Department of Consumer Protection

Testimony of William M. Rubenstein
Commissioner of Consumer Protection

General Law Committee Public Hearing
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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 today includes seven 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 important proposals.

S.B. No. 205 (RAISED) AN ACT MAKING MINOR AND TECHNICAL CHANGES TO REAL ESTATE APPRAISER AND APPRAISAL MANAGEMENT COMPANY STATUTORY DEFINITIONS.

The Department of Consumer Protection has responsibility for licensing and oversight of Real Estate Appraisers and Appraisal Management Companies with statutory authority provided in chapter 400g. The purpose of this bill before you is to make minor and technical changes to these statutes solely as a result of a compliance review conducted by the Appraisal Subcommittee of the Federal Financial Institutions Examination Council. This body is established and charged with auditing every state's statutory and regulatory structure, via a federal law referred to as Title XI of the "Financial Institutions Reform, Recovery and Enforcement Act of 1989." Following an audit of Connecticut's statutes in these areas, the Appraisal Subcommittee provided a detailed compliance review report to the Department. While the audit stated that Connecticut is "substantially" in compliance with federal requirements, it recommended that our statutes be

amended to make numerous minor and technical changes to be consistent with federal guidelines. Senate Bill 205 is before you for the sole purpose of amending the act to make these minor and technical changes. Examples include removing references to "limited residential appraiser," and "limited general appraiser," and adding references to a "provisional license" which is the type of license now recognized by federal guidelines. Failure to make the changes outlined in the audit may jeopardize future DCP licensed appraisers from having their work approved pursuant to a federally related transaction.

H.B. No. 5258 (RAISED) AN ACT CONCERNING BAKERIES AND FOOD MANUFACTURING ESTABLISHMENTS.

This bill makes several changes to the Bakeries and Food Manufacturing Establishments chapter under the jurisdiction of the Department of Consumer Protection. The most important of these changes is our proposal to include food warehouses within the definition of "food manufacturing establishments." At present time, neither DCP, nor any state agency has knowledge of how many, and where food warehouses are located throughout the state. This proposal is offered so that a centralized list of food warehouses can be obtained and maintained by the Department's Food & Standards Division.

The primary benefit of including food warehouses in the definition is to ensure food safety to the public. Food warehouses may not seem to be at the top of the list of establishments where food safety may be compromised, but in fact, the Department believes that there is danger to the public if safe and sanitary conditions in warehouses are not maintained. By including food warehouses in the statute, the Department will have the opportunity to inspect these premises and ensure they are kept in a sanitary condition and free from vermin.

Under current practices, when the FDA finds, or is made aware of food contamination issues, DCP is notified and our work to locate, inspect and pull product off the shelves begins. However, without a centralized list of all food warehouses throughout the state, we are unable to promptly and efficiently identify where potentially dangerous products are being warehoused. This gap should be filled to allow us to carry out our mission of protecting the public from unsafe food.

Finally, and importantly, this proposal is not intended as a vehicle to raise significant state funds. By including food warehouses within the "Bakeries and Food Manufacturing Establishments chapter," the annual registration fee would be $20.00. We estimate that there may be 400-500 such food warehouses in the state, but freely admit that we don't know how solid that estimate is.

The bill also makes several minor & technical language changes in the statute, including adding the terms "repacking" and "cutting" within the definition. These changes are consistent with language suggested by the FDA.

H.B. No. 5261 (RAISED) AN ACT CONCERNING THE UNFAIR SALES PRACTICES ACT AND COUNTERFEIT COMMODITIES.

This bill amends the "Unfair Sales Practices" act which falls under the jurisdiction of the Department of Consumer Protection. Specifically, the act is amended to include a new definition of "counterfeit commodity," and to prohibit any entity from selling or offering to sell a counterfeit commodity.

The Department offers this proposal in response to a growing problem of counterfeit products flowing into the state whose sale and use may place the public in significant danger.

Although DCP has long been vigilant of consumer products that may be non-compliant with numerous other statutory requirements, such as mislabeled or misbranded, or commodities whose weight or volume has been misrepresented, this proposal provides significant enforcement improvements.

By adding the definition of "counterfeit commodity" to this statute, the Department will have the authority to ***immediately*** pull those products off the shelves to keep them from the public. This streamlines that process where in some cases the Department would otherwise be required to take samples and subject them to a laboratory analysis before we can be certain that the product was mislabeled or misrepresented, and only then subject to removal from shelves.

Specifically addressing counterfeit commodities will improve our ability to quickly and efficiently act when such commodities are entered into our marketplace; it will bring added penalties to those engaging in this practice, and hopefully it will serve as a deterrent to retailers shelving products to their customers.

S.B. No. 206 (RAISED) AN ACT CONCERNING THE POWERS AND DUTIES OF THE COMMISSIONER OF CONSUMER PROTECTION.

This bill is offered by the Department to improve efficiency, transparency and compliance with the authority already vested in the statutory powers and duties of the Commissioner of Consumer Protection.

Under current law, the Commissioner is provided with broad authority to conduct investigations in areas under the Commissioner's jurisdiction. Throughout many of those areas, the Commissioner is provided with the express authority to subpoena witnesses and require the production of records necessary to the investigation. Most recent statutory schemes contain this explicit subpoena authority. However, a significant number of older statutes maintain ancient concepts of investigatory technique. For example, The Uniform, Food, Drug and Cosmetics Act gives the Commissioner the right to review business records but requires that the review take place by physically going to the business location and allowing the Commissioner or his agents "to enter, at reasonable times, any establishment, to inspect records, files and papers therein." Similar provisions are contained in the Pure Food and Drug Act, The Child Protection Act and the Controlled Substance Act, among others.

Clearly, that process is inefficient to the Department, as well as to the establishment that is the subject of such investigation. Permitting the Commissioner throughout his jurisdictional authority to conduct such inquires by compelling production of documents, rather than through the proscribed method of "entering the establishment to inspect records" will allow for more productive and less costly investigations and is consistent with contemporary investigatory procedures.

This proposal would improve the investigatory ability of the Commissioner, permit less costly investigations and enhance compliance efforts across the range of the Commissioner's regulatory responsibilities, all while providing a more customary and less intrusive method of response by those under investigation.

H.B. No. 5263 (RAISED) AN ACT MAKING MINOR AND TECHNICAL CHANGES TO DEPARTMENT OF CONSUMER PROTECTION STATUTES

This bill makes a number of minor and technical changes to Department of Consumer Protection statutes. Section 1 of the bill makes a technical and conforming change in the New Automobile Warranties statute, commonly known as the "lemon law" program. The proposal eliminates antiquated language stating that "an expert shall sit as a nonvoting member of the arbitration panel." This language should be removed from the statute as previous legislation (Public Act 07-212) amended the hearing process by, among other things, eliminating the arbitration panel. Although the expert will not a member of the arbitration panel, the statutory scheme still provides for the expert to provide input at the lemon law hearing.

Section 2 makes a minor change within the Charitable Funds Act. Under present law, the Commissioner is given authority to accept a written assurance of compliance from a respondent when a violation of the act is alleged; however, as drafted the statute states that such a written assurance may only be accepted if the violation is "not material." This designation does not advance the ability to quickly, efficiently and appropriately resolve many complaints under the Department's investigatory authority. By removing the term "not material" from the statute, DCP will have greater flexibility in resolving complaints in an appropriate manner.

Section 3 makes several minor changes within the "trial offers and automatic renewals" statutes in an effort to provide improved consumer protections from unwanted "renewals" of certain services. Under present law, a business that sells consumer products or services pursuant to a written contract that contains a provision for automatic renewal of the contract, must provide the consumer a written notice that the recipient may cancel the contract---but only when the renewal is for a period of time of "more than thirty one days." This 31 day period allows businesses to escape the mandatory consumer notice if the renewal period is 30 days or less. Consequently, many consumers do not receive notice, and nevertheless are surprised to learn that the contract has been renewed. We seek to remove that period of time reference throughout the statute, to close this loophole, and ensure that consumers are made aware of businesses

attempting to automatically renew a contract without the consumer receiving notice and given an opportunity to non-renew.

Section 4 makes a one word change within the New Home Guaranty Fund statute. If this change sounds familiar to the committee, that is because an identical change was made in the last legislative session within the Home Improvement Guaranty Fund. Specifically, we proposed a minor change to replace the term "real" property with "personal" property when attempting to satisfy a judgment against a contractor. This change clarifies the steps a consumer must undertake in order to have access to the Guaranty Fund when a judgment is rendered against a new home contactor.

Finally, sections 5 through 7 are offered to respond to frustration the Department often hears from charitable organizations in their desire to conduct numerous fundraising events throughout the year. Under present law, the number of times per year that an organization may obtain a liquor permit for fundraising events is specified in statute, and differs from organization to organization based on the way they are established. The Department proposes to increase the number of permits that all charitable organizations may obtain to twelve (12) per year. Presently, six permits may be issued to "noncommercial organizations," eight to "charitable organizations," and one to "nonprofit corporations conducting the sale of wine at an auction."

We are pleased to offer the changes contained in this bill to provide additional consumer protections, and to assist charitable organizations in their efforts.

H.B. No. 5262 (RAISED) AN ACT CONCERNING THE PHARMACY PRACTICE ACT AND COUNTERFEIT DRUGS.

This bill makes several substantive changes to the Pharmacy Practice Act and the Pure Food and Drug statutes which fall under the jurisdiction of the Department of Consumer Protection. First, we propose amending Sec. 20-619 of the Pharmacy Practice Act after having had discussions with our sister agency, the Department of Social Services. As currently drafted, this statute, which provides requirements for filling prescriptions by pharmacies, has essentially put in place two systems within a pharmacy: one for filling prescriptions based on reimbursement criteria pertaining to DSS's programs such as Medicaid and ConnPACE, and second one for "all others." While separate statutory requirements may certainly make sense for DSS reimbursement issues, both agencies agree that it is more appropriate to place those requirements within DSS statutory authority. This bill therefore removes DSS-specific requirements from DCP's Pharmacy Practice Act, while a companion DSS agency bill has been submitted to the legislature to provide statutory authority in its appropriate chapters. This statutory change reflects our belief that the practice of pharmacy protocols should be uniformly applied, regardless of whether a prescription is subject to DSS reimbursement issues, or not. DSS can impose its own requirements "over-the-top" of the standard pharmacy protocols if it desires.

Sections 2 through 7 of the bill are intended to improve the Department's ability to provide oversight in the operation of sterile compounding pharmacies. In general, a pharmacy is permitted to compound pharmaceuticals based on a prescription signed by a doctor on behalf of a single, specific patient. Public awareness of out-of state pharmacies abusing this ability by mass-producing compounded pharmaceuticals has grown recently with news accounts of contaminated products reaching the marketplace. We recognize the benefit of continuing to allow pharmacies to compound pharmaceuticals for patient-specific products, and propose statutory changes in this bill which will strengthen DCP's oversight to improve patient safety.

The changes proposed include establishing a new chapter within the Pharmacy Practice Act specifically to cover Sterile Compounding Pharmacies. It adds new licensing and reporting requirements by pharmacies for those that choose to engage in sterile compounding. Among other things, it requires those pharmacies to ensure a sterile environment and to report any changes in the physical structure or relocation of the sterile room, to ensure that DCP's Drug Control division staff can inspect the facility. And it requires those pharmacies to comply with the federal code for pharmaceutical sterile compounding.

The bill also places new mandates and reporting requirements on those "non-resident" pharmacies that are registered with DCP and engage in sterile compounding. Specifically, it requires them to provide DCP with the most recent inspection report on their facility as conducted by the licensing-authority of their state, to notify DCP if they have had any disciplinary action or written warning served against them by any state or federal authority, and to provide to DCP the names and addresses of all Connecticut residents to whom such pharmaceutical drug has been delivered if a drug recall has been initiated.

The Department is confident that the changes proposed will lead to increased patient-safety through improvements in inspection and regulatory oversight of both resident and non-resident sterile compounding pharmacies.

Section 8 of the bill adds a new section within the Pure Food and Drug chapter pertaining to "counterfeit substances." It provides a definition for counterfeit substances that mirrors language recognized by the FDA and prohibits the sale, delivery or offer to sell any of these items to the public. This new section recognizes the growth of a tremendous problem with counterfeit drugs finding their way into the marketplace. Recent examples of counterfeit substances in Connecticut include counterfeit prescription drugs sold in retail outlets, as well as over the internet. This section gives the Commissioner the authority to investigate and enforce any allegation of selling counterfeit substances including penalties for those engaged in the practice that do not hold a DCP registration.

H.B. No. 5260 (RAISED) AN ACT CONCERNING HEATING FUEL DELIVERY FEES, CHARGES AND SURCHARGES AND PREPAID GUARANTEED HEATING FUEL PRICE PLAN CONTRACTS.

This proposal makes two separate changes within the "Operation of Fuel Supply Business" and "Heating Fuel Sales" chapters that seek to provide additional consumer protections.

As you are aware, the Department has jurisdiction over home heating fuel dealers and as such we serve as an appropriate agency for consumers to register complaints against their fuel dealers----and we receive many. Especially in times like these, with fuel prices being extremely high, the number of complaints is similarly high. Certainly, not all complaints against dealers are valid nor lead to enforcement actions, but they may be deeply troubling to consumers nonetheless. The General Assembly has, over the years, evaluated practices in this industry and created rules to make sure that they are fair and transparent to consumers. Two of these rules require further adjustment.

First, under present law, home heating dealers may only charge consumers a surcharge for delivery of their product under certain circumstance set forth in statute. One provision deals with the amount of product delivered when consumer-initiated. Specifically, under present law if a consumer requests delivery of "not more" than one hundred gallons, it is permissible for the dealer to add a delivery-surcharge to the bill. The practical implication of the current language is that if the consumer requests exactly 100 gallons (a very common request) a surcharge may be applied. The number of consumer complaints the Department has received tells us that many consumers were of the belief that the surcharge could be applied only if they ordered "less than" one hundred gallons. The Department's proposal makes that change, believing this is a fair, consumer-friendly, amendment to law, and does not pose an undue burden on dealers.

The second change contained in this proposal amends a requirement dealers must comply with in the event they choose to engage in the sale of prepaid guaranteed price plan contracts to their customers. Under present law, Sec. 16a-23n states that dealers who engage in this practice must "either" (1) obtain heating fuel physical inventory, or heating fuel futures or forwards contracts in an amount of at least 80% of the number of gallons the dealer is committed to delivery to their customers, OR, (2) obtain a surety bond in an amount of at least 50% of the total amount of funds paid to the dealer by its consumers for prepaid guaranteed price plan contracts.

While the statute has been written in good-faith to provide reasonable and affordable protections to consumers that wish to purchase prepaid contracts, the sad reality is that in too many cases dealers have failed to deliver on their promises (through business-closings and bankruptcies), and the statutorily required protections have proved to be ineffective in helping consumers. The end result is that many Connecticut residents have been hit with a double-whammy---they have lost precious dollars to businesses that have closed without delivering their fuel, and they must then enter the marketplace to purchase fuel when it is generally at the highest price of the year to buy fuel they have already paid for once. With yet another business closure recently, we believe the time to act to provide more meaningful consumer protections is now.

The option to own physical inventory or futures contracts has proven ineffective to protect consumers of pre-paid contracts. We have seen that when a fuel oil dealers get in serious financial trouble, they too often sell the inventory or the futures contracts to new customers in order to raise new cash, such that when the inevitable business failure occurs, the pre-paid customers are left with nothing but an empty promise of fuel.

It is our belief that the best option to maintain the ability for consumers to purchase prepaid guaranteed price plan contracts in the marketplace, while ensuring the dealers ability to deliver on that promise resides in strengthening the surety bond provisions in the law. Our proposal does this by removing the other options and by increasing from 50% to 80% the amount of the surety bond relative to the funds received from customers in the purchase of those contracts. A surety bond purchase ensures that a private, third-party entity would objectively underwrite the risk, and would keep a close eye on the performance and financial solvency of its client. In the event of a default, the surety company would be obligated to ether deliver the fuel to the consumer or provide funds to offset the cost of the replacement fuel.

It is not the Department's view that consumers' option of purchasing guaranteed price plan contracts should be eliminated. Rather, we believe the best way to keep that option available, while ensuring that dealers can deliver on that promise is through this statutory change.

In closing, I would like to thank the committee members again for the opportunity to provide testimony in support of these important legislative proposals. I would be happy to respond to any questions you may have on these bills today or at any point in the future. Please feel free to contact me, or DCP's Legislative Program Manager, Gary Berner at your convenience.