



Senate

General Assembly

File No. 23

January Session, 2013

Senate Bill No. 859

Senate, March 5, 2013

The Committee on Insurance and Real Estate reported through SEN. CRISCO of the 17th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

AN ACT CONCERNING THE REGULATION OF PRIVATE TRANSFER FEES.

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) "Person" means an individual, corporation, limited liability
3 company, partnership, association, trustee or other entity capable of
4 holding an interest in real property or any combination thereof.

5 (2) (A) "Private transfer fee" means a fee or charge payable (i) upon
6 the conveyance and subsequent conveyance of an interest in real
7 property located in this state, or (ii) for the right to make or accept such
8 conveyance;

9 (B) "Private transfer fee" does not include:

10 (i) Any consideration payable by a grantee to a grantor for the
11 conveyance of an interest in real property located in this state,
12 including any subsequent consideration payable by such grantee for

13 such real property based on subsequent appreciation, development or
14 sale of such real property, provided such subsequent consideration is
15 payable on a one-time basis and the obligation to pay such
16 consideration does not bind successors in title to such real property.
17 For purposes of this subparagraph, "real property" includes a mineral
18 estate, as defined in section 47-330 of the general statutes;

19 (ii) Any commission payable to a real estate broker or a real estate
20 salesperson for the sale of real property located in this state pursuant
21 to a contract or agreement between such broker or salesperson and a
22 grantee or grantor, including any subsequent commission payable by
23 such grantee or grantor for such real property based on subsequent
24 appreciation, development or sale of such real property;

25 (iii) Any interest, fee, charge or other amount payable by a borrower
26 to a lender pursuant to a loan secured by a mortgage against real
27 property located in this state, including any fee payable to such lender
28 for consenting to an assumption of such loan or conveyance of such
29 real property subject to such mortgage, any fee or charge payable to
30 such lender for an estoppel letter or certificate issued by such lender,
31 and any shared appreciation interest, profit participation or other
32 consideration payable to the lender in connection with such loan;

33 (iv) Any rent, reimbursement, fee, charge or other amount payable
34 by a lessee to a lessor, including any fee or charge payable to such
35 lessor for consenting to an assignment, sublease or encumbrance of a
36 rental agreement or lease;

37 (v) Any consideration payable to the holder of an option to
38 purchase an interest in real property or the holder of a right of first
39 refusal or first offer to purchase an interest in real property located in
40 this state, for such holder's waiver, release or nonexercise of such
41 option or right;

42 (vi) Any tax, assessment, fine, fee, charge or other amount payable
43 to or imposed by a governmental entity;

44 (vii) Any dues, assessment, fine, contribution, fee, charge or other
45 amount payable to an association or a unit owners' association
46 organized under chapter 828 of the general statutes, pursuant to any
47 declaration, covenant, law, association bylaw, association rule or
48 association regulation, including a fee or charge payable to such
49 association for an estoppel letter or certificate issued by such
50 association or its authorized agent;

51 (viii) Any dues, assessment, fine, contribution, fee, charge or other
52 amount imposed by a declaration or covenant encumbering a
53 municipality or a county or any combination thereof or a
54 neighborhood or other area, irrespective of boundaries or political
55 subdivision, in this state, and payable solely to an organization that is
56 tax exempt pursuant to 26 USC 501(c) for the purpose of supporting
57 cultural, educational, charitable, recreational, environmental,
58 conservation or other similar activities that benefit such municipality,
59 county, neighborhood or other area; or

60 (ix) Any dues, assessment, contribution, fee, charge or other amount
61 payable for the purchase or transfer of a club membership related to
62 real property located in this state.

63 (3) "Private transfer fee obligation" means an obligation arising
64 under a declaration or a covenant recorded against the title to real
65 property located in this state or under any contractual agreement or
66 promise, whether or not recorded, that requires or purports to require
67 the payment of a private transfer fee upon a conveyance or a
68 subsequent conveyance of an interest in such real property.

69 (b) On and after the effective date of this section, no person shall
70 impose a private transfer fee obligation. Any such obligation imposed
71 on and after said date and any agreement that violates the provisions
72 of this subsection shall be void and unenforceable.

73 (c) Each contract offered or entered into on or after the effective date
74 of this section for the sale of real property located in this state that is
75 encumbered by a private transfer fee obligation imposed prior to the

76 effective date of this section shall include a provision disclosing the
77 existence of such obligation, a description of such obligation and a
78 statement that private transfer fee obligations are subject to the
79 provisions of this section. Any such contract that violates the
80 provisions of this subsection shall be void and unenforceable and no
81 purchaser under such contract shall be liable to the seller for damages
82 under such contract. A purchaser under a contract that is void and
83 unenforceable under this subsection shall be entitled to the return of all
84 deposits made by such purchaser in connection with the sale of such
85 real property.

86 (d) (1) For each private transfer fee obligation imposed prior to the
87 effective date of this section, the person to which such fee was or is
88 paid shall record against the title of such real property, prior to
89 December 31, 2013, in the land records of the town within which such
90 real property is located, a separate document entitled, in not less than
91 fourteen-point bold type, "Notice of Private Transfer Fee Obligation"
92 that includes the following information:

93 (A) The dollar amount of such fee if such fee is a flat amount, the
94 percentage of the sales price that constitutes the amount of such fee or
95 such other method by which such fee is calculated;

96 (B) If such real property is residential, actual dollar-cost examples of
97 such fee for a home priced at two hundred fifty thousand dollars, five
98 hundred thousand dollars and seven hundred fifty thousand dollars;

99 (C) The date or circumstances under which such obligation expires,
100 if any;

101 (D) The purpose for which the funds from such fee will be used;

102 (E) The name of the person to which such fee was or is paid and the
103 specific contact information for where such fee was or is sent;

104 (F) The acknowledged signature of the person to which such fee was
105 or is paid; and

106 (G) The legal description of such real property encumbered by such
107 obligation.

108 (2) The person to which such fee was or is paid may file an
109 amendment to the notice of changes to the contact information for such
110 person, provided such amendment includes the recording information
111 of the notice and the legal description of such real property
112 encumbered by such obligation.

113 (e) (1) Real property located in this state that is encumbered by a
114 private transfer fee obligation may become unencumbered by such
115 obligation if:

116 (A) The person to which such fee was or is paid fails to comply with
117 all the requirements of subdivision (1) of subsection (d) of this section
118 prior to December 31, 2013; or

119 (B) A grantor of such real property requests in writing, to the person
120 to which the private transfer fee was or is paid and the address shown
121 in the contact information of the notice required under subdivision (1)
122 of subsection (d) of this section, a statement showing the private
123 transfer fee amount that is payable upon the conveyance of such real
124 property and such person fails to provide such statement in writing
125 within thirty days of the date of the grantor's written request.

126 (2) In such event, a grantor of such real property shall:

127 (A) Record an affidavit conforming to the requirements of section
128 47-12a of the general statutes in the land records of the town within
129 which such real property is located; and

130 (B) Upon the filing of such affidavit, not be subject to such
131 obligation. Such grantor may thereafter convey such real property
132 without paying the private transfer fee and such real property shall
133 thereafter be conveyed free and clear of such obligation and fee.

134 (3) When an affidavit has been recorded as set forth in subdivision
135 (2) of this subsection, it shall be admissible as prima facie evidence that

136 (A) the grantor sent a written request to the person to whom the
137 private transfer fee was or is paid for a statement showing the private
138 transfer fee amount that is payable upon the conveyance of such real
139 property, and (B) such person failed to provide such statement in
140 writing within thirty days of the date of the grantor's written request.

141 (f) Violation of this section shall constitute an unfair or deceptive act
142 or practice under subsection (a) of section 42-110b of the general
143 statutes. Where an agent acts on behalf of a principal to impose a
144 private transfer fee obligation, liability shall be assessed to the
145 principal.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>from passage</i>	New section

INS *Joint Favorable*

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 14 \$	FY 15 \$
Consumer Protection, Dept.	GF - Cost	33,500	33,500
State Comptroller - Fringe Benefits ¹	GF - Cost	9,843	9,843
Consumer Protection, Dept.	GF - Potential Revenue Gain	up to \$50,000	up to \$50,000

Municipal Impact: None

Explanation

The bill results in a potential cost to the state of \$43,343 in FY 14 and FY 15 as the Department of Consumer Protection (DCP) may require an additional part-time Real Estate Examiner. Additionally, the bill may result in a revenue gain of up to \$50,000 through penalties for violations related to transfer fees. A part-time Real Estate Examiner would require a salary of \$28,500, other office expenses of \$5,000 plus fringe benefits of \$9,843. The need for a part-time Real Estate Examiner is based upon the potential for over 200 complaints in any given year.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation and the number of violations. In addition, normal annual pension costs (currently estimated at 7.5% of payroll) attributable to the identified personnel changes will be

¹The fringe benefit costs for most state employees are budgeted centrally in accounts administered by the Comptroller. The estimated active employee fringe benefit cost associated with most personnel changes is 34.54% of payroll in FY 14 and FY 15.

recognized in the state's annual required pension contribution in future actuarial valuations.

OLR Bill Analysis**SB 859****AN ACT CONCERNING THE REGULATION OF PRIVATE TRANSFER FEES.****SUMMARY:**

This bill bans private transfer fees on and after the bill's effective date. A "private transfer fee" is, with some exceptions, a fee or charge payable (1) upon the conveyance and subsequent conveyance of an interest in real property located in Connecticut or (2) for the right to make or accept the conveyance.

For any private transfer fee obligation in existence as of the bill's effective date, the bill requires the obligation to be (1) disclosed in the sale contract and (2) recorded in the town's land records by December 31, 2013. The bill also specifies how real property can become unencumbered by an existing obligation.

The bill makes a violation of its provisions an unfair or deceptive act or practice under the Connecticut Unfair Trade Practices Act (CUTPA) (see BACKGROUND). It specifies that if an agent acts on behalf of a principal to illegally impose a private transfer fee, the principal is liable.

EFFECTIVE DATE: Upon passage

PRIVATE TRANSFER FEES BANNED PROSPECTIVELY

The bill makes it illegal for a person (which includes an entity) to impose a private transfer fee obligation on or after the bill's effective date. It specifies that any obligation imposed on or after that date and any agreement that violates the bill is void and unenforceable.

EXISTING PRIVATE TRANSFER FEES REGULATED

Disclosure Required

The bill requires a contract offered or entered into after the bill's effective date for the sale of real property in Connecticut that was previously encumbered by a private transfer fee obligation to include a (1) provision that discloses the obligation's existence, (2) description of the obligation, and (3) statement that the obligation is subject to the bill's provisions.

The bill specifies that (1) a contract that fails to make such a disclosure is void and unenforceable and (2) the purchaser is not liable to the seller for damages under the contract. It also specifies that the purchaser is entitled to the return of all deposits he or she made in connection with the contract.

Recording Required

For private transfer fee obligations imposed before the bill's effective date, the bill requires the person who is paid the fee to record the obligation in the town's land records by December 31, 2013. The recording must be a separate document entitled, in at least 14-point bold type, "Notice of Private Transfer Fee Obligation" that includes:

1. the amount of the private transfer fee or method by which it is calculated;
2. if the involved property is residential, fee examples for a home priced at \$250,000, \$500,000, and \$750,000;
3. the date or circumstances under which the obligation expires;
4. what the collected fee will be used for;
5. the name of the person who collects the fee, specific contact information for where the fee is sent, and the person's acknowledged signature; and
6. the involved property's legal description.

The bill allows a person who is paid the fee to file an amendment to

the notice when contact information changes. Any such amendment must include the above recording information.

REMOVING A FEE OBLIGATION

The bill allows an existing private transfer fee obligation to be removed if:

1. the person who is paid the fee fails to record the "Notice of Private Transfer Fee Obligation" by December 31, 2013 or
2. upon the written request of a grantor of real property for a statement showing the amount of the fee payable upon the property's conveyance, the person who is paid the fee fails to provide a written statement within 30 days of the request.

If either of these situations occurs, the bill requires a grantor of real property to record an affidavit specifying the facts of the matter in the town's land records. By law, such an affidavit must include a description of the land affected by the affidavit and the land owner's name (CGS § 47-12a).

Upon filing the affidavit, the grantor is not subject to the obligation. The grantor can thereafter convey the property without paying the private transfer fee and the property will thereafter be conveyed free and clear of the obligation.

When an affidavit is recorded as set forth in the bill, it is admissible as prima facie evidence that the grantor submitted a written request for the fee statement and the person who is paid the fee failed to provide the statement within 30 days.

DEFINITIONS

Private Transfer Fee

Under the bill, a "private transfer fee" is a fee or charge payable (1) upon the conveyance and subsequent conveyance of an interest in real property in Connecticut or (2) for the right to make or accept the conveyance. It does not include any:

1. consideration payable by a grantee to a grantor for the conveyance of an interest in real property (including mineral rights), including any subsequent consideration payable by the grantee for the property based on subsequent appreciation, development, or sale of the property, provided the subsequent consideration is payable on a one-time basis and the obligation to pay the consideration does not bind successors in title to the property;
2. commission payable to a real estate broker or salesperson for selling real property pursuant to a contract or agreement between the broker or salesperson and a grantee or grantor, including any subsequent commission payable by the grantee or grantor for the property based on subsequent appreciation, development, or sale of the property;
3. interest, fee, charge, or other amount payable by a borrower to a lender under a mortgage, including any fee payable to the lender for agreeing to assume the loan or conveyance of the property, an estoppel letter or certificate (e.g., a document that certifies a certain set of facts and bars a party from later claiming a different set of facts), and any shared appreciation interest, profit participation, or other consideration payable to the lender in connection with the loan;
4. rent, reimbursement, fee, charge, or other amount payable by a lessee to a lessor, including any fee or charge payable to the lessor for agreeing to assign, sublease, or encumber a rental agreement or lease;
5. consideration payable to the holder of an option to purchase an interest in real property or the holder of a right of first refusal or first offer to purchase an interest in real property, for the holder to waive, release, or not exercise the option or right;
6. tax, assessment, fine, fee, charge, or other amount payable to or imposed by a governmental entity;

7. dues, assessment, fine, contribution, fee, charge, or other amount payable to an association or a unit owners' association organized under the Common Interest Ownership Act pursuant to any declaration, covenant, law, or association bylaw, rule, or regulation, including a fee or charge payable to the association for an estoppel letter or certificate;
8. dues, assessment, fine, contribution, fee, charge, or other amount imposed by a declaration or covenant encumbering a municipality, county, or any combination of the two, or a neighborhood or other area, irrespective of boundaries or political subdivision and payable solely to a tax-exempt organization for the purpose of supporting cultural, educational, charitable, recreational, environmental, conservation, or other similar activities that benefit the municipality, county, neighborhood, or other area; or
9. dues, assessment, contribution, fee, charge, or other amount payable for the purchase or transfer of a club membership related to real property.

Private Transfer Fee Obligation

The bill defines "private transfer fee obligation" as an obligation arising under a declaration or a covenant recorded against the title to real property located in Connecticut or under any contractual agreement or promise, whether or not recorded, that requires the payment of a private transfer fee upon a conveyance or a subsequent conveyance of an interest in the real property.

BACKGROUND

Connecticut Unfair Trade Practices Act (CUTPA)

CUTPA prohibits businesses from engaging in unfair and deceptive acts or practices. It allows the consumer protection 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

Insurance and Real Estate Committee

Joint Favorable

Yea 19 Nay 0 (02/19/2013)