
OLR Bill Analysis

sSB 193 (File 93, as amended by Senate “A” and “B”)*

AN ACT CONCERNING REVISIONS TO DEPARTMENT OF CONSUMER PROTECTION STATUTES.

SUMMARY

This bill makes various unrelated changes in the Department of Consumer Protection (DCP) statutes. It:

1. explicitly subjects bakeries, food manufacturing establishments, and food warehouses to DCP inspections (§ 1);
2. authorizes the DCP commissioner, following an inspection, to (a) impose a civil penalty of up to \$500 per violation of the laws concerning food, drug, medical device, and cosmetic facilities and (b) suspend or revoke certain facilities’ licenses or registrations (§ 1);
3. allows alcoholic liquor permittees authorized to serve alcohol for on premises consumption to change the type of entertainment they offer at any point during the year, not just at the time of renewal (§ 2);
4. establishes a \$250 fine on certain individuals who do not respond to written DCP communications concerning consumer complaints (§§ 3 & 4);
5. requires anyone placing a donation bin in a public place to include on the bin (a) the owner’s contact information and (b) information on the extent to which a nonprofit will benefit from the donation, if the bin is for a charitable purpose (§ 5);
6. deems any contract or lease for a personal emergency response system to be terminated upon the consumer’s death (§ 6);
7. makes several changes in the laws concerning companies that

offer architecture, landscape architecture, engineering, or land surveying services, including allowing engineering and land surveying companies to be owned by individuals without DCP licenses (§§ 7-9);

8. requires community association management services to have a crime insurance policy, rather than a fidelity bond (§ 10);
9. decreases, from 30 to 10 days, the time a non-resident pharmacy has to file with DCP notice of certain changes (§ 11);
10. allows the DCP commissioner or her deputy or assistants to issue citations for violations that are (a) within DCP's jurisdiction and (b) subject to infraction procedures (§ 12);
11. establishes a regulatory framework for cottage food, including licensing its operators (§§ 501-507); and
12. makes minor and technical changes.

*Senate Amendment "A" (1) adds the provisions on (a) architecture companies (§ 9); (b) community association management services (§ 10); (c) non-resident pharmacies (§ 11); and (d) DCP citations (§ 12) and (2) modifies the provisions concerning (a) a fine for failing to respond to DCP (§§ 3 & 4); (b) information posted on public donation bins (§ 5); and (c) architecture, landscape architecture, engineering, or land surveying companies (§§ 7 & 8).

*Senate Amendment "B" adds the cottage food provisions (§§ 501-507).

EFFECTIVE DATE: Upon passage, except the cottage food provisions take effect October 1, 2018 and the community association management services provision takes effect January 1, 2019.

§ 1 — ENFORCEMENT OF CERTAIN CONSUMER PROTECTION LAWS

Bakery Inspections

The bill specifically authorizes the DCP commissioner to inspect

bakeries, food manufacturing establishments, and food warehouses, and vehicles they use to transport food within the state, in order to enforce the Connecticut Food, Drug and Cosmetic (FD&C) Act. But the bill's authorization does not extend to facilities for which the licensee holds both a restaurant and bakery permit. (DCP licenses, rather than permits, bakeries.)

Enforcing Food, Drug, Medical Device, and Cosmetic Laws

If, during an inspection of a food, drug, medical device, or cosmetic factory, warehouse, or other establishment (including bakeries) ("facilities"), the DCP commissioner finds a violation of the laws governing such food and supplies, the bill authorizes her to impose a civil penalty of up to \$500 per separate violation.

Additionally, the bill authorizes her to suspend or revoke a food or cosmetic facility's license or registration. Existing law authorizes her to suspend or revoke the license of a drug or medical device facility if her inspection reveals a violation of applicable laws. The bill also allows the commissioner to suspend or revoke applicable registrations.

As is the case for license suspensions and revocations under existing law, before imposing the civil penalties or license suspensions or revocations the bill authorizes, the commissioner must provide facilities with notice and an opportunity for a hearing in accordance with the Uniform Administrative Procedure Act.

Existing laws provide various enforcement mechanisms for laws concerning food, drugs, medical devices, or cosmetics.

§ 2 — ENTERTAINMENT OFFERED BY ON-PREMISES ALCOHOLIC LIQUOR PERMITTEES

The bill allows alcoholic liquor permittees authorized to serve alcohol for on-premises consumption to change the type of entertainment they offer at any point in the year, rather than just at permit renewal. As is the case when applying for a change at renewal, under the bill, permittees must place notices in the local newspaper and affix a DCP placard on their building or some other publically visible location.

§§ 3 & 4 — FAILURE TO RESPOND TO CONSUMER COMPLAINTS

The bill specifies that DCP must process the intake of consumer complaints concerning consumer goods or services in the state, as well as any other matter in the department's jurisdiction. Existing law requires the department to maintain a toll-free telephone line for such consumer inquiries and complaints (CGS § 21a-2).

The bill authorizes DCP to (1) notify in writing a respondent against whom a complaint is received of the allegations against him or her and (2) require a response be provided to the department within 30 days. In the case of respondents that DCP does not certify, license, permit, or register (i.e., not a credential holder), failure to respond is treated like an infraction and violators may be subject to a fine of up to \$250. Under the bill, the fine may only be imposed if the department sent the notice by registered or certified mail or hand delivered it. Violators may pay the fine without having to appear in court in accordance with the mail-in procedures for infractions and certain violations.

§ 5 — PUBLIC DONATION BINS

The bill requires anyone placing a donation bin in a public place to include on the bin, in block letters at least two inches high:

1. if a nonprofit is benefiting from the donation, the percentage of the donated articles or sale proceeds that the bin owner will give to the nonprofit, and
2. the contact information for the bin's owner.

Existing law requires the bin to list additional information, including the owner's name and information on the bin's purpose.

§ 6 — TERMINATION OF PERSONAL EMERGENCY RESPONSE SYSTEM CONTRACTS

The bill deems any consumer contract or lease for a personal emergency response system to be terminated upon a consumer's death. It also deems unreasonable any of these contract's or lease's provisions that set a penalty for early termination. Under the bill, these systems are 24-hour electronic alarm systems placed in an adult's

home so that the adult can obtain immediate help in emergency situations.

§§ 7 & 8 — ARCHITECTURE, LANDSCAPE ARCHITECTURE, ENGINEERING, AND LAND SURVEYING COMPANIES

Nonrefundable Fees

The bill specifically makes the application fees to register with DCP nonrefundable when the applicant seeks to register as a corporation or limited liability company (LLC) offering (1) engineering or land surveying services or (2) any combination of architecture, landscape architecture, engineering, or land surveying services.

Company Owners

The bill also authorizes individuals who do not hold an individual engineering or land surveying license to own a corporation or LLC offering engineering or land surveying services. However, unlicensed individuals may own only up to one-third of the voting stock in a corporation or voting interests in an LLC. The law already permits such ownership arrangements for companies offering architecture services or any combination of architecture, landscape architecture, engineering, or land surveying services (CGS §§ 20-306(b)(a) & 20-298b(a)).

The bill also makes minor and conforming changes to reflect the practice of applying to DCP for registration.

§ 9 — ARCHITECTURE COMPANY LICENSE

The bill requires at least two-thirds of an architecture company's owners to be licensed architects, owning at least two-thirds of the voting stock (for corporations) or voting interests (for LLCs). (It appears this provision has no legal effect, as these requirements already exist under current law (CGS § 20-298b).)

§ 10 — COMMUNITY ASSOCIATION MANAGEMENT COMPANIES

The bill requires community association management services to have a crime insurance policy, rather than a fidelity bond (which are no longer offered) to protect the association's funds from theft by a

community association manager, a community association company, or its employees. As with the current bond requirement, the insurance requirement applies to anyone who provides association management services and has access to the association's funds.

Under current law, a community association manager must provide DCP with a certificate of each bond and every renewal or replacement before (1) he or she provides association management services that required a bond or (2) a prior bond expired. The bill instead requires managers to furnish the policy only upon the department's request.

The bill imposes current law's fidelity bond requirements on the crime insurance policy (e.g., requirements to cover maximum funds in the manager's custody and be enough to cover at least three months' assessments plus reserve funds).

§ 11 — NON-RESIDENT PHARMACY

The bill decreases, from 30 to 10 days, the time a non-resident pharmacy has to file with DCP changes in certain situations and to certain employees. It also expands the list of instances that require a report to DCP. Under the bill, a report is required for change in name, ownership, management, officers, or directors, rather than just for changes of office, corporate officer, or pharmacists as under current law.

The bill requires each report to be accompanied by a filing fee set in law, and any nonresident pharmacy that fails to provide notice within 10 days of the change must pay the late fee set in law. (Current law does not provide a filing or late fee, but SB 195, passed by both chambers, requires a \$60 filing fee for a change to officers or directors, a \$90 filing fee for a change in name, ownership, or management, and a \$50 late fee.)

§ 12 — CITATIONS

The bill allows the DCP commissioner or her deputy or assistants to issue citations for violations that are within DCP's jurisdiction and subject to infraction procedures. By law, someone who commits

certain listed violations may pay the fine by mail to the Centralized Infractions Bureau without making a court appearance.

§§ 501-507 — COTTAGE FOOD

Licensing

The bill requires all cottage food operations to be licensed annually by the DCP commissioner on a form she develops. The license must specify the food products a cottage food operation may produce. The commissioner must set the annual license fee, which must not exceed \$100.

By law, unchanged by the bill, DCP, in consultation with the Department of Public Health, may adopt regulations to allow the preparation of food in a private residential dwelling for sale for human consumption (CGS § 21a-62a).

Definitions

Under the bill, “cottage food products” means non-potentially hazardous baked goods, jams, jellies and other non-potentially hazardous foods produced by a cottage food operation. A “cottage food operation” means anyone who (1) produces cottage food products only (a) in their private residential dwelling’s home kitchen and (b) for sale directly to the consumer and (2) does not operate as a food service establishment, food retailer, distributor, or manufacturer. “Food service establishment” is any establishment in which food is stored, offered for sale, processed, or prepared, and includes the transportation of any food.

“Private residential dwelling” does not include any group or communal residential setting within any type of structure or outbuilding, shed, barn, or other similar structure.

“Home kitchen” means a kitchen designed and intended for use by a home’s residents but that is also used by a resident to produce cottage food products and that may contain one or more stoves or ovens, including a double oven, designed for residential use. “Home kitchen” does not include commercial equipment typically used for

large wholesale manufacturing.

Compliance

Under the bill, the commissioner must, before licensing and within existing resources, examine the premises of the cottage food operation to determine its compliance with the bill's cottage food provisions.

The bill requires any cottage food operation to comply with all applicable municipal laws and zoning ordinances when conducting a business from a private residential dwelling.

Water Quality

Under the bill, upon the commissioner's request, the operation must provide written verification, from a credible recognized source the commissioner decides, of compliance with all local, state, and federal laws on site wastewater systems. Any operation with a private water supply must have the supply tested before receiving a license to demonstrate that the water supply is potable. The commissioner determines the required frequency of subsequent testing.

Food Safety Training Program

The bill requires each cottage food operation, before it receives a license, to attend and complete a food safety training program that includes training in food processing and packaging. DCP must maintain on its website a list of food safety training programs the commissioner recognizes.

Limitations

The bill limits a cottage food operation's annual gross sales to \$25,000 per calendar year. If annual gross sales exceed this amount, the operation must obtain a food manufacturing establishment license or cease operations. The commissioner may request documentation to verify any operation's annual gross sales figure.

Sales

The bill requires a cottage food operation to sell its products directly to consumers (e.g., direct sales at point of production, farmers markets,

local fairs and festivals, and charitable functions). It allows advertising and sales by Internet, mail, and phone, if the operator or a designee delivers the product in person to a consumer in the state.

The bill prohibits an operation from engaging in consignment or wholesale sales and selling at (1) grocery stores, (2) restaurants, (3) long-term care facilities, (4) group homes, (5) day care facilities, and (6) schools. Additionally, operations may not operate as a food service establishment, retail establishment that sells food, a food manufacturing establishment, or food warehouse.

The bill limits the types of food an operation may produce to those specifically listed on its license, which must be displayed at every location where the products are sold.

Inspection

The bill allows the DCP commissioner to inspect a cottage food operation at any time to ensure compliance with the bill's cottage food provisions. The bill explicitly states that it does not prohibit the local health director or his or her duly authorized agent from investigating the permitted area of a cottage food operation in response to a foodborne illness outbreak, consumer complaint, or other public health emergency.

Production

Under the bill, a cottage food operation may produce food items that are not potentially hazardous. Operations must not produce potentially hazardous food items and food items that present a food safety risk, such as acidified foods, low acid canned foods, garlic in oil, fresh fruit or vegetable juices, and beverages.

Prepackaged Foods

The bill requires operations that sell prepackaged products to include an affixed label that contains the following information in English:

1. the cottage food operation's name and address;

2. the product's common or usual name;
3. the product's ingredients, in descending order of predominance by weight or volume;
4. allergen information, as specified by federal labeling requirements, such as milk, eggs, fish, crustacean shellfish, tree nuts, peanuts, wheat, and soybeans; and
5. the following statement printed in at least 10-point type in a clear and conspicuous manner that provides contrast to the background label: "Made in a Cottage Food Operation that is not Subject to Routine Government Food Safety Inspection."

Prohibitions and Requirements

The bill prohibits:

1. any person, other than the one licensed to produce cottage food products or those under his or her direct supervision, to process, prepare, package, or handle any cottage food products;
2. the preparation, packaging, or handling of cottage food products in the home kitchen while doing other domestic activities such as family meal preparation, clothes washing or ironing, kitchen cleaning, or guest entertainment; and
3. pets, infants, or children under age 12 from being in the kitchen during the preparation, packaging, or handling of any cottage food products.

The bill requires:

1. all food contact surfaces, equipment, and utensils used to prepare, package, or handle cottage food products to be washed, rinsed, and sanitized before each use;
2. all food preparation and food and equipment storage areas to be maintained free of rodents and insects; and

3. everyone involved in preparing and packaging cottage food products to (a) not be ill while working in the home kitchen, (b) wash their hands before preparing or packaging food, and (c) use single-service gloves, bakery papers, tongs, or other utensils to avoid bare hand contact with ready-to-eat foods.

Enforcement

The bill allows the commissioner to suspend or revoke a cottage food operation license for any violation of the bill's cottage food provisions, after a hearing held in accordance to the UAPA. An operation license may be summarily suspended pending such a hearing if the commissioner has reason to believe that the public health, safety, or welfare requires emergency action.

Upon issuing a summary suspension, the commissioner must schedule a hearing to determine whether to reinstate the operation's license. After the hearing, the commissioner must either void the suspension or revoke the license. Any person or business entity whose license was revoked is not permitted to apply for a new license for at least one year from the revocation date.

Under the bill, the applicant must pay the cost of any inspections necessary to determine whether to grant a new license to an applicant whose license was revoked. The commissioner determines the rate. The commissioner may refuse to grant any cottage food operation license if she finds that the applicant has a pattern of noncompliance with the bill's cottage food provisions. Prima facie evidence of a pattern of noncompliance is established if the applicant has operated, controlled, or managed two or more cottage food operations for which such a license has been revoked.

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute

Yea 16 Nay 1 (03/15/2018)