
OLR Bill Analysis

sSB 412

AN ACT CONCERNING THE ENFORCEMENT OF CERTAIN OCCUPATIONAL LICENSING STATUTES.

SUMMARY:

This bill makes several changes to the Department of Consumer Protection's (DCP) occupational licensing enforcement laws. The bill:

1. makes it illegal to negligently (a) engage in certain work without the required license or (b) employ unlicensed people (§ 2);
2. requires the DCP commissioner or appropriate examining board to issue cease work orders for certain unlicensed work (§ 2);
3. requires the commissioner, with the agency's boards, to adopt procedural rules for hearings and proceedings before him or DCP's boards and commissions (see BACKGROUND) (§ 4);
4. prohibits him from adopting regulations affecting the boards and commissions until they have approved them (§ 4);
5. allows him and the appropriate examining board to make the report to the appropriate state's attorney together (§ 1);
6. requires the boards or commissions, instead of their chairpersons, to approve dismissal of certain complaints DCP receives (§ 3); and
7. requires the commissioner, instead of allowing him, to bring certain complaints before the boards or commissions for formal hearings (§ 3).

The bill also makes technical changes.

EFFECTIVE DATE: October 1, 2014

§ 2 — PENALTIES FOR VIOLATIONS

Criminal Negligence

The bill makes it a class B misdemeanor for certain contractors to negligently:

1. perform work without first obtaining the required permit or certificate and license;
2. hire or provide an uncertified or unlicensed person to perform the work;
3. perform the work when the required license has expired.

A class B misdemeanor is punishable by a fine of up to \$1,000, imprisonment for up to six months, or both. The bill also makes these violations an unfair or deceptive trade practice under the Connecticut Fair Trade Practices Act (CUTPA) (see BACKGROUND). Existing law imposes these penalties on people who commit the above actions wilfully.

These penalties apply to people who perform electrical; plumbing and piping; solar; heating, piping, cooling, and sheet metal; fire protection sprinkler systems; elevator installation, repair, and maintenance; irrigation; automotive glass or flat glass; or swimming pool maintenance and repair work.

Cease Work Order

The bill requires the DCP commissioner, the applicable examining board, or both together, to issue and deliver a cease work order when:

1. he or the board finds someone performing work or allowing work to be performed without a required permit, license, or certificate and
2. the work is not part of a bona fide dispute among people in the trade, regardless of licensure.

The commissioner or board must, within 48 hours of finding the violation, issue and deliver the order to the person responsible for the

violation. If the commissioner issues the order, he must give a copy of it to the board, and vice versa. The bill also allows him and the board, separately or together, to notify municipal building officials of the order or ask them to issue one.

Under the bill, a cease work order must require all unlicensed, unpermitted, or uncertified people working at the worksite to immediately stop work and leave the site. Anyone who is issued an order may ask for a hearing before the commissioner and board. The request must be in writing, to the commissioner, within 10 days after the order is issued. The hearing must be held within 10 days after the request.

Civil Fines

The bill extends existing civil fines for performing certain unlicensed or uncertified work to people who negligently use or provide an unlicensed or uncertified person to perform work that requires a license or certification. By law, the fines are up to (1) \$1,000 for a first violation, (2) \$1,500 for a second violation, and (3) \$3,000 for violations occurring within three years of a second or subsequent violation. Improperly registered apprentices are exempt from a penalty for a first offense.

By law, the appropriate examining board or the commissioner can impose these civil penalties. The bill (1) allows them to issue the fine together and (2) specifies that a single penalty is issued for each violation.

Under existing law, if the commissioner collects a civil penalty from a violation that was reported to him by a municipal building official, he must remit half of the collected funds to the municipality. The bill expands the circumstances under which the commissioner must remit these funds to include penalties resulting from cease work orders issued by municipal building officials.

§ 4 — REGULATION APPROVAL

Under current law, the commissioner (1) must adopt the procedural

rules for hearings and proceedings before him or DCP's boards or commissions and (2) may adopt regulations for the subjects within the boards or commissions purview when the law allows for it. The bill makes the commissioner adopt the procedural rules and regulations with the boards, but not the commissions.

The bill prohibits the commissioner from adopting regulations unless the affected board or commission has approved them. Current law only provides the boards or commission with a reasonable opportunity to review and comment on the regulations.

§ 1 — REPORTING VIOLATIONS

By law, the commissioner, with help from the examining boards for certain occupations, may adopt regulations establishing practice, standards, experience, and training requirements for the occupations. This applies to electrical; heating, piping, cooling, and sheet metal; plumbing and piping; elevator installation, repair, and maintenance; fire protection sprinkler systems; and automotive glass and flat glass work.

Current law requires an examining board, or the commissioner or his agent to, after a hearing showing a violation of the occupational licensing law or regulations, report the violation to the state's attorney for the district where it occurred.

The bill (1) eliminates the agent's authority to make the report and (2) allows the board and commissioner to report the violation together. By law, the report is in addition to the penalties imposed for violating the licensing law or its regulations.

§ 3 — DCP COMPLAINTS

Dismissals

This bill eliminates the boards' or commissions' chairpersons' authority to approve dismissing complaints investigated by DCP for which no probable cause is found. It instead requires the applicable board or commission to approve the dismissal.

By law, DCP receives complaints on (1) the work and practices of

people licensed or certified by its boards or commissions and (2) unauthorized work and practices by unlicensed people. DCP screens the complaints and dismisses those that, if substantiated, would not violate the law or an applicable regulation. DCP must investigate the complaints that, if substantiated, would be a violation.

Formal Hearings

By law, the commissioner may settle a complaint if it is approved by both parties and relevant board or commission. Current law allows him to bring a complaint to the appropriate board or commission for a formal hearing if he determines that (1) there is probable cause to believe that the offense was committed and (2) the person named in the complaint was responsible.

The bill eliminates the commissioner's discretion to bring complaints before the board or commission. Under the bill, for complaints without a settlement, he must bring the complaint before the board or commission if he finds probable cause and culpability.

BACKGROUND

DCP Boards and Commissions

The following boards and commissions are within DCP:

1. Architectural Licensing Board;
2. examining boards for electrical; plumbing and piping; heating, piping, cooling, and sheet metal; elevator installation, repair, and maintenance; fire protection sprinkler systems; and automotive glass and flat glass work;
3. State Board of Television and Radio Service Examiners;
4. Commission of Pharmacy;
5. State Board of Landscape Architects;
6. State Board of Examiners for Professional Engineers and Land Surveyors;

7. Connecticut Real Estate Commission;
8. Connecticut Real Estate Appraisal Commission;
9. State Board of Examiners of Shorthand Reporters;
10. Liquor Control Commission; and
11. Home Inspection Licensing Board (CGS § 21a-6).

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 attorney's 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 13 Nay 4 (03/18/2014)