



Senate

General Assembly

File No. 135

February Session, 2024

Substitute Senate Bill No. 121

Senate, March 27, 2024

The Committee on Banking reported through SEN. MILLER of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE ATTORNEY GENERAL, THE BANKING COMMISSIONER AND THE DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT.

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

1 Section 1. Section 3-129e of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2024*):

3 (a) As used in this section:

4 (1) "Bank" has the same meaning as provided in section 36a-2;

5 (2) "Commissioner" means the Banking Commissioner;

6 (3) "Confidential material" means documentary material, responses
7 to interrogatories or written transcripts of oral testimony, or copies
8 thereof, or other information produced pursuant to a subpoena issued
9 under subsection (c) of this section;

10 (4) "Documentary material" includes, but is not limited to, any

11 information in a written, recorded or electronic form;

12 (5) "Federal savings association" has the same meaning as provided
13 in 12 USC 1462, as amended from time to time;

14 (6) "Freedom of Information Act" has the same meaning as provided
15 in section 1-200;

16 (7) "National bank" has the same meaning as provided in 12 USC 25b,
17 as amended from time to time;

18 (8) "Out-of-state bank" has the same meaning as provided in section
19 36a-2; and

20 (9) "Person" means an individual, a corporation, a limited liability
21 company, a partnership, a limited partnership, a limited liability
22 partnership, an association, a joint-stock company, an unincorporated
23 organization, a federal, state or municipal government or agency, an
24 agency of a political subdivision of a federal, state or municipal
25 government or any other legal entity.

26 (b) The Attorney General may bring a civil action in any court of
27 competent jurisdiction to enforce any provision of the Dodd-Frank Wall
28 Street Reform and Consumer Protection Act, [Public Law] P.L. 111-203,
29 as amended from time to time, that a state attorney general is authorized
30 by said act to enforce and to seek any relief that a state attorney general
31 is authorized by said act to seek.

32 (c) (1) (A) Whenever during the course of an investigation the
33 Attorney General has reason to believe that any person has violated any
34 provision of the Dodd-Frank Wall Street Reform and Consumer
35 Protection Act, P.L. 111-203, as amended from time to time, that a state
36 attorney general is authorized by said act to enforce, within this state,
37 the Attorney General may, prior to instituting any action or proceeding
38 against such person, issue in writing and cause to be served upon any
39 person in or outside the state, by subpoena or subpoena duces tecum, a
40 demand requiring such person to (i) submit to the Attorney General any
41 documentary material, (ii) appear before the Attorney General and give

42 testimony in or outside the state, or (iii) respond to written
43 interrogatories as to any matters relevant to the scope of the alleged
44 violation.

45 (B) (i) For any subpoena the Attorney General intends to issue under
46 this subsection to any person within the jurisdiction of the commissioner
47 or against whom the commissioner is authorized to take an enforcement
48 action, the Attorney General shall, allowing for as much time in advance
49 of the issuance of such subpoena as practicable under the circumstances,
50 coordinate with the commissioner and submit to the commissioner a
51 draft of such subpoena.

52 (ii) The commissioner shall, not later than ten business days after
53 receiving such draft subpoena, approve such draft subpoena or request
54 an opportunity to meet and confer with the Attorney General regarding
55 any material concern about such draft subpoena which is related to an
56 examination, investigation, administrative proceeding or supervisory or
57 regulatory matter within the commissioner's authority. If the
58 commissioner approves such draft subpoena, or, after ten business days,
59 the commissioner does not approve such draft subpoena or request an
60 opportunity to meet and confer with the Attorney General, the Attorney
61 General may issue such subpoena in accordance with this subsection. If
62 the commissioner requests, not later than ten business days after
63 receiving such draft subpoena, an opportunity to meet and confer with
64 the Attorney General, the commissioner and the Attorney General, or
65 their designees, shall meet and confer not later than five business days
66 after the Attorney General receives such request. The Attorney General
67 and the commissioner shall make their best efforts to address such
68 material concern and reach an agreement regarding such draft
69 subpoena and shall not unreasonably withhold such agreement.

70 (iii) The Attorney General shall, in the case of exigent circumstances,
71 submit to the commissioner such draft subpoena and a written
72 description of such exigent circumstances. The commissioner shall, not
73 later than two business days after receiving such draft subpoena,
74 approve such draft subpoena or request an opportunity to meet and

75 confer with the Attorney General regarding any material concern about
76 such draft subpoena which is related to an examination, investigation,
77 administrative proceeding or supervisory or regulatory matter within
78 the commissioner's authority. If the commissioner approves such draft
79 subpoena, or, after two business days, the commissioner does not
80 approve such draft subpoena or request an opportunity to meet and
81 confer with the Attorney General, the Attorney General may issue such
82 subpoena in accordance with this subsection. If the commissioner
83 requests, not later than two business days after receiving such draft
84 subpoena, an opportunity to meet and confer with the Attorney
85 General, the commissioner and the Attorney General, or their designees,
86 shall meet and confer not later than two business days after the Attorney
87 General receives such request. The Attorney General and the
88 commissioner shall make their best efforts to address such material
89 concern and reach an agreement regarding such draft subpoena and
90 shall not unreasonably withhold such agreement.

91 (C) (i) For any subpoena issued under this subsection to a bank or
92 out-of-state bank, the Attorney General and such bank or out-of-state
93 bank shall, promptly after any such subpoena is served, confer in good
94 faith about the matters for examination as set forth in such subpoena.

95 (ii) Such bank or out-of-state bank shall designate one or more
96 officers, directors, managing agents or other individuals who consent to
97 testify on behalf of such bank or out-of-state bank, and may determine
98 the matters on which each such individual shall testify. The individuals
99 designated by such bank or out-of-state bank shall testify about
100 information known or reasonably available to such bank or out-of-state
101 bank.

102 (iii) In any such subpoena, the Attorney General shall, in addition to
103 satisfying any applicable requirements of subdivision (2) of this
104 subsection, describe with reasonable particularity the matters for
105 examination pursuant to such subpoena and advise the bank or out-of-
106 state bank of such bank's or out-of-state bank's duty pursuant to this
107 subparagraph to confer with the Attorney General and to designate

108 individuals who shall testify.

109 (iv) The provisions of this subparagraph shall not preclude any other
110 procedure allowed under this subsection.

111 (2) Any subpoena for documentary material issued under this
112 subsection shall (A) state the nature of the alleged violation, (B) describe
113 the class or classes of documentary material to be produced thereunder
114 with such definiteness and certainty as to be accurately defined, and (C)
115 prescribe a date that would allow a reasonable time to respond. All
116 testimony taken in accordance with subparagraph (A)(ii) of subdivision
117 (1) of this subsection shall be under oath and a written transcript shall
118 be made of the same, a copy of which shall be furnished to the
119 individual appearing, and shall not be available for public disclosure.
120 All written interrogatories shall prescribe a return date that would allow
121 a reasonable time to respond, which responses shall be under oath and
122 not be available for public disclosure. No subpoena issued under this
123 subsection shall require the submission of that portion of any
124 documentary material, testimony or responses to interrogatories that
125 would be privileged or precluded from disclosure if demanded in a
126 grand jury investigation.

127 (3) Service of subpoenas ad testificandum, subpoenas duces tecum,
128 notices of deposition and written interrogatories, as provided in this
129 subsection, may be made (A) by any proper officer by personal service
130 or service at the usual place of abode, or (B) if service cannot with
131 reasonable diligence be effected under subparagraph (A) of this
132 subdivision, by any proper officer or other person lawfully empowered
133 to make service by registered or certified mail, return receipt requested,
134 a duly executed copy thereof addressed to the person to be served at
135 such person's principal place of business in this state or at the place of
136 such person's registered agent in this state, or, if such person has no
137 principal place of business in this state or registered agent in this state,
138 at such person's principal office or such person's usual place of abode.

139 (4) All documentary material and responses to interrogatories
140 furnished to, and all transcripts of testimony taken by, the Attorney

141 General pursuant to a subpoena issued under this subsection or
142 voluntarily, and all information obtained, collected or prepared in
143 connection with an investigation conducted pursuant to this subsection,
144 including the identity of the person furnishing such documentary
145 material, responses or transcripts, shall be held in the custody of the
146 Attorney General, and shall not be available to the public or be subject
147 to inspection or disclosure under the Freedom of Information Act. Any
148 documentary material furnished to the Attorney General shall be
149 returned to the person that furnished such documentary material, or
150 erased if such documentary material was furnished in electronic format,
151 upon the termination of the Attorney General's investigation or final
152 determination of any action or proceeding commenced thereunder.
153 Except as prohibited by applicable court order, nothing in this
154 subsection shall prohibit a person upon whom a subpoena has been
155 served from disclosing the existence of such subpoena or any
156 information such person furnishes in response to such subpoena.

157 (5) Notwithstanding the prohibition against public disclosure of
158 documentary material and other information provided in this
159 subsection, any confidential material may be used by the Attorney
160 General in connection with the taking of oral testimony conducted
161 pursuant to this subsection when (A) the Attorney General reasonably
162 determines that it is necessary to disclose such confidential material to
163 a person providing oral testimony in order to adduce evidence of a
164 suspected violation of a provision of the Dodd-Frank Wall Street Reform
165 and Consumer Protection Act, P.L. 111-203, as amended from time to
166 time, that a state attorney general is authorized by said act to enforce,
167 and (B) the Attorney General reasonably believes that the person
168 providing any such oral testimony (i) is an author or recipient of such
169 confidential material, (ii) has read such confidential material, or (iii) is
170 otherwise aware of the substance of such confidential material. No copy
171 or original of the confidential material described or shown to a person
172 providing oral testimony pursuant to this subsection shall be retained
173 by such person.

174 (6) The Attorney General may, without waiving any privilege,

175 disclose any confidential material for any appropriate supervisory,
176 governmental, law enforcement or other public purpose, including, but
177 not limited to, a civil action brought pursuant to subsection (b) of this
178 section, and may cooperate with officials of the federal government, the
179 state and other states by, among other things, sharing and disclosing
180 information and evidence obtained pursuant to a subpoena issued
181 under this subsection. No such disclosure or sharing shall be made
182 unless (A) the Attorney General determines that such disclosure or
183 sharing may be made in compliance with any applicable state or federal
184 laws, regulations or rules of civil procedure that govern the right of such
185 officials of the federal government, the state and other states to access
186 such information and evidence, and (B) such disclosure or sharing is
187 made under safeguards designed to prevent further dissemination of
188 such confidential material. In any proceeding before a court, the court
189 may issue a protective order in appropriate circumstances to protect the
190 confidentiality of any such confidential material and order that any such
191 confidential material on file with the court or filed in connection with
192 the court proceeding be sealed, and that the public be excluded from
193 any portion of the proceeding at which any such confidential material is
194 disclosed.

195 (7) In the event any person refuses to comply with, or otherwise fails
196 to comply with, a subpoena served in accordance with the provisions of
197 this subsection, the Attorney General may apply to the superior court
198 for the judicial district of Hartford for an order (A) compelling such
199 person to comply with such subpoena, which court may, upon notice to
200 such person, issue such order, which shall be served upon such person,
201 and (B) requiring such person to pay to the state a civil penalty in an
202 amount not to exceed ten thousand dollars, which court may, after
203 notice to such person and a hearing thereon, issue such order.

204 (8) (A) For any subpoena issued under this subsection, the person
205 upon whom service of such subpoena was made may file a motion to
206 quash such subpoena in the superior court for the judicial district where
207 such person resides or maintains an office. Notwithstanding any
208 provision of the general statutes, no fees or costs shall be assessed for

209 the filing of such motion. The person filing the motion to quash shall be
210 designated as the plaintiff and the Attorney General shall be designated
211 as the defendant. Such motion to quash shall be expeditiously assigned
212 and heard by the court. The date and time of such hearing shall be
213 established by the court. The court shall give notice to the parties of such
214 hearing.

215 (B) Upon the filing of such motion to quash, any party to the
216 proceeding regarding such motion to quash may file a motion pursuant
217 to section 11-20A of the Connecticut Practice Book, as amended from
218 time to time, to seal or limit the disclosure of files, affidavits, documents
219 or other materials on file or lodged with the court or in connection with
220 a court proceeding. The court shall hold a hearing on such motion filed
221 pursuant to section 11-20A of the Connecticut Practice Book, as
222 amended from time to time.

223 (C) The court may quash or modify any subpoena issued pursuant to
224 this subsection for any just cause, including, but not limited to, the
225 following grounds: (i) The information sought by such subpoena is
226 plainly irrelevant to the Attorney General's investigation; (ii) the
227 information sought by such subpoena is protected by the attorney-client
228 privilege or a statutory or constitutional privilege; (iii) the production of
229 property sought by such subpoena would be unreasonable or
230 oppressive; or (iv) the property sought by such subpoena constitutes
231 attorney work product.

232 (9) Notwithstanding any provision of this subsection, the Attorney
233 General shall not exercise visitorial powers, including, but not limited
234 to, by issuing a subpoena under this subsection, with respect to a
235 national bank or federal savings association except in a manner
236 consistent with federal law, including, but not limited to, 12 USC 25b(i),
237 as amended from time to time.

238 (d) Nothing in this section shall be construed to limit the authority of
239 the commissioner to enforce the Dodd-Frank Wall Street Reform and
240 Consumer Protection Act, P.L. 111-203, as amended from time to time,
241 or any other state or federal law or regulation.

This act shall take effect as follows and shall amend the following sections:		
Section 1	October 1, 2024	3-129e

Statement of Legislative Commissioners:

In Subsecs. (c)(1)(B)(ii) and (c)(1)(B)(iii), "an examination, an investigation, an administrative proceeding or a supervisory or regulatory matter" was changed to "an examination, investigation, administrative proceeding or supervisory or regulatory matter" for consistency with standard drafting conventions; in Subsec. (c)(1)(C)(iii), "subdivision (3)" was changed to "subdivision (2)" for accuracy; Subsec. (c)(5) was divided into subparagraphs for clarity; and Subsecs. (c)(5)(A) to (c)(5)(C), inclusive, were redesignated as Subsecs. (c)(5)(B)(i) to (c)(5)(B)(iii), inclusive, for clarity.

BA *Joint Favorable Subst.*

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: None

Municipal Impact: None

Explanation

Expanding the Attorney General's pre-trial investigative authority in certain types of cases has no fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sSB 121*****AN ACT CONCERNING THE ATTORNEY GENERAL, THE BANKING COMMISSIONER AND THE DODD-FRANK WALL STREET REFORM AND CONSUMER PROTECTION ACT.*****SUMMARY**

This bill expands the attorney general's pre-trial investigative authority to enforce the federal Dodd-Frank Wall Street Reform and Consumer Protection Act (Dodd-Frank Act) by, among other things, authorizing him to issue subpoenas for documentary material, testimony, or responses to written interrogatories. It generally makes information he collects under subpoenas confidential and specifies when and to whom it may be disclosed. The bill also allows him to apply to Hartford Superior Court to enforce a subpoena, including requesting the court impose a civil penalty of up to \$10,000.

Under existing law, the attorney general may bring a civil action in a court of competent jurisdiction to enforce the provisions of the Dodd-Frank Act that state attorneys general are authorized to enforce (e.g., Title X of the act, a.k.a. the Consumer Financial Protection Act of 2010). He may also seek any relief that the Dodd-Frank Act authorizes state attorneys general to seek.

The bill states that nothing in it limits the banking commissioner's authority to enforce the Dodd-Frank Act or any other state or federal law or regulation. It relatedly requires the attorney general to coordinate subpoenas with him and sets out several procedures on this process.

EFFECTIVE DATE: October 1, 2024

SUBPOENA POWER***Scope of Power***

The bill generally allows the attorney general, during an investigation, to subpoena any person in or outside the state if he has

reason to believe the person violated the provisions of the Dodd-Frank Act that he is authorized to enforce under existing law within Connecticut. Under the bill, a “person” is an individual or any other legal entity (e.g., a corporation, limited liability or joint-stock company, partnership, association, or government agency).

Regardless of this authority, the bill restricts the attorney general from exercising visitorial powers, including issuing a subpoena under the bill, against a national bank or federal savings association unless it is done in a way that is consistent with federal law. (Federal regulations generally restrict state officials from exercising visitorial powers over a national bank or federal savings association except in limited circumstances authorized by federal law. They generally describe these powers as including the power to examine the entity, inspect its books and records, and regulate and supervise its activities. The regulations also specify that authorized enforcement actions brought by a state attorney general is not an exercise of visitorial powers (12 C.F.R. §§ 7.4000 & 7.4010).) Under the bill, a “national bank” is any bank organized under the laws of the United States and any federal branch established according to the International Banking Act of 1978 (12 U.S.C. § 25b). Additionally, a “federal savings association” is a federal savings association or savings bank chartered under federal law (12 U.S.C. § 1462).

Procedures for Issuing

General. Before starting an action or proceeding against a person, the attorney general may specifically serve a demand, in writing and by subpoena, for him or her to:

1. submit “documentary material” (which includes written, recorded, or electronic information);
2. appear before the attorney general and testify in or outside the state; or
3. respond to written interrogatories on relevant matters within the scope of an alleged violation.

The bill requires that subpoenas for documentary material state:

1. the nature of the alleged violation;
2. the types of documentary material to be produced, described specifically enough to accurately identify them; and
3. a date that allows a reasonable time to respond.

Similarly, the bill requires that all written interrogatories have a return date that allows a reasonable time to respond.

Subpoenas issued under the bill cannot require anything that would be privileged or precluded from disclosure if demanded in a grand jury investigation.

Additionally, for subpoenas issued to a bank or out-of-state bank, the attorney general must describe the matters for examination in reasonable detail and advise the bank or out-of-state bank of its duty under the bill to confer with the attorney general and to designate individuals who will testify (see below). Under the bill, a "bank" is a (1) Connecticut-chartered or -organized bank and trust company, savings bank, or savings and loan association, or (2) national banking association, federal savings bank, or federal savings and loan association that has its principal offices in Connecticut. An "out-of-state bank" is any institution that engages in the business of banking other than a "bank" or a Connecticut, federal, or out-of-state credit union (CGS § 36a-2).

Procedures When Banking Department Has Jurisdiction. The bill requires the attorney general to coordinate with the banking commissioner whenever he intends to issue a subpoena to any person within the commissioner's jurisdiction or against whom the commissioner is authorized to take enforcement action. The attorney general must also submit a draft of the subpoena to the commissioner before issuing it, allowing for as much time as practicable under the circumstances.

Under general circumstances, the commissioner must, within 10

business days after receiving a draft subpoena, either approve it, or, if he has material concerns about it, ask to meet with the attorney general to discuss them. The bill requires these concerns to be related to an examination, investigation, administrative proceeding, or supervisory or regulatory matter within the commissioner's authority.

After the commissioner approves the draft subpoena, or, if the commissioner does not approve it or request a meeting with the attorney general, 10 business days after the commissioner received the subpoena, the attorney general may issue the subpoena. If the commissioner requests a meeting within the 10-business-day period, then he and the attorney general, or their designees, must hold a meeting within five business days after the attorney general receives the request. The bill requires both the attorney general and the commissioner to make their best efforts to address the material concerns and reach an agreement on the draft subpoena and to not unreasonably withhold an agreement.

The bill sets shorter time periods to respond and meet in the case of exigent circumstances. Specifically, the commissioner has two business days initially after receiving a draft subpoena rather than 10, and, if a meeting is requested, it must be held within two business days after receiving the request rather than five. To start this accelerated process, the attorney general must submit a written description of the exigent circumstances with the draft subpoena.

Servicing

Under the bill, subpoenas, notices of deposition, and written interrogatories may be served by any proper officer on the person or at his or her usual residence. However, if this cannot be done after reasonable diligence, then service may be made by any proper officer or other person lawfully empowered to make service by registered or certified mail, return receipt requested, with a copy addressed to the person to be served at his or her (1) principal place of business in Connecticut, (2) in-state registered agent's place, or (3) usual residence or principal office when he or she does not have such a principal place of business or agent.

Procedures After Servicing

Promptly after a subpoena is served on a “bank” or “out-of-state bank” (see above), the bill requires the attorney general and the bank served to confer in good faith about the examination matters set out in the subpoena. Additionally, the bank must designate at least one officer, director, managing agent, or other individual who consents to testify on the bank’s behalf, and may determine the matters on which each individual will testify. Designated individuals must testify about information known or reasonably available to the bank. (The bill expressly states that these provisions will not preclude any other procedure allowed under the bill.)

For all subpoenas under the bill, all testimony taken during a subpoenaed appearance before the attorney general and all written interrogatory responses provided must be under oath and not be publicly disclosed. A written transcript must be made of the testimony, with a copy given to the individual testifying.

The bill requires that the following information be held in the attorney general’s custody and not be disclosed to the public or subject to inspection or disclosure under the state’s Freedom of Information Act:

1. the identity of individuals who submit documentary material, responses, or testimony to the attorney general and what they submit, whether they do so in response to a subpoena issued under the bill or voluntarily, and
2. all information (e.g., interrogatories and testimony transcripts) the attorney general obtains, collects, or prepares in connection with a Dodd-Frank Act investigation.

Under the bill, documentary material that is given must be returned, or erased if it is electronic, when the investigation ends or on the final determination of an action or proceeding. The bill allows a person who is served a subpoena to disclose its existence and any information he or she provides in response to it, unless prohibited by court order.

Use and Disclosure of Confidential Information

The bill allows the attorney general to disclose “confidential material” (i.e., original or copies of documentary material, interrogatory responses, or written transcripts of oral testimony or other information produced under a subpoena) to a person orally testifying in a Dodd-Frank Act investigation when he reasonably:

1. determines its use is necessary to bring out evidence of a suspected Dodd-Frank Act violation that he is authorized by law to enforce, and
2. believes the person testifying (a) is an author or recipient of the confidential material or (b) has read it or is aware of its substance.

The bill prohibits the person testifying from keeping any of the confidential material.

The bill further allows the attorney general, under certain conditions, to disclose any confidential material without waiving any privilege for any appropriate supervisory, governmental, law enforcement, or other public purpose, including in a civil action to enforce the Dodd-Frank Act. The attorney general may also cooperate with federal or state officials (including officials from other states), such as by sharing and disclosing information and evidence he obtains. However, this disclosure or sharing of confidential material may be done only if (1) the attorney general determines that doing so will comply with applicable state or federal laws, regulations, or civil procedure rules that govern the right of federal and state government officials to access the information and evidence and (2) it is done under safeguards designed to prevent its further distribution. In any court proceeding, the bill allows the court to issue a protective order in appropriate circumstances to protect the material’s confidentiality, order it sealed, and exclude the public from any portion of the proceeding at which the material is disclosed.

Compliance

If a person refuses or otherwise fails to comply with a subpoena, the attorney general may apply to Hartford Superior Court for an order (1)

requiring compliance, after a notice and serving the order on their person, or (2) imposing a civil penalty of up to \$10,000, after notice and hearing.

Quashing

The bill allows any person who is served a subpoena issued under the bill to file a motion to quash it in the superior court for the judicial district where the person resides or maintains an office. No fees or costs may be assessed for the filing and the motion must be expeditiously assigned and heard by the court. The person filing the motion must be designated as the plaintiff and the attorney general as the defendant. The court must set the date and time for the hearing and notify the parties about it.

Upon the filing of motion to quash, any party to the proceeding may file a motion to seal or limit the disclosure of files, affidavits, documents, or other materials on file or lodged with the court or in connection with a court proceeding. The court must hold a hearing on this motion according to the Connecticut Practice Book.

The bill authorizes the court to quash or modify any subpoena for any just cause, including because the:

1. information sought by the subpoena is plainly irrelevant to the attorney general's investigation,
2. information sought by the subpoena is protected by attorney-client privilege or a statutory or constitutional privilege,
3. production of property sought by the subpoena would be unreasonable or oppressive, or
4. property sought by the subpoena constitutes attorney work product.

COMMITTEE ACTION

Banking Committee

Joint Favorable Substitute

Yea 9 Nay 3 (03/12/2024)