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Proposed Additions to HB 5561

Connecticut General Assembly

Banking Committee

March 8, 2016

[Addition of Section 4]

Section 4. (NEW) (Effective July 1, 2016)

(1) Findings. Limits on the availability of public enforcement resources have deleterious effects on the marketplace by allowing abuses targeting consumers to persist unprosecuted. To ensure the robust enforcement of the Connecticut Unfair Trade Practices Act, sections 42-110a to 42-110q, while simultaneously minimizing the outlay of scarce State funds, this Section provides for private attorneys general to represent the State's enforcement interests in certain contexts in which the State does not have the means to enforce fully state consumer protections. To ensure that they have first-hand knowledge of the harm to the State's consumers, the persons bringing actions on behalf of the State under this Section must be harmed by the violation at issue.

(2) Civil penalties. Unless State law provides a greater amount as the civil penalty recoverable by the State for violations of the Connecticut Unfair Trade Practices Act, sections 42-110a to 42-110q, a person who commits a violation of the Act shall be subject to a civil penalty not to exceed \$5,000 per violation.

(3) Private attorney general suits:

(a) A person harmed by a violation of the Connecticut Unfair Trade Practices Act, sections 42-110a to 42-110q, may initiate on behalf of the State an action to recover civil penalties on behalf of the State and to seek injunctive, declaratory, or other equitable relief that the State would itself be entitled to seek;

(b) In initiating an action under this section, a person may allege multiple violations that have affected different consumers, as long as those violations are of a sufficiently similar kind that they can be efficiently managed in a single action;

(c) For the purpose of encouraging the enforcement of public protections, a court may award a person who initiates a claim under this section an incentive award of up to twenty-five (25) percent of the total monetary recovery if that person pursues the action to final judgment or settlement as the prevailing party, or up to ten (10) percent of the total recovery if the state intervenes in the action and pursues it to final judgment as the prevailing party, including after settlement. In deciding an appropriate incentive award, a court shall consider the complexity of the case, the resources dedicated to prosecuting the case, whether the private attorney general obtained equitable relief on behalf of the state, the extent of such relief, the importance of the case and the extent of actual damages caused by the wrongdoing to consumers; and

(d) When a private attorney general or the State prevails in an action originally brought under this section, the private attorney general and the State each shall be entitled to attorney fees and costs, as reasonable based on their participation in the action.

(4) State's opportunity to intervene and proceed with the action. A person initiating an action under this Section shall serve a copy of the complaint and a letter describing the action on the Attorney General, at which point the action shall be stayed for thirty (30) days. The State may intervene in the action and proceed with any and all claims in the action:

(a) As of right within the thirty-day stay; or

(b) For good cause, as determined by the court, after the expiration of the thirty-day stay.

(5) Discovery. Whether or not the State proceeds with the action, upon a showing by the State that certain actions of discovery by the person initiating the action would interfere with the State's investigation or prosecution of a criminal or civil matter arising out of the same facts, the court may stay such discovery for a period of not more than 60 days. Such a showing shall be conducted in camera. The court may extend the 60-day period upon a further showing in camera that the State has pursued the criminal or civil investigation or proceedings with reasonable diligence and any proposed discovery in the action will interfere with the ongoing criminal or civil investigation or proceedings.

(6) Prohibition of duplicative actions. No action may be brought by a private party acting pursuant to this Section for any violations already alleged as the basis for an action brought by the State, or by another private party pursuant to this section, and no action may be brought by the State for any violations already alleged as the basis for an action brought by a private party pursuant to this Section. Furthermore, when a person initiates an action under this section, no person other than the State may intervene or bring a related action under this section based on the facts underlying the pending action.

(7) Settlement. The court in which the action is filed shall review and approve any proposed settlement of an action brought under this section to ensure that the settlement provisions are reasonable in light of State law. The court shall also ensure that any incentive fees and attorney fees or costs included in a settlement are reasonable and that the private attorney general does not recover, as an incentive payment, more than twenty-five (25) percent of the recovery remitted to the State under the proposed settlement. The proposed settlement shall be submitted to the Attorney General at the same time that it is submitted to the court. If the Attorney General opposes the settlement and expresses such opposition by filing a motion with the Court, the Court must decline approval of the settlement.

(8) Limitations on State actions initiated by a private party.

(a) The State may dismiss any action in which it decides to intervene under Section 4 of this act notwithstanding the objections of the person who initiated the action.

(b) The State may settle any action in which it decides to intervene under Section 4 of this act notwithstanding the objections of the person who initiated the action.

(9) Res judicata. Notwithstanding any other provision of law, an action initiated by a private person under this section shall not bar that person or any other individual from filing a private action based on the same nucleus of operative facts, nor shall a prior private action based on the same nucleus of operative facts bar an action under this section.

(10) Relationship to forced arbitration. Actions under this section are prosecuted on behalf of the State and not an individual, and forced arbitration agreements between private parties do not apply to actions under this section. No contract shall waive or limit a private party's right to act as a private attorney general under this section by waiving that party's right to bring such an action in a public forum or by preventing the party from being able to bring an action alleging multiple violations committed against multiple consumers pursuant to Section 3(b) of this Title.

(11) Severability. If any provision of this section or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions or applications of the section that can be given effect without the invalid provision or application, and to this end the provisions of this section are declared to be severable.

[Amendment to Section 3(c)]

(c) There is a presumption that the unconscionable terms described in this section are not severable from the clauses in which they are situated. In determining whether this presumption has been overcome, the court may consider general principles of contract law regarding the severability of unenforceable terms, including the principle that courts should refuse to sever terms if severing unconscionable terms from the clauses in which they are situated would create an incentive for drafters of standardized form contracts to include such unconscionable terms.