



House of Representatives

General Assembly

File No. 321

January Session, 2015

Substitute House Bill No. 6808

House of Representatives, March 31, 2015

The Committee on General Law reported through REP. BARAM of the 15th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING THE ENFORCEMENT OF CERTAIN OCCUPATIONAL LICENSING STATUTES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 20-341 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2015*):

3 (a) Any person who wilfully or negligently engages in or practices
4 the work or occupation for which a license is required by this chapter
5 or chapter 399b without having first obtained an apprentice permit or
6 a certificate and license for such work, as applicable, or who wilfully or
7 negligently employs or supplies for employment a person who does
8 not have a certificate and license for such work, or who wilfully and
9 falsely pretends to qualify to engage in or practice such work or
10 occupation, including, but not limited to, offering to perform such
11 work in any print, electronic, television or radio advertising or listing
12 when such person does not hold a license for such work as required by
13 this chapter, or who wilfully or negligently engages in or practices any
14 of the work or occupations for which a license is required by this

15 chapter after the expiration of such person's license, shall be guilty of a
16 class B misdemeanor, except that no criminal charges shall be
17 instituted against such person pursuant to this subsection unless the
18 work activity in question is reviewed by the Commissioner of
19 Consumer Protection, or the commissioner's authorized agent, and the
20 commissioner or such agent specifically determines, in writing, that
21 such work activity requires a license and is not the subject of a bona
22 fide dispute between persons engaged in any trade or craft, whether
23 licensed or unlicensed. Notwithstanding the provisions of subsection
24 (d) or (e) of section 53a-29 and subsection (d) of section 54-56e, if the
25 court determines that such person cannot fully repay any victims of
26 such person within the period of probation established in subsection
27 (d) or (e) of section 53a-29 or subsection (d) of section 54-56e, the court
28 may impose probation for a period of not more than five years. The
29 penalty provided in this subsection shall be in addition to any other
30 penalties and remedies available under this chapter or chapter 416.

31 (b) (1) Whenever any person is found in violation of the provisions
32 of this section, the appropriate examining board and the
33 Commissioner of Consumer Protection, either jointly or separately,
34 shall, within forty-eight hours, issue a cease work order to the person
35 responsible for the violation and deliver such order to such person.
36 Such order shall require that any person working at the site without
37 the required license or certificate cease work and leave the site
38 immediately. A copy of the order shall be given to the board if issued
39 by the commissioner, and to the commissioner if issued by the board.
40 The board and the commissioner, either jointly or separately, may
41 request that the local building official issue a cease work order in
42 accordance with the provisions of subsection (c) of section 29-261, or
43 may notify the local building official of the action taken by the board
44 or department.

45 (2) Any person issued a cease work order pursuant to this
46 subsection may request a hearing before the commissioner and the
47 board. Such request shall be made in writing to the commissioner not
48 more than ten days after the issuance of such order. Such hearing shall

49 be conducted in accordance with the provisions of chapter 54.

50 ~~[(b)]~~ (c) The appropriate examining board ~~[or]~~ and the
51 Commissioner of Consumer Protection, either jointly or separately,
52 may, after notice and hearing, impose a single civil penalty for each
53 violation on any person who (1) engages in or practices the work or
54 occupation for which a license or apprentice registration certificate is
55 required by this chapter, chapter 394, chapter 399b or chapter 482
56 without having first obtained such a license or certificate, or (2)
57 wilfully or negligently employs or supplies for employment a person
58 who does not have such a license or certificate or who wilfully and
59 falsely pretends to qualify to engage in or practice such work or
60 occupation, or (3) engages in or practices any of the work or
61 occupations for which a license or certificate is required by this
62 chapter, chapter 394, chapter 399b or chapter 482 after the expiration of
63 the license or certificate, or (4) violates any of the provisions of this
64 chapter, chapter 394, chapter 399b or chapter 482 or the regulations
65 adopted pursuant thereto. Such penalty shall be in an amount not
66 more than one thousand dollars for a first violation of this subsection,
67 not more than one thousand five hundred dollars for a second
68 violation of this subsection and not more than three thousand dollars
69 for each violation of this subsection occurring less than three years
70 after a second or subsequent violation of this subsection, except that
71 any individual employed as an apprentice but improperly registered
72 shall not be penalized for a first offense.

73 ~~[(c)]~~ (d) If an examining board or the Commissioner of Consumer
74 Protection imposes a civil penalty under the provisions of subsection
75 ~~[(b)]~~ (c) of this section as a result of a violation initially reported by, a
76 municipal building official in accordance with subsection (c) of section
77 29-261, the commissioner shall, not less than sixty days after collecting
78 such civil penalty, remit one-half of the amount collected to such
79 municipality.

80 ~~[(d)]~~ (e) A violation of any of the provisions of this chapter shall be
81 deemed an unfair or deceptive trade practice under subsection (a) of

82 section 42-110b.

83 [(e)] (f) This section shall not apply to any person who (1) holds a
84 license issued under this chapter, chapter 394, chapter 399b or chapter
85 482 and performs work that is incidentally, directly and immediately
86 appropriate to the performance of such person's trade where such
87 work commences at an outlet, receptacle or connection previously
88 installed by a person holding the proper license, or (2) engages in work
89 that does not require a license under this chapter, chapter 394, chapter
90 399b or chapter 482.

91 Sec. 2. Subsection (a) of section 21a-8 of the general statutes is
92 repealed and the following is substituted in lieu thereof (*Effective*
93 *October 1, 2015*):

94 (a) The Department of Consumer Protection shall have the
95 following powers and duties with regard to each board or commission
96 transferred to the Department of Consumer Protection under section
97 21a-6:

98 (1) The department shall control the allocation, disbursement and
99 budgeting of funds appropriated to the department for the operation
100 of each board or commission transferred to said department.

101 (2) The department shall employ and assign such personnel as the
102 commissioner deems necessary for the performance of each board's or
103 commission's functions.

104 (3) The department shall perform all management functions,
105 including purchasing, bookkeeping, accounting, payroll, secretarial,
106 clerical, record-keeping and routine housekeeping functions.

107 (4) The department shall conduct any necessary review, inspection
108 or investigation regarding qualifications of applicants for licenses or
109 certificates, possible violations of statutes or regulations, accreditation
110 of schools, disciplinary matters and the establishment of regulatory
111 policy, and make recommendations to the appropriate board or
112 commission. In connection with any such investigation, the

113 Commissioner of Consumer Protection, or the commissioner's
114 authorized agent, may administer oaths, issue subpoenas, compel
115 testimony and order the production of books, records and documents.
116 If any person refuses to appear, to testify or to produce any book,
117 record or document when so ordered, a judge of the Superior Court
118 may make such order as may be appropriate to aid in the enforcement
119 of this section.

120 (5) The department shall administer any examinations necessary to
121 ascertain the qualifications of applicants for licenses or certificates and
122 shall issue licenses or certificates to qualified applicants. The
123 department shall maintain rosters of licensees or registrants and
124 update such rosters annually, and may provide copies of such rosters
125 to the public for an appropriate fee.

126 (6) The department shall conduct any necessary investigation and
127 follow-up in connection with complaints regarding persons subject to
128 regulation or licensing by the board or commission.

129 (7) The department shall perform any other function necessary to
130 the effective operation of the board or commission and not specifically
131 vested by statute in the board or commission.

132 (8) The department shall receive complaints concerning the work
133 and practices of persons licensed, registered or certified by such boards
134 or commissions and shall receive complaints concerning unauthorized
135 work and practice by persons not licensed, registered or certified by
136 such boards or commissions. The department shall distribute monthly
137 a list of all complaints received within the previous month to the
138 chairperson of the appropriate board or commission. The department
139 shall screen all complaints and dismiss any in which the allegation, if
140 substantiated, would not constitute a violation of any statute or
141 regulation. The department shall distribute notice of all such
142 dismissals monthly to the chairperson of the appropriate board or
143 commission. The department shall investigate any complaint in which
144 the allegation, if substantiated, would constitute a violation of a statute
145 or regulation under its jurisdiction. In conducting the investigation, the

146 commissioner may seek the assistance of a member of the appropriate
147 board, an employee of any state agency with expertise in the area, or if
148 no such member or employee is available, a person from outside state
149 service licensed to perform the work involved in the complaint. Board
150 or commission members involved in an investigation shall not
151 participate in disciplinary proceedings resulting from such
152 investigation. The Commissioner of Consumer Protection may dismiss
153 a complaint following an investigation if the commissioner determines
154 that such complaint lacks probable cause. Notice of such dismissal
155 shall be given only after approval by the appropriate board or
156 commission. The commissioner may authorize a settlement if the
157 settlement is approved by the complainant, the practitioner, and the
158 board or commission. [The] In cases that are not dismissed and for
159 which settlement is not authorized, the commissioner [may] shall bring
160 a complaint before the appropriate board or commission for a formal
161 hearing if the commissioner determines that there is probable cause to
162 believe that the offense alleged in the complaint has been committed
163 and that the practitioner named in the complaint was responsible. The
164 commissioner, or the commissioner's authorized agent, shall have the
165 power to issue subpoenas to require the attendance of witnesses or the
166 production of records, correspondence, documents or other evidence
167 in connection with any hearing of a board or commission. All
168 dispositions and final decisions by the Department of Consumer
169 Protection after an investigation into a complaint has begun shall be
170 forwarded to the chairperson of the appropriate board or commission
171 on a monthly basis.

172 (9) The department may contract with a third party, if the
173 commissioner deems it necessary and if the appropriate board or
174 commission consents, to administer licensing examinations and
175 perform all attendant administrative functions in connection with such
176 examination and to monitor continuing professional education
177 requirements, and may require the payment of a fee to such third
178 party.

179 Sec. 3. Section 21a-9 of the general statutes is repealed and the

180 following is substituted in lieu thereof (*Effective October 1, 2015*):

181 (a) With regard to the boards and commissions within the
182 Department of Consumer Protection, the Commissioner of Consumer
183 Protection, after consulting with the boards and commissions, (1) shall
184 adopt uniform rules of procedure, consistent with chapter 54, for
185 hearings and other proceedings to be conducted by the boards or
186 commissions or by the commissioner and for the giving of notice to
187 persons affected by such proceedings, and (2) may, where authorized
188 by statute, adopt regulations regarding any subject within the
189 jurisdiction of a board or commission.

190 (b) Any rules of procedure and regulations adopted pursuant to this
191 section shall be adopted in accordance with chapter 54. No regulation
192 shall be adopted pursuant to this section until the appropriate board or
193 commission has had reasonable opportunity to review the proposed
194 regulation and to offer comments thereon.

195 (c) Each such board or commission may act in accordance with the
196 provisions of subdivision (7) of section 21a-7, and the commissioner
197 may act in accordance with the provisions of subdivision (3) of
198 subsection [(b)] (c) of section 21a-8, in the case of a practitioner who:
199 (1) Engages in fraud or material deception in order to obtain a license,
200 registration or certificate issued by the board or commission or to aid
201 another in obtaining a license, registration or certificate issued by the
202 board or commission; (2) performs work beyond the scope of the
203 license, registration or certificate issued by the board or commission;
204 (3) illegally uses or transfers a license, registration or certificate issued
205 by the board or commission; (4) performs incompetent or negligent
206 work; (5) makes false, misleading or deceptive representations to the
207 public; (6) has been subject to disciplinary action similar to that
208 specified in subdivision (7) of section 21a-7 or subdivision (3) of
209 subsection [(b)] (c) of section 21a-8 by a duly authorized professional
210 agency of the United States, any state within the United States, the
211 District of Columbia, a United States possession or territory or a
212 foreign jurisdiction; or (7) violates any provision of the general statutes

213 or any regulation established thereunder, relating to the practitioner's
214 profession or occupation.

215 (d) As used in chapters 390, 391, 392, 393, 394, 396, 400g, 400j, 482
216 and 400l:

217 (1) "Certificate" includes the whole or part of any Department of
218 Consumer Protection permit which the department issues under
219 authority of the general statutes and which (A) authorizes practice of
220 the profession by certified persons but does not prohibit the practice of
221 the profession by others, not certified, (B) prohibits a person from
222 falsely representing that such person is certified to practice the
223 profession unless the person holds a certificate issued by the
224 department, and (C) requires as a condition of certification that a
225 person submit specified credentials to the department which attest to
226 qualifications to practice the profession.

227 (2) "License" includes the whole or part of any Department of
228 Consumer Protection permit, approval, or similar form of permission
229 which the department issues under authority of the general statutes
230 and which requires (A) practice of the profession by licensed persons
231 only, (B) demonstration of competence to practice by examination or
232 other means and meeting of certain minimum standards, and (C)
233 enforcement of standards by the department or regulatory board or
234 commission.

235 (3) "Registration" includes the whole or part of any Department of
236 Consumer Protection permit which the department issues under
237 authority of the general statutes and which (A) requires persons to
238 place their names on a list maintained by the department before they
239 can engage in the practice of a specified profession or occupation, (B)
240 does not require a person to demonstrate competence by examination
241 or other means, and (C) may be revoked or suspended by the
242 commissioner for cause.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2015</i>	20-341
Sec. 2	<i>October 1, 2015</i>	21a-8(a)
Sec. 3	<i>October 1, 2015</i>	21a-9

Statement of Legislative Commissioners:

In section 1(b)(1) "permit" was deleted and "board or" was inserted before "department" for accuracy and consistency.

GL *Joint Favorable Subst. -LCO*

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 16 \$	FY 17 \$
Consumer Protection, Dept.	GF - Cost	218,360	287,813
Consumer Protection, Dept.	GF - Revenue Gain	22,500	30,000
Judicial Dept.	GF - Revenue Gain	15,000	20,000
State Comptroller - Fringe Benefits ¹	GF - Cost	77,485	103,313

Municipal Impact: None

Explanation

The bill results in a cost to the state of \$295,845 in FY 16 and \$391,126 in FY 17. Additionally the bill results in a revenue gain to the state of \$37,500 in FY 16 and \$50,000 in FY 17. The costs in FY 16 include \$211,360 in salaries, \$77,485 in fringe benefits and, \$7,000 in Other Expenses and Equipment. The costs in FY 17 include \$281,813 in salaries, \$103,313 in fringe benefits and \$6,000 in Other Expenses.

The Department of Consumer Protection (DCP) will need two Occupational Inspectors, two Paralegals and one Consumer Information Representative to carry out the requirements of the bill.

It is anticipated that making it illegal to negligently engage in certain work without the required license or employ unlicensed people will result in an estimated increase of 80 complaints requiring

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 38.65% of payroll in FY 16 and FY 17.

investigation by an Occupational Inspector with the support of a Paralegal.

Additionally, the bill will result in “Stop Work Orders”, a new responsibility for the DCP. This will require a Consumer Information Representative to process complaints and perform related work, a Paralegal to develop stop work orders and complete compliance work and an Occupational Inspector to monitor compliance.

The bill is anticipated to result in a minimal revenue gain of less than \$15,000 in FY 16 and less than \$20,000 in FY 17 to the Judicial Department by adding to the violation of contractors who engage in work without a required license. In FY 14 there were no convictions under the current statute. It is anticipated that this new provision will result in less than 15 convictions in FY 16 and 20 in FY 17.

Finally it is anticipated that fines by the DCP for engaging in certain work without the required license or employing unlicensed people will increase by \$22,500 in FY 16 and \$30,000 in FY 17.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to inflation and the number of violations.

OLR Bill Analysis

sHB 6808

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.

First, the bill makes it a crime to negligently engage in certain work without the required license or employ unlicensed people and imposes civil penalties for negligently employing them. It also makes the violations unfair or deceptive trade practices under the Connecticut Unfair Trade Practices Act (CUTPA) (see BACKGROUND).

The bill requires the DCP commissioner or appropriate examining board to issue cease work orders for certain unlicensed work. It also requires, rather than allows, the commissioner to bring certain complaints before DCP's occupational boards or commissions for formal hearings.

And the bill requires the commissioner to consult with the boards and commissions before adopting procedural rules and regulations affecting them. The law already gives the boards and commissions a reasonable opportunity to review proposed regulations and offer comments.

Lastly, the bill makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2015

PENALTIES FOR CERTAIN LICENSING VIOLATIONS

The bill adds penalties for certain licensing violations related to electrical work; plumbing and piping work; solar work; heating,

piping, cooling, and sheet metal work; fire protection sprinkler systems work; elevator installation, repair, and maintenance work; irrigation work; automotive glass or flat glass work; or swimming pool construction or maintenance and repair work.

Criminal Negligence

The bill makes it a class B misdemeanor (punishable by a fine of up to \$1,000, up to six months in prison, or both) to negligently:

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

Before instituting criminal charges, the DCP commissioner or his agent must review the work activity in question and determine (1) that performing it requires a license and (2) it is not the subject of a bona fide dispute.

The bill also allows a court to impose an extended probationary period of up to five years on anyone found guilty of negligently taking the above actions who cannot fully repay the victim within a certain period of time.

Existing law imposes these penalties on people who willfully commit these actions.

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 needs the credentials. 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. These fines apply to persons who perform the above described work as well as television and radio service dealers, electronics technicians, and well drillers.

By law, the appropriate examining board or the DCP commissioner can impose the 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 collected from negligently employing or providing unlicensed or uncertified people.

Cease Work Orders

The bill requires the DCP commissioner, the appropriate examining board, or both together, to issue and deliver a cease work order when someone pretends to be qualified to perform work, willfully or negligently performs work, or allows work to be performed without a required permit, license, or certificate for the work described above or for television and radio service, electronics service, or well drilling.

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 local building officials of the order or ask them to issue one.

Under the bill, a cease work order must require everyone working at the site without the required credentials to immediately stop work and leave the site. Anyone who is issued an order may request a hearing before the commissioner and the board. The request must be made in writing, to the commissioner, within 10 days after the order is issued. The hearing must be held in accordance with the Uniform

Administrative Procedure Act.

FORMAL HEARINGS ON COMPLAINTS

By law, DCP receives complaints on (1) the work and practices of people licensed or certified by its boards or commissions (see BACKGROUND) and (2) unauthorized work and practices by unlicensed people. The department must investigate complaints that, if substantiated, would be violations. Depending on the circumstances, the commissioner may dismiss or authorize settlement of complaints.

Current law allows the DCP commissioner to bring a complaint to the appropriate board or commission for a formal hearing if (1) the complaint is not dismissed or settled, (2) there is probable cause to believe the offense was committed, and (3) the person named in the complaint was responsible.

The bill eliminates the commissioner's discretion to bring complaints before a board or commission and instead requires him to do so under these same circumstances.

BACKGROUND

DCP Boards and Commissions

The following boards and commissions are within DCP:

1. Architectural Licensing Board;
2. examining boards for electrical work; plumbing and piping work; heating, piping, cooling, and sheet metal work; elevator installation, repair, and maintenance work; fire protection sprinkler systems work; 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).

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 (CGS § 42-110a et seq.).

COMMITTEE ACTION

General Law Committee

Joint Favorable
Yea 10 Nay 8 (03/12/2015)