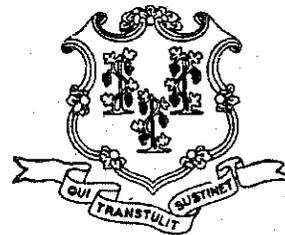


Department of Consumer Protection



Testimony of William M. Rubenstein Commissioner of Consumer Protection

General Law Committee Public Hearing
March 5, 2013

HB 6403, "AA Making Minor and Technical changes to Department of
Consumer Protection Statutes"

HB 6406, "AAC the Electronic Prescription Drug Monitoring Program"

HB 6443, "AAC Immigration Services Fraud"

Senator Doyle, Representative Baram, Senator Witkos, Representative Carter and distinguished members of the General Law Committee, I am William Rubenstein, Commissioner of Consumer Protection. Your agenda this evening includes three bills that were introduced by my Department, so let me begin by thanking you for agreeing to raise these bills for the consideration of the committee, and for providing me with the opportunity to testify in support of these three important proposals.

The first bill I will comment on is House Bill 6443, "An Act Concerning Immigration Services Fraud." The Department is proposing this bill to address the issue of immigration services fraud. This type of fraud is often referred to as notario fraud since it is often perpetrated in Latino community by providers seeking to deceive people into believing they are lawyers. In many Spanish-speaking countries, a notario is an

attorney, often possessing more credentials than other lawyers. While notario fraud gains its name from the Latino community, it occurs in all immigrant populations.

Typically, this type of fraud involves an immigration services provider who promises immigrant clients things like green cards, access to secret citizenship lotteries or similar immigration status adjustments. In worst case scenarios, the provider is simply scamming the immigrant clients and stealing their money. In other scenarios, the provider is simply unqualified or unlicensed to give immigration advice, and ends up harming the clients' chances of proper immigration status adjustments.

The Department's interest in this urgent issue is twofold: First, this is truly a serious issue in Connecticut. According to the most recent U.S. Census numbers, slightly over 13% of Connecticut's population is foreign born, which is slightly higher than the U.S. average. Those who work closely with Connecticut's immigrant population, including the American Immigration Lawyers Association and the International Institution of Connecticut to name a few, tell us that notario fraud is happening and its consequences are dire. For example, a Hartford immigration attorney recently told us about a client who had been given bad advice by a notario, and, as a direct consequence, is now facing deportation that would have been avoidable.

The second reason our agency is proposing this bill is because we are uniquely situated in our ability to regulate consumer contracts and advertising. According to the American Bar Association Commission on Immigration, state regulation of immigration services is most effective when it targets the contract formation process and the advertising of the immigration services. Additionally, there has been movement on the federal level by the Federal Trade Commission to address immigration services fraud within a consumer protection framework.

Specifically, the way our bill works is to target unqualified or unlicensed immigration services providers---it excludes legitimate providers such as lawyers, law students under an attorney's supervision, and U.S. Board of Immigration Appeals accredited non-profits from the requirements set forth in the bill. Should someone who is not an attorney, law student or accredited non-profit, provide immigration services he or she must abide by certain contracting requirements. For example, the contract must be written in English and the language in which services are offered; and it must include a

disclosure that the provider is not an attorney. Additionally, the contracts may be cancelled by the consumer at any time, and the provider is prohibited from making guarantees, misrepresentations of influence over government decision makers and representation of “secret immigration programs.” A private right of action is included in the proposed language, and a violation of the bill would be a per se violation of the Connecticut Unfair Trade Practices Act, Sec. 42-110d et seq.

We feel the time is right to put these important protections into law. President Obama recently signed an executive order easing enforcement rules for immigrants that came to the United States as children and Congress is likely to address significant immigration reform this term. As the immigration rules change, more immigrants will seek out help in navigating the new rules. There will be a natural opportunity for those who would commit immigration services fraud to do so. This bill will arm consumers, and the agency, with tools to thwart those efforts. I ask for your favorable consideration of this bill.

The next proposal I’d like to comment on is House Bill 6406, “An Act Concerning the Electronic Prescription Drug Monitoring Program.” As you may know, the Department of Consumer Protection administers this program, which is an invaluable tool in our fight to reduce prescription drug abuse. The prescription drug monitoring program is a computer web-based application used to help prescribers and pharmacists provide better patient care and to reduce controlled substance misuse, diversion and abuse. The proposal before you is offered to strengthen and improve the system by proposing five separate changes:

1) Under current law, physicians that write and *fill prescriptions for controlled substances in their own offices* have not been required to report that information. This proposal closes that loophole.

2) Under current law, every pharmacy that dispenses controlled substances must report data to the Department at least “twice monthly.” This bill proposes to acquire prescription information more frequently by requiring reporting on a weekly basis.

3) This proposal gives the Commissioner of Consumer Protection the authority to include other products or drugs in the monitoring program. An example would be to allow the collection of data concerning certain types of antibiotics (which are not on the schedule of controlled drugs) in times of epidemic.

4) We propose to make it impermissible for any person or employer to prohibit, discourage or impede the use of the program. The Department has been made aware of allegations of employers pressuring pharmacists not to use the program, presumably as it takes additional time from the employee's work of filling prescriptions. This change would ensure that pharmacists are allowed to use the program as their professional discretion dictates.

5) Finally, under present law there is no requirement that *prescribers* utilize this program. The Department seeks to make prescribers more aware of the existence and benefits of the program and therefore we have include a proposal to require holders of a DCP "controlled substance practitioner" registration to also register with the prescription drug monitoring program. This modest requirement would serve the purpose of introducing prescribers to its benefits. It is a one-time step, with no fiscal impact to the registrant or to the Department.

The misuse and abuse of prescription drugs continues to take an enormous toll on our society. Connecticut's Prescription Drug Monitoring Program is an important tool in fighting this scourge, and we believe these proposed changes will provide a meaningful impact in this battle.

The Department's third bill, House Bill 6403 is our proposal to make numerous "minor and technical" changes within Department of Consumer Protection statutes.

Sections 1-6 of this proposal are offered primarily as cost savings measures by eliminating the requirement to publish brochures and reports when alternatives are readily available. Section 1 makes it permissible to satisfy the requirements of Section 30-7 by having the agency's Liquor Control regulations posted on the agency's website, as we currently do. Similarly, Section 2 makes it permissible to comply with the requirements of the printing of pamphlets for DCP's Gaming Division by posting our regulations on-line. Section 3 allows for the posting of minutes and a roster of licensees

on-line, rather by paper publication. Section 4 allows for the posting of a roster of registered Interior Designers on the Department's website, rather than in writing. Section 5 allows for the posting of a roster of well drillers on the Department's website, rather than in writing. Section 6 eliminates the requirement for a written report of the testing done in DCP's weights & measures division, replacing it with a requirement that we maintain those records and make them available for inspection.

Section 6 makes an additional change: It makes a minor change within our Weights & Measures statutes that closes a loophole making it consistent with what we believe to be the original intent of the law. Under current law DCP is statutorily required to calibrate dealers testing equipment every other year and may not charge of fee for this service. We are aware that this requirement has allowed numerous out of state businesses to impose this burden on the Department. We propose a change in Sec. 43-3 to keep the service free for Connecticut residents and businesses with an office in Connecticut. We believe this is fair, and that the effect will be that out of state businesses will simply pay for the service in their own state. Consequently, we do not expect this change to raise significant revenue, but rather, significantly reduce the workload to DCP's weights & measures laboratory.

Sections 7 & 8 of this proposal make changes to DCP's Gaming Division statutes. Section 7 eliminates the requirement that a monthly report be prepared and sent to the office of the State Treasurer. The Director of the Cash Management Division states that this is not needed as the information is readily available to them via CORE-CT. Section 8 makes a minor change in Section 7-173, pertaining to individuals applying to operate a bazaar or raffle. This minor change removes unnecessary and overly restrictive requirements that applicants be "electors of the municipality" and replaces with a more reasonable, "residents of the state."

Section 9 makes a minor change in DCP's public charities section, by extending the time charities must renew their registration with the Department after their fiscal year ends from five months to eleven months; while correspondingly removing the provision that grants the Commissioner discretion to extend the requirement to register by 6 months. The net effect is that all charities would be granted the full time limit (11

months) to renew. This change will provide relief to organizations in the charitable community, and decrease unnecessary resource deployment within the Department.

Section 10 makes a minor and conforming change to our customary practice within DCP's Real Estate licensing Division. This change simply recognizes the correct effective dates of license renewals for Real Estate Brokers and Real Estate Salespeople.

Section 11 similarly makes a minor and conforming change regarding late license renewals of New Home Construction Contractors. It clarifies that a late renewal will be valid for the normal full two year period.

Section 12 makes a minor and technical change within the Home Improvement Guaranty statute. It clarifies that contractors' rights to a hearing before the Commissioner are not forfeited while they are making payments in accordance with a court judgment.

Section 13 makes a minor change in DCP's statutes pertaining to "Buying Clubs." This change would extend consumer protection to "services" offered by a company to consumers, in addition to the "goods" as currently written. This change is needed to clarify that companies engaged in selling travel services are to be covered by the existing requirements set forth in Sec. 42-310. The Department feels strongly that this minor change will provide much needed consumer protection in today's marketplace.

Section 14 makes minor changes within the Home Improvement Contractor statute. These changes are needed to clarify that the existing penalties encompassed within the law are able to be enforced by the Department. A minor change within the definition section of the Act is offered here to include "the solicitation of work" by the illegal contractor and also to remove the word "cash" from the price charged by the contractor. These changes will lead to an improvement in our ability to keep the public safe from illegal, unregistered and fly-by-night contractors.

Section 15 makes a minor change within the Real Estate Appraisal statute. This change is made to comply with recent federal requirements that real estate appraisal instructors be made subject to approval. This change will allow DCP to amend our regulations to conform to new federal requirements.

Section 16 makes a minor conforming change in the elevator license section. The current language states that those eligible for an elevator craftsman's license may include someone with at least two years experience in the field. However, the DOL apprenticeship program specifies a four year experience period, making current language obsolete and conflicting with current requirements. This proposal simply makes the minor change to conform to the appropriate requirements.

Section 17 makes a minor change which would enable the Department or licensing board to reinstate a license which a licensee has failed to renew in a timely manner. Under present law, any license holder under Chapter 393 who fails to renew their license within one year of expiration shall be required to retake their licensing examination if they wish to reinstate their license. This proposal increases that limit to two years, which we believe to be fairer to the tradesperson who through human error or due to circumstances beyond their control have failed to renew their license. Allowing reinstatement within two years will assist the boards, the Department and license-holders in streamlining the reinstatement process.

Section 18 makes the same changes proposed in Section 17 applicable to license types contained in CGS chapter 394 (Television and Radio Service Dealers and Electronics Technicians).

Section 19 amends the Shorthand Reporter chapter to clarify that license holders may reinstate a lapsed license within two years from the time they let their license lapse. Further, it provides for a system in which those applicants whose license has lapsed for more than two years may apply to the licensing board for reinstatement at the board's discretion. It makes clear that if the board approves reinstatement, that the applicant must pay all applicable license and late fees.

Section 20 makes changes similar to those in Section 19 in Chapter 416. This change would be applicable to all license types under the jurisdiction of the Department, allowing for license holders whose license has lapsed for more than two years to apply to the appropriate board for consideration of reinstatement. Each board would have the discretion to approve the reinstatement. It further makes clear that should the board approve reinstatement, that the applicant must pay all applicable license and late fees.

Section 21 removes an obsolete and unused provision that allowed for a temporary permit within the Radio & Television licensing chapter.

Section 22 makes a minor change regarding the amount of fine the Department may charge an applicant for “bounced check” costs. Under current statute a fixed fee of \$20 may be charged in such cases, however, presently banks are charging DCP more than \$20 and therefore the Department is losing money and unable to even recoup the amount banks impose on the Department. This change would enable the Department to charge an applicant in such cases a fine amount commensurate with the cost imposed on the Department by the bank.

Section 23 makes a conforming technical change in CGS Sec. 21-33b. Specifically, PA 09-3 (June Special Session) increased certain fees and in CGS Sec. 21-28 increased from one hundred to two hundred dollars annually the amount an applicant must pay into the Itinerant Vendor Guaranty Fund. However, a corresponding change was not made at that time to the Guaranty Fund section (CGS 21-33b). This proposed change simply conforms the two sections at the two hundred dollar amount. Consequently, there is no revenue change to this purely technical fix.

Section 24 provides for additional consumer protections within the Dating Services chapter. This minor language change would ensure that consumers who have entered into a contract to purchase a “social referral service” shall have the right to cancel within 3 days from the time the service has been made available for their use. This minor change is offered by the Department in response to consumer complaints; specifically under present law, the right for the consumer to cancel is offered within 3 days of receipt of the written contract by the company only. This change ensures that the clock doesn’t start ticking until they are able to actual use the product for 3 days.

Section 25 makes one minor/technical change within the Home Improvement Guaranty fund statute. This change simply replaces a reference to “real property” with “personal property” of a home improvement contractor when a judgment has been obtained against said contractor by a consumer. This technical change conforms with the department’s practice in processing applications to the fund by consumers harmed by actions of registered home improvement contractors.

Section 26 makes a clarifying change in the definitions within the Home Improvement Contractors chapter. Specifically, Sec. 20-419 is changed to add “condominium associations” as agents under the definition of “owner.” It clarifies the same right under the “private residence” definition. The department offers this minor change in response to consumer complaints wherein condominium unit owners who would otherwise clearly have rights under the Home Improvement Contractor Act and the Home Improvement Guaranty Fund, were less clearly eligible simply because their condominium association had acted as their agent in obtaining contractors to do work on their residence. The Department feels this change is appropriate and clarifies that consumers should not be penalized from their rights under the acts simply because a contract is signed by their condo association acting on their behalf.

Sections 27 through 35 make numerous minor and technical changes within Chapter 392 (Real Estate Brokers and Salespersons). While this appears lengthy, the technical/conforming changes throughout are primarily limited to two separate issues. First, the statute currently makes reference to the “Secretary of Housing and Urban Development.” Recent federal changes have made that reference obsolete, so we offer to change the language to read the “appropriate federal agency.” Second, we remove obsolete references to the authority of the real estate commission (“commission”) and replace with the “department.” The duties and responsibilities referred to in this statute are of the Commissioner of Consumer Protection and not of the real estate commission.

Sections 36 and 37 make two similar changes in statutes overseen by DCP’s Drug Control Division. The language proposed clarifies that Wholesalers of drugs shall require a separate certificate of registration for each location within the State of Connecticut, as well as for those that have a location outside the State of Connecticut that distributes products into the State. The provisions for wholesalers of non-controlled drugs are amended in Sec. 21a-70 (Chapter 417, Pure Food and Drug Act), while the provisions for wholesalers of controlled substances are amended in Sec. 21a-246 (Chapter 420b, Dependency-Producing Drug Act). This change would provide the department with critical information on all locations from which drugs may be stored and shipped throughout Connecticut. The ability to locate, identify and inspect all such facilities is critical to the mission of the Department.

Thank you for the opportunity to provide these remarks on behalf of the three Department proposals before you today.