
OLR Bill Analysis

sHB 5236

AN ACT CONCERNING THE DEPARTMENT OF CONSUMER PROTECTION'S RECOMMENDATIONS REGARDING CONSUMER PROTECTION AND PROFESSIONAL LICENSING, CERTIFICATION, PERMITTING AND REGISTRATION.

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BACKGROUND

SUMMARY

This bill makes various changes in the Department of Consumer Protection's (DCP) credentialing and enforcement laws, including:

1. allowing consumers to recover from the Home Improvement Guaranty Fund regardless if the home improvement contractor's (HIC) registration is held by an individual or a business (§ 2);
2. adding procedures and other requirements for when DCP orders independent inspections of mobile manufacturer home parks (§ 12);
3. allowing DCP to decide whether to accept renewal applications after a credential has expired and requiring applicants to pay all outstanding fees before renewal (§ 13);
4. presumably extending certain electronic price scanning and "get one free" laws so that they apply to additional types of business entities and expanding the number of businesses subject to the state's "get one free" law applicable to consumer commodities without bar codes (§§ 14 & 15);
5. amending the process for DCP's food, drug, and cosmetic seizures and embargoes by, among other things, allowing the commissioner to extend an embargo period, requiring him to destroy certain articles, and increasing certain penalties (§§ 16 & 17);
6. making various changes to the health club laws, including

- updating contract requirements, allowing DCP to make guaranty payments for uncontested cases without a hearing, and amending certain notice requirements (§§ 18-23);
7. making various changes to the Connecticut Unfair Trade Practices Act (CUTPA), including allowing DCP to impose civil penalties after an administrative hearing and updating provisions on investigations and notices to include electronic methods (§ 25);
 8. establishing new requirements for businesses to post and disclose their refund and exchange policies and requiring these policies to include specified disclosures (§ 26); and
 9. making various minor, technical, and conforming changes.

EFFECTIVE DATE: Upon passage

§§ 1 & 2 — HOME IMPROVEMENT CONTRACTORS AND GUARANTY FUND

Explicitly authorizes DCP to discipline an HIC or salesperson for doing home improvement work without a proper contract and allows consumers to recover from the guaranty fund regardless if their HIC's certificate of registration is held by an individual or a business entity

DCP Enforcement (§ 1)

By law, the DCP commissioner may revoke, suspend, refuse to issue, or refuse to renew a registration of; put on probation; or reprimand an HIC or salesperson for, among other things, violating any provision of the state's home improvement laws. The bill explicitly authorizes the commissioner to take these disciplinary actions against them for engaging in or practicing home improvement work without a contract containing provisions required by a specific home improvement statute.

Under this statute, HICs must provide a completed copy of a home improvement contract at the time it is executed. It also requires contracts to include certain provisions for them to be enforceable. Among other things, they must meet the following requirements:

1. be written, dated, and signed by both parties;

2. include the entire agreement;
3. identify the contractor and state his or her address and registration number;
4. include a notice of cancellation rights in accordance with the Home Solicitation Sales Act;
5. include starting and completion dates;
6. be entered into by a registered contractor or salesperson; and
7. include a provision disclosing each legal entity that is or has been a home improvement or new home construction contractor in which the owner or owners of the HIC are or were shareholders, members, partners, or owners within the past five years (CGS § 20-429).

Home Improvement Guaranty Fund (§ 2)

The bill allows consumers who suffer losses or damages because of an HIC to recover from the Home Improvement Guaranty Fund regardless if their HIC's certificate of registration is held by an individual or a business entity.

By law, the Home Improvement Guaranty Fund reimburses up to \$25,000 per claim to consumers who are unable to recover losses caused by registered HICs for contracts valued over \$200.

Current law requires the consumer to obtain a binding arbitration decision; court judgment, order, or decree; or specific type of restitution order against his or her registered HIC within two years of contracting with the HIC. For the purposes of being eligible to recover from the guaranty fund, the bill expands who the requisite decision, judgment, order, or decree may be against to include an individual who has an ownership interest in the contractor where the HIC certificate is held by a business entity.

The bill also makes these HIC owners and their business entities joint and severally liable for debts to the guaranty fund when the DCP

commissioner orders payment to a consumer out of the fund based on a decision, court judgment, order, or decree of restitution against an HIC owner found to have presumably violated the Home Improvement Act. (The bill incorrectly references the New Home Construction Act (Chapter 399a), which has a similar but separate fund (the New Home Construction Guaranty Fund) to address new home construction contractor violations; the Home Improvement Guaranty Fund only reimburses consumers for registered HIC violations (Chapter 400).)

The bill also makes various technical and conforming changes to effectuate these changes.

§§ 3-4 & 6-11 — APPRAISAL MANAGEMENT COMPANIES

Changes the current exemptions for certain federally regulated appraisal management companies from state registration and other requirements but generally carries them forward for similar companies; requires these companies to report to DCP information the department is required to submit under federal law; and allows the DCP commissioner to adopt regulations on that reporting requirement and for investigating appraisal management company violations

Federally Regulated Appraisal Management Companies (§§ 3-4 & 6-10)

Existing law imposes several requirements on appraisal management companies, including that they must register with DCP before providing services. However, these requirements do not currently apply to appraisal management companies that are a subsidiary owned and controlled by a financial institution regulated by a federal financial institution regulatory agency. This is because these companies (and certain others) are excluded from the statutory definition of “appraisal management company.”

The bill eliminates this exclusion for these companies but effectively carries forward existing exemptions for companies that are like them. It does so by creating a statutory definition for federally regulated appraisal management companies and specifically exempting them from the state’s requirements for other appraisal management companies. Under the bill, a “federally regulated appraisal management company” is an appraisal management company that is owned and controlled by an “insured depository institution” (i.e., any bank or savings association that is Federal Deposit Insurance Corporation

(FDIC) insured (12 U.S.C. § 1813)) and regulated by the Office of the Comptroller of the Currency, the Federal Reserve System governors, or the FDIC.

But, under the bill, these companies must report to DCP, in a manner the department prescribes, the information the DCP commissioner is required to submit to the appraisal subcommittee of the Federal Financial Institutions Examination Council under Title XI of the Financial Institutions, Reform, Recovery and Enforcement Act of 1989, P.L. 101-73, 103 Stat. 183 (FIRREA) and its regulations, or any policy or rule the subcommittee establishes.

The bill also requires federally regulated appraisal management companies to pay DCP an annual registry fee in an amount the appraisal subcommittee determines, in accordance with federal law. The DCP commissioner must transmit the annual registry fee to the appropriate federal regulatory entity in accordance with Title XI of FIRREA and its regulations, or any subcommittee-established policy or rule.

Regulations (§ 11)

The bill expands the DCP commissioner's authority to adopt regulations on appraisal management companies. It does so by allowing him to adopt regulations for investigating appraisal management company violations and on the bill's requirements for federally regulated appraisal management companies.

§ 5 — REAL ESTATE APPRAISAL BUSINESS PENALTIES

Builds on existing penalties for those who engage in the real estate appraisal business without a credential by subjecting them to civil penalties and making them ineligible for a credential for one year

Under existing law, anyone who engages in the real estate appraisal business without obtaining a certification or provisional license is (1) subject to a fine up to \$1,000, up to six months imprisonment, or both and (2) ineligible to obtain a certification or provisional license for one year after being convicted.

The bill further subjects these violators to civil penalties after a DCP administrative hearing and makes them ineligible to obtain a

certification or provisional license for one year from the date of a final decision rendered after the DCP administrative hearing.

However, by law and under the bill, the Connecticut Real Estate Appraisal Commission may grant a certification or provisional license to a violator during his or her one-year ineligibility period upon application and after a hearing.

§ 12 — MOBILE MANUFACTURER HOME PARK INDEPENDENT INSPECTIONS

Adds procedures and other requirements for when DCP orders independent inspections of mobile manufacturer home parks, including requiring (1) those who do the inspection to have training or be licensed, (2) the inspection report to address specific areas, and (3) timelines for submission of the report

By law, as part of an inspection or investigation, DCP may order a mobile manufactured home park owner to have an independent inspection report done, at the owner's cost, that assesses the condition and potential public health impact of a condition at the park (e.g., the condition of trees and electrical, plumbing, or sanitary systems). The bill adds several procedures and requirements related to this authority.

Reporter Qualifications and Other Changes

Under the bill, for these independent inspection reports, DCP may require the (1) person completing the report to have training or be licensed in a particular area related to the ordered inspection and (2) report to specifically address particular areas of, or issues affecting, the park that DCP is concerned with.

If DCP requires the person completing the report to have training or have a license in a particular area, the department must include the requirement in the first order it issues to the owner requiring the report.

The owner must submit proof of compliance with the above requirements at the time he or she submits the independent inspection report to the department.

Notification Procedure

Under the bill, if DCP orders an owner to get an independent inspection report as part of his or her license application or renewal, the

department must issue the order to the owner's email address from his or her most recent DCP application. The order must provide a description of the condition or conditions that require the owner to further assess.

Additional Report Procedures and Requirements

The bill requires the owner to obtain and submit to DCP an independent inspection report within 30 days of the department's order for it, unless the commissioner or his designee approves a later date in writing.

The independent inspection report must include an assessment of all conditions outlined in the DCP order requiring the report to assess the risk that the conditions pose to public health and safety. The report must also assess the severity of the conditions and have a detailed plan of action to remedy each condition.

The bill requires owners, within 10 days of receiving the independent inspection report, to provide DCP with a written, detailed plan to remedy the assessed condition. The plan must at least include a specific timeline, proposed contractors, and a budget.

§ 13 — RENEWALS AND INCOMPLETE APPLICATIONS FOR CREDENTIALS

Allows DCP discretion in whether to accept renewal applications after a credential has expired; requires applicants to pay all outstanding fees before renewal; and allows DCP to consider certain incomplete applications expired and withdrawn

The bill makes several changes affecting applications for DCP licenses, permits, certificates, and registrations (collectively, "credentials"). Existing law allows the DCP commissioner to impose a late fee on any applicant who fails to renew a credential before it expires. The late fee amount must be 10% of the renewal fee but be between \$10 and \$100. Under the bill, before the commissioner renews the credential, the applicant must pay all outstanding fees owed to DCP, including the late fee.

Under current law, if a renewal application is submitted within 90 days after the credential's expiration, the applicant must pay the late fee,

but does not need to apply for reinstatement. The bill instead provides DCP discretion in whether to accept the renewal application if it is submitted in the same timeframe. It also expressly prohibits any lapsed-credential holder from engaging in any activity for which an active credential is required, without DCP approving the renewal application for the credential.

Unless waived by DCP in writing, the bill allows the department to deem any incomplete application to have expired and been withdrawn six months after it was submitted. By law, application fees are generally non-refundable.

§ 14 — BUSINESSES SUBJECT TO THE ELECTRONIC PRICE SCANNING AND GET ONE FREE LAWS

Presumably extends certain electronic price scanning and “get one free” laws so that they apply to additional types of business entities

Current law generally imposes requirements on any person who, or association, corporation, firm, or partnership that, uses universal product coding or an electronic pricing system. The bill eliminates references to those specific types of business entities and, in doing so, appears to extend the requirements to all legal persons without limitation (i.e., so that they apply to additional types of business entities) (see CGS § 1-1(k)).

For businesses added under the bill, if they use universal product coding, then, by law, they must mark each consumer commodity that has a universal product code (UPC) with its retail price. However, there are several exceptions to this requirement, including if someone has been approved for an exemption by DCP, which, among other conditions, requires reinspection of price scanners if they are less than 98% accurate during a price accuracy inspection. Current law allows a reinspection without penalty but charges a \$250 reinspection fee. The bill specifies that this fee must be paid before reinspection.

By law, a “consumer commodity” is any food, drug, device, cosmetic, product, or commodity of any other class, except prescription drugs, that is customarily produced for retail sale; for individual consumption, personal care, or household purposes and is usually consumed or

expended during consumption or use. It does not include alcoholic liquor or carbonated soft drink containers (CGS § 21a-79(a)).

Additionally, for businesses added under the bill, if they have a retail sales area of at least 10,000 square feet and use an electronic pricing system to total a consumer's purchases, then, by law, they must generally provide an item-by-item digital display that a consumer can see as each UPC is scanned.

Get One Free Law

The bill also appears to extend one of the state's "get one free" laws to the businesses added under the bill. Under this law, consumers are generally entitled to receive a consumer commodity for free, up to a \$20 value, if the electronically scanned price for it is higher than its posted price.

§ 15 — EXEMPTION FROM GET ONE FREE LAW FOR COMMODITIES WITHOUT BAR CODES

Expands the number of businesses subject to the state's other "get one free" law applicable to consumer commodities without bar codes by narrowing the exemption from this law

The bill expands the number of businesses subject to the state's other "get one free" law that is generally applicable to "consumer commodities" (see above) without bar codes, including retail foods that must be weighed at purchase. Under this law, certain businesses are generally required to give the commodity to a consumer for free, up to a \$20 value, if its price at the point of sale is higher than its advertised or posted price.

However, there are several exceptions to this requirement under current law, including a broad exemption that applies to any person, association, corporation, firm, or partnership operating in a retail sales area that is 10,000 square feet or less. The bill narrows this exemption by decreasing the maximum qualifying retail sales area to 1,500 square feet.

§§ 16 & 17 — FOOD, DRUG, AND COSMETIC SEIZURES AND EMBARGOES

Allows the DCP commissioner to extend an embargo period for food, drugs, devices, or cosmetics and to institute a civil action in Superior Court to embargo them; requires him to embargo or destroy certain kinds of these articles; generally prohibits anyone from

altering or opening an embargoed article; and increases the maximum penalty for anyone who removes the tag or marking on an article

The bill makes several changes regarding DCP's authority to enforce the Connecticut Food, Drug, and Cosmetic Act. Existing law generally allows the DCP commissioner or his authorized agent to attach a tag or other appropriate marking to any food, drug, device, or cosmetic that is for sale or distribution that he or she has probable cause to believe violates the act and embargo the article.

Embargo Notice

Under current law, DCP attaching a tag or other appropriate marking functions as giving notice to the common carrier or other person in custody of the article that it is, or is suspected of being, in violation of the act and has been embargoed. The bill specifies that this is a form of written notice and limits the department's ability to make these attachments or markings to before or at the time the article is embargoed.

Embargo Extension and Civil Action to Continue

The bill allows the commissioner to extend an article's embargo period if a reinspection of it indicates the violation has continued. He must do this within 21 days of the embargo, which is the deadline under existing law by which he must either remove the embargo or bring a summary proceeding.

The bill requires the proceeding to be done under Uniform Administrative Procedure Act (UAPA) procedures and for the purpose of embargoing the article, rather than confiscating it as under current law. Besides removing the embargo or bringing a summary proceeding, the bill adds a third option by allowing the commissioner to institute a civil action in Superior Court to embargo the article. It also makes related technical and conforming changes to incorporate the new civil action in Superior Court and differentiate it from the administrative proceedings.

Alteration and Opening of Embargoed Article

The bill prohibits anyone from altering or opening an embargoed

article without DCP's permission or, after a summary proceeding or civil action has begun, the hearing officer's or court's permission. Existing law already prohibits removing or disposing of embargoed articles.

Complaint

The bill eliminates the requirement that summary proceeding complaints be verified by affidavit. It also specifies that the complaint must be against the person who has custody of the article to be embargoed.

Seizure

The bill eliminates the requirement that courts issue a seizure warrant for embargoed articles once a verified complaint is filed. It also removes related process requirements about how a person is to be summoned, the hearing procedures, claim filings, and what happens if the seized article is not injurious to health.

Confiscation and Destruction

After a hearing, the bill allows, rather than requires, certain articles that violate the act to be confiscated and destroyed. Specifically, DCP may confiscate them or the hearing officer or court can order the respondent or defendant to destroy them at their direction.

Under the bill, if there is an adverse ruling against the respondent or defendant, then he or she is liable for all costs and expenses DCP incurred in investigating, containing, removing, monitoring, mitigating, and disposing of the embargoed product, as well as any associated legal expenses.

Embargo or Destroy

Current law requires the commissioner or his authorized agent, whenever he or she finds any meat, seafood, poultry, vegetable, fruit, or other perishable article under certain conditions, to condemn or destroy it without delay to make the item impossible to sell as human food. The bill replaces the option of condemning the food with embargoing it. As under existing law, the conditions for the food to be embargoed or

destroyed are when it (1) is found in a room, building, other structure, or vehicle and (2) is unsound; contains any filthy, decomposed, or putrid substance; may be poisonous or harmful to health; or is otherwise unsafe.

Similarly, the bill requires the commissioner or his authorized agent, whenever he or she finds any adulterated or insanitary pharmaceutical drug, medical device, or drug paraphernalia under certain conditions, to embargo or destroy it without delay to make the item impossible to sell. DCP must do so for these items it finds in a room, building, other structure, or vehicle, that are produced, packed, or held under insanitary conditions; are unsafe or not shown to be safe; or may be contaminated by filth or be harmful or injurious to health.

Penalty

The bill increases the maximum civil penalty that the DCP commissioner may impose on anyone who removes the tag or marking on an article from \$500 to \$5,000, and allows him to also penalize those who offer or expose the article for sale. By law, the commissioner may only impose this civil penalty after notice and hearing, but may do so for each separate offense.

§§ 18-23 — HEALTH CLUBS

Makes various changes to the health club laws, including updating contract requirements, eliminating a penalty provision, allowing DCP to make guaranty fund payments for uncontested cases without a hearing, and amending certain notice requirements

Right to Cancel (§ 18)

Existing law requires every health club services contract to be cancelable within three business days after the buyer receives a copy of the contract in writing. The bill requires health clubs to deliver this copy with delivery tracking, rather than by certified or registered U.S. mail.

The bill also modifies the items a health club may ask a buyer to return if they cancel within this three-day period. Under current law, a club may ask for the return of contract forms, membership cards, and all documents and evidence of membership previously delivered. The bill instead only allows clubs to ask for any delivered cards or equipment that were part of the membership.

Medical Disability (§§ 18 & 19)

By law, each contract must allow a buyer who becomes disabled to (1) be relieved of paying for the part of the contract term for which he or she is disabled or (2) extend the contract for the disability's duration, but the club has the right to require and verify reasonable evidence of the disability.

Current law (1) allows the club to require a signed certificate by a licensed physician, physician assistant, or advanced practice registered nurse and (2) requires the club to include in the contract certain disclosures about a buyer's rights after being disabled. The bill (1) eliminates the signed certificate requirement option and instead allows the club to require documentation from one of these professionals or other credentialed medical providers (which the bill does not define) and (2) requires the disclosure to state that a buyer may send written notice of the disability electronically.

The bill also eliminates provisions (1) allowing the contract to require the buyer to submit to a physical examination by one of these professionals at the health club's expense, and (2) requiring the health club to notify the buyer whether it will require the examination.

Cancellation at a Closer Location (§ 19)

Current law allows a buyer to cancel his or her contract under certain conditions at the health club location where he or she entered the contract. The bill additionally allows a buyer to do so at the location closest to his or her primary residence. As under existing law, buyers may cancel under the three-day cancellation provision or because they moved more than 25 miles away from the club or the club closed.

Statement of Buyer's Right to Cancel (§ 19)

The bill makes conforming changes to the contract's required statement of the consumer's rights to reflect the bill's changes on (1) items a club may request to be returned, (2) medical disability requirements, and (3) allowing a buyer to cancel at the location closest to his or her primary residence. It also increases the required font size from 10-point bold type to at least 12-point font at the top of the contract.

As under current law, the statement must include a conspicuous caption (“BUYER’S RIGHT TO CANCEL”). The bill also requires that it be prominent.

The bill also makes minor and grammatical changes to the required statement.

Electronic Contracts (§ 20)

Under the bill, if the health club gives a consumer a contract in an electronic format only, it must (1) provide the three-day cancellation and disability provisions in a separate document in electronic or paper form and (2) include the consumer’s acknowledgement that he or she has received these provisions.

The bill requires that the contract, document with the cancellation and disability provisions, and acknowledgement be executed as part of a single transaction.

Information Required for License to Sell Contracts (§ 21)

The bill requires health clubs seeking a DCP license to sell health club contracts to provide an electronic copy, rather than two copies, of each health club contract the applicant currently uses or intends to use.

Elimination of Civil Penalty (§ 21)

The bill eliminates the commissioner’s authority to impose a civil penalty of up to \$300 for any health club that sells or offers to sell contracts without submitting a license renewal or renewal fee within 30 days of the license expiring. By law and among other powers, the commissioner may still suspend or revoke a health club license for specified violations.

Guaranty Fund (§ 22)

By law, the Connecticut Health Club Guaranty Fund is designed to protect health club members when a club closes or moves. If a health club is no longer operating at the location where the consumer entered the contract, the consumer may have a claim against the health club and may apply to the guaranty fund.

Disbursements. The bill sets up a new process for guaranty fund disbursements. Instead of holding an administrative hearing on each application, it allows the commissioner to make a payment on uncontested cases without a hearing.

More specifically, before the commissioner may direct payment from the fund to a buyer, he must first notify the health club of the buyer's application to the fund. The notice must also inform the club of its right to an administrative hearing to contest the disbursement if (1) it has already paid the buyer or (2) is complying with a payment schedule based on a written agreement with the buyer or a court judgment, order, or decree.

If the club requests a hearing in writing and within 15 days after receiving the DCP notice, the commissioner must grant the request and hold the hearing. If DCP does not receive a request within this 15-day period, the commissioner must (1) determine that the buyer has not been paid and (2) direct payment from the guaranty fund for the amount due. As under existing law, if multiple buyers submit claims against the same club, DCP can hear their applications in one proceeding.

Notice to Health Clubs Potentially Barred From Paying Into the Fund. Existing law requires DCP to notify a health club that it is contemplating prohibiting it from paying into the fund because it violated the health club law or engaged in unfair or deceptive trade practices, among other things. The bill eliminates the requirement that DCP send this notice by certified mail to the club's principal place of business.

Closings or Transferred Locations (§ 23)

The bill amends the notice requirements for when a health club closes or transfers locations. Current law requires it to notify DCP and all current and prospective members at least 60 days before the closing or transfer. The bill requires that these be written notices disclosing the closing or transfer. It requires health clubs to (1) notify their current members at least 60 days, and again between 20 and 40 days, before the closing or transfer and (2) give DCP an electronic copy of this written

notice within one business day after notifying current members.

The bill also eliminates a requirement that a health club publish a notice of the closing or transfer in a newspaper with general circulation in the state. It instead requires the club to conspicuously post, on its website and premises, notices about the closing or transfer.

§ 24 — HARDSHIP EXEMPTIONS FROM WELL DRILLING WATER REQUIREMENTS

Transfers, from the plumbing and piping work examining board to local health directors, authority to grant hardship exemptions from well drilling requirements related to the purity, potability, and safeguarding of well water

Current law allows the plumbing and piping work examining board to grant exemptions from well drilling requirements when they would cause undue hardship, subject to the DCP commissioner's approval. The bill transfers the authority to grant hardship exemptions related to the purity, potability, and safeguarding of well water from the examining board to the local health director. Specifically, it authorizes local health directors to grant these hardship exemptions if they find that the exemption will not adversely affect the well water's purity and adequacy.

§ 25 — CONNECTICUT UNFAIR TRADE PRACTICES ACT (CUTPA)

Allows DCP to receive electronic copies of documents of anyone being investigated or proceeded against under CUTPA; provides DCP additional options for sending certain investigative and enforcement documents; allows testimony in CUTPA proceedings to be recorded rather than transcribed and eliminates the requirement that it be filed with DCP; and allows DCP to impose a civil penalty of up to \$5,000 for CUTPA violations

The bill makes various changes to CUTPA, including allowing DCP to impose civil penalties after an administrative hearing; updating provisions on investigations and notices to include electronic methods; and making various minor, technical, and conforming changes.

Electronic Copies

By law, the DCP commissioner or his authorized representatives have the right to, among other things, access, examine, and copy the documents of anyone being investigated or proceeded against under CUTPA. The bill also allows DCP to receive electronic copies of these documents.

Sending Notice

The bill gives DCP additional options for sending certain CUTPA investigative demands or complaints other than delivering them by certified mail. It allows the department to send these actions using the same methods it uses for sending administrative enforcement action notices. By law, these notices must be delivered personally, by U.S. mail with delivery tracking or by certified mail, or by email with tracking and delivery confirmation.

Under the bill, DCP may use these additional methods for (1) serving an investigative demand on a person who is suspected of violating CUTPA or a person from whom the commissioner wants assurances that he or she has not violated the act and (2) delivering a complaint to a person who has been engaging in or is engaged in an alleged CUTPA violation.

Testimony

Current law requires testimony in a CUTPA proceeding to be put in writing by the hearing's recording officer and filed with the commissioner. The bill allows the testimony to be recorded (in an audio or audiovisual format) instead and eliminates the filing requirement.

Civil Penalty

The bill allows the DCP commissioner to impose a civil penalty of up to \$5,000 for CUTPA violations, after an administrative hearing. Correspondingly, the bill allows the DCP commissioner to ask the attorney general to apply for an order to enforce the civil penalty in the Hartford Superior Court.

Background — CUTPA

By law, CUTPA prohibits businesses from engaging in unfair and deceptive acts or practices. It allows the DCP commissioner to issue regulations defining an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$10,000, 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 up to \$25,000 for a restraining order violation.

§ 26 — RETURN OR EXCHANGE POLICIES

Establishes new requirements for businesses to post and disclose their refund and exchange policies and requires these policies to include specified disclosures; requires businesses that do not disclose their policies to give refunds or allow exchanges under certain conditions; makes various other minor, technical, and conforming changes on returns and exchanges

Required Disclosures

Under current law, businesses engaged in trade or commerce in Connecticut (businesses) must accept returned consumer goods (other than motor vehicles) if customers return them as the business's conspicuously posted refund or exchange policy allows. The bill eliminates this prohibition on businesses refusing to accept returns and replaces it with a new set of requirements for disclosing refund or exchange policies. Under the bill, businesses must clearly and conspicuously:

1. post their refund or exchange policy on their premises if they conduct in-person sales;
2. display the policy on their website if they conduct Internet sales; and
3. verbally disclose the policy for verbal sales, including sales by telephone.

If the business provides refunds or allows exchanges, its policy must disclose:

1. whether it will provide a (a) cash or credit refund or store credit or allow an exchange, and (b) refund or allow an exchange at any time or before a specified time;
2. whether any refund or exchange is subject to any fee and the fee amount, with the amount expressed in either a dollar amount or percentage; and

3. any other conditions the business requires.

Under the bill, unless a business discloses its policy to not provide refunds or exchanges according to the bill's requirements, it must provide a cash or credit refund or store credit to any consumer who returns any purchased good within seven days after receiving it.

As under existing law, the refund and exchange policy law does not apply to perishable goods or ones clearly marked as unreturnable. Violations of the disclosure provision are a CUTPA violation.

Use of Electronic System for Certain Returns

Under existing law and the bill, businesses that use an electronic system to record, monitor, and limit the number or dollar amount of returns made by a consumer must state clearly in their posted refund or exchange policy that the system is being used. The bill removes the CUTPA penalty for violating this provision.

Existing law requires these businesses to provide written notice before terminating a consumer's right to return a good. The bill allows these businesses an additional termination notification method by allowing them to provide it to an email that the consumer provides. As under existing law, notice may still be given by mail to the consumer's last-known address or to the consumer's address that is obtained through reasonably available public records.

§ 27 — NOTICE OF HEARING FOR CERTAIN PAYMENT TYPE VIOLATIONS

Specifies DCP must provide a notice and hold a hearing before issuing a fine for specified violations related to surcharges, minimum transaction amounts, and discounts based on certain payment methods

Existing law prohibits anyone from imposing an additional charge or fee on any transaction for the privilege of using a particular payment type; conditioning the acceptance of a credit or charge card payment on a minimum transaction amount, without disclosure; or reducing a commission paid to an agent because the transaction was paid by card. The bill specifies that the DCP commissioner must provide a notice and hold an administrative hearing under the UAPA before imposing an

additional civil penalty for these violations. It also makes minor and technical changes, including specifying that the “transactions” covered by this law are those that occur in the state to mirror the definitions of “trade” and “commerce” in CUTPA.

§§ 28-51 — PUBLIC WEIGHMASTER

Renames a “licensed public weigher” as a “public weighmaster” and replaces “licensed public weigher” with “public weighmaster” in statutes; increases the maximum penalty for violating the public weigher laws

To align with national naming conventions, the bill replaces “licensed public weigher” with “public weighmaster” throughout the public weighers and weight and measurement of specific articles laws (Chapters 751 & 752). It also makes various minor, technical, and conforming changes.

It also increases two penalties for public weigher violations. It does so by increasing the maximum fine, from \$100 to \$1,000, for violations of the public weigher laws for which there is no specific penalty. As under existing law, the minimum penalty is \$25. It also increases the maximum civil penalties the DCP commissioner may impose after an administrative hearing, from \$100 for the first offense and \$500 for subsequent offenses to \$1,000 per violation (§ 44). By law, each violation for a unit, certificate, device, or scale is considered a separate offense.

§ 52 — E-CIGARETTE PENALTIES PAID BY MAIL

Allows certain e-cigarette penalties to be paid by mail to the Centralized Infractions Bureau without appearing in court

The bill allows certain e-cigarette (i.e., electronic nicotine delivery system and vapor product) penalties to be paid by mail to the Centralized Infractions Bureau without appearing in court. These penalties include (1) the \$50 fine for each day anyone knowingly manufactures e-cigarettes for a business without a registration and (2) the \$90 fine for each day e-cigarette manufacturers or dealers knowingly manufacture or sell, offer for sale, or possess with the intent to sell an e-cigarette with a registration that has been expired for 90 days or less.

§§ 52 & 53 — REPEAL OF VARIOUS PROVISIONS ON MAKING AND SELLING CERTAIN STAPLE FOODS

Repeals duplicative statutes related to food standards for certain staple foods (e.g., flour, bread, rolls); increases the penalties by imposing the Uniform Food, Drug, and Cosmetic Act penalties

The bill repeals statutes on food standards, examinations, and investigations related to certain staple foods (i.e., flour, bread, rolls, corn meal, grits, rice, and macaroni) (CGS §§ 21a-27 to 30). By law, the state Uniform Food, Drug, and Cosmetic Act has similar requirements and provides DCP with comparable powers (CGS § 21a-91 et seq.).

By subjecting these staple foods to the standards established under the Food, Drug, and Cosmetic Act, the bill also increases the penalties for violating the standards. Under current law, a first offense of a staple food law violation is punishable by up to a \$100 fine, up to three months imprisonment, or both, and subsequent offenses are punishable by up to a \$500 fine, up to one year imprisonment, or both (CGS § 21a-30). Under the Food, Drug, and Cosmetic Act, first violations are generally punishable by up to six months in prison, a fine of up to \$500, or both. A subsequent violation is punishable by up to one year in prison, a fine of up to \$1,000, or both (CGS § 21a-95).

The bill also eliminates the ability to pay the offense by mail to the Centralized Infractions Bureau without appearing in court. Under current law, violators can do so for staple food violations, but not for Food, Drug, and Cosmetic Act violations.

BACKGROUND

Related Bill

sSB 201, §§ 10-12, favorably reported by the General Law Committee, among other things, provides the DCP commissioner and attorney general additional authority to enforce assurances of voluntary compliances.

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute

Yea 21 Nay 1 (03/07/2024)