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**OLR BACKGROUNDER: CONNECTICUT UNFAIR TRADE PRACTICES  
ACT**

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This report provides an overview of Connecticut Unfair Trade Practices Act (CUTPA) violations, enforcement methods, and penalties.

**OVERVIEW**

CUTPA is a state consumer protection law that prohibits unfair competition methods and unfair or deceptive acts or practices in trade or commerce (CGS § [42-110b](#)). It is modeled after the Federal Trade Commission Act (15 USC § 45(a)(1)). There are two types of CUTPA violations, one judicially determined and the other statutorily defined.

CUTPA gives individuals the right to sue and gives the state certain enforcement powers. Anyone who suffers an ascertainable loss of money or property through a prohibited CUTPA act may bring an action to recover actual damages (CGS § [42-110g\(a\)](#)). He or she does not need proof of public interest or public injury. CUTPA also allows class action suits (CGS § [42-110g\(b\)](#)).

In addition to the private course of action, CUTPA provides enforcement tools for the Department of Consumer Protection (DCP). To this end, the commissioner may issue regulations defining what

constitutes an unfair trade practice, hold investigations and hearings, order restitution, and enter consent agreements. CUTPA also allows DCP to ask the attorney general to seek certain court actions.

Under CUTPA, courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties.

## **VIOLATIONS**

There are two types of CUTPA violations. The first is judicially determined, where the court decides if an act violates CUTPA. The second is a *per se* violation, which is a specific statutory act that automatically violates CUTPA. Generally speaking, mere negligent acts or simple contract breaches, even intentional ones, are not CUTPA violations.

CUTPA provides two specific exceptions that are not violations. It does not apply to (1) transactions or actions by any regulatory board or officer acting for the state or United States and (2) acts done by the publisher, owner, agent, or employee of a newspaper, periodical, radio, or television station in publishing or disseminating an advertisement, where they did not know of the advertisement's false, misleading, unfair or deceptive character, and did not have direct financial interest in the sale or distribution (CGS § [42-110c](#)).

### ***Court Determined Violations***

In determining if an act is unfair, the Connecticut Supreme Court has adopted what is known as the "cigarette rule" from the Federal Trade Commission. This rule defines what types of conduct are unfair and deceptive under a three-part test.

The three prongs are whether the practice:

1. offends public policy as established by statute, common law, or at least within the area of some common law, statutory, or other established concept of unfairness;
2. is immoral, unethical, oppressive, or unscrupulous; and
3. causes substantial injury to consumers.

(*Conaway v. Prestia*, 191 Conn. 484, 464 A.2d 847 (1983).)

The third prong is also subject to a three-part test. The injury must (1) be substantial, (2) not be outweighed by any countervailing benefits to the consumer or competition that the practice produces, and (3) not be something the consumer could have reasonably avoided (*Williams Ford, Inc. v. Hartford Courant Co.*, 232 Conn. 559, 592, 657 A.2d 212, 228 (1995)).

All three prongs of the cigarette rule do not need to be met for there to be a violation. There may be a violation because of the degree to which it meets one criteria (*Willow Springs Condominium Ass'n Inc. v. Seventh BRT, Dev. Corp.* 245 Conn. 1, 717 A.2d 77 (1998)). There is no precise formula for the courts to balance the criteria (*Callandro v. Allstate Ins. Co.*, 63 Conn. App. 602, 778 A.2d 212 (2001)).

### ***Per Se Violations***

*Per se* violations are specific actions prohibited by law and deemed to violate CUTPA. For example, anyone who violates the Home Improvement Act also violates CUTPA (CGS § [20-427\(c\)](#)). For a list of all statutory *per se* violations, see Attachment 1.

In addition to statutory *per se* violations, CUTPA allows the DCP commissioner to issue regulations defining certain actions as an unfair trade practice (CGS § [42-110b\(c\)](#)). For example, it is a CUTPA violation for car dealers to advertise a price without disclosing certain fees (Conn. Agencies Regs. § 42-110b-28(6)).

### **ENFORCEMENT**

CUTPA authorizes DCP to investigate complaints. In this regard, the DCP commissioner may issue subpoenas, administer oaths, and conduct hearings (CGS § [42-110d\(a\)](#)). Further, the DCP commissioner or his representatives may:

1. enter and investigate any establishment at reasonable times,
2. check invoices and records,
3. take samples of commodities for evidence,
4. subpoena documentary material, and
5. have access to and copy documents

(CGS § [42-110d\(b\)](#)).

The commissioner may also mail an investigative demand to someone suspected of a CUTPA violation, so he or she can make sworn assurances that CUTPA has not, is not, or will not be violated (CGS § [42-110d\(c\)](#)).

The commissioner may conduct a hearing if he has reason to believe someone violated CUTPA. He may conduct a hearing only after giving notice of the charges. Testimony must be taken under oath. The commissioner has the power to issue subpoenas to compel the witnesses to appear or produce of documents (CGS § [42-110d\(d\)](#)).

If anyone fails or refuses to comply with the DCP commissioner's investigative demands, the commissioner may apply to Hartford Superior Court for (1) injunctive relief on the alleged act; (2) suspension of the offender's business license; and (3) other relief that may be required, until the person submits the required documents (CGS § [42-110k](#)).

The commissioner may accept an assurance of voluntary compliance from alleged CUTPA violators. Assurances may include restitution to aggrieved persons. These assurances are not considered to be an admission of a violation (CGS § [42-110j](#)).

## **PENALTIES**

If after a hearing, the commissioner feels that a violation has occurred, he must state in writing his findings of fact and issue a cease and desist order. In cases involving less than \$5,000, he may also order restitution. The commissioner may also enter into consent agreements and ask the attorney general to seek judicial enforcement of his restraining or injunction orders (CGS §§ [42-110d](#), [42-110m](#), and [42-110n](#)). The commissioner's order may be appealed to the Superior Court in accordance with the Uniform Administrative Procedure Act (CGS § [42-110e](#)).

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 violating a restraining order. The attorney general may recover civil penalties for the state (CGS §§ [42-110d](#), [42-110k](#), [42-110m](#), and [42-110o](#)). The statute of limitations for CUTPA violations is three years (CGS § [42-110g\(f\)](#)).

The attorney general may also petition the Hartford Superior Court to order the dissolution, suspension, or forfeiture of any corporation that violates any injunction terms (CGS § [42-110p](#)).

## Attachment 1: Per Se CUTPA Violations

Statute	Violation
<b>CGS § 4-28m</b>	Failing to affix tax stamp on cigarettes
<b>CGS § 12-326b</b>	Selling cigarettes below cost, with intent to injure competition
<b>CGS § 14-15b</b>	Violating motor vehicle rental contracts terms
<b>CGS § 14-16c</b>	Selling totaled or salvaged motor vehicles
<b>CGS § 14-106b</b>	Altering odometer
<b>CGS § 14-106d</b>	Selling fake air bags
<b>CGS § 14-332a</b>	Adding a gas surcharge
<b>CGS § 16-245o</b>	Restricted use of customer information for marketing
<b>CGS § 16-245s</b>	Unauthorized switch in electric suppliers
<b>CGS § 16-247s</b>	Disclosing cell phone information
<b>CGS § 16-247u</b>	Unauthorized procurement and sale of telephone records
<b>CGS § 16-256i</b>	Unreasonably delaying telephone carrier switch
<b>CGS § 16a-15</b>	Failing to display fuel pump sign requirements
<b>CGS § 16a-22k</b>	Unfair trade practices in selling fuel oil
<b>CGS § 16a-23</b>	Selling to independent retailers
<b>CGS § 16a-23a</b>	Selling of anthracite
<b>CGS § 16a-23r</b>	Violating home heating oil sales statutes
<b>CGS § 19a-509f</b>	Prohibited utility charge
<b>CGS § 20-7f</b>	Violating unfair billing practice
<b>CGS § 20-124a</b>	Failing to disclose dental referral service
<b>CGS § 20-150</b>	Violating where optical goods may be sold
<b>CGS § 20-341</b>	Working without a license
<b>CGS § 20-341y</b>	Violating mechanical contractor statutes
<b>CGS § 20-417c</b>	Violating new home construction contractors statutes
<b>CGS § 20-427</b>	Violating home improvement contractors statutes
<b>CGS § 20-457</b>	Violating community association managers statutes
<b>CGS § 20-691</b>	Violating locksmiths statutes
<b>CGS § 21-35h</b>	Violating closing-out sales statutes
<b>CGS § 21-83e</b>	Violating mobile manufactured homes statutes
<b>CGS § 21a-222</b>	Violating health club statutes
<b>CGS § 21a-343</b>	Failing to allow inspection under the State Child Protection Act
<b>CGS § 21a-345</b>	Failing to post notice for an article that has a banned substance
<b>CGS § 21a-404</b>	Violating the Home Food Service Plan Sales Act
<b>CGS § 22-244</b>	Selling milk that creates an emergency condition
<b>CGS § 22-247</b>	Written or oral contract for milk sale under an unfair trade practice
<b>CGS § 33-1335</b>	Violating corporate accountability statutes
<b>CGS § 35-1</b>	Using a fictitious business name
<b>CGS § 36a-498</b>	Soliciting a residential mortgage loan application
<b>CGS § 36a-589</b>	Violating check cashing services statutes
<b>CGS § 36a-700</b>	Violating credit clinic statutes
<b>CGS § 36a-701b</b>	Violating securing computerized data statutes
<b>CGS § 38a-355</b>	Failing to provide notice for replacement auto parts
<b>CGS § 38a-465f</b>	Failing to comply with life settlement insurance disclosures
<b>CGS § 38a-567</b>	Violating certain small employer insurance statute provisions
<b>CGS § 38a-815</b>	List of unfair trade practices in the insurance industry
<b>CGS § 42-103tt</b>	Violating certain provisions for time shares
<b>CGS § 42-103ww</b>	Furnishing false information in time share expense statement
<b>CGS § 42-110aa</b>	Refusing to accept returns
<b>CGS § 42-115t</b>	Cash register read-outs must be visible to consumer
<b>CGS § 42-115u</b>	Violating the unfair sales practices statutes

## Attachment 1 (continued)

<b>Statute</b>	<b>Violation</b>
<b>CGS § 42-116</b>	Violating the Unfair Photographic Sales Practices statute
<b>CGS § 42-125bb</b>	Violating certain provisions for layaway plans
<b>CGS § 42-126b</b>	Sending unsolicited goods
<b>CGS § 42-126c</b>	Failing to disclose certain requirements for mail order business
<b>CGS § 42-133i</b>	Notice of magazine subscription expiration
<b>CGS § 42-133ff</b>	Travel service surcharge for credit card use
<b>CGS § 42-141</b>	Violating provisions of the Home Solicitation Sales Act
<b>CGS § 42-184</b>	Violating new automobile warranties
<b>CGS § 42-206</b>	Violating provisions of the funeral service contracts statutes
<b>CGS § 42-210</b>	Violating gray market merchandise statutes
<b>CGS § 42-217</b>	Violating rain check statutes
<b>CGS § 42-227</b>	Violating automobile manufacturers' warranty adjustment programs statute
<b>CGS § 42-230</b>	Violating profiteering statute
<b>CGS § 42-232</b>	Selling products at an excessive price during energy emergency
<b>CGS § 42-234a</b>	Selling energy resources at excessive price during abnormal market disruptions
<b>CGS § 42-251</b>	Violating consumer rent-to-own agreement statutes
<b>CGS § 42-283</b>	Violating diet program statutes
<b>CGS § 42-288</b>	Violating telemarketing statutes
<b>CGS § 42-288a</b>	Violating do not call registry
<b>CGS § 42-300</b>	Violating sweepstakes statutes
<b>CGS § 42-311</b>	Violating buying club statutes
<b>CGS § 42-322</b>	Violating dating services statutes
<b>CGS § 42-360</b>	Posting of dry cleaning prices
<b>CGS § 42-370</b>	Posting of certain information on prepaid calling cards
<b>CGS § 42-371</b>	Violating provisions of consumer discount cards statute
<b>CGS § 47-6b</b>	Conveyance that is not signed by duly authorized person
<b>CGS § 48-30</b>	Misrepresentation of power to acquire property by eminent domain

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