

OFFICE OF LEGISLATIVE RESEARCH
PUBLIC ACT SUMMARY



PA 18-141—sSB 193
General Law Committee

**AN ACT CONCERNING REVISIONS TO DEPARTMENT OF
CONSUMER PROTECTION STATUTES**

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§ 1 — ENFORCEMENT OF FOOD, DRUG, MEDICAL DEVICE, AND COSMETIC LAWS

Explicitly subjects bakeries, food manufacturing establishments, and food warehouses to DCP inspections; authorizes the DCP commissioner to impose a civil penalty for violations of laws concerning food, drug, medical device, and cosmetic facilities and suspend or revoke certain facilities' licenses or registrations

Inspections

The act specifically authorizes the Department of Consumer Protection (DCP) commissioner to inspect bakeries, food manufacturing establishments, and food warehouses, as well as vehicles they use to transport food within the state, in order to enforce the Connecticut Food, Drug and Cosmetic (FD&C) Act. But this 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 act authorizes her to impose a civil penalty of up to \$500 per separate violation.

Additionally, the act specifically authorizes the commissioner 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 act 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 act 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.

EFFECTIVE DATE: Upon passage

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

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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

The act allows alcoholic liquor permittees authorized to serve alcohol for on-premises consumption to apply 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 act, permittees must place notices in the local newspaper and affix a DCP placard on their building or some other publicly visible location.

EFFECTIVE DATE: Upon passage

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

Establishes a \$250 fine on certain individuals who do not respond to written DCP communications concerning consumer complaints

The act 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 act 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 act, 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.

EFFECTIVE DATE: Upon passage

§ 5 — PUBLIC DONATION BINS

Adds to the information that must be listed on donation bins in public places

The act 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.

EFFECTIVE DATE: Upon passage

§ 6 — TERMINATION OF PERSONAL EMERGENCY RESPONSE SYSTEM CONTRACTS OR LEASES

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Deems any contract or lease for a personal emergency response system to be terminated upon the consumer's death

The act deems any consumer contract or lease for a personal emergency response system terminated upon the consumer's death. It also deems as unreasonable contract or lease provisions that set a penalty for early termination. Under the act, 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.
EFFECTIVE DATE: Upon passage

§§ 7-9 — ARCHITECTURE, LANDSCAPE ARCHITECTURE, ENGINEERING, AND LAND SURVEYING COMPANIES

Makes 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

Nonrefundable Fees (§§ 7 & 8)

The act specifically makes DCP's application fees nonrefundable when an 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.

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

Company Owners (§§ 7 & 9)

The act also authorizes individuals who do not hold an individual architecture, engineering, or land surveying license to own a corporation or LLC offering architecture, 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. (With regard to architects, it appears that the act has no legal effect, as these requirements exist in CGS § 20-298b(a).)

EFFECTIVE DATE: Upon passage

§ 10 — COMMUNITY ASSOCIATION MANAGEMENT COMPANIES

Requires community association management services to have an insurance policy, rather than a fidelity bond

The act requires individuals who provide community association management services to have a commercially-available insurance policy, rather than a fidelity bond, to protect the association's funds from theft by a community association manager, a community association company, or its employees. As with the prior bond requirement, the insurance requirement applies to anyone who provides association management services and controls or has access to the association's funds.

Under prior law, a community association manager had to provide DCP with a certificate of each bond and every renewal or replacement before (1) he or she

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provided association management services that required a bond or (2) a prior bond expired. The act instead requires managers to furnish the policy only upon the department's request.

Under the act, the same requirements that applied to fidelity bonds apply to insurance (e.g., minimum coverage amount).

EFFECTIVE DATE: January 1, 2019

§ 11 — NON-RESIDENT PHARMACY

Decreases the time a non-resident pharmacy has to file with DCP notice of certain changes; expands the circumstances under which such notice must be given

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

The act 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. (Prior law did not specify a filing or late fee, but beginning January 1, 2019, PA 18-16 establishes 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. Presumably, no fees apply until PA 18-16 takes effect.)

EFFECTIVE DATE: Upon passage

§ 12 — CITATIONS

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

The act 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.

EFFECTIVE DATE: Upon passage

§§ 13-19 — COTTAGE FOOD LICENSING

Establishes an annual licensure program for cottage food operations

Licensing

The act requires DCP to annually license all cottage food operations. Applicants must submit an application form the DCP commissioner develops and pay a license fee the commissioner sets, which cannot exceed \$100. The license must specify the food products the cottage food operation may produce.

Under the act, the commissioner must, before licensing and within existing

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resources, examine the premises of the cottage food operation to determine its compliance with the act's cottage food provisions.

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

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

Definitions

Under the act, "cottage food products" means non-potentially hazardous baked goods, jams, jellies, and other non-potentially hazardous foods produced by a cottage food operation. Products are "potentially hazardous food" if they require time and temperature control for safety to limit pathogenic microorganism growth or toxin formation.

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 (e.g., restaurant or grocery store), food retailer, distributor, or manufacturer. "Private residential dwelling" includes only owner- or resident-occupied dwellings. It 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. It 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.

Local Regulation

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

Water and Wastewater Systems

Under the act, upon the commissioner's request, a cottage food operation must provide written verification of compliance with all local, state, and federal laws concerning on-site wastewater systems from a source the commissioner recognizes as credible.

Any operation with a private water supply must have the supply tested before receiving a license, to demonstrate that the water is potable. The commissioner determines the required frequency of subsequent testing.

Food Safety Training Program

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The act 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 that the commissioner recognizes.

Gross Sales Limitation

The act limits a cottage food operation's annual gross sales to \$25,000 per calendar year. If 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 act 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 organization 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 act prohibits an operation from engaging in consignment or wholesale sales and from selling from a (1) grocery store, (2) restaurant, (3) long-term care facility, (4) group home, (5) day care facility, or (6) school. Additionally, the act specifies that operations may not operate as a food service establishment, retail establishment that sells food, a food manufacturing establishment, or food warehouse.

Inspection

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

Prohibited Foods

Under the act, a cottage food operation may produce food items that are not potentially hazardous. Operations must not produce 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 Food Labels

The act 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;

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4. allergen information, as specified by federal labeling requirements, including information on 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.”

General Rules for Food Production

The act prohibits:

1. any person, other than the one licensed to produce cottage food products or those under his or her direct supervision, from processing, preparing, packaging, or handling any cottage food products;
2. the preparation, packaging, or handling of cottage food products in the home kitchen while other domestic activities, such as family meal preparation, clothes washing or ironing, kitchen cleaning, or guest entertainment, are occurring; 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 act 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 prevent bare hand contact with ready-to-eat foods.

Enforcement

The act allows the commissioner to suspend or revoke a cottage food operation’s license for any violation of the act’s cottage food provisions, after a hearing is held in accordance with the Uniform Administrative Procedure Act.

A 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 after the revocation date. Under the act, the applicant whose license was revoked must pay the cost, at a rate the commissioner determines, of any inspections necessary to determine whether to grant a new license.

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Pattern of Noncompliance

The commissioner may refuse to grant a license if she finds that the applicant has a pattern of noncompliance with the act'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 a license has been revoked.

EFFECTIVE DATE: October 1, 2018