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## OLR Bill Analysis

### sSB 121 (File 135, as amended by Senate "A")\*

#### ***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 for this process.

Lastly, the bill makes unrelated minor and technical changes to a 2023-enacted prohibition on telemarketers making a telephonic sales call to a consumer without the consumer's prior express written consent.

\*Senate Amendment "A" principally (1) requires the attorney general to provide a draft of a subpoena to the primary supervisory agency of the subject bank or out-of-state bank at least 10 business days before issuing it, (2) adds good faith qualifications to several of the attorney

general's actions under the bill, (3) limits the bill's authorization for certain subpoenaed people to designate someone else to testify on their behalf, (4) requires motions to quash a subpoena under the bill to be filed within 10 business days after service, (5) makes minor changes to the bill's definitions, and (6) adds the telemarketers change.

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 a good faith 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, or association).

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), and 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.

Under the bill, the demand must be limited to information relevant to the scope of the 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 (1) a Connecticut-chartered or -organized bank and trust company, savings bank, or savings and loan association; (2) a national banking association, federal savings bank, or federal savings and loan association that has its principal offices in Connecticut; or (3) any affiliate as defined under federal law. 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, and includes any affiliate as defined under federal law (CGS § 36a-2).

For subpoenas to be issued to a bank or out-of-state bank, or their

officers, directors, or employees, the attorney general must, at least 10 business days before issuing the subpoena, provide a draft of it to the bank's or out-of-state bank's "primary supervisory agency" (i.e., its primary state or federal chartering agency). If, while reviewing the draft subpoena, the agency identifies a material concern about an examination, investigation, administrative proceeding, or supervisory or regulatory matter within its authority, it may, within 10 business days after receiving the draft subpoena, request an opportunity to meet and confer with the attorney general. If this request is made, the attorney general, or his designee, must be made available to meet and confer with the primary supervisory agency within the next 10 business days.

***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 to request to confer in good faith with the respective bank about the examination matters set out in the subpoena. Additionally, when the attorney general issues a subpoena ad testificandum (i.e., subpoena to testify) to a bank, out-of-state bank, or one of their high-ranking officials, the bank or official may designate at least one officer, director, managing agent, or other individual who consents to testify on the bank's or official'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 or official. However, if the attorney general has a good faith belief that the high-ranking official has unique, direct knowledge about a Dodd-Frank Act violation and that the information the subpoena seeks could not be obtained through other, less burdensome or intrusive means, the bill requires the official to testify. (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:

1. reasonably 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 in good faith that 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 the judicial district where the person resides or maintains an office, or Hartford Superior Court if the person does not reside or maintain an office in Connecticut, 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 a hearing.

### ***Quashing***

The bill allows any person who is served a subpoena issued under the bill to file, within 10 business days after being served, a motion to quash it in the superior court for the judicial district where the person resides or maintains an office, or Hartford Superior Court if the person does not reside or maintain an office in Connecticut. 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.

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)

#### Judiciary Committee

Joint Favorable

Yea 20 Nay 10 (04/29/2024)