty dollars and the renewal fee for such license shall be one
41 hundred dollars. Licenses shall be valid for a period of one year from
42 the date of issuance.

43 Sec. 2. Section 20-341 of the general statutes is repealed and the
44 following is substituted in lieu thereof (*Effective July 1, 2012*):

45 (a) Any person who wilfully engages in or practices the work or
46 occupation for which a license is required by this chapter, chapter 399b
47 or by section 1 of this act without having first obtained an apprentice
48 permit or a certificate and license for such work, as applicable, or who
49 wilfully employs or supplies for employment a person who does not
50 have a certificate and license for such work, or who wilfully and falsely
51 pretends to qualify to engage in or practice such work or occupation,
52 or who wilfully engages in or practices any of the work or occupations
53 for which a license is required by this chapter after the expiration of
54 such person's license, shall be guilty of a class B misdemeanor,
55 provided no criminal charges shall be instituted against such person
56 pursuant to this subsection unless the work activity in question is
57 reviewed by the Commissioner of Consumer Protection, or the
58 commissioner's authorized agent, and the commissioner or such agent
59 specifically determines, in writing, that such work activity requires a
60 license and is not the subject of a bona fide dispute between persons
61 engaged in any trade or craft, whether licensed or unlicensed.
62 Notwithstanding the provisions of subsection (d) or (e) of section 53a-
63 29 and subsection (d) of section 54-56e, if the court determines that
64 such person cannot fully repay any victims of such person within the
65 period of probation established in subsection (d) or (e) of section 53a-
66 29 or subsection (d) of section 54-56e, the court may impose probation
67 for a period of not more than five years. The penalty provided in this
68 subsection shall be in addition to any other penalties and remedies
69 available under this chapter or chapter 416.

70 (b) The appropriate examining board or the Commissioner of
71 Consumer Protection may, after notice and hearing, impose a civil
72 penalty on any person who engages in or practices the work or
73 occupation for which a license or apprentice registration certificate is
74 required by this chapter, section 1 of this act, chapter 394, [or] chapter
75 399b or chapter 482 without having first obtained such a license or
76 certificate, or who wilfully employs or supplies for employment a
77 person who does not have such a license or certificate or who wilfully
78 and falsely pretends to qualify to engage in or practice such work or
79 occupation, or who engages in or practices any of the work or

80 occupations for which a license or certificate is required by this
81 chapter, section 1 of this act, chapter 394, [or] chapter 399b or chapter
82 482 after the expiration of the license or certificate or who violates any
83 of the provisions of this chapter, section 1 of this act, chapter 394, [or]
84 chapter 399b or chapter 482 or the regulations adopted pursuant
85 thereto. Such penalty shall be in an amount not more than one
86 thousand dollars for a first violation of this subsection, not more than
87 one thousand five hundred dollars for a second violation of this
88 subsection and not more than three thousand dollars for each violation
89 of this subsection occurring less than three years after a second or
90 subsequent violation of this subsection, except that any individual
91 employed as an apprentice but improperly registered shall not be
92 penalized for a first offense.

93 (c) If an examining board or the Commissioner of Consumer
94 Protection imposes a civil penalty under the provisions of subsection
95 (b) of this section as a result of a violation initially reported by a
96 municipal building official in accordance with subsection (c) of section
97 29-261, the commissioner shall, not less than sixty days after collecting
98 such civil penalty, remit one-half of the amount collected to such
99 municipality.

100 (d) A violation of any of the provisions of this chapter or section 1 of
101 this act shall be deemed an unfair or deceptive trade practice under
102 subsection (a) of section 42-110b.

103 (e) This section shall not apply to any person who (1) holds a license
104 issued under this chapter, section 1 of this act, chapter 394, [or] chapter
105 399b or chapter 482 and performs work that is incidentally, directly
106 and immediately appropriate to the performance of such person's
107 trade where such work commences at an outlet, receptacle or
108 connection previously installed by a person holding the proper license,
109 or (2) engages in work that does not require a license under this
110 chapter, section 1 of this act, chapter 394, [or] chapter 399b or chapter
111 482.

112 Sec. 3. Subsection (a) of section 20-417aa of the general statutes is

113 repealed and the following is substituted in lieu thereof (*Effective July*
114 *1, 2012*):

115 (a) As used in this section, "swimming pool maintenance and repair
116 work" means the performance of all plumbing, heating and electrical
117 work necessary to service, modify or repair any swimming pool, hot
118 tub, spa or similar recreational or therapeutic equipment, where such
119 work commences at an outlet, receptacle, connection, back-flow
120 preventor or fuel supply pipe previously installed by a person holding
121 the proper license. Swimming pool maintenance and repair work
122 includes: (1) The renovation or repair of nonpotable water components
123 of a pool, hot tub or spa, including, but not limited to, the shell, tiling
124 and coping, concrete finish or vinyl liner of such pool, hot tub or spa;
125 and (2) the draining, acid washing or backwash filtration of a
126 swimming pool. The renovation or repair of nonpotable water
127 components of a pool, hot tub or spa required to be installed,
128 renovated or repaired by a licensed plumber or electrician shall not be
129 considered swimming pool maintenance and repair work. The holder
130 of a limited license for swimming pool maintenance and repair work
131 issued pursuant to this section shall not be subject to the provisions of
132 chapter 400, provided such license holder is acting within the scope of
133 the license.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section
Sec. 2	<i>July 1, 2012</i>	20-341
Sec. 3	<i>July 1, 2012</i>	20-417aa(a)

GL *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact:

Agency Affected	Fund-Effect	FY 12 \$	FY 13 \$
Consumer Protection, Dept.	GF - Revenue Gain	90,000	67,000
Judicial Dept.	GF - Revenue Gain	None	less than 5,000

Note: GF=General Fund

Municipal Impact: None

Explanation

The bill results in a revenue gain of \$90,000 (600 estimated licenses at \$150 per license) in FY 12 and \$72,000 (600 renewal licenses at \$100 plus violations) in FY 13. There are 600 pool installers in the state. In any one year there are 7 anticipated violations of the permit requirements. Each violation is subject to civil penalties and results in a class B misdemeanor. The penalty requirements of the bill are effective July 1, 2012.

The bill establishes a class B misdemeanor to install a swimming pool without a license, which will result in a potential revenue gain of less than \$5,000 to the General Fund. The estimate assumes that the establishment of a class B misdemeanor for this offense will increase the likelihood that an estimated 10 offenders annually would be prosecuted and receive harsher penalties than under current law.¹

It is anticipated that the number of additional offenders placed on probation would be less than 10, and would not result in additional resources being required by the Judicial Department.

¹ In 2010, seven fines were issued for this offense, totaling \$1,400 in revenue collected.

The Out Years

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

OLR Bill Analysis**sSB 863*****AN ACT CONCERNING THE LICENSING OF SWIMMING POOL INSTALLERS.*****SUMMARY:**

This bill (1) creates a new swimming pool builder's license and (2) extends existing penalties to swimming pool builders and swimming pool maintenance and repair contractors who work without a license. Although swimming pool maintenance and repair contractors are already required to be licensed, there is currently no penalty for doing such work without a license. The bill also specifies that swimming pool maintenance and repair work includes tiling and coping.

EFFECTIVE DATE: Upon passage for the swimming pool builder's license and July 1, 2012 for the penalties and repair work definition.

SWIMMING POOL BUILDER'S LICENSE

The bill requires the Department of Consumer Protection (DCP) commissioner to adopt regulations, by July 1, 2012, to establish the amount and type of experience, training, continuing education, and examination requirements for obtaining and renewing a license to build swimming pools.

Upon the adoption of regulations, the bill bans anyone from building a swimming pool, except on his or her own property, without a swimming pool builder's license issued by DCP and being a registered home improvement contractor. The bill defines a swimming pool to mean a permanent spa or any in-ground or partially above-ground structure intended for swimming that is more than 24 inches deep. The initial license fee is \$150 and is renewable annually for \$100.

A swimming pool builder is defined as a person who, for monetary

gain, excavates and grades for and constructs and builds a swimming pool, including, but not limited to, tiling, coping, decking, and installation of associated circulation equipment such as pumps, filters, and chemical feeders. A person licensed as a swimming pool builder must not perform electrical; plumbing and piping; or heating, piping and cooling work, unless he or she is licensed to do such work.

From adoption of the regulations until January 1, 2014, DCP must issue a swimming pool builder's license without examination to any person who applies if he or she demonstrates the experience and training equivalent to that required to qualify for the license examination.

LICENSE PENALTIES

The bill extends to swimming pool builders and swimming pool maintenance and repair contractors the existing penalty statutes for contractors who work without a license.

The law prohibits anyone without a license from willfully engaging in work that requires an occupational license. The prohibition also applies to willfully employing or supplying someone without a license, willfully and falsely pretending to qualify to practice a licensed trade, or willfully practicing work after license expiration.

The law authorizes the DCP commissioner to impose civil penalties for violating the licensing law. If a civil penalty is imposed and the violation was initially reported by a municipal building official, the commissioner must remit one-half of the amount to such municipality. In addition, violators are guilty of a class B misdemeanor, an unfair or deceptive trade practice, and must pay restitution. If they cannot pay restitution, a court may sentence them to probation.

BACKGROUND

Civil Penalties

Civil penalties for working without a license consist of a fine of up to (1) \$1,000 for a first violation, (2) \$1,500 for a second violation, and (3) \$3,000 for subsequent violations occurring less than three years

after the previous violation.

Criminal Penalty

A class B misdemeanor is punishable by up to six months imprisonment, a fine of up to \$1,000, or both. Before anyone may be prosecuted for a licensing law violation, the law requires the consumer protection commissioner to (1) review the activity in question and (2) make a written determination that the activity requires a license and is not the subject of a bona fide dispute between members of a trade or craft, regardless of whether they are licensed.

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. It 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.

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute

Yea 17 Nay 0 (03/10/2011)