

SUMMARY OF 2002 PUBLIC ACTS

Connecticut General Assembly

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NOTICE TO USERS

This publication summarizes all public acts passed by the 2001 November special session, the 2002 regular session, and the 2002 May 9 special session of the Connecticut General Assembly. Special acts are not summarized.

Use of this Book

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Organization of the Book

Bills sent directly to the floor without committee action (emergency certification) are placed in chapters according to subject matter. Within each chapter, summaries are arranged in order by public act number.

A table on penalties, appearing on the next page, describes the fines and prison sentences for various types of offenses. In the back of the volume is a list of acts by public act number and an index by subject.

Vetoed Acts

The governor vetoed three public acts: PA 02-07, An Act Concerning Hydrogen Production Facilities and Hydrogen Conversion Technology and the Protection of Long Island Sound; PA 02-38, An Act Making Adjustments to the State Budget for the Biennium Ending June 30, 2003, and Making Appropriations and Transferring Funds to Agencies With Deficiencies for the Fiscal Year Ending June 30, 2002, Concerning a Tax Amnesty Program, the Personal Income Tax, Funding for CT-N Television Network, Tax Exemptions for Alternative Fuels, the Depreciation Deduction under the Corporate Business Tax, Court Filing Fees, the Underground Storage Tank Funding Mechanism and the Administration of Certain Provisions with Respect to Taxes, and Concerning Operating a Motor Vehicle While Under The Influence of Intoxicating Liquor; and PA 02-62, An Act Concerning Animal Health Certificates and Cruelty to Animals.

TABLE ON PENALTIES

Crimes

The law authorizes courts to impose fines, imprisonment, or both when sentencing a convicted criminal. They must specify the period of incarceration for anyone so sentenced. The prison terms below represent the range within which a judge must set the sentence. The judge also sets the exact amount of a fine, up to the established limits listed below. Some crimes have a mandatory minimum sentence or a minimum sentence higher than the minimum term specified in the table. Repeated offenses may result in a higher maximum than specified here.

<i>Classification of Crime</i>	<i>Imprisonment</i>	<i>Fine</i>
Capital felony	execution or life	—
Class A felony (murder)	25 to 60 years	up to \$20,000
Class A felony	10 to 25 years	up to 20,000
Class B felony	1 to 20 years	up to 15,000
Class C felony	1 to 10 years	up to 10,000
Class D felony	1 to 5 years	up to 5,000
Class A misdemeanor	up to 1 year	up to 2,000
Class B misdemeanor	up to 6 months	up to 1,000
Class C misdemeanor	up to 3 months	up to 500

Violations

CGS § 53a-43 of the Penal Code authorizes the Superior Court to fix fines for violations up to a maximum of \$500 unless the amount of the fine is specified in the statute establishing the violation. CGS § 54-195 on criminal procedure requires the court to impose a fine of up to \$100 on anyone convicted of violating any statute without a specified penalty.

A violation is not a crime; thus a violator does not have a criminal record. Most statutory violations are subject to Infractions Bureau procedures which allow the accused to pay the fine by mail without making a court appearance. As with an infraction, the bureau will enter a *nolo contendere* (no contest) plea on behalf of anyone who pays a fine in this way.

The plea is inadmissible in any criminal or civil court proceeding against the accused.

Infractions

Infractions are punishable by fines, usually set by Superior Court judges, of between \$35 and \$90, plus an additional fee based on the amount of the fine and a \$20 surcharge. In some instances, there can be an additional \$15 cost. In addition, certain motor vehicle infractions are subject to a Transportation Fund surcharge of 50% of the fine. Finally, certain infractions committed in designated construction, utility work, and school zones or when a driver fails to yield to a bicyclist have additional fees equal to 100% of the basic infraction fine. This means some violators could have to pay \$361, although most have to pay less than that and many pay less than \$100. Parking tickets and seat belt violations can be less than \$35. An infraction is not a crime; thus, violators do not have criminal records and can pay the fine by mail without making a court appearance.

Larceny

There are six different classifications of larceny, generally depending on the value of the property illegally obtained.

<i>Degree of Larceny</i>	<i>Amount of Property Involved</i>	<i>Classification</i>
First Degree	Over \$10,000	Class B felony
Second Degree	Over 5,000	Class C felony
Third Degree	Over 1,000	Class D felony
Fourth Degree	Over 500	Class A misdemeanor
Fifth Degree	Over 250	Class B misdemeanor
Sixth Degree	\$250 or less	Class C misdemeanor

CRIMES AND OFFENSES

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TAXATION

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TERRORISM

False reports/imitation bombs/threats,
 penalties increased: (01-2 November SS)..... 9

PA 01-1, November 15 Special Session—HB 7601
Emergency Certification

AN ACT CONCERNING THE SUCCESSION AND TRANSFER TAX

SUMMARY: This act (1) delays for one year the succession tax phase-out for beneficiaries and estates still subject to the tax in 2001 and (2) freezes tax rates at 2001 levels for deaths occurring through December 31, 2002, instead of reducing the rates for deaths occurring on and after January 1, 2002 as previously scheduled.

By law, the estates of people who die on or after January 1, 2001 are not subject to succession tax if they (1) pass to surviving spouses (Class AA heirs) or immediate family members and direct descendants, such as children, grandchildren, parents, and grandparents (Class A heirs); (2) are worth \$600,000 or less and pass to collateral descendants, such as brothers, sisters, nephews, and nieces (Class B heirs); or (3) are worth \$200,000 or less and pass to any others (Class C heirs). Larger estates passing to Class B and C heirs are taxed at varying rates depending on the size of the estate and the death date. These remaining taxes are scheduled to be phased out in two (Class B) and four (Class C) annual steps, by increasing the sizes of exempt estates according to death dates. The act delays each step of the remaining phase-outs by one year by delaying the death dates for which the increasing exemptions apply.

EFFECTIVE DATE: Upon passage

PHASE- OUT SCHEDULE

Table 1 shows the succession tax phase-out schedule under prior law and the act.

Table 1: Succession Tax Phase-Out

CLASS B	CLASS C
Date of Death	
Prior Law: January 1, 2001 – January 1, 2002	
The Act: January 1, 2001 – January 1, 2003	
Estate Sizes and Tax Rates: <ul style="list-style-type: none"> • \$600,000 or less – No Tax • \$600,000 to \$1 million – 9% • More than \$1 million – 10% 	Estate Sizes and Tax Rates: <ul style="list-style-type: none"> • \$200,000 or less – No Tax • \$200,001 to \$250,000 – 10% • \$250,001 to \$400,000 – 11% • \$400,001 to \$600,000 – 12% • \$600,001 to \$1 million – 13% • More than \$1 million – 14%
Date of Death	
Prior Law: January 1, 2002 – January 1, 2003	
The Act: January 1, 2003 – January 1, 2004	

Estate Size and Tax Rates: <ul style="list-style-type: none"> • \$1.5 million or less – No Tax • More than \$1.5 million – 8% 	Estate Sizes and Tax Rates: <ul style="list-style-type: none"> • \$400,000 or less – No Tax • \$400,001 to \$600,000 – 12% • \$600,001 to \$1 million – 13% • More than \$1 million – 14%
Date of Death	
Prior Law: January 1, 2003 and after	
The Act: January 1, 2004 and after	
Date of Death	
Prior Law: January 1, 2003 – January 1, 2004	
The Act: January 1, 2004 – January 1, 2005	
No Tax	Estate Sizes and Tax Rates: <ul style="list-style-type: none"> • \$600,000 or less – No Tax • \$600,001 to \$1 million – 13% • More than \$1 million – 14%
Date of Death	
Prior Law: January 1, 2004 – January 1, 2005	
The Act: January 1, 2005 – January 1, 2006	
No Tax	Estate Sizes and Tax Rates: <ul style="list-style-type: none"> • \$1.5 million or less – No Tax • More than \$1.5 million – 14%
Date of Death	
Prior Law: January 1, 2005 and after	
The Act: January 1, 2006 and after	
No Tax	

PA 01-2, November 15 Special Session—HB 7602
Emergency Certification

AN ACT CONCERNING FALSELY REPORTING AN INCIDENT, BREACH OF THE PEACE AND THREATENING

SUMMARY: This act:

1. increases penalties for false reports of fires, explosions, catastrophes, or emergencies;
2. increases penalties for false reports that result in serious physical injury or death;
3. prohibits placing an imitation hazardous substance in a public place or in a place or manner likely to be discovered by another person with intent to cause, or with reckless disregard of causing, inconvenience, annoyance, or alarm;
4. increases the penalty for placing imitation bombs and expands this crime; and
5. increases the penalties for certain types of threats.

EFFECTIVE DATE: January 1, 2002

FALSE REPORTS

The act increases the penalty from a class A misdemeanor to a class D felony for knowingly:

1. initiating or circulating a false report or warning of the alleged or impending occurrence of a fire, explosion, catastrophe, or emergency when it is likely that public alarm or inconvenience will result or
2. falsely reporting to an official or quasi-official agency or organization that deals with emergencies involving danger to life or property an alleged or impending occurrence of a fire, explosion, catastrophe, or emergency.

A class D felony is punishable by one to five years in prison, a fine of up to \$5,000, or both. A class A misdemeanor is punishable by up to one year in prison, a fine of up to \$2,000, or both.

The act eliminates reference to false reports about crimes from this offense. (But most violent criminal conduct, or its consequences, is probably covered by the terms catastrophe or emergency. False reports of offenses or incidents to law enforcement officers is covered separately.)

The act increases, from a class D felony to a class C felony, the penalty for these crimes when the false report results in serious physical injury or death. It also increases the penalty for a false report to law enforcement officers about the alleged or impending occurrence of an offense or incident or false information about an actual incident, when it results in serious physical injury or death. The act increases this penalty from a class D felony to a class C felony.

A class C felony is punishable by one to 10 years in prison, a fine of up to \$10,000, or both.

IMITATION BOMBS AND HAZARDOUS SUBSTANCES

The act increases the penalty for placing imitation bombs in a public place with intent to cause inconvenience, annoyance, or alarm, or recklessly creating a risk of it, from a class A misdemeanor to a class D felony. It also expands this crime by including imitation bombs placed in a place or manner likely to be discovered.

The act makes it a crime to place an imitation of a hazardous substance in a public place or in a place or manner likely to be discovered, with intent to cause, or recklessly creating a risk of, inconvenience, annoyance, or alarm.

The act defines a hazardous substance as a physical, chemical, biological, or radiological substance or matter that by its quantity; concentration; or physical, chemical, or infectious characteristics may (1) cause or

significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or (2) pose a substantial present or potential hazard to human life.

As under prior law, a public place is an area used or held out for use by the public whether it is owned or operated by public or private interests.

THREATENING

The act increases, from a class A misdemeanor to a class D felony, the penalty for threatening to commit a violent crime with intent to (1) terrorize someone; (2) cause the evacuation of a building, place of assembly, or public transportation facility; or (3) cause serious public inconvenience. It similarly increases the penalty when such threats are done in reckless disregard of causing terror, evacuation, or inconvenience. It specifies that this crime includes threats to commit a crime involving use of a hazardous substance. (PA 02-97 reduces the penalty to a class A misdemeanor for threats other than those involving the use of hazardous substances.)

BACKGROUND

Related Act

PA 02-97, "An Act Concerning Acts of Terrorism," creates several terrorism related crimes; increases penalties for certain crimes when they are committed to further terrorist purposes; reduces penalties for certain types of threats; and includes provisions on wiretapping, grand juries, and increasing prices during emergencies.

PA 02-100—sHB 5166

Select Committee on Aging

Government Administration and Elections Committee

Legislative Management Committee

AN ACT CONCERNING THE LONG-TERM CARE ADVISORY COUNCIL

SUMMARY: This act requires the Long-Term Care Advisory Council (LTCAC) to seek recommendations from people who (1) have disabilities or are receiving long-term care services and (2) reflect the state's socioeconomic diversity.

It adds eight new members to the 19-member LTCAC. They are (1) a personal care attendant appointed by the House speaker; (2) the president of the Family Support Council or his designee; (3) someone caring for a person with a disability in a home setting, appointed by the Senate president pro tempore; (4) three people with disabilities, one each appointed by the House and Senate majority leaders and the House minority leader; (5) a legislator who is a member of the Long-Term Care Planning Committee; and (6) a nonunion home health aide appointed by the Senate minority leader.

The act also makes some minor and technical changes regarding some of the existing council members. It puts the state president of AARP (formerly known as the American Association of Retired Persons) himself or his designee on the council, instead of only his appointee. It also puts the president of the Connecticut chapter of the Alzheimer's Association, instead of the executive director of the Connecticut Alzheimer's Association or the director's designee, on the council. And it makes corrections in the names of several entities represented on the council.

EFFECTIVE DATE: October 1, 2002

BACKGROUND

Long-Term Care Advisory Council

The LTCAC, composed of long-term care providers and consumer advocates, advises the interagency Long-Term Care (LTC) Planning Committee, which is composed of representatives from executive agencies and legislators. The LTC Planning Committee's charge is to exchange information on long-term care issues, coordinate long-term care policy development, establish a statewide long-term care plan for the elderly and others in need of long-term care and revise it every three years, and study related issues.

PA 02-4—HB 5026
Appropriations Committee

AN ACT CONCERNING THE PROVISION OF SMOKING CESSATION SERVICES UNDER THE STATE MEDICAID PLAN AND MAKING TECHNICAL CORRECTIONS TO SPECIAL ACT 01-1 OF THE NOVEMBER 15 SPECIAL SESSION

SUMMARY: This act requires, instead of allows, the Department of Social Services (DSS) commissioner to amend the state Medicaid plan to provide coverage for smoking cessation treatment. The plan takes effect on July 1, 2003 if (1) the Human Services and Appropriations committees approve it and (2) the legislature appropriates funds for it.

The act moves approximately \$7 million that was carried forward in the November 15 Special Session (NSS) from various state agencies into the General Fund. And it credits to the General Fund \$128,806,808 in surplus appropriation reductions.

It increases the amount appropriated to the Office of Attorney General’s and Department of Higher Education’s budgets for a computer upgrade and higher education asset program, respectively. And it restores a portion of funds appropriated to the State Department of Education (SDE) for Hartford school monitors.

It reduces from \$200,000 to \$188,180 the amount of Department of Information Technology carry-forward of Connecticut Technology Initiative funds transferred to the SDE for a competitive grant program for local and regional school districts to use for basic technology in FY 2001-02.

It transfers (1) funds from a non-lapsing revenue account in the Secretary of the State’s (SOTS) office into the agency’s Other Expenses (OE) account and (2) \$1 million of the \$2 million appropriated to the Office of Workforce Competitiveness’ payments to local governments School-to-Work account to school-to-work in one of the agency’s Other Current Expense accounts.

It requires a portion of the filing fees collected for civil suits to pay for activities to address racial profiling and disparate treatment of minorities in the justice system.

It permits the Board of Governors of Higher Education, notwithstanding existing law, to deposit a minimum of \$470,000, rather than \$500,000, into the Endowed Chair Investment Fund for the Energy Studies Chair at Eastern Connecticut State University. The \$500,000 minimum is restored in FY 2002-03.

Finally, it repeals a number of FY 2001-03 appropriations transfers, additions, and reductions. Most of these changes were already made in SA 01-1, NSS.

EFFECTIVE DATE: Upon passage, except the smoking cessation provisions are effective on July 1, 2002

MEDICAID COVERAGE FOR SMOKING CESSATION TREATMENT

The act requires the DSS commissioner to amend the state Medicaid plan to include coverage for smoking cessation treatment. The treatment must be ordered by a healthcare professional who is licensed to prescribe smoking cessation drugs. Under prior law, which was optional and never implemented, only physicians could prescribe this treatment, which was limited to a maximum of \$400 per person per year. Under the act, there is no dollar limit for the treatment.

The treatment must be in accordance with a plan the commissioner develops. (It is not clear whether the state plan amendment can serve as this plan.) She must submit the plan to the Human Services and Appropriations committees by January 1, 2003. The plan must be implemented on July 1, 2003 if the committees approve it and the legislature provides funding for it in FY 2003-04.

CARRY-FORWARD FUNDS CREDITED TO GENERAL FUND FOR FY 2001-02

<i>Act Section</i>	<i>Agency/ Account or Purpose</i>	<i>Carry-Forward Amount Credited to General Fund for FY 2001-02</i>
2	Comptroller-Core Financial Systems	\$4,000,000
3	Office of Policy and Management (OPM)—OE	280,000
4	OPM—Payments to Local Governments, Drug Enforcement Program	710,446
5	OPM—Health Insurance Consultant	250,000
6	OPM—High Efficiency Licensing Program	45,000
7	OPM—Hospital Grant and Assistance Program	420,000
8	OPM—Tobacco Settlement Program Grant Account	400,000
9	DSS—OE	500,000
10	Office of Workforce Competitiveness—CETC Workforce	376,000
<i>Total</i>		\$6,981,446

CHANGES IN APPROPRIATED AMOUNTS

The act increases FY 2001-02 appropriations for two agencies as follows:

Agency/Purpose	November 2001 Appropriation	New Appropriation
Attorney General/Computer System Upgrade	\$100,000	\$147,860
Department of Higher Education/Higher Education Asset Protection Program	311,575	439,782
Total	\$411,575	\$587,642

The act also restores a portion of funds originally appropriated to SDE in FY 2001-02 for Hartford Public School monitors. SA 01-1 appropriated \$2.2 million for this purpose but the funds were eliminated in SA 01-1, NSS. The act appropriates \$51,192.

SECRETARY OF THE STATE—COMMERCIAL RECORDING ACCOUNT

With one exception, any revenue SOTS receives is deposited into the General Fund. Commercial recording fees are deposited into a separate, non-lapsing account, which is used to pay the Commercial Recording Division’s administrative expenses. The act requires \$730,000 from this account to be used to pay SOTS’s OE costs incurred during FY 2001-02. SA 01-1, NSS reduced the OE appropriation by this amount.

STATE MARSHAL AND OTHER FILING FEES

By law, the first \$250,000 collected each year from the \$250 annual state marshal fees must be credited to the state marshal account for the State Marshal Commission’s operating expenses. For FY 2001-02 only, the next \$110,000 must be transferred to the Judicial Department for the Commission on Racial and Ethnic Disparity’s operating expenses, and the next \$230,000 to OPM for OE to pay for police racial profiling prevention activities. The act requires General Fund deposits of the \$5 civil action filing fees, in addition to the marshal fees, to be counted towards these amounts.

REPEALED SECTIONS

The act repeals a transfer in FY 2001-02 of \$219,000 from the Department of Public Health’s Breast and Cervical Cancer Detection and Treatment program line item to OE for chlamydia education and testing and another \$25,000 for gynecologic cancer

education materials. But SA 01-01, NSS, transfers the same amount from the first account to the second.

It also repeals a transfer in FY 2001-02 and 2002-03 of \$125,000 from the Department of Agriculture’s Connecticut Grown Product Promotion account to the Agriculture Experiment Station for wildlife fertility control. SA 01-1, NSS appropriates money for this purpose in FY 2001-02, but does nothing for FY 2002-03.

The act repeals a section of law (§ 45 of PA 01-1, JSS) that changed the following four SDE account appropriations. All but one of the changes for FY 2001-02 were already restored in SA 01-1, NSS. The priority school districts line item for FY 2001-02 was originally \$83,894,569 but was reduced to \$81,774,351 in SA 01-1, NSS. The FY 2002-03 changes for all four accounts are not restored, thus the original appropriations (see 5th column in chart) for that year remain in effect.

Account	Original FY 2001-02 (SA 01-1, JSS)	Subsequent FY 2001-02 (Section 45 of PA01-1, JSS) (Repealed)	Current (SA 01-1, NSS)	Original FY 2002-03 (§ 11 of SA 01-1, JSS)	New FY 2002-03 (§ 45 of PA 01-1, JSS) (Repealed)
Priority School Districts	\$83,894,569	\$82,274,351	81,774,351	\$83,242,509	\$81,622,258
Early Childhood Programs	2,806,047	2,816,547	2,816,547	2,806,535	2,817,035
Early Reading Success	705,544	2,235,544	2,235,544	706,461	2,236,461
Extended School Hours	0	79,718	79,718	0	79,751

PA 02-38—SB 660 (VETOED)
Emergency Certification

AN ACT MAKING ADJUSTMENTS TO THE STATE BUDGET FOR THE BIENNIUM ENDING JUNE 30, 2003, AND MAKING APPROPRIATIONS THEREFOR, MAKING DEFICIENCY APPROPRIATIONS AND TRANSFERRING FUNDS TO AGENCIES WITH DEFICIENCIES FOR THE FISCAL YEAR ENDING JUNE 30, 2002, CONCERNING A TAX AMNESTY PROGRAM, THE PERSONAL INCOME TAX, THE GIFT TAX, FUNDING FOR CT-N TELEVISION NETWORK, TAX EXEMPTIONS FOR ALTERNATIVE FUELS, THE DEPRECIATION DEDUCTION UNDER THE CORPORATION BUSINESS TAX, COURT FILING FEES, THE UNDERGROUND STORAGE TANK FUNDING MECHANISM AND THE ADMINISTRATION OF CERTAIN PROVISIONS

WITH RESPECT TO TAXES, AND CONCERNING OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR

SUMMARY: For FY 2002-03, this act adjusts state appropriations, allows specified funds to be carried forward rather than lapsing on July 1, 2002, and transfers money to the General Fund. It also makes many other funding adjustments for FY 2002-03; changes funding for the Underground Storage Tank Clean-Up Fund; eliminates funding allocations for recreational fishing, the statewide centralized voter registration system, and the Hospital Assistance Program Account; and changes the way the state pays for implementing the federal Health Insurance Portability and Accountability Act. It requires the Connecticut Television Network to be funded through an assessment on cable television companies and authorizes a 100% tax credit to offset the assessments.

The act allocates additional funds to cover deficiencies in appropriations for FY 2001-02 and adjusts estimated revenue for FY 2002-03.

The act makes many changes in taxes and revenues. With respect to the personal income tax, it (1) imposes a temporary 1% surcharge on annual income over \$1 million, (2) grants a temporary exemption to September 11th and anthrax attack victims, and (3) defers scheduled tax decreases for single filers.

Regarding business taxes, the act (1) bars corporations from using a new federal 30% bonus depreciation rule to figure their state corporation tax liability, (2) changes and clarifies (a) the Department of Revenue Services (DRS) commissioner's authority to make adjustments in corporation taxes owed and (b) interest payment requirements on refunds of corporation and air carrier tax overpayments, and (3) temporarily suspends payments for 65% of the value of unused research and development (R&D) corporation tax credits to eligible companies.

The act also:

1. defers scheduled decreases in the gift tax,
2. authorizes an exemption from the petroleum products gross earnings tax and extends existing tax exemptions for alternative fuels,
3. establishes a tax amnesty program, and
4. increases certain court filing fees.

The act makes several changes in the drunk driving law. It:

1. lowers the .10% blood-alcohol content (BAC) standard for defining the per se offense of drunk driving (DWI) to .08% BAC;
2. eliminates a separate .07% BAC standard for defining drunk driving that formerly applied to anyone with a prior DWI conviction,

thereby establishing a single .08% standard for all offenses;

3. eliminates the infraction offense of driving while impaired by alcohol (BAC of .07-.099%);
4. extends the Pretrial Alcohol Education Program to those under age 21 charged for a first time under the separate "zero tolerance" law that prohibits them from driving with a BAC of .02% or more;
5. allows someone arrested for DWI (but not someone under age 21 charged under the .02% zero tolerance law) to participate in the Pretrial Alcohol Education Program once every 10 years, instead of only once;
6. requires a Department of Mental Health and Addiction Services (DMHAS) evaluation of an alcohol education program applicant before the referral court approves the participation application rather than after, and requires the applicant to pay a nonrefundable \$100 evaluation fee when he applies for the program in addition to the existing \$50 application fee;
7. eliminates the requirement that someone with a BAC of .16% or more participate in a minimum 15-session program, instead of a minimum 10-session program, but maintains authority for requiring a 15-session program based on the evaluation report and court order;
8. adjusts the program fees to reflect the requirement for the \$100 evaluation fee at the time of application; and
9. eliminates the requirement that the public safety commissioner consult with the public health commissioner when adopting regulations governing the administration of BAC tests, the operation of test devices, training and certification of test device operators, and the drawing or obtaining of blood, breath, or urine samples for determining BAC levels.

EFFECTIVE DATE: Various. See individual sections below.

FY 2002-03 BUDGET ADJUSTMENTS

Appropriations

The act revises total FY 2002-03 appropriations from various funds for state agencies and functions as shown in Table 1.

Table 1: Total FY 2002-03 Appropriations by Fund

§	Fund	Total Appropriation		Difference
		Prior Law	The Act	
1	General	\$12,431,380,964	\$12,387,581,035	(\$43,799,929)
2	Special Transportation	877,308,778	875,431,164	(1,877,614)
3	Mashantucket Pequot and Mohegan	120,000,000	137,500,000	17,500,000
4	Soldiers', Sailors', and Marines'	3,463,637	3,634,714	171,077
5	Regional Market Operation	901,312	930,584	29,272
6	Banking	15,774,759	15,933,944	189,185
7	Insurance	21,665,676	21,301,122	(364,554)
8	Consumer Counsel and Public Utility Control	21,243,192	21,001,963	(241,229)
9	Workers' Compensation	24,736,793	24,279,354	(457,439)

EFFECTIVE DATE: July 1, 2002

Carry-Forwards

Rather than lapsing on July 1, 2002, the act allows funds appropriated in prior years to be carried forward and spent in FY 2002-03, as shown in Table 2.

Table 2: Carry-Forwards to FY 2002-03

Section	Agency	Amount	For
11 (a)	Office of Policy and Management	Unexpended balance	Justice Assistance Grants
11(b), (c)	Office of Policy and Management	Unexpended balance	Interlocal agreements signed prior to June 30, 2001
11(d)	Office of Policy and Management	\$2,037,051	Payments to Local Governments, Drug Enforcement Program
12	Office of Workforce Competitiveness	Unexpended balance	CETC Workforce, Jobs Funnel, and School-to-Work programs
13(a)	Labor Department	Unexpended balance	Workforce Investment Act
13(b)	Labor Department	Unexpended balance	Welfare-to-Work Grant Program
14	Office of the Chief Medical Examiner	Unexpended balance	Equipment
15(a)	Department of Social Services	Unexpended balance	Supplemental child care services within the Child Care Services – TANF/CCDBG Account
17(a)	Department of Education	Unexpended balance	Developmentally Disabled

			Settlement
17(b)	Department of Education	Unexpended balance	School construction
18	Teachers' Retirement Board	Unexpended balance	Computer software
19(a)	Department of Correction	Unexpended balance	Inmate medical services
19(b)	Department of Correction	Unexpended balance	Inmate tracking system
21	Department of Motor Vehicles	Up to \$182,000	Other expenses
24(b)	Department of Motor Vehicles	Up to \$500,000	Other expenses
32	Insurance Department	Up to \$425,000	Information systems
35(a)	Transportation Department	\$1,400,000	Personal services
35(b)	Transportation Department	\$1,400,000	Other expenses

EFFECTIVE DATE: July 1, 2002

Transfers to the General Fund

The act transfers money from various programs and funds to the General Fund and credits the amounts for FY 2002-03, as shown in Table 3.

Table 3: FY 2002-03 Transfers to the General Fund

Section	Program or Fund	Amount
22(a)	FY 2002-03 Tobacco and Health Trust Fund contribution	\$12,000,000
	FY 2002-03 Biomedical Research Trust Fund contribution	4,000,000
23	Tobacco and Health Trust Fund	39,500,000
	Biomedical Research Trust Fund	3,000,000
26	Private Occupational School Student Benefit Account	500,000
27(a)	Connecticut Housing Finance Authority	85,000,000
27(b)	Connecticut Innovations, Inc.	7,500,000
27 (c)	Connecticut Development Authority	7,500,000
29	Probate Court Administration Fund	5,000,000
37	Title V Emissions Program	3,000,000
	New Home Construction Guaranty Fund	1,000,000
	Municipal Employees Social Security Administration	580,922
	Cash Management Improvement Act Settlement	1,100,000
	Derby Courthouse Maintenance Reserve	500,000
	Meriden Courthouse Maintenance Reserve	500,000
	Correction Industries Revolving Fund	500,000
	Technical Services Revolving Fund	500,000
Capital Equipment Data Processing Purchasing Fund	1,000,000	

EFFECTIVE DATE: July 1, 2002

OTHER BUDGET ADJUSTMENTS

Anthem Demutualization Fund Stock Sales (§ 25)

The act authorizes the state treasurer, before June 30, 2003, to sell stock held in the Anthem Demutualization Fund for its fair market value, and appropriates \$127.2 million of the sale proceeds to the General Fund for FY 2002-03. It also allows her to use state retirement and trust funds and funds the act appropriates for state retirement contributions to buy the stock.

EFFECTIVE DATE: Upon passage

Secretary of the State (§ 10)

Despite the law requiring the Commercial Recording Account to be used only to pay the expenses of the Commercial Recording Division of the Secretary of the State's Office, the act allow the secretary to use up to \$1,956,995 from the account for FY 2002-03 for Other Expenses.

EFFECTIVE DATE: July 1, 2002

Hospital Finance Restructuring Funding (§ 16)

The act reduces for FY 2001-02 and eliminates for FY 2002-03, the amounts the Department of Social Services (DSS) must pay in hospital finance restructuring funding to Hartford, Saint Francis, and Stamford hospitals. Table 4 shows the FY 2001-02 reductions.

Table 4: FY 2001-02 Hospital Finance Restructuring Fund Payments

<i>Hospital</i>	<i>Prior Law</i>	<i>The Act</i>
Hartford	\$3,412,244	\$2,412,048
Saint Francis	2,709,583	1,710,048
Stamford	2,485,860	1,486,049

EFFECTIVE DATE: July 1, 2002

Biomedical Research Trust Fund (§ 23(c))

The act exempts funds in the Biomedical Research Trust Fund from the Office of Policy and Management's (OPM) quarterly requisition and allotment process. By October 1, 2002, it requires the public health commissioner to submit a plan for spending the money in the fund to the chairmen and ranking members of the Public Health and Appropriations committees through the Office of Fiscal Analysis (OFA). After that date, the commissioner must submit quarterly expenditure reports, also through OFA.

EFFECTIVE DATE: July 1, 2002

Teachers' Retirement Fund (§ 24 (a))

The act specifies that the amount it appropriates is the state's contribution to the Teachers' Retirement Fund for FY 2002-03, despite a law requiring the state to contribute 100% of the actuarially recommended annual contribution for the cost of current benefits plus a portion of the fund's amortized unfunded liability.

EFFECTIVE DATE: July 1, 2002

Department of Motor Vehicles (§ 20)

The act carries forward the unspent balance of a 1999 appropriation to the Department of Motor Vehicles for converting to fully reflective license plates and allows the department to use the money in FY 2002-03 also to upgrade its registration and driver's license data processing systems.

EFFECTIVE DATE: July 1, 2002

Chief Medical Examiner (§ 24(c))

The act carries forward and transfers up to \$50,000 of unspent funds appropriated to the Office of the Chief Medical Examiner for medicolegal investigations. It requires the office to use the money to buy death investigation software.

EFFECTIVE DATE: July 1, 2002

Smoking Cessation (§ 28)

The act transfers \$2.5 million from the Tobacco and Health Trust Fund to the Department of Social Services (DSS) for smoking cessation programs.

EFFECTIVE DATE: July 1, 2002

Labor Department (§ 30)

The act earmarks \$551,000 of the Labor Department's FY 2002-03 appropriation as shown in Table 5.

Table 5: Labor Department Appropriations

Project SOAR	\$100,000
Displaced Homemakers	100,000
Non-Traditional Occupational Training	351,000

EFFECTIVE DATE: July 1, 2002

Transportation Strategy Board (§ 31)

The act earmarks \$1.6 million of the amount it carries forward for the Transportation Strategy Board for FY 2002-03 as shown in Table 6.

Table 6: Transportation Strategy Board Appropriations

Jobs access programs to Southeast Connecticut and Dial-A-Ride	\$1,000,000
Transportation Strategy Board consultant services	500,000
Urban downtown traffic plan	100,000

EFFECTIVE DATE: July 1, 2002

Institute for Municipal and Regional Policy (§ 33)

The act transfers \$100,000 from a DMHAS appropriation for the Community Mental Health Strategic Investment Fund to Connecticut State University for the Institute for Municipal and Regional Policy at Central Connecticut State University's Center for Public Policy and Practical Politics.

EFFECTIVE DATE: July 1, 2002

University of Connecticut Veterinary Diagnostic Lab (§ 34)

The act requires UConn to use \$50,000 of its FY 2002-03 Operating Expenses appropriation for the Veterinary Diagnostic Laboratory.

EFFECTIVE DATE: July 1, 2002

Private Providers (§ 36)

The act requires OPM to use its appropriation for private providers for pay increases.

EFFECTIVE DATE: July 1, 2002

Fisheries Account Allocation (§ 103)

The act eliminates an additional \$1 million allocation of petroleum products gross earnings tax revenue to the Conservation Fund's fisheries account for FY 2002-03. Under prior law, the funds were to be used for recreational fishing purposes.

EFFECTIVE DATE: Upon passage

Centralized Voter Registration System (§ 104)

The act eliminates the secretary of the state's authority to use up to \$700,000 from the Commercial Recording Account in FYs 2001-02 and 2002-03 to implement the statewide centralized voter registration system.

EFFECTIVE DATE: July 1, 2002

Disproportionate Share Payments To Hospitals (§ 104)

The act eliminates a requirement that any federal financial participation funds the state receives for disproportionate share (DSH) payments to hospitals for the final quarter's DSH settlement for hospital fiscal

year 1999 under PA 01-3, June Special Session, be credited to the Hospital Assistance Program account. (This account is used to reconcile DSH over- and underpayments.) It also eliminates requirements that (1) federal funds deposited in that account during FY 2001-02 not lapse and continue to be available to be spent in FY 2002-03 and (2) DSS distribute whatever remains in the account to Yale-New Haven Hospital during FY 2002-03.

EFFECTIVE DATE: July 1, 2002

Health Insurance Portability And Accountability Act Implementation (§§ 15(b), (c), (d) & 40)

For FYs 2002, 2003, and 2004, the act requires DSS to deposit in the General Fund any reimbursements it receives for data processing costs and hardware to implement the federal Health Insurance Portability and Accountability Act. The money must be credited to a special nonlapsing account in the Department of Information Technology (DOIT) and used for its costs for implementing the federal act. DOIT may also transfer money from the account to other state agencies that need funds to implement the federal act. DOIT must submit a quarterly report through OFA to the Appropriations Committee specifying how much money it receives and spends to implement the federal act.

For FYs 2003 and 2004, the act allows DSS to establish an account for the reimbursement it expects to receive for developing a data warehouse in compliance with an advance planning document approved by the federal Department of Health and Human Services.

The act transfers \$1.9 million of an FY 2000-01 appropriation, previously carried forward to FY 2001-02, for the Private Provider Infrastructure/Debt Fund in OPM to DOIT to implement the federal act. It allows DOIT to carry the money forward to FY 2002-03 and to transfer it to other state agencies that need implementation money.

EFFECTIVE DATE: The funding transfer is effective on passage. The remaining provisions are effective July 1, 2002.

Connecticut Television Network Funding (§ 69)

The act requires the DRS commissioner to assess cable TV companies providing service in the state for a total of \$2.5 million each year starting with FY 2002-03. The money must be deposited in the General Fund and used by the Office of Legislative Management to fund Connecticut Television Network (CTN) coverage of state government and public policy events. The act gives each cable TV company a 100% credit against its community antenna television company gross earnings tax liability for its share of the CTN assessment as long

as, by October 1, 2002, it provides CTN’s programming 24 hours a day and seven days a week to all its Connecticut customers.

The act requires DRS to assess the companies by July 1 annually, starting July 1, 2002. Companies must pay assessments by August 1 annually and are not permitted to pass the assessment on to their subscribers. Each company’s assessment must be based on its number of subscribers in the state according to its most recently filed report on programming interruptions not caused by subscribers. By law, companies must file this report with the Department of Public Utility Control and, in practice, it contains each company’s subscriber numbers.

EFFECTIVE DATE: Upon passage

Underground Storage Tank Clean-Up Account (§ 84)

The act changes the share of petroleum products gross earnings tax revenue earmarked for the Underground Storage Tank Clean-Up Account from one-third of the quarterly total to a flat \$3 million per quarter. It also eliminates a requirement that the comptroller stop crediting revenue to the account when its balance exceeds \$15 million and resume when it falls below \$5 million.

The account (1) reimburses responsible parties for expenses greater than \$10,000 but less than \$1 million related to cleaning up leaking nonresidential underground storage tanks and (2) pays administrative costs for the program.

EFFECTIVE DATE: October 1, 2002

FY 2001-02 DEFICIENCIES

Special Transportation Fund Appropriation (§ 38)

For FY 2001-02, the act appropriates \$7.4 million from the Special Transportation Fund to the Department of Transportation. It requires the department to allocate \$2.8 million of the amount to bus operations and \$4.6 million to the reserve for salary adjustments.

EFFECTIVE DATE: Upon passage

Funding Transfers

The act transfers various sums between agencies and programs as shown in Table 7.

Table 7: Funding Transfers for FY 2001-02

SEC	FROM		TO		AMOUNT
	Agency or Fund	Program or Purpose	Agency or Fund	Program or Purpose	
39	Office of Policy and Management	Private Provider Infrastructure/Debt Fund	Department of Information Technology	Other expenses	\$650,000

41	Office of Policy and Management	Private Provider Infrastructure/Debt Fund	Department of Public Safety	Workers' compensation claims	681,222
42	Office of Policy and Management	Miscellaneous grants	Department of Mental Retardation	Workers' compensation claims	859,419
43	Department of Mental Health and Addiction Services	Supportive housing	Department of Mental Health and Addiction Services	Other expenses	3,100,000
44	Education Department	School construction	Department of Social Services	Medicaid	33,200,000
45	Education Department	School construction	Department of Social Services	Child Care Services – TANF/CCD BG	5,700,000
46	Education Department	School construction	Military Department	Personal services	300,000
47	Education Department	School construction	Military Department	Other expenses	100,000
48	Education Department	School construction	Department of Environmental Protection	Personal services	500,000
49	Education Department	School construction	Department of Environmental Protection	Other expenses	300,000
50	Education Department	School construction	Department of Public Health	Other expenses	500,000
51	Education Department	School construction	Department of Social Services	Medicaid	9,100,000
52	Office of Policy and Management	Energy contingency	Department of Social Services	Temporary Assistance to Families – TANF	9,700,000
53	Department of Higher Education	Higher Education Matching Grant Fund	Department of Education	Excess Cost–Student Based (special education)	6,500,000
54	Department of Environmental Protection	Residential Underground Storage Tank Clean-up	General Fund	Reserve for salary adjustments	4,000,000
55	Department of Higher Education	Higher Education Matching Grant Fund	Department of Administrative Services	Workers' compensation claims	2,046,170
56	Department of Social Services	Hospital finance restructuring funding	General Fund, State employees health service cost	Other expenses	10,000,000
57	Mashantucket Pequot and Mohegan Fund	Grants to towns	Department of Social Services	Medicaid	9,200,000
58	Mashantucket Pequot and Mohegan Fund	Grants to towns	Department of Correction	Workers' compensation claims	3,493,189

EFFECTIVE DATE: Upon passage

Transfers to the General Fund (§§ 59-64)

The act transfers appropriations for various programs to the General Fund for FY 2001-02, as shown in Table 8.

Table 8: Transfers to the General Fund for FY 2001-02

Section	Program or Fund	Amount
59	Tobacco Settlement Fund Tobacco Grant Account	\$400,000
60	Department of Mental Health and Addiction Services, TBI Community Services	1,400,000
61	Department of Higher Education, Minority Advancement Program	142,164
62	Department of Higher Education, National Service Act	61,952
63	Department of Higher Education, Minority Teacher Incentive Program	71,595
64	Various agency appropriations	46,802,962

EFFECTIVE DATE: Upon passage

Department of Social Services (§ 65 (a) & (b))

From the FY 2001-02 transfers to the General Fund listed above, the act requires DSS to pay \$2.5 million from Medicaid funds to Stamford Hospital and \$3.3 million to Yale-New Haven Hospital. It transfers \$1 million to DSS for Other Expenses for FY 2001-02 and allows the department to carry the funds forward to FY 2002-03 for the same purpose. (Although the section refers to funds transferred to the General Fund for FY 2001-02 under sections 22 to 27 of the act, it is sections 59 to 64 of the act that actually make those transfers.)

EFFECTIVE DATE: Upon passage

Department of Economic and Community Development (§ 65(c))

From the FY 2001-02 transfers to the General Fund listed above, the act requires the Department of Economic and Community Development to use \$2,243,276 for local tax abatements and \$2.9 million for payments to local governments in lieu of taxes. It allows the department to carry these funds forward to FY 2002-03 for the same purposes.

EFFECTIVE DATE: Upon passage

REVENUE ESTIMATE REVISIONS (§§ 100-102)

The act revises prior estimates of total revenue for the General; Mashantucket Pequot and Mohegan; and the Soldiers', Sailors', and Marines' funds for FY 2002-03, as shown in Table 9.

Table 9: FY 2002-03 Total Estimated Revenue (millions)

Section	Fund	Old	New
100	General Fund	\$12,432.0	\$12,387.8
101	Mashantucket Pequot and Mohegan Fund	135.0	137.5
102	Soldiers', Sailors' and Marines' Fund	3.50	3.70

EFFECTIVE DATE: Upon passage

INCOME TAX

Additional Tax On Income Over \$1 Million (§ 66)

The act imposes a temporary 1% surcharge on annual Connecticut taxable income greater than \$1 million. The surcharge applies for the 2002 and 2003 tax years (i.e., from January 1, 2002 through December 31, 2003). The additional tax must be computed and collected according to applicable state income tax requirements.

EFFECTIVE DATE: Upon passage and applicable to tax years beginning on or after January 1, 2002 and before January 1, 2004.

Exemption For Terrorist Victims (§ 68)

The act grants state income tax relief to victims of certain terrorist attacks. It defines a "terrorist victim" as someone who (1) died of wounds or injuries sustained in the September 11, 2001 attack or in an anthrax attack occurring between September 11, 2001 and January 1, 2002 and (2) is not identified by the U.S. attorney general as a conspirator or participant in the attack or a representative of either.

Under the act, neither a terrorist victim nor his estate is required to file a state income tax return for 2001, and no 2001 income taxes owed nor any additions, interest, and penalties on them can be assessed. Any such taxes or charges already assessed must be abated and any collected, refunded. If a legal representative for the victim's estate has been appointed, refunds go to that person. If not, refunds are payable to the victim's surviving spouse, if any.

The exemption does not apply to taxes attributable only to (1) deferred compensation that would have been payable after death if the person had not died in the terrorist attacks or (2) amounts paid in 2001 that would not have been payable in that year except for an action taken after September 11, 2001.

For joint filers, the act limits the exemption to the victim's share of the couple's total tax liability. It extends the same limitation to an existing income tax exemption for active duty U.S. Armed Forces members who die while serving in a combat zone. If such a person dies from an injury or illness incurred in a combat zone during a combat period, existing law waives his income tax liability for the tax year of his death as well as any prior tax year ending on or after his first day of service in the combat zone.

Under the act, tax relief for joint filers must be determined by (1) figuring the separate tax liabilities of the victim or Armed Forces member and his spouse, (2) adding them together, (3) determining the percentage of the total attributable to the victim or Armed Forces

member, and (4) applying that percentage to the couple's joint liability.

The act conforms to the "The Victims of Terrorism Tax Relief Act of 2001," enacted by Congress on December 20, 2001 and signed by the President on January 23, 2002.

EFFECTIVE DATE: Upon passage

Single Filers (§§ 85-87)

For single people, the act freezes through 2003 the personal exemption from the state income tax and the income threshold for a reduced exemption. It also delays increases in the exemption and exemption reduction thresholds previously scheduled for taxable years 2002 through 2007 by two years each so they take effect for 2004 through 2009 (see Table 10).

Table 10: Singles Exemption Schedule

Taxable Year(s)		Exemption	Exemption Reduction Threshold
Old Law	The Act		
2001	2001-2003	\$12,500	\$25,000
2002	2004	12,750	25,500
2003	2005	13,000	26,000
2004	2006	13,500	27,000
2005	2007	14,000	28,000
2006	2008	14,500	29,000
2007 and after	2009 and after	15,000	30,000

The act delays increases in adjusted gross income levels at which singles qualify for income tax credits. It does so by freezing until 2004 the 2001 income tables used to figure credits and correspondingly delaying scheduled implementation dates for each new income table by two years. Credits range from 75% for people with the lowest qualifying incomes to 1% for those with the highest. Table 11 shows the credits for the lowest and highest income ranges under the prior law and the act.

Table 11: Singles Tax Credit Schedule

Taxable Year(s)		Income Ranges	
Prior Law	The Act	Lowest (75% credit)	Highest (1% credit)
2001	2001-2003	\$12,500-\$15,600	\$54,000-\$54,500
2002	2004	12,750-15,900	55,000-55,500
2003	2005	13,000-16,300	56,000-56,500
2004	2006	13,500-16,900	58,000-58,500
2005	2007	14,000-17,500	60,000-60,500
2006	2008	14,500-18,100	62,000-62,500
2007 and after	2009 and after	15,000-18,800	64,000-64,500

Income tax credits over \$100 are reduced by 10% for each \$10,000 of annual income above a specified threshold. The act delays by two years scheduled increases in these thresholds for single filers as shown in Table 12.

Table 12: Singles Credit Reduction Threshold

Credit Phase-Out Threshold	Taxable Year(s)	
	Prior Law	The Act
\$54,500	2001	2001-2003
55,500	2002	2004
56,500	2003	2005
58,500	2004	2006
60,500	2005	2007
62,500	2006	2008
64,500	2007 and after	2009 and after

EFFECTIVE DATE: Upon passage and applicable to tax years starting on and after January 1, 2002.

CORPORATION TAX

Depreciation (§ 73)

The act bars corporations from using a recently enacted federal bonus depreciation rule to determine net income for purposes of the corporation tax. Under prior law, federal depreciation rules, including the bonus, automatically applied to state corporation tax determinations. Under the act, corporations must follow all applicable federal depreciation rules, except the bonus.

The new federal law (P.L. 107-147, § 101, codified as 26 USC 168(k)) gives corporations a special 30% first-year bonus depreciation on certain property they buy or start building on or after September 11, 2001 and before September 11, 2004. They must place the property in service before January 1, 2005. The bonus depreciation applies to property subject to the "modified accelerated cost recovery system" (i.e., property placed in service after 1986). It covers such property that is (1) depreciable over 20 years or less, (2) water utility property, (3) computer software not subject to separate intangible property amortization rules, or (4) qualified leasehold improvement property.

The act also eliminates obsolete provisions (1) limiting the corporation tax depreciation deduction available under the federal "accelerated cost recovery system" for the first five years after it was instituted (i.e., income years 1981-1985); (2) allowing companies to recover the amounts not allowed over the succeeding five years (i.e., income years 1986-1991); (3) allowing companies to choose to continue using pre-1981 depreciation rules; and (4) allowing the DRS commissioner to disallow use of pre-1981 rules under certain conditions.

EFFECTIVE DATE: Upon passage and applicable to property placed in service after September 10, 2001 in income years ending after that date.

Carpenter Technology Decision (§§ 74 & 75)

The DRS commissioner can adjust a corporation's reported Connecticut income, deductions, capital, and assets under the corporation tax if he determines the company has an agreement, understanding, or arrangement with another company that gives an inaccurate or improper reflection of its Connecticut business, income, or capital. This act specifies that (1) the facts, circumstances, and transactions of the *Carpenter Technology* case meet the legal standard for making such an adjustment and (2) the commissioner was justified in making adjustments in that case. It thus bars other companies from using the type of transactions that Carpenter Technology used to reduce or avoid state corporation tax liability.

Carpenter Technology set up a Delaware subsidiary; capitalized it with \$300,005,000; and, a few days later, borrowed all but \$5,000 back. Carpenter paid interest on the loan and deducted the interest, saving \$196,102 in Connecticut corporation taxes for 1990 and 1991. The DRS commissioner determined the loan had no valid business purpose and disallowed the interest deduction. But a Superior Court ruling, endorsed by the Connecticut Supreme Court, held the disallowance was unreasonable because Carpenter's arrangement did not result in an improper or inaccurate reflection of income (*Carpenter Technology Corp. v. Commissioner of Revenue Services*, 47 Conn. Sup. 122 (2000); *Carpenter Technology Corp. v. Commissioner of Revenue Services*, 256 Conn. 455 (2001)).

The act also prohibits the commissioner from exercising his authority to make adjustments in an arbitrary, capricious, or unreasonable way.

EFFECTIVE DATE: Upon passage and applicable to income years starting on or after January 1, 2002.

Interest On Corporation and Air Carrier Tax Refunds (§§ 76 & 77)

The act gives DRS three months from the date a return claiming overpayment of corporation or air carrier tax is due, excluding extensions, or filed, whichever is later, to credit or refund the overpayment before it must start paying interest on the refund. Under prior law, except for refunds resulting from overpayments of estimated tax, DRS owed 0.66% interest for each month or part of a month that elapsed between the tax due date or payment date, whichever was later, and the date it gave notice that a refund was due.

Under the act, for amended returns filed before the final filing date for the year or period, the three-month period begins on the final filing date, excluding extensions. If the overpayment results from carrying

back a net operating or capital loss, interest must be determined (1) using the last filing date of the tax year in which the loss arises (excluding any extensions) and (2) as if the overpayment applied to that year. In such a situation, the three-month period begins on the date the company files an amended return for the loss year claiming the overpayment. The act applies the same treatment to overpayments resulting from tax credit carrybacks.

In addition, if an overpayment is claimed on a late-filed or amended tax return, the act specifically disallows interest for any period before the return is filed, stating its legislative intent is to clarify the law in this regard.

Under the act, returns are considered filed only when filed on authorized forms that include the taxpayer's name; address; identifying number; required signatures; and enough information, either on the return itself or in required attachments, to mathematically verify the tax liability shown in the return.

EFFECTIVE DATE: Upon passage

R&D Corporation Tax Credit Refund Payments (§ 88)

The act suspends for one year, from July 1, 2002 through June 30, 2003, payment of refunds for 65% of the value of unused corporation tax credits for research and development (R&D) expenses. By law, companies with annual gross incomes of \$70 million or less are eligible for the refunds.

EFFECTIVE DATE: July 1, 2002

GIFT TAX (§ 67)

The act delays a scheduled phase-out of the tax on gifts of \$1 million or less. The tax on gifts of \$25,000 or less was eliminated as of January 1, 2001. This act delays the effective date of each scheduled rate reduction on gifts between \$25,000 and \$1 million by two years, thus delaying the end of the phase-out from January 1, 2006 to January 1, 2008. It freezes the gift tax at 2001 rates for the 2002 and 2003 calendar years and defers each subsequent reduction by two years as shown in Table 13.

Table 13: Gift Tax Phase-Out Schedule

TAX RATES IN EFFECT			
Old Law	The Act	Gift	Tax
2001	2001	\$25,000 or less	None
	2002	\$25,001 – \$50,000	\$250 plus 2% of the amount over \$25,000
	2003	\$50,001-\$75,000	\$750 plus 3% of the amount over \$50,000
		\$75,001-\$100,000	\$1,500 plus 4% of the amount over \$75,000
		\$100,001-\$675,000	\$2,500 plus 5% of the amount over \$100,000

Old Law	The Act	Gift	Tax
		Over \$675,000	\$31,250 plus 6% of the amount over \$675,000
2002	2004	\$50,000 or less	None
		\$50,001-\$75,000	\$750 plus 3% of the amount over \$50,000
		\$75,001-\$100,000	\$1,500 plus 4% of the amount over \$75,000
		\$100,001-\$700,000	\$2,500 plus 5% of the amount over \$100,000
		Over \$700,000	\$32,500 plus 6% of the amount over \$700,000
Old Law	The Act	Gift	Tax
2003	2005	\$75,000 or less	None
		\$75,001-\$100,000	\$1,500 plus 4% of the amount over \$75,000
		\$100,001-\$700,000	\$2,500 plus 5% of the amount over \$100,000
		Over \$700,000	\$32,500 plus 6% of the amount over \$700,000
Old Law	The Act	Gift	Tax
2004	2006	\$100,000 or less	None
		\$100,001-\$850,000	\$2,500 plus 5% of the amount over \$100,000
		Over \$850,000	\$40,000 plus 6% of the amount over \$850,000
Old Law	The Act	Gift	Tax
2005	2007	\$950,000 or less	None
		Over \$950,000	\$45,000 plus 6% of the amount over \$950,000
Old Law	The Act	Gift	Tax
2006 and after	2008 and after	\$1 million or less	None
		Over \$1 million	\$47,500 plus 6% of the amount over \$1 million

EFFECTIVE DATE: Upon passage and applicable to income years starting on or after January 1, 2002.

TAX EXEMPTIONS FOR ALTERNATIVE FUELS

Petroleum Products Gross Earnings Tax (§ 70)

The act exempts from the petroleum products gross earnings tax money refiners or distributors earn from first sales in Connecticut of petroleum products for fuel cell fuel that occur between July 1, 2002 and June 30, 2003. A fuel cell produces electricity directly or indirectly from hydrogen or hydrocarbon fuel through an electro-chemical process, rather than by burning.

The act also delays, from July 1, 2002 to July 1, 2003, the expiration date of the exemption for refiners' and distributors' earnings from sales of propane for motor vehicle fuel and extends the exemption back to such sales that occurred between January 1, 2000 and July 1, 2001.

EFFECTIVE DATE: July 1, 2002

Utility Tax (§ 71)

The act extends, from June 30, 2002 to June 30, 2003, the expiration date of an exemption from the

utility gross earnings tax for gas company income earned from selling natural gas or propane for motor vehicle fuel.

EFFECTIVE DATE: July 1, 2002

Sales And Use Tax (§ 72)

The act exempts vehicles powered exclusively by hydrogen and their associated fueling equipment from the sales and use tax through July 1, 2003. It also extends for one year, from July 1, 2002 to July 1, 2003, the expiration dates of sales and use tax exemptions for:

1. new vehicles that run exclusively on natural gas or electricity;
2. new vehicles that run exclusively on propane, if they meet federal or state emission standards under the Clean Air Act;
3. equipment used to convert vehicles to run exclusively on natural gas, electricity, or propane or to run on one of those fuels and any other fuel; and
4. equipment used in, or as part of, a compressed natural gas filling or electric recharging station for alternative-fuel vehicles.

EFFECTIVE DATE: July 1, 2002

TAX AMNESTY (§§ 78 & 89)

Taxes and Period Covered

The act requires the DRS commissioner to establish a tax amnesty program for anyone who owes state tax, interest, or penalties for any taxable period ending on or before March 31, 2002. The amnesty runs from September 1 to November 30, 2002 and covers any taxable period before March 31, 2002 for which:

1. neither the taxpayer nor the DRS commissioner on his behalf filed a tax return,
2. the taxpayer underreported his tax and DRS did not examine the return,
3. interest or penalty was imposed for late payment or underreporting, or
4. interest or additional tax was imposed because the taxpayer failed to file and the commissioner filed a return for him.

Amnesty Conditions

The DRS commissioner must prepare amnesty tax return forms requiring applicants to specify the tax and taxable period for which they seek amnesty. If the person applies in writing and pays all the taxes he owes for the applicable tax periods, plus interest at the rate of 1% per month or part of a month, the act bars the commissioner from seeking penalties or criminal

prosecution for those periods.

The commissioner may grant amnesty only to those who apply during the amnesty period and who either (1) pay the tax and interest due when they file their amnesty tax return or (2) because of financial hardship, enter into an installment payment agreement on the commissioner's terms and conditions. If a taxpayer fails to pay any installment under such an agreement, the agreement is void and the total balance is due immediately. Failure to pay all amounts due invalidates the amnesty.

Exclusions

The act bars amnesty for those who (1) have received notice from DRS that they are being audited for the period for which they are seeking amnesty or (2) are parties to any criminal investigation or civil or criminal litigation pending on June 1, 2002 in any federal or state court for failure to file or pay or for state tax fraud.

Additional Penalty

The act imposes an additional penalty of 5% of the taxes owed on any tax liability that could be, but is not, satisfied during the amnesty. The penalty, which cannot be waived or abated, is in addition to any other penalties, interest, or costs.

DRS Authority and Administrative Costs

The act gives the DRS commissioner authority to do what is necessary to implement the amnesty program and allows DRS to use up to \$2 million in revenues from the program to administer the act.
EFFECTIVE DATE: Upon passage

COURT FEE INCREASES (§§ 79-83)

The act increases various court fees as shown in Table 14.

Table 14: Court Fee Increases

Section	Fee	Old	New
79	Jury fee in civil actions	\$300	\$350
80	Small claims entry fee	30	35
81(a)	Motion to open, set aside, modify, or extend Superior Court civil judgment	60	70
81(b)	Motion to open or reargue civil appeal decided in the Appellate or Supreme Court	60	70
82	Application for personal property execution	10	20
83	Application for wage execution	10	20

EFFECTIVE DATE: July 1, 2002

DRUNK DRIVING (DWI)

BAC Threshold for DWI (§§ 90-98)

It is against the law to drive a motor vehicle (1) while under the influence of alcohol, drugs, or both or (2) with an "elevated blood alcohol content." The former offense may be prosecuted with or without any direct evidence of a person's BAC. For the latter, under prior law, someone over age 21 was considered to be driving with an elevated BAC if he was found to have a .10% BAC for a first offense or a .07% BAC if he had a previous conviction for drunk driving. The act lowers the standard from .10% to .08% BAC and eliminates the .07% standard for someone with a prior conviction, thus making the standard uniform for all offenses.

The act also eliminates the infraction offense of operating while impaired by alcohol. This offense occurred when someone was found to have a BAC between .07% and .099%.

Pretrial Alcohol Education Program (§ 99)

Under prior law, someone charged with DWI for the first time could apply to the court to participate in the Pretrial Alcohol Education Program. But drivers under age 21 charged under another law when found with BACs of .02% or more could not apply. The act eliminates this distinction so drivers under age 21 may qualify for the program if charged with a first offense under either law.

Pretrial Alcohol Education Program Procedural Changes (§ 99)

Under prior law, when someone applied for the program, he paid a \$50 application fee. If the court granted the application, the person was referred to the Bail Commission for assessment and confirmation of eligibility. Once eligibility was confirmed, the applicant was referred to DMHAS for evaluation and placement in an appropriate alcohol program for one year. If the person's BAC was less than .16%, he had to participate in at least 10 counseling sessions and pay a nonrefundable \$425 program fee. If his BAC was .16% or more, he had to participate in at least 15 counseling sessions and pay a \$600 program fee.

The act makes several changes in these procedures. It:

1. requires an applicant to pay a nonrefundable \$100 evaluation fee in addition to the \$50 application fee when he applies for the program;
2. requires him to be referred to DMHAS for evaluation at the same time he is referred to

- the Bail Commission for assessment and confirmation of eligibility, rather than afterward;
3. requires the Bail Commission to receive the evaluation report before it refers him to DMHAS for placement in a program and specifies that the program must be an alcohol intervention program;
 4. eliminates the minimum 15-session program for someone whose BAC is .16% or more while allowing such a program to be required based on the evaluation report and court order; and
 5. reduces the program fees to \$325 for a 10-session, and \$500 for a 15-session, program, apparently reflecting the new up-front \$100 evaluation fee.

EFFECTIVE DATE: July 1, 2002

BACKGROUND

Criminal and Administrative Sanctions for DWI Offenses

Table 15 shows the criminal and administrative penalties that apply to drunk driving violations. All sanctions are mandatory.

Table 15: Drunk Driving-Related Sanctions and Penalties

ADMINISTRATIVE LICENSE SANCTIONS			
	First Offense	Second Offense	Third Offense
Test Refusal	6 months	1 year	3 years
.02% BAC or higher-under age 21	90 days	9 months	2 years
.07% BAC or higher with prior conviction	90 days	9 months	2 years
.10% BAC or higher	90 days	9 months	2 years
.16% BAC or higher	120 days	10 months	2 years, six months
CRIMINAL SANCTIONS			
First Offense	Second Offense	Third Offense	
<i>Fine:</i> \$500-\$1,000 <i>Imprisonment:</i> Six months—48 hours minimum mandatory OR Suspended sentence with 100 hours of community service <i>License Action:</i> One-year suspension	<i>Fine:</i> \$1,000-\$4,000 <i>Imprisonment:</i> Two years—120 days minimum mandatory AND 100 hours of community service <i>License Action:</i> Three-year suspension (or until age 21 if longer)	<i>Fine:</i> \$2,000-\$8,000 <i>Imprisonment:</i> Three years—one year minimum mandatory AND 100 hours of community service <i>License Action:</i> Permanent revocation	

RELATED ACTS

This act’s provisions concerning the Underground Storage Tank Clean-Up Account were also enacted as part of PA 02-80, An Act Concerning Reimbursement

Limits from the Underground Storage Tank Clean-Up Account.

The provisions exempting September 11th and anthrax terrorist victims from the 2001 state income tax were also included in PA 02-126, An Act Requiring Issuance of United We Stand Commemorative Number Plates, and Concerning Tuition Waivers and an Income Tax Exemption for Children and Spouses of Terrorist Victims and Designating a Remembrance Day.

PA 02-107—HB 5734

Appropriations Committee

Finance, Revenue, and Bonding Committee

AN ACT DESIGNATING CERTAIN “FUNDS” AS “ACCOUNTS”

SUMMARY: This act consolidates state agency and institution employee, client, and student funds by changing the funds’ designation from “activity funds” and “welfare funds” to “trustee accounts.” Money in these accounts comes from a variety of sources, including vending machines and membership fees, and is used exclusively for the benefit of the employees, clients, or students of these agencies or institutions. The act also makes a few conforming technical changes.

The act eliminates a requirement that an agency or institution head operating a general welfare fund file a financial report with the secretary of the Office of Policy and Management (OPM). The law already requires these individuals, as well as the treasurers of student government organizations controlling such money, to file balance sheets and statements of operations with OPM.

EFFECTIVE DATE: July 1, 2002

PA 02-117 – SB 635

Appropriations Committee

AN ACT CONCERNING CREDIT IN THE TEACHERS’ RETIREMENT SYSTEM FOR PART-TIME TEACHING SERVICE

SUMMARY: The law allows members of the Teachers’ Retirement System (TRS) to buy additional credited service for certain types of activities for which they would not otherwise receive TRS credit. To be eligible to purchase credit as a substitute teacher, a person must have worked for at least 40 days in one school district in one school year. The act reduces, from 20 to 18, the number of days of service as a substitute teacher needed to equal one month of credited service. Since TRS benefits are calculated based on a teacher’s total months

of credited service, the act enables qualified substitute teachers to purchase additional months and receive a larger benefit.

EFFECTIVE DATE: July 1, 2002

PA 02-118—sSB 643

Appropriations Committee

**AN ACT INCREASING THE AMOUNT OF
UNAPPROPRIATED SURPLUS TRANSFERRED
TO THE BUDGET RESERVE FUND**

SUMMARY: This act increases the maximum amount of the unappropriated General Fund surplus for any fiscal year that must be transferred to the Budget Reserve (“Rainy Day”) Fund from 5% to 7.5% of the net General Fund appropriations for that year. By law, unappropriated surplus funds remaining after the full allocation to the Budget Reserve Fund must go to reduce (1) the State Employees Retirement Fund’s unfunded liability and (2) outstanding state debt.

EFFECTIVE DATE: July 1, 2002

PA 02-12—sHB 5073

Banks Committee

AN ACT CONCERNING PREPAID FINANCE CHARGES

SUMMARY: By law, a lender making a high-cost home loan may not require the borrower to pay charges as a condition of the loan before closing (“prepaid finance charge”) totaling more than 5% of the loan’s principal amount or \$2,000, whichever is greater. The act expands the definition of prepaid finance charge to include any charge the borrower pays either (1) by cash or check before or at the loan consummation or credit extension or (2) by withholding funds at any time from the transaction’s proceeds. The law already includes a lender or broker’s commission or fee for selling prepaid credit life, accident, health, disability, or unemployment insurance or other goods and services that the customer pays for with the loan or credit proceeds and finances as part of the principal amount. Prior law defined a prepaid finance charge as a charge imposed as an incident to, or condition of, a loan or credit extension, including (1) loan fees, (2) points, (3) commissions, (4) brokers’ fees or commissions or (5) transaction fees.

The act removes the exclusion of the time-price differential from the definition of prepaid finance charges and instead exempts (1) premiums, fees, and other sums paid to, or escrowed by, a government agency and (2) interim interest. It defines “interim interest” as the interest the borrower pays during the period at or before consummating a closed-end loan, so long as the borrower starts paying off the loan within 62 days.

By law, high-cost home loan payment schedules may not consolidate more than two periodic payments and pay them in advance from the proceeds. The act allows such payment schedules if a government agency is required to escrow the funds. It makes a conforming change to a provision prohibiting a secondary mortgage broker or lender from imposing loan fees, points, commissions, or transaction fees determined in accordance with the Connecticut Truth-in-Lending Act, except the time-price differential, to prohibit all prepaid finance charges which, when added to the broker’s fee or commission, total more than 8% of the loan principal. EFFECTIVE DATE: Upon passage

PA 02-13—HB 5074

Banks Committee

Finance, Revenue and Bonding Committee

AN ACT CONCERNING ASSESSMENTS AND REPORTS FILED WITH THE COMMISSIONER OF BANKING

SUMMARY: This act requires only mutual Connecticut banks to publish annual reports of their condition and income in a newspaper in the county in which their main office is located. Prior law required all Connecticut banks to publish these reports twice each year. The law still requires all Connecticut banks to file reports with the banking commissioner, but the act requires only mutual banks to publish them.

The act allows the commissioner to offset the amount he collects from a Connecticut bank as an assessment for the Banking Department’s expenses by up to the amount charged the bank by another state where the bank has a branch. It also simplifies the trust department examination fee structure by charging the amount that the commissioner determines to be the examination’s actual cost. Prior law imposed a minimum charge of \$150, and rates of \$150 per day for an examiner in charge and \$100 per day for an assisting examiner.

EFFECTIVE DATE: July 1, 2002

PA 02-21—sSB 329

Banks Committee

AN ACT CONCERNING THE BANKERS’ BANK

SUMMARY: This act allows “bankers’ banks” to provide services to financial institutions anywhere in the country but still requires them to be owned by institutions with principal offices in New York or New England. It allows bankers’ banks to provide services that indirectly serve banks, which may include direct contact with customers, while prior law limited their services to other banks. For example, small banks often cannot spare staff to assist their customers in other locations, but a bankers’ bank serving a small bank could send assistance in the small bank’s stead.

EFFECTIVE DATE: October 1, 2002

PA 02-31—sHB 5423

Banks Committee

AN ACT CONCERNING BANK PARITY

SUMMARY: This act broadens the circumstances under which financial institutions may disclose financial records. First, it allows disclosure to a broker-dealer or investment advisor engaged in a contractual networking arrangement with the institution, if the customer is (1)

advised that these entities may share the information among themselves and (2) before the initial sharing occurs, given a reasonable opportunity to direct that the information not be shared. Second, it allows disclosure to a customer service representative who works or acts as an agent for both (1) the financial institution and (2) a broker-dealer or investment advisor engaged in a contractual networking arrangement. Third, it allows disclosure to a broker-dealer or investment advisor's other agents or employees engaged in a contractual networking arrangement in order to comply, or verify compliance, with applicable laws governing the financial institution, broker-dealer, or investment advisor's activities.

The act defines a "contractual networking arrangement" as an arrangement between a financial institution and (1) a registered Connecticut broker-dealer; (2) a registered Connecticut investment advisor; or (3) an investment advisor that has filed a notice of exemption from registration, if the broker-dealer or investment advisor offers securities-related services to the financial institution's customers.

By law, financial institutions are: banks, Connecticut and federal credit unions, and other institutions authorized to accept deposits in Connecticut. Financial records include account statements, documents granting account signature authority, and checks or money orders. A "broker-dealer" is a person in the business of making securities transactions for his own or others' accounts. An "investment advisor" is a person paid to (1) tell others about securities values or advise them about investing in, buying, or selling securities or (2) issue or create securities analyses or reports.

EFFECTIVE DATE: October 1, 2002

PA 02-39—SB 330

Banks Committee

AN ACT CONCERNING BANK CONVERSIONS

SUMMARY: This act allows any Connecticut bank to convert to an uninsured bank with the banking commissioner's approval. Prior law allowed Connecticut banks to convert to uninsured banks if they were authorized to accept retail deposits. The act applies only to Connecticut banks organized solely to operate in a fiduciary capacity.

EFFECTIVE DATE: October 1, 2002

PA 02-47—sSB 93

Banks Committee

Judiciary Committee

AN ACT CONCERNING BANK POWERS AND TRANSACTIONS

SUMMARY: This act expands the authorized activities of state banks and the banking commissioner's authority to close banks. It allows Connecticut bank organizers to amend their pending proposals and requires the commissioner to publish notice of certain changes to allow the public an opportunity to object. It clarifies Connecticut banks' authority to establish branches and allows them to relocate or sell certain out-of-state branches, with the commissioner's approval. It also gives mutual and subsidiary holding companies new power over reorganized financial institutions and stock issuance.

EFFECTIVE DATE: October 1, 2002, except the sections addressing mutual and subsidiary holding companies take effect upon passage.

EXPANSION AND LIMITATION OF COMMISSIONER'S AUTHORITY

The act allows the commissioner to close all banks or Connecticut credit unions in the state or specified towns or counties for good cause. Prior law allowed him to do so only in an emergency. The act exempts Connecticut banks that have applied to convert to uninsured banks from the commissioner's authority to seek to enjoin a bank from transacting business or for a conservator to wind up a bank's affairs if the commissioner believes (1) the bank's charter is forfeited, (2) the public is in danger of being defrauded, (3) the bank is insolvent, or (4) the Federal Deposit Insurance Company has terminated the bank's account or deposit insurance.

ORGANIZATION OF CONNECTICUT BANKS

Application Changes

The act adds new provisions to the Connecticut bank organization process. Before the commissioner issues a final certificate of authority, the act allows bank organizers, with his approval, to amend their proposed certificate of organization to change (1) the name or type of Connecticut bank they are organizing; (2) the location of the bank's main office; (3) the amount, authorized number, and par value of the bank's shares of capital stock, if applicable; or (4) an organizer or prospective initial director's name.

It also allows the organizers, with the commissioner's approval, to alter material provisions of their proposed business plan and amend their proposed certificate of incorporation to change the minimum amount of equity capital with which the bank will start its business. This can be less than the amount of the bank's authorized capital, but by law it must be at least (1) \$5 million for regular Connecticut banks and (2) \$2 million for Connecticut banks acting solely as fiduciaries.

The act allows the organizers to file notice with the commissioner of plans to amend their proposed certificate of incorporation to change any bank organizer or prospective initial director's occupation, residence, post office, or business address.

Commissioner's Duties

If the commissioner receives an application to change a Connecticut bank's name in its proposed certificate of organization, the act requires him to publish notice of it in the Banking Department's weekly bulletin. The notice must state that people have 30 days to object in writing to the change on the grounds that the selected name will tend to confuse the public. If the commissioner does not think the name will confuse the public and no one objects, the act requires him to approve the name change. But if the commissioner finds that the name may confuse the public, or an objection is filed, he must order a hearing to be held between 20 and 30 days after the deadline for filing objections. The act also requires him to publish notice of the hearing date in the bulletin at least 14 days in advance. It requires him to hear everyone who wants to speak at the hearing and make a ruling within 15 days.

The act requires the organizers to file any approval they receive for changes to their certificates of authority or incorporation with the secretary of the state, at which time the approved amendments take effect.

MERGER, CONSOLIDATION, AND CONVERSION

The act allows any shareholder of a bank involved in a merger or consolidation to assert appraisal rights and cash in his shares. It replaces most references to "dissenting" and "objecting" shareholders with those shareholders who "assert appraisal rights." It eliminates the requirement that a shareholder objecting to a Connecticut bank's conversion (1) file a written objection with the bank's secretary on or before the date of the shareholders' meeting to vote on conversion and (2) make a written demand for payment of his stock within 10 days after the bank converts. But it continues to require these actions of shareholders objecting to the conversion of a capital stock community bank or capital

stock Connecticut bank.

BRANCHES

The act allows Connecticut banks, with the commissioner's approval, to (1) relocate outside Connecticut any out-of-state branch or limited branch in accordance with notice requirements and (2) sell a branch, limited branch, or mobile branch that was established outside Connecticut if the selling bank has existed and operated continuously for at least five years, unless the commissioner waives this requirement. The act also clarifies Connecticut banks' authority to establish limited branches, either de novo or by branch conversions.

HOLDING COMPANIES

Establishing Subsidiaries

The act replaces the commissioner's general authority to adopt regulations regarding reorganized financial institutions with specific powers for mutual and subsidiary holding companies. It allows a mutual holding company to establish a subsidiary holding company as a direct subsidiary to hold 100% of its reorganized savings institution stock. It permits mutual holding companies to establish subsidiaries either when they first reorganize or later, subject to the commissioner's conditions and approval. As part of the approval process, the act requires them to file with the commissioner their (1) proposal to establish the subsidiary holding company, (2) proposed certificate of incorporation, and (3) bylaws.

The act deletes from the definitions of "mutual holding company," "reorganized savings bank," and "reorganized savings and loan association" a requirement that a mutual holding company own a majority of these institutions' ordinary voting shares. It expands the definition of "mutual holding company" to include a subsidiary holding company that a mutual holding company controls. The act defines a "subsidiary holding company" as a stock-holding company holding all of a reorganized savings organization's stock and controlled by a mutual holding company. It prohibits mutual holding companies from forming and operating subsidiaries to evade or frustrate the purposes of the laws concerning reorganizing mutual savings banks and mutual savings and loans into mutual holding companies.

Issuing Common Stock

The act requires subsidiary holding companies to be treated as reorganized savings institutions for stock

issuance purposes. When a subsidiary holding company issues stock, the act prohibits anyone other than its parent mutual holding company from owning or controlling 51% or more of its stock when the proposed issuance ends.

POWERS OF CONNECTICUT BANKS

The act expands Connecticut banks' powers to allow them to engage in the same activities state law permits for out-of-state banks. Prior law allowed Connecticut banks to engage only in activities that federal banks could engage in under federal law.

PA 02-73—sHB 5316

Banks Committee

AN ACT CONCERNING CREDIT UNION MODERNIZATION

SUMMARY: This act significantly reorganizes credit union law under the Connecticut Credit Union Act by:

1. modifying the process for organizing and establishing a Connecticut credit union;
2. allowing credit unions to make member business loans;
3. authorizing credit unions to invest their surplus funds in additional securities, funds, obligations, and real estate;
4. increasing the authority of credit unions' governing boards and executive, supervisory, and credit committees;
5. expanding the role credit union service organizations play in assisting credit unions and their members;
6. requiring credit unions to have policies addressing conflicts of interest and insider transactions;
7. creating basic service and corporate credit unions;
8. updating credit union merger and conversion policies;
9. requiring "allowance for loan and lease losses" accounts; and
10. allowing members of a credit union to vote on its proposed dissolution.

The act also applies banking law principles of receivership and insolvency to credit unions. It allows the banking commissioner to apply for an injunction, receiver, or conservator for a credit union under certain circumstances. It allows a share account holder to pledge his credit union interest to another person, and it applies to credit unions existing banking law provisions on adverse claims.

EFFECTIVE DATE: October 1, 2002

DEFINITIONS (§§ 1, 35, 39)

Connecticut Credit Union

The act amends the definition of a "Connecticut credit union" by expanding its field of membership to include (1) a credit union's organizers, employees, and advisory directors; (2) a deceased member's surviving spouse; and (3) members for life, regardless of any change in the circumstances under which they originally qualified. It redefines the purpose of a Connecticut credit union as operating for the benefit and general welfare of its members by distributing to, or keeping for, them the earnings, benefits, or services it offers. The act removes the purposes of (1) encouraging thrift among its members, (2) creating a source of credit with reasonable interest rates, and (3) allowing members to use and control their own money to improve their economic and social condition. It specifies that a volunteer board of directors elected by and from the credit union's membership must govern a Connecticut credit union.

The act expands the definition of Connecticut credit union (1) officers to include the governing board's chairman, vice-chairman, secretary, and treasurer and (2) directors to include members of the governing board, directors emeritus, and advisory directors.

Time Deposit

The act adds "share accounts" (essentially savings accounts held by members of credit unions) to the definition of a "time deposit."

FRANCHISE AND FILING FEES (§ 36)

The law requires a Connecticut credit union to pay the secretary of the state \$13 for (1) incorporation; (2) filing a certificate of amendment to a certificate of organization; (3) a certificate of merger; or (4) a copy of a certificate of organization, amendment, or merger. The act additionally imposes a \$13 fee for (1) filing a certificate of authority and certificate of incorporation for a Connecticut or federal credit union's conversion to a mutual savings bank, mutual savings and loan association, or mutual community bank or (2) the secretary of the state's certification of a merger agreement, plan of merger, certificate of amendment to the certificate of incorporation, and the commissioner's approval of the merger. It also imposes a \$20 fee for each copy of each document the secretary of the state prepares and furnishes and a \$5 fee for affixing the official seal.

CERTIFICATES OF AUTHORITY TO OPERATE CONNECTICUT CREDIT UNIONS (§§ 37, 38)

Applying to Organize

The act expands laws allowing seven or more people to apply with the commissioner to organize a Connecticut credit union. Prior law required the application to include (1) the credit union's name, including the words "credit union" and "Inc." or "mutual benefit association;" (2) a statement that the Connecticut credit union plans to engage in lawful credit union behavior, and that its existence is perpetual; (3) the locations of its Connecticut offices; (4) a detailed description of its field of membership; (5) any other lawful provisions about its regulation, management, or powers the governing board believes to be appropriate; (6) the par value of its shares; and (7) three copies of its certificate of organization and two copies of its bylaws.

The act, instead, requires the organizers' written application to include a proposed certificate of incorporation on the commissioner's form, which the organizers have signed and acknowledged before an officer competent to administer oaths, stating (1) the Connecticut credit union's name; (2) the town where the main office will be located; (3) each organizer, proposed director, and proposed member of senior management's name, occupation, residence, and post office or business address, including those not named in the proposed certificate; and (4) that the Connecticut credit union intends to engage in activities authorized for its type of institution. It must also include (1) the proposed bylaws, describing how the credit union intends to conduct its business, signed and acknowledged by the organizers before an officer competent to administer oaths; (2) a business plan, including a three-year financial forecast; (3) a potential member survey; (4) for a proposed community credit union, evidence to support a finding that the geographic community exists; and (5) any other information the commissioner requires.

The act requires all of the organizers and directors, when applying to organize and whenever the commissioner requires, to provide him with their fingerprints for use in criminal history background checks. But the act does not require him to conduct these checks. It requires the commissioner to investigate the same facts in filed applications as under prior law, as well as to determine if the proposed credit union is reasonably likely to succeed. It also requires him to consider the effect of overlapping fields of membership on the proposed and existing credit unions and allows him to require the proposed credit union to limit or eliminate overlaps to promote credit union stability. The act eliminates a provision of prior law

giving a properly certified Connecticut credit union "perpetual existence."

One provision of the act requires the commissioner to issue a certificate of authority to any applicant who meets the requirements listed above (§ 37(c)), while another states an additional requirement that the credit union obtain share and deposit insurance from the National Credit Union Association (NCUA) (§ 38(d)(3)). The act eliminates the prior schedule requiring the commissioner to notify the organizers within 30 days of the application filing with his decision granting or denying their certificate. It prohibits him from issuing a certificate of authority if he thinks the proposed credit union's name will tend to confuse the public. It allows him to revoke a certificate for banking law violations.

If the commissioner approves a certificate, the act requires the credit union to file one original of the certificate of incorporation and one original of the certificate of authority with the secretary of the state. Upon filing, the act considers the credit union to be a corporation.

Organizing a New Credit Union

Within a reasonable time after the commissioner issues the certificate of authority, the act requires the credit union's organizers to hold an organizational meeting to elect directors, who (1) elect officers, (2) appoint committee members, (3) adopt the bylaws, and (4) conduct any other necessary business to complete the credit union's organization. Under prior law, the organizers had to carry out these duties. The act requires the credit union to finish its organization and start conducting business within six months after the date the commissioner issues its certificate of authority or the certificate becomes void. But it permits the organizers to apply for, and the commissioner to grant, an extension for good cause. The act prohibits the credit union from starting to conduct business until (1) the NCUA insures its deposits and shares and (2) a surety company bonds it.

Amending a Certificate of Incorporation

Prior law specified procedures for a credit union to amend its certificate of incorporation. The act changes the commissioner's approval process to require him, if he finds the amended certificate of incorporation complies with the Connecticut Credit Union Act, to endorse it and return the original certificate of amendment to the credit union, which must file it with the secretary of the state. Under prior law, the commissioner filed the amended certificate. The act also specifies that the amendment is effective upon this

filing.

Bylaws

The act significantly changes the required contents of a Connecticut credit union's bylaws. It requires them to specify at least (1) the credit union's name; (2) its field of membership and membership qualifications; (3) its shares' par value; (4) the number and terms of directors and election procedures; (5) the duties of members of senior management; (6) the credit function responsibilities of a credit committee, credit manager, loan officer, or combination thereof; (7) how to conduct annual meetings and voting; (8) conditions for paying, receiving, or withdrawing shares and deposits; and (9) other matters the governing board finds necessary.

Prior law required the bylaws to contain (1) the purpose for, and manner in which, special meetings of members would be held; (2) the officers' titles and duties; (3) how officers and directors would be removed and how to fill their vacancies; (4) the term lengths for the supervisory committee, credit committee, directors, and officers; (5) other management and regulatory provisions the incorporators or governing board deemed necessary; and (6) any additional provisions the commissioner required.

Under prior law, a credit union could amend its bylaws at any time, but the commissioner had to approve all bylaw changes. The act prohibits a credit union from amending its bylaws without the commissioner's written approval for three years after its certification. After that, it allows the credit union to amend its bylaws, but it requires the commissioner's written approval for any change to the credit union's name or field of membership. It specifies that any bylaw amendment becomes effective when adopted, except that those requiring the commissioner's approval are effective upon his approval. The act allows a credit union with a multiple common bond membership to add a group of fewer than 500 potential members to its field of membership without the commissioner's approval.

Basic Service Credit Unions and Conversion to a Full Service Credit Union

The act creates a new level of credit union services, called basic service. It allows any credit union, except a community credit union, to be organized just to provide basic services. It defines "basic services" as (1) issuing regular shares, (2) making signature and participation loans up to an amount the commissioner determines, (3) selling money orders and travelers checks, and (4) issuing and redeeming savings bonds.

In order to accelerate a basic service credit union's certification process, the act requires the commissioner

to provide to the organizers, free of charge: (1) a model business plan for basic services; (2) policy guidelines about shares, lending, investments, and other credit union business activities; and (3) sample letters for sponsor support, grants, and nonmember deposits, as applicable. If the commissioner finds the organizers in compliance with all credit union organization requirements, including NCUA insurance, the act requires him to issue the credit union a certificate of authority to offer only basic credit union services.

The act allows a basic service credit union, with the commissioner's approval, to convert to a full service credit union. To do so, it must file with the commissioner a proposed conversion plan, including (1) a new business plan, (2) an original certificate of amendment to its certificate of incorporation, and (3) a certificate from its secretary that a majority of the governing board approved the conversion plan and amended certificate.

The act requires the commissioner to approve the conversion if he finds that (1) the converting credit union complied with all applicable laws, (2) its net worth meets his requirements, (3) it received satisfactory ratings on its most recent safety and soundness examination, and (4) the proposed conversion will better serve the credit union's members' needs. Once the commissioner approves the conversion, the act requires the credit union promptly to file the approval and its amended certificate of incorporation with the secretary of the state, at which point it becomes a full service Connecticut credit union, with all of the corresponding rights, duties, privileges, and liabilities.

FIELDS OF MEMBERSHIP (§ 39)

The law limits Connecticut credit unions' fields of membership to (1) single common bonds; (2) multiple common bonds; and (3) people in a well-defined community, neighborhood, or rural area. It defines a "multiple common bond membership" as a membership field consisting of more than one group of people, with each group member having a common bond of occupation or association. A "single common bond membership" consists of only one such group. By law, a Connecticut credit union with at least \$10 million in assets and a membership limited to people in a well-defined community, neighborhood, or rural area is a "community credit union." The act expands these fields of membership to include a Connecticut credit union's (1) organizers and employees and (2) advisory director.

The act permits single and multiple common bond fields of membership to include (1) associations and organizations of the credit union's members, (2) partnerships where the majority of partners are members, and (3) corporations in which a majority of

shareholders are members.

The act applies the prior criteria by which the commissioner had to judge whether to approve any change to a field of membership only to an amendment that would allow a multiple common bond membership credit union to expand its field of membership to add a group of 500 or more potential members, excluding those eligible because of a family relationship or relation to a community, neighborhood, or rural district. In addition, he must find that (1) the credit union has complied with applicable laws and (2) it is not practicable or safe for the proposed group to form its own credit union. The act appears to allow amendments to add smaller groups without the commissioner's approval.

The act requires any credit union with a multiple or single common bond field of membership that acquires people in a well-defined community, neighborhood, or rural district other than an underserved investment area through merger, expansion, or otherwise, to become a community credit union. It allows the commissioner to withhold or place conditions on approval of a community credit union's bylaw amendment based on its community reinvestment performance.

MEMBERSHIP APPLICATIONS AND EXPULSION OF MEMBERS (§ 40)

Prior law required all membership applications to be submitted to a membership officer, if one was appointed, who had the authority to approve applications and had to report to the governing board on applications approved and received. The act directs all membership applications to be submitted to the Connecticut credit union. It requires the governing board to consider and act on these applications at each regular meeting or appoint a membership officer. It also deletes a provision of prior law allowing members to give notice and withdraw from membership.

CREDIT UNION MEETINGS (§ 41)

Prior law required Connecticut credit unions to hold their annual meetings whenever their governing boards decided; the act requires annual meetings as the bylaws provide. The act allows the governing board to call special meetings, as the bylaws provide, at (1) the request of a board majority; (2) the supervisory committee's written request; or (3) the request of 10% of the credit unions members, or any lesser percentage the bylaws provide. It prohibits a member under age 18 from voting or holding office. Unless the bylaws provide otherwise, the act allows members to vote (1) in person, (2) by proxy, or (3) by mail ballot. Prior law expressly prohibited proxy voting and did not mention

mail ballots.

REPORTING AND RECORDING REQUIREMENTS (§ 42)

Prior law required Connecticut credit unions to submit annual reports to the commissioner within 31 days after their fiscal year ended. The act requires them to submit reports twice a year, on February 1 and August 1, and otherwise as often as he deems necessary. It requires them to present management and committee information as required under the law and to identify each committee chairman. It requires credit unions to establish and maintain records, accounting systems, and procedures accurately reflecting their operations so the commissioner can readily determine their true financial condition and ensure their compliance with the Connecticut Credit Union Act.

LOAN AND LEASE LOSSES (§ 43)

Prior law established the amount of reserves a credit union had to maintain against bad loans and other losses. The act instead requires Connecticut credit unions to establish and maintain an "allowance for loan and lease losses account" in an amount representing its estimated losses on loans and leases. It specifies that credit unions must compute and adjust the allowance necessary before declaring or paying dividends. Most of the act's provisions on the allowance for loan and lease losses are the same as prior reserves law, but the act raises the threshold net worth amount determining which contribution provisions apply to a credit union from \$500,000 to \$2 million.

The act defines "net worth" (1) as a Connecticut credit union's retained earnings balance at the end of each dividend, excluding the allowance for loan and lease losses account, and (2) for a credit union that the NCUA designates as a low-income credit union under federal law, as including any uninsured secondary capital account subordinate to all other claims, such as creditors, shareholders, and the National Credit Union Share Insurance Fund. It specifies that retained earnings consist of (1) undivided earnings; (2) regular reserves; and (3) other appropriations the commissioner, NCUA, or the credit union's governing board, with the commissioner's approval, designates.

DEPOSITS (§ 44)

Under prior law, credit unions could deposit their funds only in government-insured accounts, and could not deposit more than 10% of their assets in out-of-state institutions. The act allows them to deposit funds in any depositories their governing boards designate. It

prohibits withdrawing funds unless the director or designated member of senior management signs the withdrawal check or order.

GOVERNING BOARDS (§ 45)

Authority

The act gives Connecticut credit union governing boards control over managing the credit union's operations, funds, committee actions, and records. It adds to the board's powers by authorizing it or its designee to:

1. make adequate provisions for an allowance for investment losses and a loan and lease losses account;
2. establish different classes of share accounts, including special purpose accounts classified according to different rights and restrictions;
3. ensure that required bonds are maintained in full force and effect at all times;
4. approve loans in accordance with the credit union's bylaws;
5. set credit union employees' compensation levels;
6. establish a supervisory committee, appoint its members, and establish and appoint members to other committees as the bylaws allow, all of which must keep minutes of all actions they take; and
7. establish and adopt written policies needed to implement the credit union's powers, which must be approved and reviewed at least annually.

These must include policies on (1) lending and investments, in accordance with the Connecticut Credit Union Act; (2) employment and personnel; (3) funds management; (4) collections and charge-offs; (5) charitable contributions; and (6) conflicts of interest.

Membership

The act specifies that a credit union's governing board consists of an odd number of directors, with a minimum of five. It removes the prior 15-member maximum and defines a "director" as a member of a Connecticut credit union's governing board, a director emeritus, or an advisory director. The act requires the commissioner to approve all directors elected or appointed to serve on a troubled Connecticut credit union's governing board before they begin service. It defines "troubled Connecticut credit union" as one that, in the commissioner's written opinion, is (1) in danger of insolvency, (2) unlikely to be able to meet its members' demands or pay its obligations in the normal

course of business, (3) likely to incur losses depleting most or all of its capital, or (4) operating in an unsafe and unsound manner. It defines "capital" as (1) undivided earnings; (2) regular reserves; (3) other special purpose reserves; (4) donated equity; and (5) accumulated, unrealized security gains or losses.

The act allows a director to serve multiple terms and stipulates that the terms of office for directors serving terms longer than one year be staggered to ensure that an equal number of terms expire each year. It requires each director to take an oath or affirmation that he will (1) administer the credit union's affairs diligently and honestly, (2) remain responsible for the duties of a director even if he delegates their performance, and (3) not knowingly or willfully allow any violation of credit union laws.

The act prohibits anyone from serving as a credit union's director if he (1) has been found liable on any claim, or convicted of any offense, involving dishonesty or breach of trust; (2) has been removed by any state or federal regulatory agency from office as a financial institution's director, officer, or employee; (3) is not eligible for coverage under the credit union's surety bond; or (4) has habitually failed to pay debts or has become insolvent or bankrupt, unless the governing board decides in writing that his service as director is in the credit union's best interests. These prohibitions are in addition to the existing requirement that directors be members in good standing.

Suspension and Removal

The act requires the credit union's governing board, by a two-thirds vote of its members at a regular or special meeting, to remove a director or board-appointed committee member (1) who has failed, without good cause, to attend three consecutive board or committee meetings or half of the meetings held during the calendar year or (2) who is no longer qualified for the position under the criteria cited above. The act allows a governing board to remove or suspend, by a two-thirds vote, any director or board-appointed committee member for good cause, including (1) violation of any credit union statute, regulation, or order; (2) participation in any unsafe or unsound practice in connection with the credit union; (3) being charged with committing or participating in a crime punishable by more than one year in prison under state or federal law, if continued service or participation could pose a threat to the credit union's members; (4) failure to perform his duties or breach of his fiduciary duty; (5) use of his official position in a way contrary to the credit union or its members' interest; and (6) breach of a written agreement with the commissioner.

The act requires the board promptly to notify the commissioner of any decision to suspend. The suspension takes effect immediately, and within seven business days, the board must notify all of the credit union's members of a special meeting to hear the report on the suspension and vote on removal. The act does not require this notice to be given if the suspended director or member resigns. The special meeting must take place within 21 business days after the suspension's effective date. The act authorizes the credit union's membership, by majority vote, to reject or accept the governing board's report and requires the board to take any action the members deem necessary. If this action involves removal, the act requires the credit union promptly to notify the commissioner.

Vacancies

Prior law required filling board vacancies according to the credit union's bylaws. Under the act, if a director's death, resignation, or removal creates a vacancy on the governing board, a majority vote of the remaining directors is needed to fill the position, regardless of whether they constitute a quorum. It allows a director so elected to hold office until the next annual meeting, when the credit union's members must vote to fill the rest of the unexpired term. The act requires the secretary to appoint a successor for any governing board vacancy due to the expiration of a director's term. But if there are more candidates than vacancies, the act requires the credit union's members to vote on the matter.

Advisory Directors and Directors Emeritus

The act allows the governing board, as the bylaws permit, to appoint advisory directors and directors emeritus to serve at its pleasure and advise the board on executing its duties and responsibilities. An advisory director need not be eligible for credit union membership, but a director emeritus must be a credit union member. The act prohibits advisory directors from being governing board members, directors emeritus from being credit union officers, and both from voting on any governing board matter. An advisory director, but not a director emeritus, may participate in governing board or committee deliberations, but neither may make any motions. The act requires the bylaws to specify the number of advisory directors and directors emeritus and their qualifications.

Governing Board Meetings (§ 46)

The law requires the governing board to meet at least monthly. The act continues this, but if the

governing board delegates its authority to an executive committee, it requires one body to meet at least monthly and the other at least quarterly, according to the bylaws. Unless the bylaws provide otherwise, the act allows the board to permit any and all directors to participate in all but one board meeting per year through the use of any means of communication allowing all participating directors simultaneously to hear and communicate with each other during the meeting. The act deems any person participating through these means to be present at the meeting.

The act requires the governing board to elect its officers and appoint committee members at its first meeting after the annual meeting. Unless the bylaws require a greater number, the act considers a majority of the board to constitute a quorum. It regards any act of a majority of directors present at a meeting where there is a quorum to be an act of the governing board, unless the bylaws or the Connecticut Credit Union Act provides otherwise.

EXECUTIVE COMMITTEES (§ 47)

The act requires an executive committee, if the governing board appoints one, to consist of an odd number of three or more credit union directors. It removes the prior five-member maximum. The act provides for the committee to meet quarterly or monthly, according to the bylaws, and to act for the governing board between the board's meetings in all areas except approving policies, subject to the board's conditions and limitations. Prior law required the executive committee to include the chairman of the governing board. The act does not contain this provision, nor does it specifically state the ways in which the committee can act for the board.

SUPERVISORY COMMITTEES AND CREDIT UNION AUDITS (§ 48)

The act requires a credit union's supervisory committee to consist of three or more credit union members annually appointed by the governing board. None may simultaneously serve on the credit committee or as the credit union's officer or employee. Only one may simultaneously serve as the credit union's director, and all must be members in good standing. It removes the prior five-member limit.

The act makes the supervisory committee responsible for ensuring that directors and senior managers meet required financial reporting objectives and establish practices and procedures sufficient to safeguard members' assets. To fulfill these responsibilities, the act requires the supervisory committee to determine whether (1) internal controls are

established and effectively maintained; (2) accounting records and financial reports are accurate and promptly prepared; (3) relevant plans, policies, and procedures the governing board established are administered properly; and (4) the governing board's plans, policies, and control procedures are sufficient to safeguard against error, carelessness, conflict of interest, self-dealing, and fraud.

The act gives the supervisory committee sole authority to hire and fire outside and internal auditors. It requires any agreement between the committee and an outside auditor to be documented in an engagement letter specifying the terms, conditions, and objectives of the employment or stating agreed-upon procedures. As under prior law, the committee must make or provide for an annual audit, which the act specifies must cover the entire period since the last audit. The act prohibits any paid outside auditor from being a credit union employee, governing board or board-appointed committee member, credit manager, loan officer, or an immediate family member of any of these people.

The act requires each Connecticut credit union's annual audit to contain an opinion audit of its financial statement by an independent licensed or certified public accountant. Credit unions with less than \$300 million in total assets must also have (1) an agreed-upon "procedures engagement" performed by a trained and proficient auditor that adequately assesses the credit union under audit, with the supervisory committee satisfying any comprehensive audit requirements the audit does not meet and (2) a comprehensive audit performed by the supervisory committee, the credit union's internal auditors, or another financial institution's internal auditors.

The act requires the committee to verify members' accounts at least once every two years by (1) verifying all members' share and loan accounts, (2) obtaining a statistical sampling of member share and loan accounts performed in connection with an independent licensed or certified public accountant's opinion audit, or (3) using a statistical sampling method resulting in a random selection representative of the credit union's membership. By law, the supervisory committee must file its report at the credit union's main office and present it to the governing board. The act also requires the committee to file a copy of its written report with the commissioner.

The act requires the supervisory committee, or any independent licensed or certified public accountant, internal auditor, or other auditor, as applicable, to provide related working papers, policies, and procedures concerning the annual audit, internal audit, examination, and verification to the commissioner upon his request. It mandates that the governing board require the auditor to submit a signed report of the audit or examination

showing the credit union's condition within a reasonable time after the audit or examination's effective date.

The act empowers the supervisory committee to suspend at any time, by a two-thirds vote of its members, any credit union director, employee, or board-appointed committee member for cause, at a meeting called for that purpose. It requires the suspension to take effect immediately, and the committee promptly to notify the commissioner. The law already requires the committee to notify all members of a special meeting to hear its report on the suspension and to vote on removal, but the act does not require this notice if the person subject to suspension resigns. The act specifies that the special meeting must take place no more than 21 business days after the suspension date. It requires the supervisory committee promptly to notify the commissioner if the members ask it to remove the offending party.

CREDIT COMMITTEES (§ 49)

The act allows a credit union's governing board to delegate, in accordance with its bylaws, some or all of its lending authority to (1) a credit committee, (2) a credit manager, (3) loan officers, or (4) any combination of these. The act defines a "credit manager" as a person approved by a Connecticut credit union's governing board to supervise lending activities. If the bylaws permit a credit committee, the act directs that the committee consist of an odd number of three or more credit union members in good standing, and it removes the prior five-member limit. As under existing law, none of them may simultaneously serve on the supervisory committee.

By law, loan officers may not disburse the credit union's funds for any credit extensions they approve except those secured in full by pledge of the borrowing member's own shares. The act applies the same restriction to credit managers. It also allows any unsuccessful applicant for credit or release or substitution of collateral to appeal to the credit committee, if applicable, or else to the governing board. The act requires the committee or board to act on the appeal at its next regular meeting. If the credit committee disapproves the appeal, the person can appeal to the governing board, unless he is appealing a denial by a credit manager or loan officer. The governing board must act on the appeal at its next regular meeting.

CREDIT UNION AND EMPLOYEE AND MEMBER BENEFITS (§ 50)

With the commissioner's approval, the act permits a credit union to provide, in accordance with the Employee Retirement Income Security Act, reasonable health, accident, and related personal insurance to its directors, other than its emeritus and advisory directors. This is not considered compensation.

INSIDERS (§ 51)

The act requires Connecticut credit unions' governing boards to adopt a written conflict of interest policy including provisions addressing transactions with (1) insiders and their immediate family members and (2) other people with common ownership, investment, or other pecuniary interest in a business enterprise with insiders and their families. The act defines an "insider" as a credit union's director, board-appointed committee member, senior manager, or loan officer. It considers an "immediate family member" as a person related by blood, adoption, or marriage to a person in a Connecticut credit union's field of membership. It defines "senior management" as the president or chief executive officer (CEO), vice president or vice CEO, chief financial officer, credit manager, or any person in a similar position.

If a Connecticut credit union extends credit to an insider, the act requires it to obtain the governing board's approval if (1) the insider is the debtor, guarantor, endorser, or cosigner and (2) the credit extension by itself, or added to the total outstanding credit on which the insider is the debtor, guarantor, endorser, or cosigner, exceeds \$25,000 plus pledged shares.

The act prohibits a credit union insider or professional the credit union hires from directly or indirectly participating in any decision affecting his pecuniary interest or that of his immediate family, or any corporation, partnership, or association, other than the credit union, in which he has a direct or indirect interest. It also prohibits an insider, his immediate family members, or other people sharing a common ownership, investment, or other pecuniary interest with an insider or his immediate family from (1) getting a credit extension from the credit union with preferential rates, terms, or conditions; (2) acting as a guarantor or endorser on the credit extension; or (3) being involved with appraising or valuating assets to be used as collateral.

The act prohibits insiders and their immediate family from directly or indirectly receiving any commission, fee, or other compensation, except those of nominal value, in connection with the credit union's

extensions of credit. But it specifies that this prohibition does not apply to the credit union's payment of (1) employee salaries, incentives, or bonuses based on the credit union's overall financial performance; (2) incentives or bonuses to employees not part of senior management, in connection with an extension of credit, so long as the governing board establishes related policies and controls and monitors compliance at least once a year; and (3) fees to an insider or his immediate family for performing title searches, loan closings, and collections. The act also allows directors, board-appointed committee members, employees not part of senior management, and their immediate family members to receive compensation from someone outside the credit union for services or activities the director, committee member, or employee performed, as long as they did not make a referral. The act stipulates that insiders conduct all permissible transactions at arm's length and in the credit union's best interests.

The act prohibits insiders, their immediate families, and credit union employees from receiving anything of value in connection with the credit union's investment or deposit of its funds, unless the governing board determines they do not present a conflict of interest, and includes the determination in its minutes. The act specifies that this prohibition does not bar the credit union from paying salaries, incentives, and bonuses to its employees for making these investments or deposits. With the commissioner's approval, the act allows a credit union to retain an employee or director who serves as an officer, employee, or director of any other financial institution. It defines a "financial institution" as any Connecticut, federal, or out-of-state bank or credit union.

The act prohibits an insider and his immediate family from receiving any direct or indirect payment or benefit connected to the credit union's insurance or group purchasing activities for members and employees. It specifies that this prohibition also applies to any employee directly involved in insurance or group purchasing activities, unless the governing board determines the employee's involvement does not present a conflict of interest and includes this determination in its minutes.

The act prohibits Connecticut credit unions from buying, leasing, or otherwise acquiring, without the governing board's approval recorded in its minutes, premises from (1) an insider or his immediate family member, (2) a corporation in which the insider or his immediate family member is an officer or director or has an ownership interest of 10% or more, or (3) a partnership in which any insider or his immediate family member is a limited or general partner with an interest of 10% or more. It applies this prohibition to any employee directly involved in fixed asset

investments, unless the governing board determines such involvement does not present a conflict of interest and includes this determination in its minutes.

The act prohibits insiders, employees, and their immediate families from directly or indirectly buying any credit union asset for less than the current fair market value, unless the credit union's governing board approves the transaction, determines it to be in the credit union's best interest, and records both in its minutes. When a credit union hires an insider or his immediate family member to render services, the act requires the governing board to document in its minutes that the hiring was (1) at arm's length, (2) in the credit union's best interests, and (3) in accordance with the competitive bidding and appropriate due diligence provisions of the credit union's conflict of interest policy.

The act prohibits directors, board-appointed committee members, members of senior management, and members of their immediate families with outstanding credit union service organization loans or investments from directly or indirectly receiving any salary, commission, investment income, or other compensation from the credit union service organization or any person it serves. But the act specifies that it does not bar (1) Connecticut credit union insiders or their immediate family from helping to operate the credit union service organization, if this organization does not pay them or (2) reimbursing the credit union for services its directors, committee members, or senior management members provide, if the credit union service organization pays in full, at least quarterly, the amount it owes the credit union for these services.

The act prohibits Connecticut credit unions from making a member business loan if the credit union or its senior management receives additional income tied to the profit or sale of the business or commercial endeavor for which the loan is made.

CONNECTICUT CREDIT UNION AUTHORIZED POWERS (§ 52)

In addition to their existing powers, the act allows Connecticut credit unions to:

1. receive deposits from their members and certain nonmembers;
2. reduce the amount of their nonmember shares and deposits;
3. expel members;
4. use their best efforts to make secured and unsecured loans to their members in accordance with the Connecticut Credit Union Act and alternative mortgage loan laws;
5. declare and pay dividends, and pay interest refunds to borrowers;

6. act as a federal, state, or local government or agency's fiscal agent;
7. provide to other Connecticut, federal, and out-of-state credit unions (a) loan processing and servicing, (b) member check and money order cashing services, (c) share withdrawal and loan proceed disbursement, (d) money orders, (e) internal audits, (f) automated teller machine services, and (g) other similar services;
8. provide services to help its customers find products, including offering third party products and services by (a) selling advertising space on its web site, (b) putting enclosures in account statements and receipts, and (c) selling statistical or consumer financial information to outside vendors in accordance with disclosure laws;
9. exercise fiduciary powers, with the commissioner's prior approval;
10. maintain and rent out safety deposit boxes if the credit union has sufficient insurance to cover any losses;
11. provide certification services, such as notarizing, guaranteeing signatures, and certifying electronic signatures and share drafts;
12. act as an agent for (a) an authorized tax collector or (b) an in-state electric, electric distribution, gas, water, or telephone company in collecting money due to it;
13. issue and sell securities that are (a) are guaranteed by the Federal National Mortgage Association or another entity authorized to create a secondary loan market for the credit union's type of loans or (b) subject to the commissioner's approval, related to loans the credit union makes, and guaranteed or insured by a financial guaranty insurance company or similar entity;
14. establish a charitable fund, either as a trust or nonprofit corporation, so long as (a) it is tax-exempt and the tax code allows it to accept charitable contributions, (b) the fund fully discloses its operations upon the commissioner's request, and (c) the credit union's trust department or at least one director or senior manager acts as the fund's trustee or director;
15. in a majority of the governing board's discretion, make contributions or gifts to or for a 501(c)(3) tax-exempt charitable, educational, or public welfare organization, without the limits applicable under prior law;
16. pledge or assign any or all of its outstanding loans to any other credit union service

organization, quasi-governmental entity, or government-sponsored enterprise and act as the collecting, remitting, and servicing agent for the loans, charging for these acts;

17. buy the minimum amount of an entity's capital stock if the entity requires the purchase in connection with the credit union's loan sale, pledge, or assignment, and hold and dispose of the stock;
18. buy one or more loans from any other lending institution or federally recognized Native American tribe, if it has a formal written agreement with the tribal government allowing the credit union to service and collect on the loans;
19. join the Federal Home Loan Bank System, with the commissioner's approval, and borrow funds as federal laws allow;
20. sell some or all of its non-loan assets to another lending institution, buy some or all of another lending institution's non-loan assets, and assume some or all of a Connecticut or out-of-state credit union's liabilities;
21. sell a branch or some or all of its assets, with the commissioner's approval; and
22. engage in credit union or financially related activities (like data processing, consumer services, and tax planning), with the commissioner's approval, unless the commissioner feels that the credit union's credit union service organization should perform the activities to protect the credit union from loss exposure.

The act also allows Connecticut credit unions to act as finders or agents for insurance and annuity direct sales, sell insurance and annuities indirectly through a Connecticut credit union service organization, or enter into arrangements for third-party marketing organizations to sell insurance and annuities at the credit union or to its members, so long as:

1. the insurance company issuing or selling the insurance and annuities is licensed to do so;
2. the Connecticut credit union, Connecticut credit union service organization, or third-party marketer gets an insurance license before selling any insurance or annuities;
3. the insurance sold does not include title insurance; and
4. the credit union or credit union service organization does not underwrite the insurance or annuities.

PAR VALUE AND PAYMENTS (§§ 53, 54)

The law allows a credit union's shares to have a par value of \$5 or any multiple of \$5, but the act limits them to a \$100 maximum. By law, members, with the commissioner's written approval, may make payments on their shares that qualify as part of a retirement plan. But the act limits these payments to individual retirement accounts and Keoghs, excluding 401(k) accounts allowed under prior law.

The act allows Connecticut credit unions to receive payment on shares from a nonmember who is (1) an individual holding an account jointly with a member; (2) a federal, state, or local governmental entity; (3) a federally-recognized Native American tribal government located in Connecticut; or (4) another credit union. Prior law allowed credit unions only to receive payment on shares from nonmembers who were state or federal officers, employees, or agents with official custody of public funds.

The act permits NCUA-designated low-income Connecticut credit unions to offer secondary capital accounts to anyone other than an individual, subject to applicable federal laws. It also allows Connecticut credit unions to get share insurance coverage from a licensed Connecticut insurance company in an amount exceeding the Federal Credit Union Act's limits.

PAYMENT OF DIVIDENDS (§ 56)

Under prior law, a credit union's dividends could be paid only from net earnings, after provision was made for required reserves. The act allows a Connecticut credit union's governing board, or its executive committee or senior management if the governing board so delegates, to declare and pay dividends on partial or full shares from current or accumulated net earnings, so long as the credit union can still (1) meet its net worth requirements, (2) provide for accrued and unpaid expenses, and (3) adequately fund the allowance for loan and lease losses account. But the act prohibits a credit union from declaring or paying dividends if (1) it is insolvent or paying dividends would make it so or (2) its net assets are less than stated capital or paying dividends would make them so.

LOANS AND LOAN POLICIES (§ 57)

The act requires Connecticut credit unions to adopt and implement written loan policies calling for all loan applications to be in writing, and addressing (1) the categories and types of secured and unsecured loans the credit union offers; (2) the way it will make and approve mortgage loans, member business loans, and insider

loans; and (3) underwriting guidelines and collateral requirements. The policy must also cover acceptable standards for (1) title review, title insurance, and appraiser qualifications and (2) appraisal and evaluation standards and the administration process. The act allows the commissioner to review loan policies and order changes to ensure safe and sound lending practices.

As under prior law, the act prohibits an obligor's total direct or indirect liabilities to a credit union from exceeding the greater of \$200 or 10% of the credit union's assets when incurred. It allows exceeding these limitations for up to six hours if, at the closing where the obligor incurs these liabilities, the credit union immediately assigns or apportions to one or more other people at least the amount over the limit. The act considers a liability to be incurred at closing, unless a legally binding written contract to enter into the transaction precedes the closing, in which case the liability is incurred at the time of the commitment. It views a liability as the net of all liabilities the obligor will pay to the credit union at closing from the commitment proceeds. The act specifies that the general partners' liabilities be included in computing a partnership's liabilities, and the partnership's liabilities be included in computing a general partner's liabilities.

MORTGAGE LOANS (§ 58)

The act allows Connecticut credit unions to make mortgage loans to their members. It defines "mortgage loan" for this purpose as a closed-end loan or line of credit (1) secured wholly or substantially by a lien on, or interest in, real estate; (2) including a leasehold interest; and (3) secured by a one-to-four family residence that is a member's primary residence; or (4) by any other real estate, so long as the credit union's loans to a mortgagor secured by other real estate total no more than \$50,000. The act exempts from its restrictions mortgage loans that the administrator of veterans' affairs (now called the secretary) guarantees, commits to, or insures. It allows credit unions to make mortgage loans secured by a leasehold interest, so long as the leasehold estate's term, excluding any renewal, does not expire before the loan matures. The act specifies that a mortgage loan does not include a member business loan. It defines "real estate" for mortgage loan purposes to include land, any structure, and other improvements or equipment permanently attached to the land or structure.

Prior law required a person familiar with real estate values in the community where the real estate is located to appraise or evaluate it before the credit union granted a mortgage. The act specifies that the credit union's governing board or its designee approve the appraiser

before he makes his assessment, but it permits using an appraisal by someone who appraised the property for a government agency that plans to insure or guarantee it.

The act adds new requirements to the other provisions of mortgage law. First, it requires mortgage loans a Connecticut credit union makes (1) secured by a first lien or interest to mature not more than 42 years after they were made and (2) to finance a manufactured home or secured by a subordinate lien to mature not more than 20 years after they were made. It defines "manufactured home" as a movable dwelling containing living facilities suitable for one family to live in year-round, including permanent facilities for eating, sleeping, cooling, and sanitation, as long as the purchaser uses the dwelling as a residence and will, within 90 days after purchase, situate it in a manufactured housing community or other semi-permanent site in Connecticut.

Second, the act requires Connecticut credit union mortgage loans to have their principal and interest paid in at least consecutive semiannual installments, with payments sufficient to pay off the entire loan within 42 years from the first payment and the first payment within 24 months of the date of the loan. But the semiannual payment requirement does not apply to (1) consumer revolving loan agreements; (2) alternative mortgage loans; (3) loans secured by residential real estate that can be demanded at any time; (4) building construction loans, with the commissioner's approval, that will mature within 24 or 36 months; and (5) any other loan or class of loan the commissioner chooses.

The act exempts Federal Housing Administration (FHA) insured loans from its mortgage loan restrictions, but subjects those loans to two additional limitations: (1) for first mortgages on real estate, the insurance contract must provide that the federal government fully guarantee that principal and interest will be paid in the event of loan default or foreclosure and (2) if the credit union has a commitment for FHA insurance, it may grant the borrower an installment construction loan if the total of all installments is no more than the greater of 80% of the real estate's value each time the credit union makes an advance or the final loan's proportion to the real estate's final estimated value, except that the final advance may make the total of all advances equal to the total loan amount. Prior law prohibited the installment total from exceeding the greater of 50% of the real estate's value or the final loan's proportion to the final estimated property value. The act prohibits the credit union from making the final advance on an insured loan until the FHA inspects and approves the construction.

The act allows a Connecticut credit union to invest in mortgages otherwise prohibited under its restrictions if (1) its governing board or board-appointed committee

reviews the loan's or overall loan program's nonconforming aspects and finds the loan or program prudent under the circumstances and (2) the total of its outstanding nonconforming loans is no more than 8% of the credit union's total assets. It requires the credit union to record its decision on the loan or program's prudence and its reasons in the application file. A nonconforming loan can be removed from the assets limitation when the borrower repays the loan or the nonconforming aspects no longer exist.

MEMBER BUSINESS LOANS (§ 59)

Establishing a Business Loan Program

The act prohibits Connecticut credit unions from making member business loans until they (1) meet the commissioner's net worth (i.e., retaining earnings) requirements, (2) develop a member business loan program, and (3) get the commissioner's prior written approval. In applying for the commissioner's approval, the credit union must include its member business loan policy and show it has sufficient resources, knowledge, systems, and procedures in place to monitor and control the risks involved. The act requires Connecticut credit unions making member business loans to hire a person with at least two years' direct experience to process, make, or service the loans.

Definitions

The act defines a "member business loan" to be any loan, line of credit or unfunded credit line commitment, letter of credit, or other credit extension that the borrower plans to use for (1) commercial, (2) corporate, (3) investment property, (4) business venture, or (5) agricultural purposes. It excludes the following loans: (1) those fully secured by a lien on the member's one-to-four family residence; (2) those fully secured by credit union or other financial institution shares or deposits; (3) one or more loans totaling less than \$50,000 to members or associated members who plan to use the money to benefit a common endeavor; (4) those that a federal, state, or local government agency fully insures, guarantees repayment, or commits in advance to buy in full; or (5) those that a corporate Connecticut credit union grants to a Connecticut, federal, or out-of-state credit union. The act defines an "associated member" as any member sharing ownership, an investment, or another pecuniary interest in a business or commercial endeavor with the borrower. It defines a "construction loan" as a loan for developing or acquiring real estate the borrower plans to use to produce income, such as renting or selling residential or commercial property. It defines "net worth" as retained

earnings.

Credit Union Business Loan Policy

The act requires the credit union's governing board to adopt and review annually a specific member business loan policy addressing:

1. the types of member business loans it will make;
2. the trade area;
3. the maximum amount of assets, in relation to net worth, that it will invest in member business loans;
4. the maximum amount of assets, in relation to net worth, it will invest in each type of member business loans;
5. the maximum amount of assets, in relation to net worth, that it will loan to a single member or associated member, subject to the act's overall business loan limits (see below);
6. the qualifications and experience it will require of its member business loan employees;
7. the documentation required to support each loan application, which it may amend as necessary, including (a) balance sheets, (b) cash flow analysis, (c) income statements, (d) tax data, (e) leveraging analysis, and (f) comparison with industry standard;
8. the extent to which it will require its employees to underwrite the loan;
9. receiving and updating financial statements and other documentation, including tax returns;
10. for loans secured primarily by a mortgage on income-producing real estate, getting and retaining income projection statements, tenants' financial statements, and other necessary credit information;
11. collateral requirements, including (a) loan-to-value ratios, (b) value and ownership determinations, (c) steps to secure collateral, and (d) frequency of re-evaluating collateral value and marketability;
12. interest rates and maturities;
13. general procedures, including loan monitoring, servicing, administering, and collection; and
14. guidelines for buying and selling member business loans and loan participation, if applicable.

Loan Limits

The act allows Connecticut credit unions to make unsecured member business loans so long as the:

1. total unsecured net outstanding member business loan balance to any one member or

associated members does not exceed the lesser of \$100,000 or 2.5% of the credit union's worth;

2. total of all unsecured net outstanding member business loan balances does not exceed 10% of the credit union's net worth;
3. credit union's net worth is at least 7%; and
4. credit union submits quarterly reports to the commissioner, providing numbers and any other details he requires.

The act defines the "net outstanding member business loan balance" as the outstanding loan balance, including unfunded commitments, but excluding portions of member business loans (1) secured by credit union shares; (2) secured by shares or deposits in other financial institutions; or (3) that a federal, state, or local government agency partially insures, guarantees, or commits in advance to purchase.

The act prohibits the total amount of secured and unsecured net outstanding member business loan balances to any one member or associated members from exceeding the greater of (1) \$100,000 or (2) 15% of the credit union's net worth, but allows the commissioner to waive this maximum. It limits a Connecticut credit union's total amount of secured and unsecured net outstanding member business loan balances to the lesser of (1) 12.25% of its total assets or (2) 1.75 times its net worth. It allows the commissioner to grant an exception to the aggregate limit if the credit union submits a written request documenting that it meets at least one of the following criteria:

1. it serves predominately low-income members;
2. it participates in the federal Community Development Financial Institutions Program; or
3. it can demonstrate that it was established to make member loans.

The act requires the commissioner to notify the credit union and the NCUA of his decision within 45 days after the exemption request. It allows him to revoke an exemption if the credit union ceases to qualify or for safety and soundness reasons.

Construction Loans

The act subjects member business construction loans to the following additional requirements, unless the commissioner waives them:

1. the total of all construction loans may not exceed 15% of the credit union's net worth;
2. the borrower must have at least a 35% equity interest in the real estate at issue; and
3. the loan records may be released only after qualified personnel make on-site, written inspections in accordance with a pre-approved

draw schedule and any other conditions the loan documentation requires.

Loan-to-Value Ratios

The act limits the loan-to-value ratio for member business loans secured by first liens to 80% or less, unless a private mortgage or equivalent insurance covers the value over 80%, or a federal, state, or local government agency insures, guarantees, or commits in advance to purchase the excess. It allows the commissioner to waive this limit and permit a loan-to-value ratio up to 95%.

The act also prohibits the loan-to-value ratio for member business loans secured by second or lesser priority liens from exceeding 80%, unless the credit union holds the first lien and a (1) private mortgage or equivalent insurance covers the value over 80% or (2) federal, state, or local government agency insures, guarantees, or commits in advance to purchase the excess. It bars the loan-to-value ratio from ever exceeding 95%.

Waivers

The act allows a Connecticut credit union to request a waiver of the limits on (1) member business loans, (2) member business construction loans, and (3) loan-to-value ratios for member business loans secured by first liens. It can do so by submitting the following documentation to the commissioner:

1. a copy of its member business loan policy;
2. a statement of the higher limit it seeks, if applicable;
3. an explanation of its need to raise the limit or change the appraisal requirement, as applicable;
4. documentation to support its ability to manage the activity; and
5. an analysis of its prior member business loan experience, including (a) its history of loan losses and loan delinquency, (b) volume and cyclical or seasonal patterns, (c) diversification, (d) concentrations of credit to one member or associated members over 15% of its net worth, (e) underwriting standards and practices, (f) types of loans grouped by purpose and collateral, and (g) qualifications of the employees who process, approve, and administer the loans.

The act requires the commissioner to provide the NCUA's Region 1 with a copy of the request and consult and work cooperatively with that office to make a decision. It allows the commissioner to grant or deny the waiver within 60 days of receiving the request.

The act subjects member business loans to federal appraisal requirements, but allows the credit union to request a waiver. (It does not say from whom.) Both the commissioner and the NCUA must approve the request in writing before it takes effect.

The act allows the commissioner to lower any limit, revoke any waiver, or revoke a credit union's approval to make member business loans if the credit union's policies or practices violate safe and sound lending principals. It requires credit unions' financial statements to identify their total member business loans, and separately identify each category of member business loans in their records.

CREDIT UNION INVESTMENTS (§ 60)

In addition to those areas of investment already authorized by law, the act allows Connecticut credit unions to invest their uncommitted funds in:

1. the Student Loan Marketing Association's (SLMA) obligations and its other securities and instruments;
2. any other NCUA-insured Connecticut, federal, or out-of-state credit union's federal funds, shares, share certificates, or other share deposits;
3. a Federal Deposit Insurance Corporation (FDIC)-insured Connecticut, federal, or out-of-state bank's federal funds or deposit accounts;
4. any federal reserve bank or state or federal central liquidity facility's shares, deposits, or loans;
5. any corporate Connecticut, federal, or out-of-state credit union's shares, deposits, or loans;
6. shares of, deposits with, or loans to a national or state credit union association or credit union corporation of which the credit union is a member, if the investment does not constitute a controlling interest in the entity or total more than 1% of the credit union's total assets;
7. real estate and real estate improvements, furniture, fixtures, and equipment for the credit union's future use, but the investment may not total more than 5% of the credit union's total assets without the commissioner's written approval;
8. debt and equity mutual funds, whose portfolios consist solely of authorized government and SLMA securities and obligations;
9. fixed or variable rate asset-backed securities, collateralized mortgage obligations, and real estate mortgage investment conduits, except stripped mortgage-backed securities, residual interests, mortgage servicing rights, commercial mortgage related securities, or

small business-related securities;

10. money market funds that a commissioner-approved ratings service rates in the three highest ratings categories;
11. repurchase agreements and reverse repurchase agreements, so long as (a) the underlying securities are legal investments for Connecticut credit unions; (b) the credit union receives daily assessments of the underlying securities' market value, including accrued interest, and maintains an adequate margin reflecting a risk assessment of the underlying securities and the term of the agreement; and (c) the credit union enters into signed contracts with all approved counterparties; and
12. Connecticut, federal, or out-of-state bank-issued Yankee dollar deposits, Eurodollar deposits, bankers' acceptances, deposit notes, and bank notes with original weighted average maturities under five years.

The act also limits investment in government general and revenue bonds allowed under the law to no more than 10% of the credit union's total assets in any one issuer.

With the commissioner's prior written approval, the act also allows Connecticut credit unions to invest in:

1. debt and equity securities and debt and equity mutual funds (including money market funds and investment trusts), regardless of any other liability the securities and mutual funds' maker, obligor, guarantor, or issuer has to the credit union, so long as (a) a commissioner-approved ratings service rates the securities and mutual funds in the three highest ratings categories, or if not, the credit union's governing board considers them a prudent investment; (b) the total amount the credit union invests in one maker, obligor, or issuer's securities and mutual funds does not exceed 25% of its capital; (c) the total amount of the debt securities and debt mutual funds does not exceed 25% of the credit union's total assets; (d) the total amount of the equity securities and equity mutual funds does not exceed 25% of the credit union's total assets; and (e) the credit union does not engage in securities trading, including when-issued trading and pair-off transactions, without the commissioner's additional prior written approval; and
2. any other investment the commissioner deems appropriate considering the credit union's financial condition and strategic goals, the investment's inherent risk, and the credit union's ability to monitor and control the risks involved.

Under the act, “debt securities” means (1) any marketable obligation showing any person’s indebtedness in the form of direct, assumed, or guaranteed bonds, notes or debentures, or any similar security; (2) participation agreements in these investments; or (3) repurchase agreements. The act defines “equity securities” as a stock or similar security, certificate of interest, or participation in any (1) profit-sharing agreement; (2) pre-organization certificate or subscription; (3) transferable share; (4) voting trust certificate or certificate of deposit for an equity security; (5) limited partnership interest; (6) interest in a joint venture; (7) certificate of interest in a business trust; (8) any security convertible, with or without consideration, into a security listed above; (9) any warrant or right; or (10) any put, call, straddle, or other option or privilege of buying or selling a security without being bound to do so, but excluding debt and equity mutual funds.

The act allows a Connecticut credit union to invest in, or make loans to, credit union service organizations, so long as (1) its total loan to, or investment in, any one organization is no more than 2% of its total assets, regardless of the service organization’s profitability, and (2) it files with the commissioner prior written notice of its intent to make the loan or investment. If the commissioner does not disapprove it within 30 days of filing the notice, the act permits the credit union to make the loan or investment.

CORPORATE CONNECTICUT CREDIT UNIONS (§ 61)

Prior law allowed a single central Connecticut credit union to be organized and operated as a Connecticut credit union. The act keeps most of the central credit union provisions but renames the entity a corporate credit union. It defines “corporate,” when used to describe a Connecticut, federal, or out-of-state credit union, as an organization that the NCUA designates as a corporate credit union and that (1) is chartered as a credit union under federal or state law; (2) receives shares from, and provides loan services to, credit unions; (3) operates primarily to serve other credit unions; (4) limits its number of natural person members to the minimum required by state or federal law to charter and operate the credit union; and (5) does not condition a credit union’s membership eligibility on its membership in any other organization. It must use the word “corporate” in its official name. The act allows the same membership categories as apply to a central credit union, and also includes (1) credit union service organizations and their associated organizations and (2) the corporate Connecticut credit union’s organizers.

The act eliminates certain limitations on the governing board’s authority and permissible

investments that existed under central credit union law. It allows a corporate Connecticut credit union to invest its surplus in the same way as other Connecticut credit unions, except that investments in debt securities and credit union service organizations must be made according to federal corporate credit union laws and must have the commissioner’s approval whenever the federal act directs its credit unions to the NCUA. The act also allows a corporate Connecticut credit union, with the commissioner’s approval, to accept investments from member and nonmember financial institutions. It considers these investments to be part of the credit union’s paid-in capital, but not its shares.

The act allows a corporate Connecticut credit union to make loans in the same way as other Connecticut credit unions, but subject to federal lending limits. The federal law limits a corporate credit union’s total unsecured loans to member credit unions to the greater of 50% of its capital or 75% of its total reserves and undivided earnings. Prior law limited a central credit union’s total loans to 20% of its paid-in and unimpaired capital and surplus. The act limits the corporate credit union’s maximum total of secured loans and irrevocable lines of credit to the greater of 100% of capital or 200% of total reserves, undivided earnings, and paid-in capital. The act also requires a corporate Connecticut credit union to contribute to the reserves based on the reserve ratio requirements in federal law.

The act allows a corporate Connecticut credit union to borrow funds up to the limits imposed by federal corporate credit union laws, which allow credit unions to borrow up to the greater of 10 times their capital or 50% of shares. Central credit unions could only borrow funds up to 100% of their paid-in and unimpaired capital and surplus. The act also allows a corporate credit union to establish and maintain one or more credit union service organizations.

CONNECTICUT CREDIT UNION SERVICE ORGANIZATIONS (§§ 7, 62)

Prior law allowed one or more Connecticut credit unions, with the commissioner’s approval, to operate a shared service center for their members’ benefit or contract with a credit union service organization to own or operate a center. It defined a “credit union service organization” as an organization providing services that are useful to credit unions in conducting their operations and providing services to their members.

The act expands credit union service organizations’ role in providing services to credit unions. It allows a Connecticut credit union, with the commissioner’s approval, to establish a Connecticut credit union service organization, individually or jointly with other Connecticut, federal, or out-of-state credit unions, or

other federally insured depository institutions inside or outside of Connecticut. It defines a “credit union service organization” as an entity organized under state or federal law to provide credit union service organization services primarily to (1) its members, (2) Connecticut and federal credit unions, (3) out-of-state credit unions other than its members, and (4) members of other credit unions. It defines “credit union service organization services” as financial services that (1) state or federal laws authorize credit union service organizations to provide, (2) are closely related to credit union business, (3) are convenient and useful to credit union business, and (4) are reasonably related to the credit union’s operations. A “Connecticut credit union service organization” is a credit union service organization located in Connecticut, incorporated under Connecticut laws, and established by at least one Connecticut credit union. The act repeals the prior statutory definition of credit union service organizations, which simply defined them as providing services to credit unions.

The act requires a Connecticut credit union establishing a credit union service organization to file an application with the commissioner containing (1) a description of the services in which the credit union service organization will engage, (2) an explanation of how these services are related to credit union services, and (3) any other information the commissioner requires. The act specifies that the credit union service organization be organized as a corporation, but it may be a limited liability company or limited partnership if the establishing Connecticut credit union files with its application a written legal opinion that the limited liability company or limited partnership will limit the credit union’s exposure to no more than the amount it invests in or lends to the credit union service organization.

The act requires a Connecticut credit union service organization to (1) account for all transactions using generally accepted accounting principles; (2) prepare quarterly financial statements and obtain an annual opinion audit on these statements by a licensed certified public accountant; (3) preserve all of its books and records in accordance with the regulations the commissioner adopts; (4) give the commissioner complete access to its books, records, and internal controls for review, evaluation, and examination; and (5) pay the actual cost of any review, evaluation, or examination the commissioner conducts.

The act allows Connecticut credit unions to invest funds in, or lend to, existing credit union service organizations. But in doing this, the Connecticut credit union must obtain (1) a written agreement that the credit union service organization will perform the same accounting and recordkeeping activities as required

above, except preserving its books in accordance with the commissioner’s regulations and (2) a written legal opinion that the credit union service organization is established as a corporation, limited liability company, or limited partnership, and the credit union’s potential risk exposure is no more than losing the money it invested in or lent to the credit union service organization. If the Connecticut credit union wishes to maintain its investment in, or loan to, a credit union service organization planning to change its form of organization, the act requires it to obtain a written legal opinion that the service organization will continue in a form that similarly limits the credit union’s potential exposure.

The act allows a Connecticut credit union service organization to expand its services by filing with the commissioner (1) prior written notice of its intent to expand services, (2) an explanation of how the proposed expansion is related to credit union services, and (3) any additional information the commissioner requires. Unless the commissioner disapproves within 30 days of the filing, the act permits the organization to expand its services. It prohibits credit union service organizations from acquiring direct or indirect control of another depository institution or investing in shares, stocks, or obligations of an insurance company, trade association, liquidity facility, or similar organization, corporation, or association.

If the commissioner determines that a Connecticut credit union’s investments in, or loans to, any credit union service organization exceed the 2% assets limit or are otherwise imprudent for the credit union to maintain, the act allows him to require the credit union to divest the loans or investments. The act allows a Connecticut credit union service organization, in connection with providing credit union service organization services, to invest in service providers. But it limits this investment to the amount the service provider requires for its services.

The law already allows a Connecticut credit union, whether or not it invests in a credit union service organization, to enter into agreements and pay appropriate fees and service charges to enable its members to transact with the service organization. The act also allows a credit union to lend to a credit union service organization to obtain credit union service organization services for itself or provide them to its members.

CONNECTICUT CREDIT UNION BRANCHES AND MAIN OFFICES (§§ 63, 66)

Branches

The act defines a “branch” as any Connecticut

credit union office at a fixed location, other than the main office, that receives shares or deposits, pays share drafts or checks, or lends money. It prohibits a Connecticut credit union from establishing a branch inside or outside of the state unless it first applies to the commissioner and the commissioner has not disapproved the application within 30 days after its filing. The act allows the commissioner to disapprove an application to establish a branch if he finds that:

1. doing so is inconsistent with safety and soundness or with the Connecticut credit union's field of membership;
2. for a single or multiple common bond membership, establishing the proposed branch will result in impermissible overlap with other credit unions' fields of membership in the proposed location;
3. for a community credit union, (a) the proposed branch is not generally accessible to the public, (b) establishing the branch will oversaturate the proposed location with financial institutions, or (c) the credit union does not have a record of complying with community reinvestment requirements; or
4. for an out-of-state branch, the other state's laws do not authorize the branch's establishment.

As long as a Connecticut credit union does not violate these provisions, the act allows it to establish or operate a branch in the same or approximately the same location as another federally insured financial institution. The act also allows the commissioner to examine and supervise a Connecticut credit union's out-of-state branches and enter into agreements with other state or federal credit union regulators for examination and supervision.

If a Connecticut credit union wants to close an in-state or out-of-state branch, the act requires it to notify the commissioner as soon as possible but at least 30 days before the closing date. The notice must detail the reasons for closing the branch. The act requires the credit union to notify its members of the proposed closing by (1) conspicuously posting the notice at the branch at least 30 days before the closing and (2) including the notice in at least one regular account statement it mails to its members who use the branch, or in a separate mailing to those members at least 30 days before the closing date.

With the commissioner's approval, the act allows any Connecticut credit union to relocate a branch in the state in accordance with the commissioner's notice and other requirements. It defines "relocating" as moving within the same immediate neighborhood without substantially affecting the nature of the business or members served.

Main Offices

The act allows a Connecticut credit union, with the commissioner's approval, to relocate its main office anywhere in the state. It requires the commissioner, before granting approval, to consider (1) the field of membership the Connecticut credit union's proposed relocation would serve; (2) the adequacy of the credit union's current main office; (3) the economic need for, and cost of, the proposed relocation; and (4) the proposed relocation's convenience and necessity to the field of membership.

OUT-OF-STATE CREDIT UNIONS (§ 64)

The law allows out-of-state, state-chartered credit unions to establish branches in Connecticut. The act allows the commissioner to disapprove establishing a branch for the same reasons he can disapprove establishing a Connecticut credit union's new branch. It allows an out-of-state, state-chartered credit union with a branch in Connecticut to establish, with the commissioner's approval, additional branches in the state. It also allows an out-of-state, federally chartered credit union, with prior written notice to the commissioner, to establish a branch or additional branches in Connecticut and allows a federal credit union, with prior written notice, to establish additional branches.

MERGERS (§ 67)

Conditions

The act significantly revises the prior laws under which a Connecticut credit union, with the commissioner's permission, could merge with a Connecticut, federal, or out-of-state credit union. It sets the following conditions on mergers with out-of-state and federal credit unions:

1. When a merger results in an out-of-state state-chartered credit union, the act prohibits the commissioner from approving the merger unless the out-of-state credit union has share insurance as the Federal Credit Union Act requires and its chartering state's laws authorize the merger under conditions no more restrictive than do Connecticut's laws.
2. Federal and out-of-state federally chartered credit unions proposing to merge with Connecticut credit unions must show the commissioner they comply with all federal laws.
3. Any out-of-state credit union proposing a merger must show the commissioner it

complies with its chartering state's laws governing the merger and provide any additional information he requires.

Plans and Application

By law, the governing boards of the credit unions proposing to merge must adopt a merger plan by majority vote. The act requires this merger plan to name the merging credit unions; the resulting credit union; and the proposed merger's terms and conditions, including the resulting credit union's field of membership. The boards must (1) enter into a merger agreement; (2) file an application with the commissioner; and (3) for a terminating Connecticut credit union, submit the merger plan to its members for a vote.

The application must include (1) the merger plan and each governing board's minutes adopting the plan; (2) the merger agreement; (3) an original proposed certificate of incorporation and proposed amended bylaws, if applicable; (4) financial statements of the merging credit unions and a pro forma financial statement for the resulting institution; (5) for a terminating Connecticut credit union, a proposed written notice to its members of the time, date, and place of the meeting to vote on the merger and a proposed form of any ballot or proxy; (6) information addressing the items the commissioner must consider before approving; and (7) any additional information the commissioner requires.

Approval

The act prohibits the commissioner from approving a merger unless he considers whether (1) the merging credit unions have engaged in any unsafe or unsound practice during the one-year period before they filed their application; (2) the resulting credit union will be adequately capitalized; (3) the resulting credit union will have the managerial capability and financial resources to serve its proposed membership; (4) the proposed merger will substantially lessen competition in the Connecticut credit union industry; and (5) the proposed merger will benefit the proposed membership's convenience and needs. It allows the commissioner to approve the merger if he is satisfied the conditions are met, and include in his approval such terms and conditions as he sees fit.

After the commissioner approves the merger, the act requires the resulting credit union to file a copy of its merger agreement; merger plan; certificate of amendment to its certificate of incorporation, if any; and the commissioner's approval in the Secretary of the State's Office. Within 10 days after filing, it must also

file copies of these documents with the commissioner, and a copy of its amended bylaws, if the resulting institution is a Connecticut credit union.

On the merger's effective date, the act indicates that (1) the merged parties' corporate existence is continued by and in the resulting credit union; (2) both parties' assets, business, good will, and franchises are vested in the resulting credit union without any deed, endorsement, or other instrument of transfer; and (3) the resulting credit union assumes all of the merged parties' debts, obligations, and liabilities.

CONVERSIONS (§§ 68, 69)

Connecticut Credit Union into Federal Credit Union

Prior law allowed a Connecticut credit union, with the commissioner's approval, to convert into a federal or out-of-state credit union. The act limits conversion to Connecticut credit unions that have existed and operated continuously for at least five years, and only into a federal credit union.

Prior law required the governing board to adopt the conversion proposal by a majority vote and establish the time and date of a regular or special meeting for the members to vote on it. The act requires the Connecticut credit union proposing to convert to file an application with the commissioner, including (1) the conversion plan adopted by a majority vote of the governing board and a copy of its resolution adopting the plan; (2) a proposed written notice of the date, time, and place of a regular or special meeting for the members to vote on the conversion, including a proposed form of any proxy or mail ballot; (3) proof of compliance with all applicable federal laws governing the conversion; and (4) any additional information the commissioner requires. The act requires the commissioner to approve a conversion if he determines that the converting credit union has complied with all of the requirements.

Prior law required the converting Connecticut credit union promptly to take any action necessary to make it a federal credit union, and in any case no more than 90 days after the member vote approving conversion. Within 10 days after the Connecticut credit union received the document evidencing the federal credit union's organization, it had to file a copy of its federal charter with the commissioner. The act makes this no more than 90 days after receiving the commissioner's approval. And, within 10 days after the converting Connecticut credit union receives a federal credit union charter and certificate of insurance, the act requires it to file copies of them with the commissioner.

Federal or Out-of-State Credit Union into Connecticut Credit Union (§ 69)

Prior law allowed federal and out-of-state credit unions to convert into Connecticut credit unions by complying with federal or state conversion requirements and filing proof of compliance and an application with the commissioner. The act requires the application to include (1) a plan of conversion and copy of the governing board's resolution adopting the plan; (2) a three-year business plan, including pro forma financial statements; (3) a copy of the proposed certificate of incorporation, signed by the proposed directors, and a copy of the proposed bylaws; (4) information addressing the items the commissioner must consider about the proposed credit union's suitability; and (5) any additional information he requires.

Prior law allowed the commissioner to issue an approval of conversion and a certificate of authority when he was satisfied that the proposed credit union had complied with all requirements. The act requires him first to determine that (1) the conversion would serve the proposed membership's economic needs and is in accordance with sound credit union practices, (2) the converting credit union will have the managerial capacity and financial resources to serve its members, and (3) the converting credit union has sufficient net worth to meet all applicable regulatory requirements.

The act requires the converting credit union promptly to file and record the commissioner's approval and its certificates of incorporation and authority with the secretary of the state. Under prior law, the commissioner did this filing. As under prior law, when these are filed and recorded, the act considers the federal or out-of-state credit union to be a Connecticut credit union on the date it ceases to be a federal or out-of-state credit union. Within 10 days of filing, it requires the converted credit union to file copies of these documents with the commissioner.

Connecticut or Federal Credit Union to Mutual Connecticut Bank (§ 70)

The law allows Connecticut and federal credit unions to convert into mutual savings banks, mutual savings and loan associations, or mutual community banks. The act removes a requirement that the proposed conversion plan the converting credit union files with the commissioner include a provision prohibiting a converted mutual Connecticut bank from (1) paying its directors any expenses or fees or (2) entering into any agreements with directors or their affiliates to provide it with products or services, for at least two years after the conversion's effective date.

The law also requires a converting Connecticut credit union's governing board, after approving the conversion plan, to send to members notice of a meeting to vote on the proposal, a mail ballot, and a disclosure statement. The act requires the disclosure statement to include, at a minimum, a description of the (1) reasons for the proposed conversion, (2) differences between membership rights in the converting credit union and depositor rights in the proposed mutual financial institution, and (3) significant differences between the converting credit union's authorized powers and those of the proposed mutual financial institution.

Converted Credit Union Powers

The act specifies that (1) a converted federal or Connecticut credit union possesses all rights, privileges, and powers as its federal charter or state certificate of authority, as applicable, grants, and (2) the converting institution's assets, business, and goodwill are transferred to and vested in it without any deed or instrument of conveyance, unless the converting credit union wishes to execute an instrument to confirm the transfer. It subjects the converted credit union to all of the converting credit union's duties, relations, obligations, trusts, and liabilities, whether as debtor, depository, registrar, transfer agent, executor, administrator, or otherwise, and makes it liable to pay and discharge all the debts and liabilities, perform all the duties, and administer all the trusts as though the converted credit union had incurred the liability or assumed the duty itself. The act preserves all of the converting credit union's creditors' rights and all liens against its property, and allows the credit union to receive, accept, collect, hold, and enjoy all gifts, bequests, devises, conveyances, trusts, and appointments in its name or favor, whether they were meant to take effect before or after the conversion.

DISSOLUTION (§ 71)

The act modifies the procedures for a Connecticut credit union to terminate its corporate existence and be dissolved. Under prior law, within three days after a majority of the governing board adopted a plan to dissolve the credit union, the board had to file a copy of the plan with the commissioner and inform him of the date when the members would vote on it. The act requires the credit union's chairman or vice chairman and secretary or treasurer to attest to the copy of the dissolution plan filed with the commissioner.

The act also dictates that the dissolution plan be approved at an annual or special meeting of the credit union's members. It requires written notice of the date, time, and place of the meeting to be hand-delivered or

mailed to all members at their last-known address, as shown on the credit union's records, no more than 30 nor less than seven days before the vote. The notice must clearly describe the plan and the reasons for it and notify each member of his right to vote on the plan in person, by proxy, or by mail ballot, and include an official form of proxy or mail ballot. The act reduces the number of members needed to approve the proposal from two-thirds to a majority of members voting.

When the commissioner receives the vote result statement, prior law allowed him to apply to either the Superior Court of Hartford or the town where the credit union was located to appoint a receiver. The act allows him to apply only to the Hartford Superior Court. The act eliminates the commissioner's ability to terminate the Connecticut credit union's corporate existence by certifying, in writing, that no other reasonable alternatives are available to protect the credit union's members and creditors. Instead, it allows him to ask for a conservator or receiver to be appointed, in the same way as he can for a bank. The act also allows him to have a conservator or receiver appointed for (1) the reasons the law allows him to terminate the credit union's corporate existence and (2) any of the reasons the law allows him to apply for a receiver or conservator for banks.

RESTRAINING ORDERS AND INJUNCTIONS

Notice of a Temporary Restraining Order (§ 10)

The act expands the prior delivery requirements to require the commissioner to hand-deliver a copy of the restraining order to the bank, credit union, or credit union service organization's president, chief executive officer, secretary, treasurer, manager, or general partner, as appropriate for each institution. Prior law allowed him only to leave the order with a bank's secretary, treasurer, or cashier. The act allows an institution's executives to waive the notice. The act also extends to credit unions and credit union service organizations a reasonable notice requirement before a court issues a restraining order, and it deems notice to the institution's executives as sufficient notice to the institution itself.

Courts' Authority Over Injunction Application (§ 11)

The act allows the commissioner to apply for an injunction, receiver, or conservator in the case of (1) a forfeited certificate of authority of a Connecticut or out-of-state credit union; (2) a credit union's fraud, unsafe business practices, asset dissipation, or insolvency; or (3) termination of NCUA insurance. Prior law allowed the court to (1) grant an injunction or appoint a receiver or both or (2) appoint a conservator. The act allows the

commissioner to apply for an injunction in the Hartford Superior Court or the judicial district where the credit union's main office is located. The act allows the court to declare a Connecticut credit union's certificate of authority null and void after giving reasonable notice to the credit union. The law already allows it to nullify a Connecticut bank's charter.

Receivers and Conservators (§§ 12, 13, 14, 15, 16, 17, 18, 20)

The act applies provisions of banking law on receivers, receivership, and insolvency to Connecticut credit unions. If a court decides to name a receiver or conservator for a credit union, the act requires it to name the commissioner. But the act allows the commissioner to request that the NCUA be named receiver in his place. It also allows him to put credit unions into the Department of Banking division that liquidates and administers the affairs of banks. The act requires the receiver to place the Connecticut credit union in liquidation. It requires the conservator to carry on the credit union's business, preserve and conserve its assets and property, and put it in a safe and sound condition. The act also authorizes such additional procedures for receivers and conservators as the law allows for Connecticut banks.

The act prohibits any director, officer, or member of a credit union's senior management from (1) acting on the credit union's behalf; (2) conveying, transferring, assigning, pledging, mortgaging, or encumbering any of its assets; (3) creating any lien on it; or (4) preferring any of its share account holders or creditors, and declares any such act void. It allows the commissioner or receiver to terminate the credit union's executory contracts and lessee obligations within six months of the receiver's appointment. It also allows share account holders to submit plans to refinance or reorganize the credit union, as the law allows depositors, shareholders, and creditors to do for banks.

The act prohibits a claim in favor of a Connecticut credit union in receivership that was not time-barred at the time the receiver citation was served on the credit union from being barred against the receiver in a suit to recover the claim, brought by the receiver in his own or the credit union's name.

Liquidation, Subrogation, and Disposition (§§ 25, 26, 27)

The law directs the distribution sequence of a liquidated Connecticut credit union's assets or the proceeds from their disposition. The act adds specific provisions for liquidating corporate and low-income credit unions to that list: (1) for a corporate Connecticut

credit union, membership and then paid-in capital and (2) for a Connecticut credit union the NCUA designates as low-income, any outstanding secondary capital accounts. The act also specifies that when a Connecticut credit union's assets and their proceeds are insufficient to pay the total amount due each claimant in a particular class, they must be distributed to each claimant in the class on a pro rata basis.

If the NCUA pays a closed Connecticut credit union's insured account liabilities, the act requires the NCUA to be subrogated to the share account owners' rights against the credit union just the same as it is in the closing of a federal credit union. The act also requires the Connecticut credit union to forfeit its certificate of authority after the funds are properly distributed if the court has not approved any refinancing or reorganization plan.

PLEDGE OF SHARE ACCOUNT (§ 28)

The act allows any named share account holder to pledge his interest in a Connecticut credit union account to another person without the consent of any other named owner, unless the share contract says the account is nontransferable or otherwise limits pledge rights. But the act does not allow pledging of (1) a share account subject to negotiable orders of withdrawal or (2) a time account. Prior law limited the effectiveness of a bank deposit account pledge only to the account's named owners, their executors, or administrators, unless the pledger recorded a different intent on the bank's books or filed with it a copy of such order. The act applies this provision to credit unions and also allows a pledge to be effective against a bank deposit or credit union account's receivers or custodians. The act requires a lien against the pledgee's account until full loan repayment if the pledgee makes a loan based on the pledge of a savings account. It allows the Connecticut credit union maintaining the share account to be a pledgee.

ADVERSE CLAIM TO SHARE ACCOUNT (§ 30)

The act applies to credit union share accounts the law on adverse claims to money in a bank account. It prohibits a Connecticut or federal credit union from recognizing an adverse claimant's demand for money from a share account holder's account held in Connecticut unless the claimant either (1) gets a restraining order, injunction, or other process against the credit union in which the account holder or his executor, administrator, receiver, custodian, legal representative or heir is made a party and served with summons or (2) executes a bond indemnifying the credit union from any liability, damage, costs, or expenses for paying the

claim. But the act says these prohibitions do not apply if the share account holder is the claimant's fiduciary and the claimant presents an affidavit showing his reasonable belief that the fiduciary is about to misappropriate the share account funds. The act also adds a bank account holder's receiver or custodian to the list of people whom an adverse claimant to a bank account may make a party and serve with summons.

SHARE ACCOUNT HOLDERS AND PASSBOOKS (§§ 31, 32, 33)

The act subjects Connecticut credit unions' passbooks, certificates, instruments, and statements to the same laws that apply to banks. If a share account document is lost, stolen, or destroyed, the act allows the person or people holding the account to apply to the credit union for payment of the account balance or issuance of a duplicate document. The act specifies that the credit union's liability for the original document ends upon payment or reissuance. It considers everything in a statement or passbook to be accurate, unless the account holder files an action against the credit union claiming inaccuracy or incompleteness within seven years after delivery.

The act also allows minors to establish Connecticut or federal credit union share accounts as owners, joint owners, co-owners, or beneficiaries.

COMMISSIONER'S AUTHORITY OVER BANKS AND CREDIT UNIONS (§§ 3, 4, 9, 10)

The act extends the banking commissioner's existing authority over banks to the following activities and other entities, as indicated:

1. electronic data processing services (Connecticut credit unions and credit union service organizations) (§ 3);
2. liability for violating banking laws (credit union service organizations and their officers, directors, managers, or general partners) (§ 4);
3. limits on withdrawals from institutions in financial distress (Connecticut credit unions) (§ 9);
4. issuance of temporary restraining orders preventing institutions from distributing or receiving money (Connecticut credit unions, Connecticut credit union service organizations, and out-of-state credit unions with branches in Connecticut) (§ 10);
5. appointment of conservators (Connecticut credit unions and Connecticut credit union service organizations) (§ 10); and
6. issuance of restraining orders to prevent an institution from paying out dividends or other

funds until the court deems it necessary (credit unions and Connecticut credit union service organizations) (§ 10).

Stipulations and Agreements (§ 5)

If the banking commissioner conducts an examination or investigation and finds that a Connecticut bank, credit union, or credit union service organization (1) did not file a report when it was due; (2) is insolvent; (3) violated any banking statute, regulation, rule, or order; or (4) is or has been participating in unsafe and unsound practices, the act allows him to enter into (1) stipulations and agreements or memoranda of understanding with a Connecticut bank, either alone or with the FDIC, or (2) letters of understanding and agreement or memoranda of understanding with a Connecticut credit union or Connecticut credit union service organization, either alone or with the NCUA.

Banking Department Expenses and Payments (§ 6)

The act gives new Connecticut credit unions three full calendar years after the commissioner issues their certificates of authority before he may collect pro rata annual payments to meet Department of Banking expenses. It also gives the commissioner discretion to reduce a credit union's payment by the amount it paid in another state.

Information Disclosure (§§ 7, 8)

The act removes prior law's express permission for Connecticut credit unions to disclose to shared service centers information that members used to complete transactions with the credit union. But it allows financial institutions to disclose customer records to insurance companies to conduct risk assessment for surety bonds and fraud investigations.

PA 02-111—sSB 231

Banks Committee

Finance, Revenue and Bonding Committee

AN ACT CONCERNING CONSUMER CREDIT AND MONEY TRANSMITTER LICENSEES

SUMMARY: This act expands license requirements for mortgage lenders and brokers and requires originators to be registered. It increases the banking commissioner's authority with respect to mortgage lenders and brokers, sales finance companies, small loan lenders, debt adjusters, and consumer collection

agencies. It increases these parties' license fees and changes their application deadlines and frequency. The act imposes mortgage licensee net worth and experience requirements and updates the bond requirements for first mortgage lenders, money transmitters, and consumer collection agencies. It calls for a new bond requirement for debt adjusters, and specifies how mortgage lenders and brokers must retain their records. It also makes minor and technical changes.

The act expands the definition of a "consumer collection agency" to include a person who collects property tax from a property tax debtor on a municipality's behalf. It defines a "property tax debtor" as a person or organization who incurred indebtedness or owes a debt to a municipality because the municipality levied a property tax. The act prohibits consumer collection agencies from physically receiving funds for a creditor municipality, but allows them to contact debtors in the municipality's stead.

The act eliminates a provision allowing the commissioner to refuse to issue a sales finance company license if he finds that the applicant's spouse or the applicant company's owner, director, officer, member, partner, employee, or agent previously (1) had a sales finance company license revoked, (2) caused someone else's license to be revoked, or (3) violated any sales financing or retail installment sales financing law.

The act eliminates a requirement for small loan lender license applicants to advertise their intent to seek a license before filing an application. It allows the commissioner to refuse a license to any unfit applicant or an applicant who made a material misstatement on his application. The act removes a requirement that a small loan lender licensee keep its obligatory capital investment at its licensed business place. It also eliminates a requirement that an application contain the applicant's name, home and business address, and the business's members or partners, if applicable.

EFFECTIVE DATE: October 1, 2002, except for the provisions on consumer collection agency property tax collection, which take effect on July 1, 2002.

MORTGAGE LENDERS AND BROKERS

Powers

The law authorizes the banking commissioner to issue first and secondary mortgage lender and broker licenses. The act allows these lenders to make loans in their own names with their own money or fund loans through a "table funding agreement." Under the act, a "table funding agreement" is an agreement where one person agrees to (1) pay for a loan made in another person's name and (2) purchase it.

The act creates a new category of mortgage licensees called correspondent lenders. The act defines "mortgage correspondent lenders" as people who make mortgage loans in their own names but (1) do not fund them; (2) hold them for less than 90 days; and (3) arrange for someone else to fund them through a warehouse, table funding, or similar agreement. A "warehouse agreement" is an agreement to provide someone with credit so he has the money to make mortgage loans and hold them to sell to others. The act also specifically authorizes first and secondary mortgage brokers to indirectly arrange mortgage loans. The act allows (1) a first mortgage lender to act also as a first mortgage correspondent lender, and (2) both of them to act as first mortgage brokers. Similarly, it allows a secondary mortgage lender to act as a secondary mortgage correspondent lender, and both can act as secondary mortgage brokers.

As a condition of obtaining a license, the act requires a net worth of at least (1) \$250,000 for a first mortgage lender; (2) \$100,000 for a secondary mortgage lender; and (3) \$25,000 for first and secondary mortgage lenders, correspondent lenders, and brokers. The act requires all licensees to inform the commissioner immediately if their net worth falls below the required amount. Licensees who renew their licenses after (1) October 1, 2002 for first mortgage licensees and (2) July 1, 2003 for secondary mortgage licensees must have a supervisor at their place of employment with experience in mortgage lending or brokerage, as applicable, for at least three of the last five years.

The law requires mortgage license applications to include the name and address of each (1) applicant and (2) applicant member, officer, director, authorized agent, and shareholder owning 10% or more of outstanding stock. The act requires them to include (1) the type of license sought, (2) the location for which the license is sought, (3) the name and address of each partner, and (4) a financial statement not more than six months old showing the applicant's net worth. If the financial statement is unaudited, the proprietor, general partner, or other authorized member, officer, or trustee must swear to its accuracy under oath before a notary public. The act requires all mortgage licensees, instead of just secondary mortgage licensees, to include on their license and renewal applications the names and addresses of the trustees, lead lenders, and trust beneficiary or other participant lenders in outstanding participation loans.

The act requires all mortgage licensees, instead of just first mortgage licensees, to include any additional information the commissioner requests on the applicant, its background, its activities, and its principal and employees' background. It also subjects secondary

mortgage licensees to the same licensing standards first mortgage licensees must now meet. The act requires all applicants to include evidence that their supervisors have the requisite experience, and an application to register their current and prospective originators. It expands license effectiveness guidelines to include provisions on (1) applications and referrals from unlicensed mortgage brokers and (2) refunds of first mortgage originators' advance fees.

The act authorizes the commissioner to deny a license or originator registration to any applicant who makes a material misstatement in its application, as well as those who fail to meet his standards, as under prior law.

Originators

The act defines an "originator," as a person at a first or secondary mortgage lender or broker's office who gets paid to set up first or secondary mortgage loans. It requires a mortgage lender or broker to register an originator before hiring or using him. A first mortgage lender may not accept applications or applicant referrals from unregistered originators if the lender knows that the commissioner has not registered them. A first mortgage lender or broker need not register an originator it has already registered under the secondary lender or broker laws, and vice versa. The act prohibits originators from working without being registered or working for more than one person at a time. Originators' registrations are valid only when they are actively working for a licensee. The act requires originators and licensees immediately to inform the commissioner when they terminate their relationship.

Registration. The act requires first mortgage licensees to pay the commissioner a \$100 registration fee when applying to register an originator, but if they file within one year of their license expiration, the fee is \$50. It requires secondary mortgage licensees applying to register an originator to pay (1) \$50 if they apply before their own license expires or (2) \$100 if they apply after that. The act makes an originator's registration expire at the same time as the licensee's license, unless the licensee files a renewal application and pays two years of registration fees. It makes registration fees nonrefundable, just as the law already does for licenses.

The act also counts each first mortgage loan negotiated, solicited, placed, found, or made without a registration as a separate violation of the banking laws. This penalty already applies to first and secondary mortgage loans undertaken without a license.

The act allows the commissioner to hold originators to the same standard that he uses to assess license applications from partnerships, associations, and other

corporations. It requires him to register the applicant's originator unless he has reason to doubt the originator's character or fitness. The act also requires the commissioner to notify both the originator and the applicant licensee if he denies an originator's registration application. The act specifies that a first mortgage originator's registration remains in effect until it is surrendered, revoked, or suspended, or until it expires.

Advance Fees. The act prohibits originators from accepting payment of an advance fee unless it is on behalf of a licensee. It allows licensees to pay originators all or part of an advance fee, but specifies that these fees are not refundable.

The act specifies that advance fees paid or given to a secondary mortgage lender or broker are refundable. The law already provides for refunds of advance fees paid to first mortgage lenders and brokers.

Activities Beyond Scope of License

The act specifies that a mortgage correspondent lender is not acting as a mortgage lender if he uses his own money to make a loan when someone else fails to follow through on a funding commitment. But it eliminates a provision stipulating that (1) a person is not considered to be acting as a secondary mortgage lender or broker if he negotiates a secondary mortgage loan in the course of his duties as a licensed real estate broker, accountant, or attorney and (2) the person's estate beneficiaries will not be deemed to be engaging in the secondary mortgage loan business either, unless they make new secondary loans.

RECORD RETENTION

The act adds the broker's name and address, when applicable, to the information licensees must keep in their loan transaction records. It extends the length of time first and secondary mortgage licensees must keep the records of loans they service from one year after the last payment to two years after the last payment or loan assignment, whichever happens first. The act makes record retention provisions already applicable to first and secondary mortgage brokers apply to licensees acting as mortgage lenders or brokers but not servicing the loan. It requires secondary mortgage licensees to keep loan transaction records at the business location named in their application or make them available within five business days of the commissioner's request.

DEBT ADJUSTERS

The act limits the statutory definition of "bona fide nonprofit organization" to 501(c)(3) tax-exempt

organizations and defines "debtor" for debt adjustment purposes as any individual who has incurred or owes a debt for personal, family, or household purposes. It eliminates provisions that required a debt adjuster to provide the debt adjustment service for free or at cost. The act allows the commissioner to grant the organization a debt adjuster license if he finds (1) the applicant, partners, members, officers, directors, and principal employees, as applicable, to be of sufficient character and integrity to properly conduct sales financing business and (2) the applicant is solvent and has not started a proceeding in bankruptcy or receivership or assignment for its creditors' benefit.

The act requires original debt adjuster license applicants to pay the commissioner an application fee of \$250. These licenses expire on September 30 of the odd-numbered year after they were issued unless renewed. But the act specifies that any license issued before October 1, 2002 will expire September 30, 2003 if not renewed. Licensees must file their renewal applications by September 1 of the year the license expires. The act makes application fees nonrefundable, and license fees will not be reduced if the license is surrendered, revoked, or suspended before it expires.

The act requires debt adjusters to keep a separate bank account for payments from Connecticut debtors. Prior law required them to keep an account for all debtors, where the money stayed until it was paid to either a debtor or a creditor. The act also removes provisions limiting debt adjuster licensees to adjusting debts and conducting business that does not conflict with the licensee's customers or industry. Instead, it requires a debt adjuster license to state the adjuster's name and the business location to which it applies, and prohibits the adjuster from using any other name except the one on the license the commissioner issued.

BOND REQUIREMENTS

First Mortgage Lender and Money Transmitter Bond Requirements

The act expands the license bond requirements for (1) first mortgage lenders' agreements with borrowers and prospective borrowers to also cover agreements entered into for the benefit of those parties and (2) money transmitters. It allows the commissioner to proceed on the bond against the principal or surety, or both, to collect any civil penalty against the licensee for violating banking laws. The first mortgage lender licensee's bond proceeds will be held in trust for successful claimants in case of the licensee's bankruptcy. The licensee's creditors and judgment holders cannot attach these funds.

Debt Adjuster Bond Requirement

The act requires applicant debt adjusters to file with the commissioner a bond, written by an authorized surety in a form approved by the attorney general. But it allows any applicant filing license applications for multiple locations to file one bond to cover all of them. The act specifies the bond's principal amount to be the greater of (1) \$40,000 or (2) twice the amount of the applicant's highest total debt adjustment payments from Connecticut debtors in any month of the previous year, ending July 31. It requires the licensee to submit a bond or bond renewal every September 1 conditioned on the licensee's faithfully (1) performing his written agreements with debtors, (2) accounting for all debt adjustment funds received, and (3) conducting his business in accordance with the debt adjuster statutes.

If the licensee fails to perform written agreements or illegally converts a debtor's funds, the act allows the debtor to recover damages from the bond principal, surety, or both. It also allows the commissioner to proceed on the bond against the principal, surety, or both to collect the applicable civil penalty for the licensee's violation of banking laws. The act requires bond proceeds, even if commingled with the licensee's other assets, to be held in trust for successful claimants in case the licensee declares bankruptcy. The licensee's creditors and judgment holders cannot attach these funds. The act requires the bond to be kept the entire time the applicant holds a license, but the licensee's total bond liability may not exceed the bond's penalty amount. The act prohibits licensees from saying they are endorsed, sponsored, recommended, or bonded by the state. Prior law prohibited them from implying or referring to their status as bonded, approved, or bonded or approved by the state.

Consumer Collection Agency Bond Requirement

By law, consumer collection agency licensees must maintain a \$5,000 bond. The act allows anyone hurt by the licensee's illegal conversion of creditor or consumer debt funds to recover damages from the bond principal, surety, or both. It also allows the commissioner to proceed on the bond against the principal, surety, or both, and to collect any civil penalty for the licensee's violation of banking laws. The act requires bond proceeds, even if commingled with the licensee's other assets, to be held in trust for successful claimants in case of the licensee's bankruptcy. The licensee's creditors and judgment holders cannot attach these funds. The act specifies that the bond runs concurrently with the license, and that the licensee's total bond liability cannot exceed the bond's penalty amount.

LICENSE AND APPLICATION FEES

The act extends license effectiveness from one to two years, expiring on September 30 of (1) the even-numbered year after issuance for mortgage licensees and (2) the odd-numbered year after issuance for sales finance companies, small loan lenders, and consumer collection agencies. The act requires licensees to pay the commissioner two years of license fees for renewal. Under prior law, secondary mortgage, sales finance company, and small loan lender licenses expired every June 30; consumer collection agency licenses every April 30; and first mortgage licenses every September 30.

<i>Type of license</i>	<i>Former license fee</i>	<i>New initial license fee</i>	<i>New fee if renewing within one year before license expires</i>	<i>New fee if renewing after license expires</i>
First mortgage lender	\$400	\$800	\$400	\$800
First mortgage correspondent lender	N/A	\$800	\$400	\$800
First mortgage broker	\$200	\$400	\$200	\$400
Secondary mortgage lender	\$400	\$800	\$400	\$800
Secondary mortgage correspondent lender	N/A	\$800	\$400	\$800
Secondary mortgage broker	\$200	\$400	\$200	\$400
Originator registration	N/A	\$100	\$50	\$100
Sales finance company	\$400	\$800	\$400	\$800
Small loan lender	\$400	\$800	\$400	\$800
Debt adjuster	N/A	\$250	\$250	N/A
Consumer collection agency	\$400	\$800	\$400	\$400

The act also generally requires mortgage, sales finance company, small loan lender, and consumer collection agency licensees to file renewal applications by September 1 of the year their licenses expire. But they must file by June 1, 2003 for licenses expiring June 30, 2003, and by April 1, 2003 for licenses expiring April 30, 2003, to avoid a \$100 late fee. Prior law required them to file annually by June 1 or April 1, as applicable, and pay a fee to renew the license for the next year.

The act increases sales finance company, small loan lender, and consumer collection agency renewal fees from \$400 to \$800. But it specifies that sales finance company and small loan lender licenses renewed effective July 1, 2003 will expire on September 30, 2005 and cost \$900, while consumer collection agency licenses renewed effective May 1, 2003 will expire on

September 30, 2005 and cost \$1,000. And it requires consumer collection agency applicants whose licenses expired less than 60 days before they file a new license application to include a \$100 filing fee along with the application fee. The act requires secondary mortgage and correspondent lenders renewing licenses that expire June 30, 2003 to pay the commissioner a \$500 license fee. It requires secondary mortgage brokers renewing licenses expiring June 30, 2003 to pay a \$250 license fee.

The act removes a requirement that secondary mortgage applicants or licensees pay any expenses from secondary mortgage lending examinations or investigations related to their license.

LICENSE PLACEMENT, TRANSFER, ASSIGNMENT, AND AMENDMENT

The act eliminates a requirement that mortgage lenders, brokers, and debt adjusters working in several places prominently post their license in each location. The licensee still must get a license for each place where he wants to work, but the act requires him to keep a license only at the location for which it was issued and make it available for public inspection. The act requires first mortgage lender, broker, sales finance company, debt adjuster, and consumer collection agency licensees to give prior written notice before changing their business location. Prior law required them to get the commissioner's prior approval. The act prohibits sales finance company and consumer collection agency licensees from transferring or assigning their licenses; the law already prohibits this for first and secondary mortgage licensees and debt adjusters.

The act prohibits sales finance companies from assigning or transferring their licenses, or using a name other than that on the license the commissioner issued. The act eliminates a requirement for licensees to notify the commissioner immediately of any personnel or participation loan participant changes. Instead, it applies to secondary mortgage licensees the same provisions governing first mortgage licensees for (1) license placement and availability provisions; (2) notification of changes to information contained in the application provisions; and (3) license surrender, revocation, suspension, and expiration.

LICENSE SUSPENSION, REVOCATION, OR NON-RENEWAL

The act expands the grounds on which the commissioner may suspend, revoke, or refuse to renew a first or secondary mortgage license, and replaces those for debt adjusters, to include (1) failure to perform an agreement with a licensee or debtor; (2) violation of any

banking law; and (3) a finding that the applicant committed fraud, misappropriated funds, or misrepresented any material fact about a first or secondary loan or debt adjustment transaction, as applicable. The law already allows the commissioner to suspend, revoke, or refuse to renew a mortgage loan license if a licensee violates any provisions regarding nondepository first mortgage lenders and brokers, creditors' collection practices, the Truth-in-Lending Act, or consumer credit reports. The act also eliminates provisions (1) requiring a secondary mortgage licensee immediately to surrender his license if the commissioner suspends or revokes it; (2) requiring the commissioner to establish rules for sales finance company license revocation hearings, findings, and orders; and (3) allowing the commissioner to revoke a small loan lender license if the licensee did not pay the annual license fee.

The act also replaces the commissioner's authority to suspend or revoke a consumer collection agency license for cause and instead allows him to suspend, revoke, or refuse to renew licenses for the same reasons he can deny them, as well as if he finds anyone associated with the company has (1) made any material misstatement in the application; (2) committed any fraud or misrepresentation or misappropriated funds; or (3) violated any relevant banking laws.

PA 02-36—sHB 5179

*Select Committee on Children
Education Committee
Public Health Committee*

AN ACT CONCERNING ONE STOP FAMILY CENTERS

SUMMARY: This act requires the education and public health commissioners to develop a plan to co-locate, where feasible, family resource centers and school-based health clinics established after July 1, 2002. By law, new family resource centers must be located in public elementary schools, unless the education commissioner grants an exception.

EFFECTIVE DATE: Upon passage

PA 02-109—sHB 5176

*Select Committee on Children
Judiciary Committee
Appropriations Committee*

AN ACT CONCERNING YOUTH IN CRISIS

SUMMARY: This act makes it clear that the youth in crisis program covers both 16- and 17-year-olds. Prior law defined a “youth” as a person age 16 to 18, while it defined a “youth in crisis” as someone age 16 to 17. The act permits the Judicial Department to use any juvenile justice appropriations to operate the youth in crisis program.

The act gives police officers and local government and community agency officials who work with youths in crisis (like youth service bureau staff) the same immunity from personal liability they have when working with families with service needs. The law immunizes them from liability for damages for personal injuries that arise from the child or his parents voluntarily terminating services.

A youth in crisis is someone who comes under juvenile court jurisdiction because he has run away from home without just cause, is beyond his parents’ control, or has multiple unexcused absences from school. The court can require the youth to work, participate in community service, or go to school or some other educational program; restrict his driving; and require mental health services.

EFFECTIVE DATE: Upon passage for the change in youth in crisis definition, July 1, 2002 for the funding provision, and October 1, 2002 for the immunity provision.

PA 02-119—sHB 5425

*Select Committee on Children
Education Committee
Appropriations Committee*

AN ACT CONCERNING BULLYING BEHAVIOR IN SCHOOLS AND CONCERNING THE PLEDGE OF ALLEGIANCE

SUMMARY: This act requires all school boards to develop policies (1) addressing bullying and (2) ensuring that time is available during each school day for students to recite the Pledge of Allegiance. The act states that it is not to be construed to require anyone to recite the pledge.

The act defines bullying as repeated, overt acts by one or more students on school grounds or at a school-sponsored activity that are intended to ridicule, humiliate, or intimidate another student.

Each district’s bullying policy must:

1. permit anonymous reports by students of bullying and written reports by parents or guardians of suspected bullying,
2. require teachers and other school staff to notify school administrators of bullying they witness and students’ reports they receive,
3. require school administrators to investigate parents’ written reports and review students’ anonymous reports,
4. require each school to maintain a publicly available list of the number of verified bullying acts that occurred there,
5. include an intervention strategy for school staff to deal with bullying,
6. provide for including language about bullying in student codes of conduct, and
7. require notice to parents or guardians of all students involved in a verified act of bullying. The notice must describe the school’s response and any consequences that may result from further acts of bullying.

The policy must be developed for use starting February 1, 2003.

EFFECTIVE DATE: July 1, 2002 for the bullying policy; October 1, 2002 for the Pledge of Allegiance policy.

PA 02-127—sSB 334
Select Committee on Children
Judiciary Committee
Human Services Committee

AN ACT CONCERNING RESTRAINING AND PROTECTIVE ORDERS AND THE REPORTING AND INVESTIGATION OF SUSPECTED ABUSE OF DELINQUENT CHILDREN COMMITTED TO THE COMMISSIONER OF CHILDREN AND FAMILIES

SUMMARY: This act (1) increases the penalty for violating a protective order, (2) makes violating a family violence restraining order a separate crime, (3) subjects restraining order violators to enhanced penalties as persistent offenders, (4) requires state marshals to give copies of *ex parte* restraining orders to police officials, and (5) requires the court to give certain information to people who apply for restraining orders. The act also requires DCF to notify in writing the legal guardian and the attorney of record of any delinquent child committed to it within 10 days of receiving a report that the child has been abused. If DCF substantiates the report, it must notify the guardian and the attorney in writing; this notice must also be given within 10 days of receiving the abuse report.

EFFECTIVE DATE: October 1, 2002

RESTRAINT AND PROTECTIVE ORDERS

Penalty for Violating a Protective Order

The act raises the penalty for violating a protective order from a class A misdemeanor to a class D felony (see Table on Penalties). It applies to orders protecting against family violence, stalking, and witness harassment.

Penalty for Violating a Restraint Order

The act makes violating a family violence restraining order a class A misdemeanor. By law, (1) a person who enters a premises in violation of a restraining order is guilty of 1st degree criminal trespass, which is a class A misdemeanor and (2) a restraining order violator can be held in contempt of court, which is punishable by imprisonment for up to six months, a fine of up to \$500, or both.

The act establishes four circumstances under which a person violates a restraining order. These occur when the target of the order knows its terms and violates them by (1) not staying away from the person or place named in the order; (2) contacting the person; (3) restraining the person or the person's liberty; or (4) threatening,

harassing, assaulting or sexually assaulting, molesting, or attacking the person.

Restraint Order Subjects as Persistent Offenders

The act subjects a restraining order violator to the enhanced penalty for persistent offenders if, in addition to violating the order, he was within the previous five years convicted of or released from prison for committing:

1. a capital or class A felony;
2. a class B felony, except promoting 1st degree prostitution and 1st degree larceny;
3. a class C felony, except promoting 2nd degree prostitution and bribing jurors;
4. 2nd or 3rd degree assault or criminal trespass, 3rd degree burglary or robbery, 3rd degree sexual assault, 2nd degree stalking or harassment; or
5. threatening, unlawful restraint, criminal use of a firearm, reckless burning, or violating a protective order.

The act also subjects a person who committed any of the above crimes to the persistent offender penalty if, within the five previous years, he was convicted of violating a restraining order.

By law, the enhanced penalty is the sentence for the next more serious degree of the crime. The enhanced penalty for violating a restraining order would be the sentence for a class D felony. Before imposing the enhanced penalty, the court must consider the defendant's history and character and the nature of the circumstances of his criminal conduct.

Motion to Modify Release Conditions

The act permits a court to hear a prosecutor's motion to modify the release conditions for a restraint order violator who will be arraigned at the next sitting of the geographical area court where the offense was allegedly committed without first notifying the accused, the bail commissioner, or any surety. Courts can already do this for people charged with family violence crimes, violating protective orders, or certain types of stalking.

Restraint Order Notices

The law requires the person who applies for a restraining order to have the alleged offender (the respondent) served with (1) the application, (2) notice of the hearing on the application, and (3) any *ex parte* order issued because of immediate physical danger. It requires the court clerk to send a certified copy of the order to the police where the applicant lives and, if the respondent lives in a different town, to the police there

within 48 hours of issuance. When an applicant who works in a town other than where she lives asks the clerk to notify the police where she works, the clerk must do so.

The act requires the applicant to include a copy of the affidavit she presented to the court in the papers she has served. It requires the court clerk to send a copy of the order to the police where the applicant works (if different from the town where she lives) whether or not she asks for this.

The act requires a state marshal, immediately after serving an *ex parte* order, to provide an attested copy of it to police officials in the town where the applicant lives. The copy must include the applicant's affidavit and state the date and time notice was served. If service did not occur in the town where the applicant lives, the marshal must immediately send a facsimile to the police in the town where the respondent lives. And, if the applicant works in a town other than where she or the respondent lives, the marshal must send a facsimile to the police where she works. The act requires all copies to include the applicant's affidavit. (The act does not apply to others who can legally serve process, such as constables, other proper officers, and indifferent persons.)

Referral to Victim Advocate or Counselor

The act requires the court to give applicants for a restraining order in domestic violence situations information on how to (1) continue the order beyond its initial period and (2) contact domestic violence counselors.

PA 02-86—sHB 5402
 Commerce Committee
 Judiciary Committee

**AN ACT CONCERNING TERMS AND
 CONDITIONS OF STATE ECONOMIC
 DEVELOPMENT ASSISTANCE**

SUMMARY: This act establishes a procedure to ensure that businesses receiving more than \$1 million in state economic development assistance comply with the terms and conditions of their assistance agreements. The procedure requires state agencies providing this assistance to:

1. notify businesses when they fail to comply with the agreements,
2. recover the assistance if the businesses subsequently fail to comply, and
3. impose liens on any security required as a condition of receiving assistance (excluding grant only agreements).

The act requires three economic development agencies—the Department of Economic and Community Development (DECD), the Connecticut Development Authority (CDA), and Connecticut Innovations, Inc. (CII)—to include specific requirements in all their assistance agreements: (1) specific job creation and retention goals; (2) reporting requirements for assistance recipients; and (3) security (a letter of credit, lien on real property, or a security interest in other goods) from assistance recipients.

The act permits awarding authorities (defined as DECD, CDA, CII, and any other agency providing assistance) to recover state assistance if the businesses that received it failed to meet their job creation and retention goals when it was in their power to do so. It allows these agencies to modify terms and conditions of assistance agreements when it is in the best interest of the state or community to do so. The modifications include forgiving loan repayments, revising job creation and retention goals, and changing interest rates.

EFFECTIVE DATE: July 1, 2002, except for the compliance notice and penalty provision, which is effective October 1, 2002.

STATE ASSISTANCE

State assistance means any economic development grant, loan, loan guarantee, or tax benefit not generally made available to a for-profit business that exceeds \$1 million or that totals that amount when added to state assistance received during the preceding two years. The act covers assistance provided by quasi-public and state agencies authorized to award assistance.

GENERAL COMPLIANCE

Procedure

The act allows any state or quasi-public agency to penalize an assistance recipient that does not comply with the assistance agreement if it was in the recipient's power to do so. When a recipient fails to comply, which constitutes default under the act, the agency must send a written notice by registered mail to the recipient ordering it to comply within 180 days. If the recipient fails to comply within that time, the awarding authority may penalize the recipient by:

1. rescinding the agreement and requiring the recipient to repay the full amount of any grant, outstanding loan (including interest), or tax benefit;
2. imposing a penalty of 1% per month on any part of a grant, outstanding loan, or tax benefit; or
3. foreclosing on any collateral or bond related to such a grant, loan, or tax benefit for penalty payment and to cover costs incurred due to penalty collection.

Lien on Security

The act requires that an awarding authority place a lien on security it requires under any agreement, except for grants, or require some other appropriate security. The amount of the lien must equal the amount due on state assistance. The lien has priority over all subsequent liens except state tax liens. The awarding authority may waive this right when it is in the best interest of the state or local community, but must notify the State Bond Commission or appropriate board of directors of any change in the assistance agreement.

**ECONOMIC DEVELOPMENT AGENCY
 COMPLIANCE**

Job Creation Compliance

The act requires DECD, CDA, and CII's financial assistance agreements with businesses to include certain provisions. In cases where the agency provides assistance specifically to create or retain jobs, the agreements must include goals for achieving that purpose and require the businesses to submit periodic reports on their progress in meeting those goals. All agreements, except those for grants or loans for less than one year, must require security, which can be in the form of a letter of credit, lien on real property, or security in personal or any other type of property. The agreements must also require the businesses to remain

in substantial material compliance with state and federal law.

The act requires an assistance recipient to provide compliance information, including compensation paid to employees in jobs created as a result of state assistance, upon request by the awarding authority. If an assistance recipient fails to create and retain the agreed upon number of jobs and it was within the recipient's control to do so, the awarding authority may require it to repay an amount proportionate to the number of jobs it failed to create or retain. But the agency may allow the recipient to revise its job goals if it is in the state's or community's best interest.

Agreement Revision

The awarding authority may revise an agreement when it is in the best interest of the state or local community not to penalize the assistance recipient. The awarding authority may, at its discretion, modify the terms or conditions of state assistance, including loan forgiveness and revision of job retention and creation goals. The bond commission or the appropriate board of directors must be notified of any change to an assistance agreement.

BACKGROUND

Quasi-Public Agencies

Quasi-public agencies are: CDA, CII, Connecticut Housing Finance Authority, Connecticut Housing Authority, Connecticut Health and Educational Facilities Authority, Connecticut Higher Education Supplemental Loan Authority, Connecticut Resources Recovery Authority, Connecticut Hazardous Waste Management Service, Connecticut Coastline Port Authority, Capital City Economic Development Authority, and Connecticut Lottery Corporation.

PA 02-88—HB 5498

*Education Committee
Appropriations Committee
Finance, Revenue and Bonding Committee*

AN ACT CONCERNING A NEW CONNECTICUT FUTURES ACCOUNT

SUMMARY: This act allows the Board of Governors (BOG) of Higher Education to establish and administer a “Gear Up for Connecticut Futures” account as a separate and nonlapsing account within the General Fund. It (1) requires the account to be used for scholarships under the federal “Gaining Early Awareness and Readiness for Undergraduate Programs” (GEAR UP) program; (2) allows the BOG to deposit in the account state funds appropriated as a state match to a federally funded GEAR UP grant; and (3) allows the state treasurer to invest surplus account funds as the statutes authorize, but directs her to credit all investment interest to the account.

EFFECTIVE DATE: July 1, 2002

BACKGROUND

Federal GEAR UP Program

The federal Department of Education (DOE) created the GEAR UP program in 1998 to fund partnerships between high-poverty middle schools and colleges, universities, community organizations, and businesses. These partnerships provide (1) tutoring; (2) mentoring; (3) college preparation and financial aid information; (4) an emphasis on core academic preparation; and (5) in some cases, scholarships. DOE chose to start the program no later than the seventh grade based on research showing that students who take difficult classes early tend to do well in high school and go on to college. GEAR UP aims to address the college opportunity gap by creating long-term mentoring relationships and working with entire grades to improve low-income schools.

PA 02-140—sSB 423

*Education Committee
Finance, Revenue and Bonding Committee
Government Administration and Elections Committee*

AN ACT CONCERNING THE O'NEILL CENTER, THE CONNECTICUT STATE UNIVERSITY'S BIDDING PROCESS AND THE CONNECTICUT INSTITUTE FOR MUNICIPAL STUDIES

SUMMARY: This act:

1. allows the Department of Public Works (DPW) commissioner to use the same negotiated contracting and bidding procedures for Connecticut State University (CSU) student dormitory projects he already may use for other designated state construction projects, such as the Connecticut Juvenile Training School and the downtown Hartford higher education center;
2. eliminates the Connecticut Institute for Municipal Studies (CIMS) as a separate entity and transfers its financial and other assets to Central Connecticut State University (CCSU);
3. eliminates the requirement that the comptroller provide group health coverage for CIMS employees;
4. from July 1, 2002 to June 30, 2006, exempts money Western Connecticut State University's contractor receives from O'Neill Center ticket sales from regular requirements for depositing state funds;
5. allows public education constituent unit or institution chief executive officers (CEOs) to accept electronic bids, quotations, and proposals for equipment, supplies, and contractual services but bars them from refusing to consider a bid, quotation, or proposal because it is not submitted electronically; and
6. allows constituent units to meet requirements to keep certain bids “sealed” either by sealing them in an envelope or keeping them in a safe and secure electronic environment.

EFFECTIVE DATE: July 1, 2002

CONTRACTING PROCEDURES

The act applies to CSU dorm projects that qualify as priority higher education projects the special contracting and bidding procedures that already apply to community courts, the Connecticut Juvenile Training School, the downtown Hartford higher education center, and the University of Connecticut library project, among others. By law, “priority higher education projects” involve repairing, renovating, enlarging, equipping, purchasing, or constructing buildings as part of a higher education constituent unit's comprehensive facilities master plan. They must be reviewed and approved by the Priority Higher Education Facility Project Review Committee.

The act exempts these CSU dorm projects from the competitive bidding process for contracts over \$500,000 to construct, reconstruct, alter, remodel, repair, or demolish public buildings. That process requires the

public works commissioner to issue a request for proposals and award the project contract to the lowest responsible qualified bidder. Instead, for qualifying CSU dorm projects, as with other emergency and expedited projects, the act authorizes the commissioner to select and interview at least three responsible and qualified general contractors and negotiate a contract with one of them.

CONNECTICUT INSTITUTE FOR MUNICIPAL STUDIES

The act transfers CIMS' financial assets, records, files, and intellectual property and copyright rights to the Institute for Municipal and Regional Policy at CCSU's Center for Public Policy and Practical Politics. It eliminates provisions:

1. establishing CIMS as a nonprofit, nonstock corporation with a 21-member board of directors;
2. establishing CIMS' mission and function;
3. establishing requirements for board meetings and authorizing the board to hire technical and support staff and consultants;
4. requiring CIMS to develop a long-range strategic plan for revitalizing communities in crisis and eliminating duplicative public services;
5. requiring CIMS' board of directors to establish a consortium of public and private higher education institutions with expertise in governmental and urban affairs, including a visiting scholars program, to promote the study of issues related to CIMS' mission; and
6. requiring the board to review and implement pilot demonstration projects related to CIMS' mission and accept public or private funding for them.

O'NEILL CENTER TICKET RECEIPTS

From July 1, 2002 to June 30, 2006, the act exempts money from O'Neill Center ticket sales from regular requirements for depositing state funds. Those requirements are that funds be paid to the state treasurer or deposited in the state's name according to the treasurer's regulations within 24 hours of being received, if they total \$500 or more, or within seven days, if less than \$500. Instead, the act allows the O'Neill Center contractor to deposit ticket money in its own account for up to 40 days. During that time, the contractor must pay the event's expenses and account for, and pay, the share due to the university under its contract. Once the university receives its share, it must deposit the money according to regular state procedures.

BACKGROUND

Priority Higher Education Facility Project Review Committee

This committee consists of the Office of Policy and Management secretary, state treasurer, and DPW commissioner or their designees. It reviews and approves projects submitted by higher education constituent units.

Higher Education Purchasing Authority

By law, higher education CEOs must solicit competitive bids or proposals whenever they buy equipment, supplies, or contractual services costing more than \$10,000. Bids for purchases over \$50,000 must be publicly advertised in at least two publications, including a major daily newspaper published in the state, and posted on the Internet.

PA 02-7—HB 5346 (VETOED)
Energy and Technology Committee
Environment Committee

**AN ACT CONCERNING HYDROGEN
 PRODUCTION FACILITIES AND HYDROGEN
 CONVERSION TECHNOLOGY AND THE
 PROTECTION OF LONG ISLAND SOUND**

SUMMARY: This act establishes a one-year moratorium, effective upon passage, on consideration or final approval by state agencies of applications (including pending applications) relating to an electric power line or gas pipeline across Long Island Sound. The act affects, among others, the Connecticut Siting Council (CSC) and the Department of Environmental Protection (DEP).

The act bars the construction of any electric power line within the Sound for one year to allow for a comprehensive environmental assessment and plan to be completed. (The act does not specify who will prepare the plan.) This provision applies regardless of any provision of the statutes or any approval received before the act's effective date.

The act bars the construction of any electric power line within the Sound for one year to allow for a comprehensive environmental assessment and plan to be completed. (The act does not specify who will prepare the plan.) This provision applies regardless of any provision of the statutes or any approval received before the act's effective date.

Any application for a gas pipeline or electric power line crossing Long Island Sound that CSC or DEP considers after the assessment and plan are completed must be evaluated on the application's (1) likelihood to impair the public trust in the Sound, based on information in the assessment and plan; and (2) the extent to which the application is consistent with the assessment and recommendations in the plan.

These provisions do not apply to projects located in the mile-wide corridor across Long Island Sound from Norwalk to Northport, New York that are currently occupied by electric cables.

Within 15 days of its passage, the act requires CSC to submit an advisory opinion to the Federal Energy Regulatory Commission (FERC) on behalf of the state. The opinion must ask FERC (1) not to approve any individual new power line or gas pipeline crossings for one year to allow for the completion of the assessment and plan and (2) avoid environmental damage to the Sound to the greatest extent possible when licensing any future gas pipelines, by considering the assessment and the plan's recommendations.

By law, Connecticut Innovations, Inc. (CII) administers the Renewable Energy Investment Fund to promote several renewable energy resources. The act adds hydrogen production and conversion technologies to these resources. (Among other things, hydrogen can be used to power fuel cells to produce electricity.) However, it bars CII from promoting renewable energy resources that relate to facilities, such as electric transmission lines, that cross the Sound and are

regulated by the Siting Council. By law, CII, a quasi-public agency, can use the fund to promote investment in renewable energy resources, stimulate demand for them, and encourage their deployment. Money in the fund comes from a charge on electric bills.

EFFECTIVE DATE: Upon passage for the moratorium and related provisions; July 1, 2002, for the CII provisions.

BACKGROUND

Related Act

PA 02-95, An Act Concerning the Protection of Long Island Sound, contains moratorium provisions that are similar to those contained in this act. However, its moratorium excludes facilities that have already been permitted and includes telecommunications lines crossing the Sound and the proposed overland transmission line between Bethel and Norwalk. In addition, it requires the Institute of Sustainable Energy at Eastern Connecticut State University to lead two working groups and prepare a comprehensive assessment of issues surrounding cross-Sound crossings and the Bethel-Norwalk line.

PA 02-8—sHB 5408
Energy and Technology Committee

**AN ACT CONCERNING THE FORMS OF
 IDENTIFICATION REQUIRED BY PUBLIC
 SERVICE COMPANIES AND
 TELECOMMUNICATIONS COMPANIES**

SUMMARY: This act allows utilities regulated by the Department of Public Utility Control (DPUC) to demand two forms of identification rather than one, when a person opens an account. It allows the utility to demand that one of the forms of identification have a photograph. Under prior law, identification meant the number on a Social Security card or driver's license or non-driver's identification issued by the Department of Motor Vehicles and other forms of DPUC-approved identification. The act expands the acceptable forms of identification to include (1) valid U.S. and foreign passports; (2) resident alien or alien registration cards issued by the Immigration and Naturalization Service; and (3) other valid forms of identification issued by a municipal, state, or federal government. By law, if the person does not have acceptable identification, the utility must still open the account, but can terminate service if the person does not provide identification within 15 days.

The act prohibits DPUC-certified telecommunications companies, such as long-distance carriers, from demanding identification from prospective residential service customers other than as described above. The companies are not required to provide service if the person does not provide identification.

The act does not bar utilities or telecommunications companies from accepting other forms of identification, so long as they accept the forms described above.

EFFECTIVE DATE: Upon passage

PA 02-16—sHB 5203

Energy and Technology Committee

AN ACT CONCERNING GAS COMPANY SUPPLY AND DEMAND FORECAST REPORTS AND CONSERVATION PLANS

SUMMARY: This act requires gas company forecasts of supply and demand to cover a five-year, rather than a 10-year, period. By law, the companies must submit the forecasts in a report to the Department of Public Utility Control by October 1 of each even-numbered year.

Under prior law, the department had to hold a hearing on the forecasts. Under the act, it must do so only at the request of an individual or firm.

EFFECTIVE DATE: October 1, 2002

PA 02-32—sHB 5430

Energy and Technology Committee

AN ACT CONCERNING TELECOMMUNICATIONS CUSTOMERS' RIGHTS

SUMMARY: This act requires telephone and telecommunications companies to disclose additional information to customers. It requires that all telecommunications service bills (1) clearly and conspicuously identify the charges for which a customer's basic, local service will not be disconnected if he fails to pay the charge; (2) label a charge as a tax only if it is directly assessed by the taxing entity on the customer through the telecommunications company; and (3) separately list such taxes on the bill. The law already requires these bills to identify the name and toll-free phone number of the service provider.

The act requires telephone and telecommunications companies to clearly and conspicuously disclose in writing to customers whether the removal or change in any telecommunications service will result in the loss of a discount or other change in the rate charged for any

telecommunications service. They must do this when the customer subscribes for the service and annually thereafter. The act requires companies to disclose a promotional offering as such and that it will be in effect for a limited time. They must do this for any promotional offering filed on and after October 1, 2002 with the Department of Public Utility Control (DPUC). The telephone company (e.g., Southern New England Telephone) or telecommunications company (e.g., Sprint, MCI, or AT&T) must provide this disclosure when the customer subscribes to the service and annually thereafter.

The act requires DPUC to conduct a contested case on whether these companies should be required to provide advance notice to their customers of any change in purchases or subscription services that increases customers' overall monthly bill. By law, the Office of Consumer Counsel is entitled to participate as a party in all DPUC contested cases.

EFFECTIVE DATE: Upon passage for the contested case; October 1, 2002 for the other provisions.

PA 02-76—SB 481

Energy and Technology Committee

*Government Administration and Elections Committee
Legislative Management Committee*

AN ACT CONCERNING THE SOUTHEASTERN CONNECTICUT WATER AUTHORITY AND THE WATER PLANNING COUNCIL

SUMMARY: This act makes the Water Planning Council permanent and requires it to report its preliminary findings and any proposed legislative changes to the Energy and Technology, Environment, and Public Health committees by January 1 annually. Under prior law, the council (1) had to submit its final report and proposed legislative changes to the committees by January 1, 2003 and (2) went out of existence on that date or when it submitted the report, whichever came first. The council consists of the commissioners of public utility control, environmental protection, and public health, and the Office of Policy and Management secretary. It is charged with investigating a wide range of water policy issues that cross agency lines.

The act (1) increases the membership of the Southeastern Connecticut Water Authority (SCWA) governing board and makes related changes, (2) expands the powers and duties of SCWA's advisory board, and (3) requires SCWA to revise its water supply plan or adopt a new plan.

EFFECTIVE DATE: Upon passage

SOUTHEASTERN CONNECTICUT WATER AUTHORITY

Governance

The act increases the size of SCWA's governing board from five to seven, with the two new members appointed from the authority's representative advisory board. (The advisory board consists of two voters from each of the towns within the authority's territory.) The new members must be selected from a slate of at least three nominees provided by the Southeastern Connecticut Regional Council of Governments (SCRCOG). They have terms of three and four years, respectively. Vacancies in these two appointments must be filled in the same way the original appointments are made. The act expands, from three to four, (1) the number of members needed for a quorum, (2) the minimum number of votes needed for the board to take action, and (3) the maximum number of governing board members who can be from one political party. It allows SCRCOG members to serve on the governing and advisory boards.

Advisory Board

The act requires the SCWA advisory board to establish procedures and policies jointly with the authority to govern how SCWA will coordinate its activities to cooperatively develop the water supply and distribution system on a regional basis. The act allows the advisory board to call a special meeting with SCWA to (1) review SCWA's financial conditions and progress in developing a regional supply system and (2) discuss issues relating to water supply and SWCA's operations. The act requires that advisory board members cast their votes in person.

Water Supply Plan

The act requires SCWA, by July 1, 2003, to (1) amend its last water supply plan for the southeastern Connecticut planning region or (2) adopt a new plan. It can spend up to \$150,000 to analyze the potential for more fully interconnecting and integrating the water supply system in the region. SCWA must submit its proposals to the Water Planning Council for review.

PA 02-94—sHB 5599

Energy and Technology Committee

AN ACT CONCERNING THE TREATMENT OF EXPENDITURES FOR CRITICAL ASSETS,

FACILITIES, AND EQUIPMENT OF PUBLIC SERVICE COMPANIES

SUMMARY: By law, the Department of Public Utility Control (DPUC) must follow certain principles in setting utility rates, including that rates be just sufficient to cover utility costs while protecting public interests. This act specifies that the costs include the reasonable cost of security for the utility's assets, facilities, and equipment incurred solely to respond to security needs associated with the September 11, 2001 attacks and the continuing war on terrorism.

In case of an electric or gas utility whose rate plan includes an earnings sharing mechanism, the act allows DPUC to modify the plan to allow the company to include such costs, both existing and foreseeable, in its rates. (Under an earnings sharing mechanism, if a company's rate of return exceeds a level set by DPUC, the company's ratepayers and shareholders share the excess.) Before approving the modification, DPUC must hold a hearing and conduct the proceeding as a contested case. By law, DPUC can (1) subject services provided by a telephone company that are not fully competitive to alternative forms of regulation, such as price indexing, and (2) modify the plan if needed to address previously unforeseen circumstances. The act allows DPUC to modify the company's plan to allow the company to recover the security costs described above.

EFFECTIVE DATE: October 1, 2002

PA 02-98—sHB 5205

Energy and Technology Committee

AN ACT CONCERNING THE CERTIFICATION OF TELECOMMUNICATIONS SERVICE PROVIDERS

SUMMARY: This act eliminates the requirement that the Department of Public Utility Control hold a hearing on all applications for certificates to provide intrastate telecommunications services. Instead, it requires the department to hold a hearing only if an interested person requests one. The act requires the department to notify (1) all interested persons of the application and (2) all interested persons, rather than just parties, of a hearing. In practice, interested parties in certificate proceedings are often limited to the applicant, the department, and the Office of Consumer Counsel. Interested persons may include other companies, organizations, and individuals.

EFFECTIVE DATE: October 1, 2002

PA 02-141—sSB 154*Energy and Technology Committee**Planning and Development Committee***AN ACT CONCERNING THE COMPETITIVE
TRANSITION ASSESSMENT FOR
MANUFACTURING PLANTS IN DISTRESSED
MUNICIPALITIES**

SUMMARY: This act seeks to broaden the circumstances under which the Department of Public Utility Control may exempt manufacturing plants from part of the competitive transition assessment (CTA) on their electric bills. The act applies to plants that employ at least 200 people and are in a distressed municipality within an enterprise corridor. The following towns currently meet both criteria: Ansonia, Derby, Griswold, Killingly, Naugatuck, Plainfield, Putnam, Sprague, and Thompson. (The list of distressed municipalities changes over time based on economic criteria.)

It is unclear to what extent the act allows the department to exempt a plant from the CTA. By law, a manufacturer in any town that builds a new plant or expands an existing one may apply to the department for an exemption of that part of the CTA attributable to the electricity demand created by the new construction, so long as (1) it will create at least 100 new jobs and (2) the increased electric demand is at least 50 kilowatts. The act, read literally, would allow a manufacturer in a distressed municipality in an enterprise corridor to apply for an exemption only if it also meets these criteria. Under this interpretation, the act has no effect. An alternative interpretation is that the act would allow a manufacturer expanding a plant in such a town to apply for an exemption, even if it does not meet the current jobs and electric demand criteria. The act does not provide an exemption to a plant that meets its geographic criteria but does not expand.

PA 02-7 of the May 9 Special Session specifically allows the manufacturers covered by this act to seek an exemption from their entire CTA.

EFFECTIVE DATE: July 1, 2002

BACKGROUND*Competitive Transition Assessment*

By law, the CTA is used to pay off the stranded costs of the electric utility that serves the consumer. Stranded costs were previously recovered in electric rates, but now are recovered in a separate CTA that applies whether the consumer buys electricity from the utility or a competitive supplier.

PA 02-11—sHB 5709
Environment Committee

AN ACT CONCERNING THE BENEFICIAL REUSE OF GLASS

SUMMARY: This act allows solid waste facility owners and operators to use crushed recycled glass as cover material. “Solid waste facilities” include solid waste disposal areas, volume reduction plants, transfer stations, wood-burning facilities, and biomedical waste treatment facilities.

EFFECTIVE DATE: October 1, 2002

PA 02-14—HB 5076
Environment Committee
Planning and Development Committee

AN ACT CONCERNING COSTS ASSOCIATED WITH QUARANTINED ANIMALS

SUMMARY: This act imposes on all animal owners and keepers the same duty dog owners currently have to redeem their captured or impounded pets. Specifically, they:

1. must submit proper identification and pay a fee of up to \$15 plus any advertising costs to the municipal animal control officer before redeeming the animal;
2. must pay the full cost of detention and care plus fee and advertising costs stated above if they fail to redeem their animal within 24 hours of receiving notice from the animal control officer or, for unknown owners, after the officer publishes a notice in the newspaper;
3. commit an infraction if they do not redeem their animal within 120 hours (five days) of the date they receive notice; and
4. are prohibited from retrieving an animal that bit a person without first obtaining written consent from the agriculture commissioner, chief animal control officer, or an animal control officer.

The act also (1) replaces the \$5 per day fee that animal owners must pay when their animals are quarantined in a public pound for biting or attacking someone with the fee structure for captured or impounded animals and (2) mandates that animal owners must pay all costs of care and detention for animals quarantined for rabies or biting.

EFFECTIVE DATE: July 1, 2002

PA 02-15—HB 5077
Environment Committee

AN ACT CONCERNING ILLEGAL DUMPING

SUMMARY: This act requires people who dump material at licensed dump sites to be authorized to do so. Prior law required such authorization only at state or municipal dump sites. The act applies to the dumping of more than one cubic foot of litter at one time, furniture, garbage bags and their contents, cars and car parts, large appliances, tires, bulky waste, certain hazardous wastes, and similar material.

EFFECTIVE DATE: October 1, 2002

PA 02-17—sHB 5542
Environment Committee
Energy and Technology Committee

AN ACT CONCERNING ELECTRICAL SERVICE AT MARINAS

SUMMARY: This act requires electric companies and electric utilities to permit the installation of submeters at marina boat slips to monitor electricity use by individual boat owners. Existing law already allows submeter installation at recreational campgrounds and other locations the Department of Public Utility Control approves. It requires electric companies and utilities to provide electricity to campgrounds at a rate no greater than the residential rate charged in the service area where the campground is located. The act does not specify a rate for marinas.

The act bars the installation of submeters for nonresidential use at campgrounds, marinas, or other approved locations. It requires that nonresidential services, including general outdoor lighting, marina operations, repair facilities, and restaurant or other retail recreational facilities, be separately metered and billed at the appropriate rate.

EFFECTIVE DATE: October 1, 2002

PA 02-35—sHB 5078
Environment Committee
Public Safety Committee
Public Health Committee

AN ACT CONCERNING ANIMAL DISEASE CONTROL

SUMMARY: This act expands the agriculture commissioner’s ability to cooperate with the United States Department of Agriculture’s Animal and Plant

Health Inspection Service, Veterinary Services (hereafter USDA) in controlling animal diseases including all livestock, not just cattle, and allowing control as well as eradication of diseases.

Prior law authorized the commissioner to cooperate with a USDA national system for eradicating bovine tuberculosis or any other infectious or contagious bovine disease. The act expands the commissioner's areas of cooperation to include all contagious and infectious diseases affecting livestock (not just cattle) and birds that the USDA includes in the scope of its plans.

The act requires the governor to consult with the commissioner before accepting one of these plans. It authorizes USDA officials to perform the duties associated with the national plan only after the commissioner requests that they do so. These duties include inspecting, quarantining, and condemning diseased animals, as well as entering any grounds or premises to perform such duties. Under current law, the inspectors can carry out these duties once the governor accepts the plan.

The act authorizes the commissioner to call upon all law enforcement officials, rather than just constables, to assist the USDA officials in carrying out these duties and requires all law enforcement officials to offer assistance when called. Under the act, law enforcement officials include state and municipal police officials.

The act makes conforming and technical changes.
EFFECTIVE DATE: July 1, 2002

PA 02-45—sHB 79
Environment Committee

AN ACT CONCERNING LOCALLY-GROWN FARM PRODUCTS

SUMMARY: This act allows farm products or eggs to be sold or advertised as "local" or "locally grown" when they were grown or produced in Connecticut or within a 10-mile radius of where they are sold. Prior law restricted the use of "native," "native grown," "Connecticut Grown," and other similar terms to farm products and eggs grown or produced in Connecticut. The act eliminates the "Connecticut Grown" designation.

If the agriculture commissioner asks, the act requires any person or business that uses "local" or "locally grown" in advertising or selling to prove that they grew or produced their products in Connecticut or within the specified 10-mile radius of where they are sold. Violators are subject to a fine of not more than \$25.

EFFECTIVE DATE: July 1, 2002

PA 02-50—sSB 592
Environment Committee
Judiciary Committee

AN ACT CONCERNING THE PROTECTION OF CONNECTICUT FISHERIES

SUMMARY: This act prohibits anyone from taking or attempting to take any glass eel (transparent, post-larval eels), elver eel (young eels), or silver eel from state waters. Violators are subject to a maximum \$250 fine.

The act requires the environmental protection commissioner to adopt regulations to protect and restore eelgrass. The regulations must include provisions for (1) protecting existing eelgrass beds from degradation, (2) developing a plan to restore eelgrass, and (3) periodically monitoring these measures' effectiveness.

The act increases to \$250 the fine for violating certain sport fishing and commercial license fishing laws. Under prior law, the penalties were \$154 and \$100, respectively. The violations include unauthorized obstruction of fish passing in any stream and using nets, trawls, or seines where their use is prohibited.

EFFECTIVE DATE: October 1, 2002, except the provision on requiring the commissioner to adopt regulations is effective upon passage.

PA 02-51—sSB 79
Environment Committee
Appropriations Committee

AN ACT CONCERNING THE CERTIFICATION OF ORGANICALLY GROWN FOODS

SUMMARY: This act allows the Agriculture Department to certify organically grown food and eliminates the ability of the Northeast Organic Farming Association of Connecticut to do so. It does not affect other groups recognized by the U.S. Department of Agriculture's National Organic Standards Board to certify organic food.

The act increases the permitted amount of residues from unintended or unavoidable contamination allowed in certified organic products and by-products. Under prior law, the residues could not exceed 1% of the Environmental Protection Agency's tolerance level for agricultural products. The act increases the amount to 5% of that level.

EFFECTIVE DATE: October 1, 2002

PA 02-56—sHB 5663
Environment Committee
Education Committee
Transportation Committee

AN ACT CONCERNING THE IDLING OF SCHOOL BUSES

SUMMARY: This act prohibits stopped school buses from idling their engines for more than three minutes, with certain exceptions.

Specifically, the act bars stopped school buses from idling except where:

1. they must remain motionless because of traffic conditions or mechanical problems over which the driver has no control;
2. it is necessary to operate heating, cooling, or auxiliary equipment needed for the vehicle’s proper operation;
3. the outside temperature is below 20 degrees Fahrenheit;
4. the vehicle is being repaired;
5. it is necessary to maintain a safe temperature for special needs students; or
6. the driver is picking up or discharging passengers on a public highway or public road.

The act makes a first violation an infraction, for which the total amount due is \$102, if paid by mail. Subsequent offenses are punishable by fines of between \$100 and \$500.

State regulations, which apparently remain in effect for school buses, prohibit “mobile sources” from idling their engines for more than three minutes except in certain instances and impose a fine of up to \$25,000 a day (or up to one year in jail) for first-time offenders. However, the penalty cannot be imposed unless the violator does so knowingly or with criminal negligence. The act does not require this element.

EFFECTIVE DATE: October 1, 2002

BACKGROUND

Related law

State regulations prohibit idling the engines of mobile sources for more than three minutes except in certain instances. Mobile sources include school buses, other vehicles, construction equipment, aircraft, locomotives, vessels, lawnmowers, and other small appliances. The regulations permit mobile sources to idle their engines for more than three minutes when:

1. they must remain motionless because of traffic conditions or mechanical problems over which the driver has no control;
2. it is necessary to operate heating, cooling, or

auxiliary equipment needed for the vehicle’s proper operation;

3. the outside temperature is below 20 degrees Fahrenheit;
4. the vehicle is being repaired; or
5. the operator is bringing the vehicle to the manufacturer’s recommended operating temperature.

Criminal Negligence

A person acts with criminal negligence with respect to a result or to a circumstance described by law defining an offense when he fails to perceive a substantial and unjustifiable risk that such result will occur or such circumstance exists. The risk must be of such nature and degree that the failure to perceive it constitutes a gross deviation from the standard of care that a reasonable person would observe in the situation.

Knowingly

A person acts knowingly with respect to conduct or circumstance described by law defining an offense when he is aware that his conduct is of such nature or that such circumstance exists.

PA 02-57—HB 5541
Environment Committee
Transportation Committee
Planning and Development Committee

AN ACT CONCERNING CATTLE CROSSINGS

SUMMARY: This act allows local traffic authorities to create distinct crossing areas for cattle and livestock by placing appropriate indicators at dangerous crossing paths and intersections used for guided cattle or livestock crossing, especially near farms. Indicators include devices, markers, or lines on the highway prescribed by State Traffic Commission regulations. The State Traffic Commission is the legal traffic authority for state highways. A local traffic authority can be a police chief, police commission, city or town manager, board of selectmen, or any other legally elected or appointed official or board, depending on the type of municipality.

The act requires drivers to yield the right-of-way to guided cattle or livestock crossing in designated areas by slowing or stopping. Drivers may not overtake another vehicle that stops for such a crossing. Anyone guiding cattle or livestock must yield to an emergency vehicle displaying signals or audible warnings reasonably indicating it is operating in an emergency

situation. But emergency vehicle drivers must exercise due care in avoiding people and guided cattle or livestock. A violation is an infraction (see Table on Penalties).

EFFECTIVE DATE: October 1, 2002

BACKGROUND

Use of Signs

By law, a person may display signs warning drivers that a cattle crossing is underway. Drivers must slow down or stop as necessary when someone is posting such a sign. A person may only display a sign just prior to or while crossing the cattle. To use a sign, a person must obtain a permit from the transportation commissioner or local traffic authority. The permit specifies sign color, size, and wording.

PA 02-61—sHB 5659

Environment Committee

Finance, Revenue and Bonding Committee

Planning and Development Committee

AN ACT CONCERNING DOG LICENSE FEES

SUMMARY: This act raises, from \$5 to \$7, the annual fee for licensing a neutered male or spayed female dog and allocates the \$2 fee increase from each license to the Animal Population Control Fund. The fund reimburses veterinarians part of the cost of the operation (plus certain pre-surgical immunizations) for participating in the state's program to spay and neuter dogs adopted from pounds.

EFFECTIVE DATE: October 1, 2002

PA 02-62—sSB 78 (VETOED)

Environment Committee

Judiciary Committee

AN ACT CONCERNING COMPANION ANIMAL HEALTH CERTIFICATES AND CRUELTY TO ANIMALS

SUMMARY: This act specifies that the health certificate a person needs when importing a dog or cat into the state must be obtained no earlier than 30 days before importing the animal. By law, the health certificate must be from a licensed, graduate veterinarian stating that the animal (1) is free of any infectious, contagious, or communicable disease and (2) if older than three months, has been vaccinated against rabies by a licensed veterinarian. Violators are subject

to a fine of up to \$100, 30 days imprisonment, or both.

The act expands the animal abuse law by (1) requiring anyone in charge, or who has custody, of an animal to provide proper shelter for it when it is kept outside and (2) setting outdoor dog care conditions that subject violators to a fine of up to \$ 1,000, up to a year in prison, or both.

It also sets separate conditions for dog care, including:

1. tethering and chaining standards,
2. cable and line measurements, and
3. requiring owners to keep female dogs in heat away from male dogs (other than for breeding purposes),

First offenders violating these conditions draw a warning, with a penalty of \$100 for a second or subsequent violation.

The act allows someone being prosecuted to claim, as an affirmative defense, that his violation of the tethering or confinement provision was not his usual and customary conduct. The act specifies that it does not prevent a finding of a violation of the existing law barring cruelty to animals, fighting animals, or intentionally killing a police animal.

EFFECTIVE DATE: October 1, 2002, except for the health certificate section, which is effective July 1, 2002.

EXPANDING THE ANIMAL ABUSE LAW

Prior law required anyone who has charge or custody of an animal to provide it with proper food, drink, or "protection." The act requires "shelter" instead of protection and specifies that proper shelter for a dog depends on all the surrounding physical circumstances, including (1) weather conditions such as temperature and moisture; (2) the dog's physical condition and needs at the time of the alleged violation; and (3) if, when the alleged violation occurred, it was outside for a limited time to evacuate or exercise.

Under the act, when circumstances require an outdoor housing facility for a dog, the facility must be insulated and waterproof. The facility must have dry bedding material if necessary to prevent stress, discomfort, or danger to the dog. The act requires that a person in charge or having custody of a dog have such a facility if his dog is kept outside for more than a half hour when the temperature is below 40 degrees Fahrenheit, unless the dog is a cold-weather breed generally known to tolerate cold weather without stress or discomfort. Violators are subject to the existing animal abuse penalty of up to a \$1,000 fine, a year's imprisonment, or both.

STANDARDS FOR DOG CARE

For a dog primarily housed outside, the act specifies that its chain or tether must (1) not weigh more than one-tenth of the dog's body weight; (2) be at least 12 feet long or five times the length of the dog (from snout to tail end), whichever is longer; (3) have swivels at both ends; and (4) be attached to a properly fitting collar or harness. The act also requires any cable that a dog is kept on with a pulley or trolley to be at least 10 feet long and not be more than seven feet above the ground. Violators are subject to a warning for a first violation and a \$100 fine for subsequent violations.

The act applies the same penalty to a person who fails to keep a female dog in heat in a secure area away from male dogs or from being able to defend itself from a male dog when tethered, except for controlled breeding purposes.

PENALTIES

Under the act, anyone who keeps a dog tethered, chained, or confined in a pen, cage, container, or other indoor or outdoor housing facility for more than 15 continuous hours is subject to a warning for a first violation and a \$100 fine for subsequent violations. The same penalty applies to a person who fails to provide a minimum of two hours in which the dog is not tethered or confined during a 24-hour period. The act exempts certain people from this penalty.

AFFIRMATIVE DEFENSES

The act allows someone being prosecuted to claim, as an affirmative defense, that the violation of the tethering or confinement provision was not his usual and customary conduct. (By law, a defendant must prove an affirmative defense by a preponderance of the evidence.)

EXCEPTIONS

The tethering and confinement penalty does not apply when the action is:

1. authorized after an examination by a licensed veterinarian in writing, when the authorization lists the medical reasons and specifies that the tethering or confinement not exceed 30 days;
2. for safety reasons as authorized in writing by an animal control officer, with time for regular exercise specified;
3. by a commercial boarding kennel, pet shop, municipal or government facility, charitable organization that houses homeless animals, or a licensed training or grooming facility; or

4. by a person or business licensed to conduct dog racing.

PA 02-64—sHB 5209

Environment Committee

Appropriations Committee

Energy and Technology Committee

AN ACT CONCERNING REDUCING SULFUR DIOXIDE EMISSIONS AT POWER PLANTS

SUMMARY: This act limits, as of January 1, 2005, the use of emissions credit trading as a means of meeting Department of Environmental Protection (DEP) regulatory standards for sulfur dioxide emissions from older power plants. It allows trading only when (1) the DEP commissioner orders its use to offset excess emissions when he suspends the standards due to a shortage of low-sulfur fuel or (2) the restriction threatens the reliability of electricity supply. The act specifies that these provisions do not suspend or alter any underlying procedures or requirements of DEP regulations regarding sulfur dioxide emissions.

The act also codifies with several changes, as of January 1, 2005, (1) the emissions standards that go into effect, under the regulations, on January 1, 2003 and (2) the provisions that allow the commissioner to suspend these standards.

The act specifies that its provisions do not impair the commissioner's ability to waive, with regard to a "must-run" plant, any sulfur dioxide emissions limit or other permit limits as may be permitted under current state or federal law. A "must-run" plant is one ordered to run by the Independent System Operator (ISO), which administers the New England power grid. ISO normally uses the least expensive plants available to meet power demands, but sometimes orders more expensive plants located in areas with limited generation or transmission to run in order to ensure system reliability. The act allows the commissioner to attach conditions on such a waiver he considers necessary to mitigate any adverse environmental or public health impacts.

The act broadens a law that allows a charge on end-use consumers' electric bills, for certain costs associated with the dislocation of employees as a result of restructuring the electric industry.

EFFECTIVE DATE: January 1, 2004 for the dislocated employee provisions and January 1, 2005 for the emissions provisions.

EMISSIONS STANDARDS

Existing Regulations

The regulations and the act cover plants that are subject to the acid rain provisions of the federal Clean Air Act and DEP regulations regarding nitrogen oxides. These are Bridgeport Harbor, Devon, Middletown, Montville, New Haven Harbor, and Norwalk Harbor. The regulations were adopted pursuant to Executive Order 19.

Under existing regulations, the owner or operator of each of these plants currently must:

1. burn liquid or gaseous fuel that has a sulfur content of no more than 0.5% sulfur by weight;
2. meet an average emissions rate of no more than 0.55 pounds of sulfur dioxide per million British Thermal Units (mmBTUs) for a unit of the plant (most of the plants consist of several units); or
3. meet an average emissions rate of no more than 0.5 pounds of sulfur dioxide per mmBTUs, if the owner or operator averages the emissions from two or more units on the same premises.

This analysis refers to the above as the 0.5% standard.

Under regulations that are scheduled to become effective as of January 1, 2003 the owner or operator must:

1. burn liquid or gaseous fuel that has a sulfur content of no more than 0.3% sulfur by weight;
2. meet an average emissions rate of no more than 0.33 pounds of sulfur dioxide per mmBTUs for a unit of the plant; or
3. meet an average emissions rate of no more than 0.3 pounds of sulfur dioxide per mmBTUs, if the owner or operator averages the emissions from two or more units on the same premises.

This analysis refers to the above as the 0.3% standard. The act allows plant owners to also meet this standard by burning solid fuel (e.g., coal) that has a sulfur content of no more than 0.3% sulfur by weight.

The regulations allow the owner or operator to meet the difference in emissions between those allowed under the 0.5% and 0.3% standards by emissions credit trading. The act limits the use of credit trading, as discussed below.

Suspension of Standards

The regulations allow the DEP commissioner to temporarily suspend the standards as they apply to a unit that burns low-sulfur fuel if the commissioner finds that (1) the availability of fuel that meets the standards is inadequate to meet the needs of the state's residential,

commercial, and industrial users and (2) this unavailability constitutes an emergency. The commissioner must specify in writing the length of time that the suspension will be in effect. Within 30 days after the end of the suspension period, the unit owner must report to the commissioner, in writing, the amount of its sulfur dioxide emissions above the amount that would have been emitted if the suspension had not gone into effect.

The act codifies these provisions as of January 1, 2005, and extends them to units that burn low-sulfur solid fuel such as coal. It specifies that the suspension period can be no longer than the period in which the inadequate supply of compliant fuel constitutes an emergency. The act requires the commissioner to notify the Environment and Energy and Technology committees of the suspension.

EMISSIONS CREDIT TRADING AND RESTRICTIONS ON ITS USE

Trading

The regulations allow plant owners to meet the difference between the 0.5% and 0.3% standards by emissions credit trading. Two types of credits can be used under this provision. The Environmental Protection Agency allocates one type, sulfur dioxide allowances, to pollution sources regulated under the federal acid rain program. An allowance permits a source to emit up to one ton of sulfur dioxide during or after a specified calendar year.

The second type of credit is called a discrete emission reduction credit (DERC). The DEP commissioner grants a DERC for a one-ton reduction in sulfur dioxide emissions by a stationary source. To do so, he must certify in writing that the reduction is real, quantifiable, surplus (i.e., greater than required by law), permanent, and enforceable. Emission reductions at power plants in the years 1999 through 2002 are eligible for DERCs if the plant reduced its emissions below the most stringent sulfur dioxide rate applicable to the plant. Under the regulations, DERCs can be traded on a one-for-one basis, while four allowances must be traded to offset one ton of emissions at a power plant.

Restrictions

The act prohibits the use of trading starting January 1, 2005 except under two circumstances. The first permits the use of sulfur dioxide allowances or DERCs to meet the standards when the commissioner requires a plant owner or operator to use credit trading to offset excess emissions created during a suspension period. Under the regulations, the commissioner may require

the unit owner to offset excess emissions resulting from a suspension through trading, if the excess is more than 50 tons. The act instead requires him to order an offset in such cases.

The second circumstance allows the commissioner, in consultation with the chairperson of the Department of Public Utility Control, to permit trading if (1) the trading restriction harms the ability to meet electric reliability standards set by the New England Power Pool or its successor organization and (2) the trading authorization is intended to mitigate this problem. In these instances, the commissioner, in consultation with the chairperson, must (1) specify in writing the reasons for permitting trading and how long it will be permitted and (2) notify, by either the time they authorize the trading or the next business day, the Environment and Energy and Technology committees of the authorization. The authorization can last for no more than 30 days, but the commissioner may issue additional authorizations. The committees may (1) hold a joint public hearing and meeting within 10 days of receiving the notice, and (2) modify or reject the authorization by majority vote. If the committees do not meet, the authorization is considered approved.

DISLOCATED EMPLOYEES

By law, the systems benefits charge (SBC) on consumers' electric bills covers various public policy costs associated with the electric power industry. Under prior law, these included costs incurred before January 1, 2006 by an electric company or its generation affiliate from the dislocation of its employees (other than officers) as a result of the restructuring of the electric generation market, so long as the dislocation occurred on or after July 1, 1998.

The act expands the costs by:

1. delaying the date by which costs must be incurred to January 1, 2008;
2. allowing the SBC to be used to cover dislocated employee costs incurred by exempt wholesale generators (EWG) e.g., the companies that own the plants affected by the act's other provisions, and competitive electric retail suppliers; and
3. allowing the SBC to be used for costs arising from the closure, on or after January 1, 2004, of a plant or EWG as the result of not meeting the emissions standards of the act or the DEP regulations.

By law, the SBC can be used to cover costs incurred or projected for severance payments, retraining, early retirement, outplacement, and related expenses.

PA 02-80—sHB 5211

Environment Committee

Finance, Revenue and Bonding Committee

Appropriations Committee

AN ACT CONCERNING REIMBURSEMENT LIMITS FROM THE UNDERGROUND STORAGE TANK PETROLEUM CLEAN-UP ACCOUNT

SUMMARY: This act changes the share of petroleum products gross earnings tax revenue earmarked for the Underground Storage Tank Clean-Up Account from one-third of the quarterly total due to a flat \$3 million per quarter. It also eliminates a requirement that the comptroller stop crediting revenue to the account when its balance exceeds \$15 million and resume when it falls below \$5 million. But PA 02-1, May Special Session, prohibits the transfer of the payments due to the clean-up account in FY 2002-03.

The act increases the account's reimbursement limit, from \$3 million to \$5 million, for clean-up costs for leaking tanks when a responsible party (1) reported the leak to the Department of Environmental Protection (DEP) before December 31, 1987 and (2) spent more than \$500,000 to remediate it by June 19, 1991. The act allows the DEP commissioner to pay any part of the reimbursement that exceeds \$3 million in annual payments over a maximum of five years.

EFFECTIVE DATE: October 1, 2002 for the change in the quarterly petroleum products gross earnings tax allocation and the elimination of the fund cap; July 1, 2002 for the higher reimbursement for certain tanks.

BACKGROUND

Underground Storage Tank Petroleum Clean-up Account

This account reimburses responsible parties for remediation costs they incur because of leaking underground storage tanks. Eligible costs include those incurred as a result of releases; suspected releases; release-related investigations; and third-party claims for bodily injury, property damage, and damage to natural resources. By law, a responsible party is any person or entity, including the state or a municipality, that owns or operates an underground storage tank or tank system that leaks. The responsible party must pay the first \$10,000 of costs incurred.

PA 02-85—HB 5210

Environment Committee
Public Health Committee
Judiciary Committee
Planning and Development Committee

AN ACT CONCERNING THE SOUTH CENTRAL CONNECTICUT REGIONAL WATER AUTHORITY AND CONCERNING THE SALE OF WATER TO COMMUNITY WATER SYSTEMS

SUMMARY: This act redefines the boundaries of regional water pollution control authorities' jurisdiction. Previously, the jurisdiction of an authority matched the outermost boundaries of its member towns. Under the act, an authority has jurisdiction only over areas agreed upon by the member towns. It specifies that a Superior Court within a judicial district that includes an area within the authority's boundaries has jurisdiction over an authority dispute.

The act tightens conditions under which a public water system can sell excess water (i.e., water above the amount needed to properly supply inhabitants of a service area). Prior law allowed the public health commissioner to permit a public water system to sell excess water only if it could show that an abundant supply existed for its service area for five years. Under the act, the system must show that it has an abundant supply for 10 years. The act also requires the purchasing system to agree to an emergency water usage restriction in concurrence with that of the supplying system. By law, a system's permission to sell excess water is valid for 10 years and may be renewed with the commissioner's approval. The act also specifies that public water systems include those owned and operated by municipalities and political subdivisions and makes a technical change.

The act expands the South Central Connecticut Regional Water Authority's purpose to include purchasing and managing wastewater systems (and defines "wastewater system") and conserving water and makes many conforming technical changes to its charter (SA 77-98). The act also expands the ways the authority can repay bonds and makes changes to provisions governing bidding, employee indemnification and code of ethics, board member compensation, and appeals of board decisions.

EFFECTIVE DATE: Upon passage for changes to the South Central Connecticut Regional Authority's charter; October 1, 2002 for regional water pollution control authorities' jurisdiction; and January 1, 2003 for sale of excess water by public water systems.

PA 02-90—sHB 5539

Environment Committee
Public Health Committee
Government Administration and Elections Committee
Appropriations Committee
General Law Committee

AN ACT CONCERNING MERCURY EDUCATION AND REDUCTION

SUMMARY: This act establishes a comprehensive scheme governing the sale, use, distribution, and disposal of, and notification requirements for, mercury and many products that contain mercury.

It (1) requires manufacturers to notify the Department of Environmental Protection (DEP) commissioner of their products' mercury content and imposes other notice requirements; (2) restricts the sale of a number of mercury-added products, phasing down their maximum allowable mercury content; and (3) generally bans the sale, starting January 1, 2003, of mercury thermometers, mercury-containing novelties, and other products.

The act requires the commissioner to participate in and consult with a multi-state clearinghouse and to serve as its designated agent to help coordinate and carry out the act's requirements.

The act requires mercury-added products (products to which mercury has been intentionally added) and their packaging to be labeled as to their mercury content and it requires their manufacturers to develop and implement plans for their collection and recycling and report to DEP on the system's effectiveness. The collection requirements do not apply to certain products, including cosmetics and pharmaceuticals, meant to be totally consumed during use. The commissioner must review state regulations on the handling of mercury wastes and may, if necessary, amend them to facilitate collection.

The act's notice requirements take effect January 1, 2003 and apply to mercury-added products manufactured after that date. Its collection requirements take effect July 1, 2003 and apply to mercury-added products manufactured after that date. Its labeling requirements and the first stage of its phase-down requirements take effect July 1, 2004 and apply to mercury-added products manufactured after January 1, 2004.

The act exempts motor vehicles manufactured before October 1, 2003, from its notice, phase-down, labeling, and collection requirements.

It is unclear to what extent the act applies to pharmaceuticals. The act defines mercury-added products to include pharmaceuticals, and exempts pharmaceuticals from its collection requirements.

However, another section of the act appears to completely exempt pharmaceuticals from its provisions.

The act allows the DEP commissioner to implement an education, outreach, and assistance program for households and affected parties and to develop an awards program to recognize those who excel in reducing or eliminating mercury in air emissions.

EFFECTIVE DATE: July 1, 2002

REGIONAL CLEARINGHOUSE

The act requires the commissioner to (1) participate in a regional, multi-state clearinghouse; (2) serve as its designated agent for the purpose of receiving notification and submissions of information as the act requires; and (3) help coordinate reviews of manufacturers' notifications concerning mercury-added products, applications for phase-down exemptions, collection system plans, disclosures of mercury content, applications for alternative labeling or notification systems, education and outreach activities, and other related functions.

MANUFACTURERS' NOTICE TO DEP

Starting January 1, 2003, the act requires manufacturers, or their designated industrial trade groups, to give DEP or the clearinghouse written notice about their mercury-added products before offering them for sale or distributing them for promotional purposes. Manufacturers include importers and distributors of foreign-made products. Mercury-added products are products, product components, commodities, or chemicals to which mercury has been intentionally added. They do not include packaging, which is covered by another law. With the commissioner's approval, a manufacturer or its designated trade group can provide information about a product category rather than an individual product.

The notice must include:

1. the manufacturer's name and address and the position, address, and phone number of its contact person;
2. a brief description of the product or product line;
3. the total amount of mercury in each product; and
4. the product's mercury content within specified ranges.

The mercury content must be identified within the following ranges: less than 5 milligrams (thousandths of a gram); 5 to 10 milligrams; 10 to 50 milligrams; 50 to 100 milligrams; 100 to 1,000 milligrams (one gram); or more than one gram. The manufacturer or its designated industrial trade group must revise this information

whenever there is a significant change or at the request of DEP or the regional clearinghouse.

State law on trade secrets applies to public disclosure of information submitted to DEP under the act. But DEP may provide the clearinghouse with such information and, in consultation with the clearinghouse, may compile or publish analyses or summaries of the information, so long as the documents do not identify the manufacturer or reveal confidential information.

These requirements do not apply to any mercury-added product for which federal notice requirements preempt state authority.

SALES RESTRICTIONS ON MERCURY-ADDED PRODUCTS—GENERAL PROVISIONS

Phase-Down of Allowable Mercury Content

The act bars anyone from offering for sale or distributing for promotional purposes mercury-added products with mercury content above the levels specified in the act. Starting July 1, 2004, the standard is (1) one gram for fabricated products, such as lamps, switches, and measuring devices and (2) 250 parts per million (ppm) for formulated products, such as cosmetics and pharmaceutical products. Starting July 1, 2006, the standard falls to 100 milligrams (0.1 gram) for fabricated products and 50 ppm for formulated products.

The phase-down limits apply to each component part of a product that contains one or more mercury components, and not the entire product.

Exemptions for Lighting

The phase-down does not apply to (1) specialized lighting used in the entertainment industry, such as metal halide lights, and (2) mercury-containing lamps used for backlighting from which the mercury cannot be removed.

By July 1, 2003, the commissioner must convene a working group, including government representatives of other northeastern states, to evaluate advances in technology and to recommend ways to regulate (1) specialized lighting used in the entertainment industry, including metal halide lights, and (2) mercury-added products that have a mercury content between 10 and 100 milligrams or 10 and 50 ppm. The commissioner also must convene a subgroup of this working group, members of which must include representatives of industry trade groups for mercury-containing lamps, to develop a collection plan for such lamps in accordance with the act's provisions. The working group must complete its recommendations by July 1, 2004.

In addition, the commissioner must exempt products from these limits if the level of mercury or its

compounds is needed to comply with state or federal health or safety requirements. The manufacturer must provide the commissioner with information demonstrating the need for such an exemption. The manufacturer must notify the clearinghouse of its request.

TEMPORARY EXEMPTIONS

A manufacturer can also ask the commissioner for a modified or conditional exemption for up to four years from the limits on total mercury content for a product or product category. The manufacturer must notify the clearinghouse of its request. The manufacturer must apply for such an exemption (1) at least one year before the limit is to take effect, for existing products or product categories, or (2) before the sale or distribution for promotional purposes of a new product or category of products. The manufacturer must (1) document the basis for the exemption or renewal and (2) describe how it will ensure a system exists for the proper collection, transportation, and processing of the product once it reaches the end of its useful life.

In determining whether to grant such an exemption, the commissioner must consider whether a system exists to collect, process, and transport the mercury-added product. Such a system must include either provisions for the direct return of a waste product to the manufacturer or a collection or recycling system supported by an industry, trade group, or similar private- or public-sector effort. (It is unclear whether the collection system must be in place when the commissioner decides whether to grant the exemption, or if the manufacturer need only ensure such a system will exist either at the time the limit takes effect or at the end of the product's useful life.)

In addition, the commissioner must find the following criteria are met:

1. the product's use benefits the environment or protects public health or safety;
2. there is no technically feasible alternative to the use of mercury in the product;
3. no comparable, mercury-free product is available at a reasonable cost; and
4. when considering renewal of an exemption, whether the manufacturer has made reasonable efforts to remove mercury from the product.

To assure consistency, the commissioner must consult with the clearinghouse and other states, Canadian provinces, and regional governmental organizations before issuing such an exemption. The commissioner may renew a modified or conditional exemption for up to four years if the manufacturer applies for one and the commissioner finds that it has (1) met the requirements for such an exemption and (2)

complied with all the conditions of the original approval. The commissioner may grant more than one such renewal.

BANS ON SPECIFIC PRODUCTS

Novelties

The act bans anyone, as of July 1, 2003, from offering for sale or distributing for promotional purposes, mercury-added novelties. These are products intended mainly for personal or household enjoyment or for adornment, such as toys, games, ornaments, holiday decorations, apparel, jewelry, figurines, and yard statues or similar products. But the fact a product contains a removable button battery does not by itself make it a novelty banned by the act. Novelty manufacturers must notify retailers that sell their products of the ban and inform them how to properly dispose of their remaining inventory as hazardous waste according to law.

Thermometers

The act bans anyone, as of January 1, 2003, from offering for sale or distributing for promotional purposes, mercury fever thermometers, except under a doctor's prescription. Thermometer manufacturers must give the buyer or recipient a notice of the thermometer's mercury content and instructions on safe handling and proper cleanup if a thermometer breaks. This provision does not apply to digital thermometers that contain a removable button cell battery containing mercury.

Dairy Manometers

The act bans, as of July 1, 2003, anyone from offering for sale or distributing for promotional purposes, mercury dairy manometers (devices that measure the pressure on milking lines). Manufacturers must notify retailers about the ban and how to properly dispose of the manometers as hazardous waste according to law. The DEP commissioner, in consultation with the agriculture commissioner, must examine the feasibility of implementing a collection and replacement program for these devices, and implement it within available resources.

Mercury Dental Amalgam

The act bans, as of July 1, 2003, the use of mercury amalgam by vocational dental education or training schools unless the school has developed and implemented a DEP-approved plan to use best management practices to prevent improper discharges and to properly handle, recycle, or dispose of waste

elemental mercury and amalgam. Such a plan also must teach students about mercury hazards and best management practices.

LABELING

General Requirements

Beginning July 1, 2004, mercury-added products cannot be offered for sale or distributed for promotional purposes unless they comply with the act's labeling standards. Both the product and either its packaging or care-and-use manual must be labeled. The labeling requirements do not apply to manufacturers of medical equipment intended for use only by medical personnel, or to button cell batteries.

Retailers will not be found in violation if they are unaware a product contained mercury.

If a product contains a removable mercury-added product as a component, both the product and component must be labeled. The product label must identify the mercury-added component so it may be easily located and removed.

Labels on packaging must be clearly visible before sale. All required labels must inform the buyer, in words or symbols, that mercury is present in the product and that it should be properly disposed of or recycled according to law. Labels on products must be designed to last for the product's life.

Starting July 1, 2004, anyone offering a mercury-added product for sale by catalog or distributing it for promotional purposes must clearly advise the buyer in writing before the sale that the product contains mercury. (This apparently refers to distribution for promotional purposes only by catalog, because the general notification deadline is January 1, 2003.) Starting July 1, 2004, any person offering mercury-added products for sale by telephone must advise the purchaser before the sale that the product contains mercury. These requirements apply to transactions in which the buyer cannot see the label on the package or product before purchasing it.

The product manufacturer is responsible for labeling unless the wholesaler or retailer agrees in writing to take responsibility for implementing an alternative to the labeling requirements as the act provides.

Specific Products

The manufacturer is generally responsible for meeting the above requirements. But (1) manufacturers of fluorescent lights need only label the packaging, (2) no product labeling is required for mercury thermometers, (3) vehicle manufacturers must place a

label on the vehicle door identifying the vehicle's mercury-added components rather than labeling them individually, (4) manufacturers of products containing a lamp used for backlighting that contains mercury that cannot be removed must place the label on the product or its care-and-use manual, (5) products whose only mercury components are button cell batteries containing mercury do not require a product label but must include a label on any product instructions and the packaging, and (6) no package labeling is required for large appliances sold in stores where there are floor models. (Appliances include such items as microwave ovens and portable heaters, as well as refrigerators, washers, dryers, and similar items.)

Alternative Compliance

A manufacturer can apply to the commissioner and the clearinghouse for an alternative way of meeting the labeling standards if (1) compliance with them is not feasible, (2) the proposed alternative would be as effective in providing pre-sale notification of mercury content and instructions on proper disposal, or (3) federal law preempts state authority over labeling. Such approvals are good for up to two years and may be renewed if still eligible under the above requirements, and upon compliance with the conditions of the prior approval. Renewal requests must be submitted 90 days before the prior approval expires. In deciding whether to approve, deny, modify, or condition a request for an alternative to the labeling requirements, the commissioner must consult with other states, Canadian provinces, and regional governmental organizations to ensure that his label requirements are consistent with those in other jurisdictions. He may revoke an approval for cause.

Additional Notice Requirements for Lamps

Any person who sells mercury-added lamps, regardless of whether they must be labeled or not, to the owner or manager of any industrial, commercial, or office building, or to anyone who replaces or removes from service outdoor lamps containing mercury, must notify the buyer in writing, either on the invoice or in a separate document, that the lamp contains mercury. The notice must state that mercury is a hazardous substance regulated by federal and state law and that the lamp must not be disposed of as solid waste. This requirement does not apply to retail establishments that incidentally sell mercury-added lamps. Any person who contracts with the owner or manager of an industrial, commercial, or office building, or with a person responsible for outdoor lighting, to remove lamps containing mercury from service must provide written notice to the person

for whom the work is being done that the lamps contain mercury, and of his plans to manage the mercury in the removed lamps. "Manage" apparently refers to the contractor's plans to recycle or dispose of the mercury-added lamps.

COLLECTION SYSTEM

Plan

The act bans anyone, beginning July 1, 2003, from offering for sale or distributing for promotional purposes any mercury-added product unless the manufacturer, alone or with others, has submitted a plan to DEP for a system to collect such products. If a mercury-added product is a component of another product, the system must provide for the removal and collection of the mercury-added component or collection of both the mercury-added component and the product containing it.

The collection system must include:

1. an educational component to inform the public about the program's purpose and how to participate in it,
2. a targeted capture rate for the mercury-added components or products;
3. an implementation and financing plan,
4. documentation of the participants' willingness to implement the system,
5. a description of the measures the manufacturer will use and report to demonstrate that the system meets the capture rate,
6. a description of additional or alternative measures to be used if program targets are not met, and
7. a recycling or disposal plan.

The act requires the commissioner to review any barriers to the recycling or disposal plan and, if necessary, to amend regulations to ease collection.

The act prohibits the state or local governments from paying for the collection system.

By July 1, 2004, and every two years thereafter, the manufacturer or the entity that submitted the collection plan on the manufacturer's behalf must report to the commissioner and the clearinghouse on its effectiveness. The report must include an estimate of the amount of mercury collected, the capture rate for mercury-added products or components, the results of the plan's other performance measures, and any other information as the commissioner requires. The commissioner must make the reports available to the public.

Exemptions

The act exempts the following from collection requirements:

1. formulated mercury-added products intended to be consumed in use, such as cosmetics, pharmaceuticals, chemical reagents and other laboratory chemicals;
2. products with mercury in a component that the buyer cannot feasibly remove, such as electronic products containing a mercury-containing lamp used for backlighting, provided its manufacturer or trade association provides information on recycling and safe disposal on the Internet;
3. photographic film and paper;
4. manufacturers or trade associations of manufacturers of mercury-containing lamps whose labeling directs purchasers to a toll-free telephone number and Internet site providing information on recycling and safe disposal; and
5. any other products for which the commissioner determines a collection plan is not feasible.

ELEMENTAL MERCURY

The act bars anyone from offering for sale or distributing for promotional purposes elemental mercury without providing the Material Safety Data Sheet (MSDS) prescribed under federal law. Starting July 1, 2003, the seller, distributor, or provider must require the buyer to sign a statement at the time of receipt that the buyer (1) will use the mercury only for medical, research, or manufacturing purposes; (2) understands that mercury is toxic; and (3) will store, use, handle exposure to it, and dispose of it according to federal and state law.

DENTAL PRACTITIONERS

The act requires anyone who offers for sale, distributes for promotional purposes, or provides elemental mercury to a dental practitioner to provide a federally prescribed MSDS. Starting July 1, 2003, such practitioners must (1) use the mercury only for dental purposes, (2) store, use and handle exposure to such mercury according to American Dental Association Guidelines, state and federal law, and any applicable best management practices the state adopts; and (3) dispose of the elemental mercury according to federal and state law.

PUBLIC EDUCATION PROGRAM

The act allows the DEP commissioner, in consultation with other state agencies, to develop a comprehensive education, outreach, and assistance program for businesses (including manufacturers, waste generators, and others), solid waste management agencies and related entities, recyclers, scrap metal processors, health care facilities, institutions, schools, households, and other interested groups. The program may focus on (1) the hazards of mercury; (2) the responsibilities of manufacturers, agencies, and individuals under the act; and (3) voluntary efforts they can undertake to help reduce mercury in the environment.

The commissioner, in conjunction with manufacturers and other affected businesses, may promote the program's development and implementation. He may cooperate with other states, Canadian provinces, and regional organizations in developing public education, outreach, and assistance programs. He may develop an awards program to recognize the accomplishments of people who exceed the act's requirements and excel at reducing or eliminating mercury in air emissions or releases.

PA 02-95—sHB 5609

Environment Committee

Energy and Technology Committee

Legislative Management Committee

Education Committee

Appropriations Committee

AN ACT CONCERNING THE PROTECTION OF LONG ISLAND SOUND

SUMMARY: This act establishes moratoriums, effective on passage, on (1) consideration or final approval of proposals to build energy and telecommunications lines through Long Island Sound, and (2) final approval of overland electric transmission lines from Bethel to Norwalk.

It establishes a one-year moratorium on consideration or final approval of applications (including pending applications) to build a gas pipeline, electric power line, or telecommunications line across the Sound. It exempts from the moratorium applications limited solely to the maintenance, repair, or replacement of such lines already used to provide service to certain Connecticut customers. It specifically exempts the replacement of existing electric cables in the corridor from Norwalk to Northport, N.Y. For the purposes of the act, the Sound includes its harbors, embayments, tidal rivers, streams, and creeks, to the extent any

project would impact them.

By the end of the one-year moratorium period, the act requires the preparation and completion of a comprehensive environmental assessment and plan ("assessment") of the Sound's natural resources. It requires the Institute of Sustainable Energy at Eastern Connecticut State University to lead a task force in preparing the assessment.

Upon completion of the assessment, the act requires the Department of Environmental Protection (DEP), the Connecticut Siting Council, and any other state agency, when considering an application for an electric power line, gas pipeline, or telecommunications crossing of the Sound, to additionally evaluate the applications for their: (1) likelihood to impair the public trust in Long Island Sound based on information contained in the assessment; (2) consistency with the assessment's recommendations; and (3) individual and cumulative environmental impact, as anticipated by the assessment.

The act requires the Siting Council to request, within 15 days of the act's passage, that the Federal Energy Regulatory Commission (FERC) not approve any new electric power line, gas pipeline, or telecommunications crossing until the assessment is completed, and that FERC avoid environmental damage to the Sound to the greatest extent possible by considering the assessment's recommendations when licensing a project. If FERC does consider an application for an electric power line, gas pipeline, or telecommunications crossing, the act requires the Siting Council and other state agencies having jurisdiction to review the project and recommend to FERC siting, construction procedures, and environmental mitigation measures that conform with the assessment, to the extent such information is available.

The act prohibits any state agency from granting final approval to applications, including pending applications, relating to existing electric transmission lines from Bethel to Norwalk, until February 1, 2003. But it allows routine maintenance and repair of such lines. It requires the Institute for Sustainable Energy to lead a working group to study the economic, environmental, reliability, operational, technical, power, and safety aspects of installing such lines, and requires it to report its findings and recommend any necessary statutory changes by January 1, 2003. The act requires DEP and the Siting Council, after the report is published, to determine whether any decision or opinion rendered on any such application is consistent with the report's findings. It bars any applicant who elects to proceed with his application despite the moratorium from accruing legal rights or financial entitlements.

EFFECTIVE DATE: Upon passage

LONG ISLAND SOUND ASSESSMENT AND PLAN

Representation on Institute Panel

In developing the assessment, the Institute for Sustainable Energy must work with a task force that includes the task force members listed in the governor's Executive Order 26 (see BACKGROUND) and one representative each of:

1. DEP's bureau of fisheries,
2. the agriculture department's aquaculture bureau director,
3. the Department of Transportation's Coastline Port Authority Bureau of Aviation and Ports,
4. the Connecticut Seafood Council,
5. the Atlantic States Marine Fisheries,
6. Save the Sound, Inc.,
7. the Connecticut Fund for the Environment,
8. the Soundkeeper, and
9. the state geologist.

The task force also must include one representative each from:

1. the holder of a merchant cable permit,
2. a gas pipeline applicant,
3. the telecommunications industry, and
4. each local gas and electric distribution company.

The task force may invite others to participate, including federal agencies concerning matters within their jurisdiction.

Assessment and Plan

The assessment and plan must include a review and analysis of the criteria set forth in Executive Order 26. It also must include, in consultation with the University of Connecticut's Institute of Water Resources and Cooperative Extension Service, a comprehensive inventory and mapping of all existing environmental data on Long Island Sound's natural resources, including all coastal resources as defined by law, and all points of public access and use. It must include the locations of (1) rare and endangered species, including their breeding and nesting areas; (2) historically productive fishing grounds; and (3) unusual and important underwater vegetation.

The assessment also must:

1. evaluate the relative importance and uniqueness of the Sound's natural resources;
2. identify its most ecologically sensitive natural resources;
3. assess the status, potential, and environmental impacts of proposed methods of meeting the region's energy needs that do not require placement of a power line or cable within the

Sound;

4. evaluate ways to restrict the number and impact of electric power lines, gas lines, and telecommunications lines within the Sound, as well as the individual and cumulative environmental impacts of any such proposed crossings;
5. inventory existing crossings of the Sound and evaluate the environmental conditions of the areas where they are located;
6. evaluate the reliability and operational impacts to the state and region of proposed Sound crossing and evaluate the impact of recommended limitations on such crossings on reliability;
7. recommend ways to provide for regional energy needs while protecting the Sound to the greatest extent possible; and
8. recommend natural resource performance bond levels to insure and reimburse the state if future electric power line, gas pipeline, or telecommunications crossings substantially damage the public trust in the Sound's natural resources.

BETHEL-NORWALK TRANSMISSION LINE
ASSESSMENT AND REPORT*Representation on Working Group*

The Institute for Sustainable Energy must convene and chair a working group including:

1. two representatives chosen by the chief elected officials of Bethel, Redding, Weston, Wilton, and Norwalk, one with energy, and one with environmental expertise;
2. one representative of the Connecticut Fund for the Environment;
3. two representatives of the applicant company; and
4. one representative of the New England Independent System Operator (ISO).

Working Group Report

The working group must develop a comprehensive assessment and report on the:

1. economic considerations and environmental preferences and appropriateness of installing the transmission lines underground or overhead;
2. feasibility of meeting all or part of the region's electric power needs through distributive generation; and
3. electric reliability, operational and safety

concerns of the region's transmission system, and the technical and economic feasibility of addressing those concerns with available electric transmission system equipment.

BACKGROUND

Executive Order 26

On April 12, Governor Rowland barred state agencies from making final determinations on large-scale gas or electric transmission expansion projects, including those in the Sound, and the electric transmission project proposed for southwestern Connecticut, until January 15, 2003. He created a task force to review and analyze pending proposals; study ways to provide for the region's energy needs while protecting the Sound; assess the environmental impact of laying cables, power lines, and pipelines in the Sound; evaluate ways to limit the number of such energy crossings; and identify ways to mitigate environmental damage and maintain the aesthetic integrity of areas where transmissions lines are placed. The task force must issue its recommendations by January 1, 2003, and must include representatives of the Institute for Sustainable Energy, the Office of Policy and Management, the Public Utilities Control Authority, the Siting Council, DEP, the agriculture department, the New England ISO, and FERC.

Federal Energy Regulatory Commission

This commission is an independent agency within the U.S. Department of Energy that regulates transmission and sale of natural gas for resale and transmission and wholesale sales of electricity in interstate commerce. It is not directly involved in siting electric transmission facilities, but does regulate gas pipeline siting.

Distributive Generation

Distributive generation refers to ways of generating electricity on the premises of an end user within the transmission and distribution system, including fuel cells, microturbines, photovoltaic systems, or small wind turbines.

PA 02-116—sSB 593

Environment Committee
Planning and Development Committee

AN ACT CONCERNING DELINQUENT TIPPING FEES

SUMMARY: This act requires resources recovery and solid waste facility owners and operators to notify each municipality served by a solid waste collector when the collector has failed to pay the facility's tipping fees for three consecutive months.

EFFECTIVE DATE: October 1, 2002

PA 02-121—sHB 5708

Environment Committee
Appropriations Committee
Government Administration and Elections Committee
Judiciary Committee
Education Committee
Transportation Committee

AN ACT CONCERNING REVISIONS TO THE CONNECTICUT ENVIRONMENTAL POLICY ACT

SUMMARY: This act requires a state agency to inform the public and other state agencies when it proposes an action that may significantly affect the environment and increases the amount of information it must provide.

It requires agencies proposing such actions ("sponsoring agencies") to hold a public "scoping" meeting if 25 people, or an association with at least that many members, requests one. It specifies the information the sponsoring agency and other state agencies must provide.

It requires the sponsoring agency to respond to substantive issues raised at the meeting and a subsequent comment period in its environmental impact evaluation (EIE) and increases the information EIEs must contain. By law, an EIE is a detailed written document on the environmental impact of a proposed action.

It requires the sponsoring agency to submit the EIE and its responses for review and comment to the Office of Policy and Management (OPM), as well as other agencies the law requires. OPM must review the agency's responses in addition to reviewing the EIE and the comments as the law requires.

It requires the Council on Environmental Quality (CEQ) to post notices of the public scoping process in the *Environmental Monitor*, a publication the act creates. It specifies when notice must be published and who must receive the publication.

The act eliminates statutory references to "finding of no significant impact" or FONSI. However, FONSI also are required by regulation. It is not clear what impact the act has on these regulations.

The act eliminates a requirement that certain environmental statements prepared after July 8, 1975 be submitted to various agencies for review and makes

conforming and technical changes.
EFFECTIVE DATE: October 1, 2002

PUBLIC SCOPING PROCESS

The act requires a sponsoring agency to conduct a public scoping process before deciding whether to draft an EIE for an action that may significantly affect the environment. Apparently, a sponsoring agency is an agency primarily responsible for recommending or initiating an action that may significantly affect the environment. By law, such agencies must prepare an EIE.

The sponsoring agency must simultaneously provide notice of the scoping process, on a form CEQ approves, to (1) CEQ, (2) OPM, and (3) any other state agency whose activities the proposed action may reasonably affect or be affected by. Notice must include the date, time, and location of the meeting and the duration of the public comment period. Members of the public and representatives of interested state agencies have 30 days from publication of the notice in the *Environmental Monitor* to comment on the nature and extent of the proposed action's environmental impacts.

The sponsoring agency may hold a public meeting. But, it must hold one if 25 people, or an association with at least 25 members, requests one within 10 days of the notice's publication in the *Environmental Monitor*. It must hold the meeting no sooner than 10 days after publication and accept public comments for at least five days after the meeting. The act does not set a deadline by which the agency must hold the meeting. The meeting date and five-day post-meeting comment period may, therefore, extend beyond the 30-day comment period mentioned above.

Sponsoring Agency Meeting Requirements

At the meeting, the sponsoring agency must provide:

1. a description of its proposed action, the need for it, and its purpose;
2. siting criteria and a list of potential sites;
3. the resources and environmental limitations of each potential site;
4. potential alternatives to the proposed action; and
5. any information the agency believes necessary.

Meeting Requirements of Other State Agencies

The act requires other state agencies submitting comments or participating in the public scoping meeting to discuss, where practicable:

1. the resources of any site being considered for the proposed action;
2. any agency plans that may affect or be affected by the proposed action;
3. permits or approvals the proposed action requires; and
4. appropriate measures to mitigate the proposed action's impact, including recommendations for alternative sites for the proposed action or alternatives to the proposed action the sponsoring agency has not yet identified.

Environmental Impact Evaluations

The act requires the sponsoring agency to consider the comments and information it receives during the scoping process in deciding which proposed actions to address in its EIE. It must evaluate any substantive issues raised during the scoping process that pertain to a proposed or alternative action or site.

The act increases the amount of information EIEs must provide. By law, an EIE must include, among other information, a description of the proposed action, possible direct and indirect environmental consequences, and adverse environmental effects that cannot be avoided. To these, the act adds information about proposed actions in general and proposed facilities in particular.

By law, EIEs must include mitigation measures proposed to minimize environmental impacts for all proposed actions. The act requires EIEs to include detailed mitigation measures (and a site plan where appropriate) but limits these to proposed actions where they are appropriate.

For all proposed actions, the act requires an EIE to include:

1. a description of the need for the proposed action and its purpose;
2. the cumulative effects on the environment, in addition to the direct and indirect effects the law already requires, that might result from the proposed action (DEP regulations already require a sponsoring agency to consider cumulative environmental impacts when assessing whether an action significantly affects the environment);
3. an evaluation of the consistency of the proposed action and each alternative with the State Plan of Conservation and Development; and
4. an evaluation of whether each alternative avoids, minimizes, or mitigates any environmental impact.

In addition, the act requires that EIEs for proposed facilities include:

1. a description of the proposed facility's infrastructure needs, including parking, water supply, and wastewater treatment, as well as the facility's size; and
2. a list of all sites controlled by, or reasonably available to, the sponsoring agency that would meet the stated purpose of the proposed facility.

long-term environmental goals. It does not include emergency measures undertaken in response to an immediate threat to public health or safety or ministerial activities involving no exercise of discretion on the state agency's part.

CEQ AND THE *ENVIRONMENTAL MONITOR*

The act requires CEQ to publish the *Environmental Monitor* at least once a month. Each issue must include notices of sponsoring agency actions and notice of the opportunity to petition for a public scoping meeting. Notices filed with the council by 5 p.m. on the first of each month must be published in the *Monitor* within 10 days. CEQ must post the *Monitor* on its Internet site and send a subscription or copy by e-mail to any state agency, municipality, or person requesting one. It must provide the *Monitor* to municipal clerks for posting in town halls.

The act requires the sponsoring agency to notify the public of the EIE's availability in the *Monitor* as well as by notice the law already requires. The act eliminates the need to publish such notice in the *Connecticut Law Journal*. By law, the sponsoring agency must make the EIE available to the public when it submits it to various state agencies for review and must hold a hearing on the EIE if 25 people, or an association of at least that many members, requests one within 10 days of the notice's publication.

BACKGROUND

Connecticut Environmental Policy Act

CEPA identifies and evaluates the impact of proposed state actions that could significantly affect the environment. CEPA does not mandate a particular outcome or prohibit certain activities. It requires that certain information be available to decision makers and the public and that this information be considered in deciding whether and how to proceed with the project.

Actions Affecting the Environment

By law, an action is an individual activity or sequence of planned activities proposed by state departments, institutions, or agencies or funded in whole or in part by the state. An action affecting the environment is one that could (1) have a major impact on the state's land, water, air, certain historic landmarks and structures, existing housing, or other environmental resources or (2) serve short-term to the disadvantage of

PA 02-1—sSB 37

Finance, Revenue and Bonding Committee

AN ACT CONCERNING THE RATES OF STATE CIGARETTE TAXES

SUMMARY: This act increases the cigarette tax from 50 cents to \$1.11 per pack of 20 (25 to 55.5 mills per cigarette), starting April 3, 2002.

On April 3, 2002, the act also imposed a 61-cent tax on each pack (30.5 mills on each cigarette) that cigarette dealers and distributors had in inventory. By May 1, 2002, each dealer and distributor had to report the number of cigarettes in inventory at either the close of business or midnight on April 2 to the Department of Revenue Services. Failure to file the report by the due date is grounds for the department to revoke a dealer's or distributor's license.

EFFECTIVE DATE: April 3, 2002 for the new tax rate; upon passage for the tax and reports on cigarettes in inventory.

BACKGROUND

Cigarette Distributors and Dealers

Cigarette manufacturers, wholesalers, and large-scale cigarette retailers (those who operate five or more retail outlets or 25 or more cigarette vending machines) are licensed as "distributors." All other sellers are considered "dealers."

PA 02-3—sSB 33

Finance, Revenue and Bonding Committee

AN ACT CONCERNING CERTAIN TAXES RELATED TO HEALTH CARE AND REPORTING REQUIREMENTS FOR CERTAIN MANAGED CARE SUBCONTRACTORS

SUMMARY: A 2001 law exempted hospital patient care services from the 5.75% sales and use tax from July 1, 2001 through June 30, 2003. This act applies the exemption to services for which hospitals are paid, rather than those they provide, during the two-year period.

The act also eliminates, retroactive to January 1, 2001, a credit against the net direct subscriber tax for HMOs providing health coverage under the HUSKY A, HUSKY B, or HUSKY Plus programs. It replaces the credit with supplemental payments equal to 100% of the credit in FY 2001-02 and 25% in FY 2002-03.

Finally, the act requires each subcontractor paying mental health and dental claims for a Medicaid HMO to

report quarterly to the social services commissioner on how much and what proportion of its monthly HMO payments has gone (1) directly to health care providers and (2) for administrative costs and profits. The first report is due July 1, 2002.

EFFECTIVE DATE: Upon passage, except for the Medicaid managed care reporting requirement, which is effective April 1, 2002. The tax credit repeal applies to income years starting on or after January 1, 2001.

SUPPLEMENTAL PAYMENTS

An HMO's total tax credit was determined by multiplying \$73.50 by the 12-month average number of eligible patients the HMO covers under the HUSKY programs on the first of each month. The act gives an HMO that would have been eligible for a supplemental payment for FY 2001-02 if it (1) pays its full tax due for calendar year 2001 and (2) along with its final return, gives the revenue services commissioner a computation of the credit it could have taken.

Any HMO that receives a supplemental payment for FY 2001-02 is eligible for another supplemental payment for FY 2002-03. That payment is \$36.75 multiplied by the six-month average number of eligible patients the HMO covers under the HUSKY programs on the first of each month from January through June 2002.

PA 02-34—HB 5548

Finance, Revenue and Bonding Committee

AN ACT CONCERNING THE STATE TREASURER'S POWER TO INVEST IN REAL ESTATE INVESTMENT TRUSTS

SUMMARY: This act eliminates the classification of real estate investment trusts (REITs) as "alternative investments" for the state's trust funds, thus implicitly including them in the statutory cap on those funds' equity investments. By law, the treasurer can generally invest no more than 60% of the market value of each state trust fund in stocks (equities). But she may invest as much as 65% for up to six months in the event of market fluctuations, if she considers it to be in a fund's best interest.

REITs invest in real estate or loans secured by real estate. They sell ownership shares to investors and pay dividends from the rental income.

EFFECTIVE DATE: Upon passage

PA 02-52—sHB 5547

Finance, Revenue and Bonding Committee

AN ACT CONCERNING TREASURY BILL RATE REFERENCES FOR EMINENT DOMAIN PURPOSES

SUMMARY: This act changes the default interest rate payable in certain eminent domain cases from one tied to the yield on 52-week U.S. Treasury bills to one tied to the weekly average one-year constant maturity yield on Treasury securities as published by the Federal Reserve board of governors. The U.S. Treasury eliminated the 52-week Treasury bill on February 27, 2001.

By law, a court makes the final determination when a property owner disagrees with the compensation a state or local government offers when it takes his property by eminent domain. If the court determines the agency owes the owner more than it originally offered and deposited with the court, it must assess interest on the difference. This act changes the default interest rate that applies when the court does not specify an interest rate.

If less than one year's interest is due, the act's default rate is the average one-year constant maturity yield on Treasury securities for the week preceding the taking, instead of the 52-week Treasury bill rate at the last auction before the taking. If interest is due for more than a year, the act requires the annual rate to be tied to the average constant maturity yield for the week before, rather than to the rate at the last Treasury bill auction before, the start of each year.

EFFECTIVE DATE: Upon passage

PA 02-103—sHB 5735

Finance, Revenue and Bonding Committee

AN ACT IMPLEMENTING RECOMMENDATIONS OF THE LEGISLATIVE COMMISSIONERS FOR TECHNICAL REVISIONS TO VARIOUS TAX STATUTES

SUMMARY: This act extends the scope of the Ethics Commission's regulations (and the treasurer's interim requirements that apply before the regulations are adopted) that define permissible "finder's fees" payable in connection with state, quasi-public agency, or municipal investment transactions. While the law generally bars the state and quasi-public agencies from paying finder's fees, it excludes certain types of compensation from the ban and requires the Ethics Commission's regulations and the treasurer's interim requirements to further define permissible compensation

payable to certain parties.

Under prior law, the regulations and interim requirements could define only permissible (1) marketing or due diligence fees earned in connection with the offer, sale, or purchase of a security or investment interest and (2) compensation to third parties in connection with issuing debt. The act also allows the regulations and interim requirements to define permissible compensation (1) for legal, investment banking, investment advisory, underwriting, financial advisory, or brokerage firm services; (2) paid to a licensed real estate broker or salesperson; and (3) paid to investment professionals engaged in the business of representing investment services providers.

The act also makes technical changes in various tax laws to correct statutory references, remove or update obsolete language, and renumber and reorganize sections.

EFFECTIVE DATE: October 1, 2002 for most sections. The section reorganizing, renumbering, and eliminating obsolete language in sales and use tax definitions takes effect January 1, 2003. The section making a conforming change in a reference in the definition of "repair services" for certain items, including artificial devices for disabled people and life support equipment, that are exempt from the sales and use tax, is effective July 1, 2002.

PA 02-104—sHB 5672

*Finance, Revenue and Bonding Committee
Government Administration and Elections Committee
Judiciary Committee
Appropriations Committee*

AN ACT CONCERNING TELEPHONE CALLS FROM A CORRECTIONAL FACILITY

SUMMARY: This act requires the corrections commissioner to establish a pilot program to give inmates at one corrections unit the option of paying for phone service using a debit or a similar system instead of calling collect, with inmates paying for calls using money deposited in their accounts for that purpose. The commissioner must (1) post a notice to advise inmates and families of the option and (2) in consultation with the state's chief information officer, make every effort to establish the program within one year of the act's effective date.

EFFECTIVE DATE: Upon passage

PA 02-108—sSB 595

*Finance, Revenue and Bonding Committee
Planning and Development Committee*

AN ACT CONCERNING REQUIREMENTS FOR ISSUANCE OF MUNICIPAL REFUNDING BONDS AND CERTAIN INTEREST RATE AGREEMENTS

SUMMARY: This act increases municipalities' flexibility to refinance their outstanding debt and establishes conditions under which they may enter into agreements to manage interest rate fluctuations in connection with the sale or issuance of municipal bonds or notes.

EFFECTIVE DATE: Upon passage

REFINANCING DEBT

The act exempts municipal bonds issued to refinance outstanding bonds ("refunding bonds") from requirements that:

1. they be payable either (a) in substantially equal installments of principal and interest or (b) so that no principal installment is more than 50% higher than any prior installment and
2. the first installment come due within three years, and the last installment within 20 years, of the issue date.

It adds a requirement that total debt service on the refunding bonds constitute a net present value savings compared to that of the bonds being refinanced, after accounting for the cost of issuance and the underwriters' discount. Prior law required refunding bonds to meet the same requirements as all other municipal bonds.

INTEREST RATE RISK MANAGEMENT

The act expressly allows municipalities to use interest rate swap agreements in connection with issuing or carrying bonds or notes. (An interest rate swap is a contract in which two parties agree to exchange interest payments of differing character, such as a fixed for a variable interest rate, based on an underlying agreed-upon principal amount that is not exchanged.) Under the act, such agreements can include futures contracts, options, puts (contracts to sell at a predetermined price), calls (contracts to buy at a predetermined price), and other similar risk management mechanisms.

The act:

1. requires the agreements to contain whatever payment, security, default, remedy, or other terms and conditions the municipality thinks appropriate;
2. allows municipalities to select the other party in such an agreement through negotiation or competitive bidding;
3. requires municipalities, in selecting the other party, to consider (a) the party's ability to meet

its obligations, including its ratings by nationally recognized rating agencies, (b) the impact of the agreement on the ratings of any outstanding municipal bonds or notes, and (c) any other criteria they consider appropriate; and

4. requires the other party's unsecured long-term debt to be rated in the AA category or above by at least one nationally recognized rating agency. (PA 02-5, May Special Session, expanded these criteria (see BACKGROUND)).

Prior law and the act allow a municipality to pledge its full faith and credit under such agreements. But the act allows the pledge to go only as far as the pledge securing the underlying bonds or notes. It also allows the municipality to pledge all or part of the collateral securing the underlying bonds, if permitted under its contracts with the bondholders. The act specifies that pledges can cover netting payments under the interest rate management agreements. (Netting payments require only the party owing a net balance under a swap agreement to transfer funds.)

Finally, the act allows a municipality to (1) get credit in connection with issuing or refunding bonds from bank and insurance company subsidiaries as well as from the banks and insurance companies themselves and (2) use the credit to redeem bonds before maturity even when bondholders do not require it. (PA 02-5, May Special Session, also added qualified public depositories (see BACKGROUND)).

BACKGROUND

Related Act

PA 02-5, May 9 Special Session, amends this act to allow municipalities to obtain lines of credit and other similar financing in connection with issuing or refunding bonds from qualified public depositories as well as commercial banks, insurance companies, and their subsidiaries. It also expands the minimum qualifications for other parties to municipal agreements connected with issuing bonds or notes to include those whose unsecured long-term obligations are rated in the A category if the party (1) can provide collateral to enhance its credit and (2) is a qualified public depository.

PA 02-143—SB 496

*Finance, Revenue and Bonding Committee
Planning and Development Committee*

AN ACT CONCERNING THE STATE'S SECURITY INTEREST IN CERTAIN PERSONAL PROPERTY AND THE FIXING OF PROPERTY ASSESSMENTS OF ELECTRIC GENERATING FACILITIES IN CERTAIN MUNICIPALITIES

SUMMARY: This act establishes a process for the state to recover its reimbursements to municipalities for revenue they lose from mandated property tax exemptions for new and newly acquired machinery and equipment used in manufacturing or biotechnology. It also allows qualified municipalities, under certain conditions, to fix property taxes and assessments on certain newly constructed electric power plants at less than the plant's full projected tax liability.

EFFECTIVE DATE: Upon passage for the power plant provisions and July 1, 2002 for the security interest provisions. The latter apply to personal property tax exemptions in which the state has a security interest for the October 1, 2001 and subsequent assessment years.

PROPERTY TAX EXEMPTION REIMBURSEMENTS

Existing Exemption and Security Interest Requirements

By law, certain businesses in a distressed municipality or targeted investment community qualify for a state-reimbursed, five-year, 50% property tax exemption for the value of new machinery and equipment acquired as part of a technological upgrade of a manufacturing process. Businesses throughout the state also qualify for a state-reimbursed, five-year, 100% property tax exemption for the value of new or newly acquired machinery and equipment used in manufacturing or biotechnology facilities or operations. The state has a security interest in exempt machinery and equipment equal to the state reimbursement. The security interest is enforceable against the business for five years after the last year in which it received an exemption, if it ceases all manufacturing or biotechnology operations or moves them entirely out of the state. This act establishes a process for enforcing this security interest.

Lien to Recover State Reimbursement

The act requires tax assessors who grant exemptions for such machinery and equipment to notify the Office of Policy and Management (OPM) secretary in writing whenever a business that received an exemption either ceases operations or moves entirely out of state. The assessor has five years after October 1 of the last assessment year in which he granted the exemption to file the notice. When the secretary

receives the notice, the state must use the existing procedure for putting a tax lien on personal property to put a lien on the business' machinery and equipment in this state to recover the state reimbursement. For purposes of the lien, the state reimbursement is considered the tax owed.

Lien Notice

Under the act, the lien notice must include:

1. the owner of the property on which the state claims the lien,
2. the owner's business or home address,
3. the specific property subject to the lien,
4. where the property was located when it was last exempt from property taxes under the reimbursement provisions,
5. the total amount of the state reimbursement, and
6. the tax periods for which the lien is claimed.

This is generally the same information required for other state personal property tax lien notices. The only difference is that, under the act, the notice need not specify the type of tax owed or the accrued penalties and interest.

Priority of Liens

If several state agencies perfect liens against the same business on the same day, the time of day determines which lien takes precedence. If the liens are perfected at the same time on the same day, the lien for the highest amount prevails.

Lawsuits to Recover Reimbursements

The act also allows the OPM secretary to ask the attorney general to sue anyone who received an exemption to recover the state reimbursement.

PROPERTY TAXES ON NEWLY BUILT POWER PLANTS

The act expands certain municipalities' power to fix property tax or assessments on new power plants.

The law allows any municipality, with the approval of its legislative body, to fix the tax or assessment for a power plant that completes construction after July 1, 1998, as if the plant were located in an enterprise zone. In enterprise zones, towns must fix taxes or assessments on any improved real property within a zone and defer a decreasing portion of the tax increase on the improvement for seven years.

Although the enterprise zone law requires the municipality to fix the tax or assessment only after the improvements are completed, the law covering new power plants allows towns to fix the plants' full tax or assessment before construction is finished as long as it does so based on a reasonable approximation of the completed plant's full fair market value arrived at using its best efforts.

In addition to these powers, the act allows certain municipalities, either before or after its effective date, to fix taxes or assessments on power plants that complete construction after July 1, 2003 at less than the full amount, as long as the amounts fixed represent an equivalent share of the plant's estimated fair market value. To be eligible, a municipality must either:

1. be under state governance (a criterion that currently applies only to Waterbury) or
 2. have negotiated a tax agreement with a power plant owner that was approved by the municipality's legislative body between January 1, 2002 and February 28, 2002.
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PA 02-22—SB 505
General Law Committee

AN ACT CONCERNING THE ADVERTISEMENT OF MANUFACTURERS' REBATES FOR ALCOHOLIC LIQUOR PRODUCTS

SUMMARY: This act allows liquor retailers to advertise the availability of a manufacturer's rebate or a product's net price. The advertisement must contain the selling price before the rebate is deducted, the amount of the rebate, the net price, and the date the rebate offer expires. All statements must be made in the same font size, color, and style.

The act defines "advertise" as making any statement in connection with the solicitation of business by a liquor retail permittee. It includes statements in newspapers or other publications. "Manufacturer's rebate" means the amount payable through an offer by a liquor seller other than the retailer to refund all or a portion of the selling price to a consumer. "Net price" means the final price paid by the consumer after deducting the rebate amount of the rebate.

EFFECTIVE DATE: July 1, 2002

BACKGROUND

Advertising Rebate Offers

State regulations prohibit all retailers from advertising the net price after deduction of a manufacturer's rebate unless the retailer redeems the rebate coupon at the time of the sale. The regulation does not prohibit a retailer from advertising the availability or amount of a rebate (*Conn. Agencies Reg.* § 42-110b-119). A violation is an unfair trade practice. State regulations also prohibit liquor retailers from offering free goods to consumers (*Conn. Agencies Reg.* § 30-6-A40(f)).

An attorney general's opinion states that the net effect of the two regulations is to prohibit liquor retailers from advertising the availability of a manufacturer's rebate under any circumstances (8 Op. Conn. Atty. Gen. 31 (1989)).

PA 02-25—SB 509
General Law Committee

AN ACT CONCERNING FARM WINE MANUFACTURED IN CONNECTICUT

SUMMARY: This act allows a farm winery to sell wine produced by another Connecticut farm winery. Prior law allowed farm wineries to sell only their own

products. By law, a "farm winery" is a business that is located on a farm and that manufactures and sells wine. It may sell wine and beverages distilled from grape and other fruit products, such as brandy, grappa, and eau-de-vie.

EFFECTIVE DATE: October 1, 2002

PA 02-43—SB 500
General Law Committee

AN ACT CONCERNING ELECTRONIC PRICING EXEMPTIONS

SUMMARY: This act increases from 10 to 12 the number of items that the consumer protection commissioner may, by regulation, exempt from the item pricing law. By law, stores that use Universal Product Coding and bar scanners to total a customer's purchases must mark each item with its price. The law also establishes other exemptions, such as for stores equipped with an approved electronic shelf labeling system.

EFFECTIVE DATE: October 1, 2002

BACKGROUND

Items Exempt from Item Pricing Law

State regulations exempt 10 items: canned cat food; milk; powdered gelatin and pudding dessert mixes; canned tuna fish; fresh shell eggs; ice cream in one-half gallon, quart, and pint sizes; frozen concentrated juices and fruit drinks; toilet tissue packaged in single rolls; baby food packaged in glass jars; and individually packed candy and chewing gum offered for sale at the checkout (*Conn. Agencies Reg.* § 21a-79-5). The law also exempts alcoholic beverages and carbonated soft drinks.

PA 02-48—sSB 504
General Law Committee
Public Health Committee

AN ACT CONCERNING THE REPORTING OF PRESCRIPTION ERRORS AND REQUIRING CERTAIN CONTINUING EDUCATION FOR PHARMACISTS

SUMMARY: This act requires the consumer protection commissioner to adopt regulations requiring pharmacies to establish quality assurance programs designed to detect, identify, and prevent prescription errors. The act defines a "prescription error" as a clinically significant

act or omission relating to the dispensing of a drug that results, or may reasonably be expected to result, in a patient's injury or death. In addition, the act requires each pharmacy (1) to post signs and include notices on receipts or in prescription packaging informing consumers of a way to report prescription errors and (2) keep records about prescription errors.

The act adds a requirement relating to pharmacist continuing education. The law requires pharmacists to obtain at least 15 hours of continuing education each year, at least five of which must be obtained by attending a live presentation. The act requires that at least one of the five live hours be on pharmacy or drug law.

EFFECTIVE DATE: October 1, 2002

QUALITY ASSURANCE PROGRAMS

The act requires the consumer protection commissioner to adopt regulations, with the advice and assistance of the Pharmacy Commission, to require:

1. each pharmacy to implement a quality assurance program designed to detect, identify, and prevent prescription errors;
2. each such program to have written policies and procedures;
3. the policies to require the pharmacy to report the errors to the prescribing practitioner and the patient or his caregiver or appropriate family member if the patient is deceased or unable to comprehend;
4. the error report to include ways of correcting or mitigating the error; and
5. records to be kept ready for inspection for at least three years and available to inspection by the consumer protection commissioner within 48 hours in cases in which the commissioner is investigating an error report.

REQUIRED SIGN AND NOTICE

The act requires each pharmacy to post an 8-by 10-inch sign in a conspicuous location stating: "If you have a concern that an error may have occurred in the dispensing of your prescription you may contact the Department of Consumer Protection, Drug Control Division, by calling [DCP's toll-free number]." The sign must use lettering that is of a size and style that allows a consumer standing at the prescription counter to read it without difficulty.

The act requires pharmacies to include on each receipt or in each bag or packaging a notice containing the information that must be on the sign.

PA 02-59—sHB 5621

General Law Committee

Planning and Development Committee

Public Safety Committee

AN ACT CONCERNING LICENSING OF ARCHITECTS AND CERTIFICATION OF BUILDINGS IN CERTAIN USE GROUPS

SUMMARY: This act (1) revises an exemption from the requirement that building plans be sealed by a licensed architect for structures smaller than 5,000 square feet and (2) eliminates a notice that must be given to a local building official before the filing of a building permit application for a building that exceeds the "threshold limits."

EFFECTIVE DATE: October 1, 2002

5,000-SQUARE-FOOT EXEMPTION

The law prohibits anyone from practicing architecture unless he is licensed, but exempts some activities from the definition of the "practice of architecture." The law does not require someone performing an exempt activity to be a licensed architect. Prior law exempted making plans for, or supervising the construction of, buildings or additions of less than 5,000 square feet. The act instead exempts making plans for, or supervising the construction of, buildings or additions in which the entire structure contains less than 5,000 square feet.

Prior law excluded from the exemption alterations involving the safety or stability of buildings. The act instead excludes from exemption buildings with less than 5,000 square feet if they are in one of the following State Building Code use groups: assembly, educational, institutional, high hazard, or transient residential.

BUILDING OFFICIAL NOTIFICATION

The act eliminates the requirement that anyone proposing to construct a building or structure that exceeds the threshold limits give written notice to the local building official at least 90 days before filing a building permit application.

BACKGROUND

State Building Code Use Groups

The State Building Code classifies buildings and structures according to 10 different use groups. The table broadly defines the use groups included in the act.

Use Group	Buildings or Structures
Assembly	Designed for gatherings of at least 50 people.
Educational	Designed for more than five people for an educational purpose up to grade 12.
High hazard	Occupied to manufacture, process, or store hazardous materials.
Institutional	Designed for people suffering from physical limitations or in which people are detained for correctional purposes.
Residential	Designed with sleeping accommodations, except those which are institutional, including buildings for transient use, such as hotels, motels, boarding houses, and similar buildings.

Threshold Limits

The “threshold limit” requirements apply to buildings and structures with any of the following features: (1) four stories, (2) 60 feet tall, (3) a clear span of 150 feet, (4) 150,000 square feet of floor area, or (5) occupancy by at least 1,000 people. There are additional threshold limits for certain types of buildings based on their State Building Code use group.

PA 02-81—sHB 5248

General Law Committee

Judiciary Committee

Appropriations Committee

AN ACT CONCERNING THE UNIFORM CONSUMER LEASES ACT

SUMMARY: This act requires consumer leases to be in a record and establishes minimum requirements for them. It defines a “consumer lease” as one that lasts at least four months with a total obligation of up to \$150,000 in which the goods are leased for a personal, family, or household purpose. It defines “record” as information inscribed on a tangible medium, such as paper, or stored in an electronic medium, such as a computer file, and retrievable in perceivable form.

The act:

1. establishes when leases are signed, completed, or terminated;
2. excludes certain leases;
3. subjects certain transactions to it regardless of how they are characterized;
4. provides that it is supplemented by other law;
5. prohibits consumers from waiving rights established by the act except to settle a dispute;
6. establishes rules concerning the choice of law;
7. requires good faith and prohibits unconscionable conduct;
8. coordinates with the federal “e-sign” law;

9. makes federal consumer lease advertising restrictions apply to leases with a total obligation of up to \$150,000;
10. requires lessors to give consumers a blank lease on request before a lease is signed;
11. applies federal consumer lease disclosure requirements to leases with a total obligation of up to \$150,000 (as prior law did for consumer motor vehicle leases);
12. sets rules for lessors that require consumers to obtain casualty and liability insurance;
13. requires lessors to give lease guarantors a notice of their obligations and risks;
14. requires lessors to give consumers a payment status report on demand;
15. sets rules concerning the return of property traded in or payments made before a lease is disapproved;
16. prohibits consumer leases from containing provisions in which the consumer confesses judgment or allows a lessor to commit a trespass or breach of peace;
17. prohibits a lessor from taking a security interest in the consumer’s other property to secure a lease;
18. sets limits on late fees and attorney’s fees imposed on the consumer;
19. requires that the consumer be notified when a lease is assigned;
20. allows a consumer to sublease and allows consumer leases to contain provisions requiring the consumer to obtain the lessor’s consent;
21. requires the estimated residual value in an open-end consumer lease to be a reasonable approximation of anticipated fair market value when the lease expires;
22. prohibits a lessor’s charges for insurance from being more than the premium charged by the insurer;
23. prohibits a lessor from inducing a consumer to sign a lease by offering post-consummation rebates or commissions;
24. sets rules on the exclusion or modification of implied warranties;
25. prohibits making consumers responsible for the gap amount, which is the amount the consumer would owe if a total loss were considered to be an early termination, minus amounts received from insurance;
26. sets rules for default and allowing a consumer to cure it;
27. prohibits lessors from committing a breach of peace to repossess property, establishes how the lease holder must apply the realized value of the goods against the consumer’s debt, and

- limits the use of electronic means to repossess goods;
28. sets the procedure to determine realized value when a lease is terminated;
 29. limits a consumer's liability if a lease is terminated early;
 30. prohibits reporting mutually agreed-upon terminations to credit reporting agencies as defaults;
 31. sets standards for determining excess wear and tear for goods other than motor vehicles;
 32. allows a consumer to recover actual damages and statutory damages for specified violations;
 33. relieves the lease holder from liability for relying on a consumer's statement of his purpose for leasing goods;
 34. establishes a statute of limitations;
 35. limits private remedies if the lease holder has corrected the violation;
 36. gives assignees limited protection from liability for certain violations of disclosure requirements;
 37. provides that a lease holder's violation of one provision does not affect his other rights under a consumer lease;
 38. requires the consumer protection commissioner to enforce the act and authorizes him to adopt regulations;
 39. makes its provisions severable;
 40. sets rules for its effect on current leases; and
 41. requires anyone applying or construing it to consider the need for uniformity among the states which have enacted it.

The act eliminates the requirement that motor vehicle lessors disclose the "lease rate" of an automobile lease, the lease amount financed, and the lease finance charge.

The act states that it may be cited as the "Uniform Consumer Lease Act."

EFFECTIVE DATE: July 1, 2003, except the repeal of the provisions concerning the calculation and disclosure of the lease rate in a motor vehicle lease takes effect on July 1, 2002.

CONSUMER LEASE (§ 2)

The act defines "consumer lease" as a lease or sublease in which (1) the consumer is obligated for a term longer than four months and for no more than \$150,000, excluding residual value, payments for options to renew or purchase, and payments to someone other than the lease holder regardless of whether the lessee has a purchase option when the lease expires and (2) the goods are primarily for personal, family, or household purposes. It defines "lease" as a transfer of

the right to possess and use goods for a period of time in return for a fee. It does not include a sale on approval or the retention or creation of a security interest.

CONSUMMATION, EXPIRATION, AND TERMINATION (§ 3)

Under the act, a consumer consummates a consumer lease when he signs a record showing his contractual obligation. A consumer becomes obligated even if he is subject to subsequent approval by the lessor, such as a credit check.

A lease expires at the scheduled end of its term. A lease terminates when the consumer's right to possess and use the goods ends because (1) the lease expires, (2) either party chooses to end the lease as permitted in the lease, or (3) the parties agree to terminate it.

SCOPE AND EXCLUSIONS (§ 4)

The act applies to all consumer leases except leases (1) entered into by a consumer and a lessor who has leased goods five or fewer times in the preceding or current calendar year, (2) for goods incidental to the lease of real property if (a) the consumer is not liable for the value of the goods at the end of the lease except for abnormal wear and tear and (b) the consumer does not have a purchase option, (3) for goods incidental to a sales contract, and (4) of safe-deposit boxes.

If a transaction is predominately a consumer lease transaction and it includes the incidental sale of goods or services, then the incidental sale is not subject to the laws concerning retail installment sales financing, retail credit transaction statement errors, or consumer layaway plans. For example, the incidental sale of a service contract made in connection with leasing goods would not be subject to those laws.

The act provides that consumer lease provisions requiring the consumer to pay license or registration fees, taxes or amounts necessary to discharge security interests or liens or to satisfy an obligation from a previous lease do not make the payment subject to state laws on small loan lenders, truth-in-lending, retail installment sales financing, retail credit transaction statement errors, or consumer layaway plans.

TRANSACTIONS SUBJECT TO THE ACT (§ 5)

The act prohibits a consumer lease from being designated as a credit sale, loan, or security interest in order to make the transaction subject to other law instead of this act. The act allows parties to a lease that is not subject to the act to agree in the lease or a record signed with the lease that the act applies to their lease. It prohibits parties to a consumer lease from agreeing

that the transaction is not subject to the act.

RELATIONSHIP TO OTHER LAW (§ 6)

The act provides that it is (1) supplemented by other applicable statutory provisions and by general principles of law and equity, unless they are inconsistent with the act's provisions and (2) not to be construed to limit or restrict in any way rights or remedies available to a lessee or another person under other statutes or principles of law and equity.

WAIVER OF RIGHTS (§ 7)

The act generally prohibits consumers from waiving or agreeing to forgo rights, benefits, or remedies it establishes except as part of settling a dispute or collection claim. It makes a settlement in which a consumer has done so invalid if a court finds that the settlement was unconscionable when made.

CHOICE OF LAW AND FORUM (§ 8)

In a dispute concerning a lease agreement, the act allows the parties to choose the applicable law only if they choose the jurisdiction in which (1) the consumer principally resides when the agreement is signed; (2) the consumer principally resides within 30 days after the agreement is signed; (3) the leased goods will be used; or (4) the leased goods are physically received, subject to the following rules.

If the choice of law is based on where goods are physically received, the law chosen by the parties is not Connecticut law, and the lease holder initiates an action in this state to enforce rights against a state resident, the lease holder's action is subject to the act's provisions concerning: applicability and relationship to other laws (§§ 5 & 6); waiver of rights (§ 7); obligation of good faith (§ 9); unconscionability (§ 10); and except for any required disclosures, to the provisions concerning prohibited lease terms (§ 19); creation of security interests (§ 20); late charges (§ 21); payments after assignment by lease holder (§ 22); subleasing (§ 23); residual value (§ 24); insurance (§ 25); commissions or rebates (§ 26); default (§ 29); repossession (§ 30); determination of realized value (§ 31); early termination (§§ 32 & 33); and excess wear and tear standards (§ 34).

If a lease holder violates one of these provisions, the act makes his actions subject to its provisions on: damages, costs, and attorney's fees (§ 35); liability for damages (§§ 36 & 38); statute of limitations (§ 37); liability of subsequent lease holders (§ 39); violations by lease holders (§ 40); and the consumer protection commissioner's powers and duties (§§ 41 & 42).

Regardless of any provision in a consumer lease, an action by a lease holder against a consumer to enforce rights must be brought where the consumer resides, and a consumer may bring an action against a lease holder in any judicial forum that otherwise has jurisdiction over the lease holder.

OBLIGATION OF GOOD FAITH (§ 9)

The act provides that every contract subject to, and every duty imposed by, this act imposes an obligation of good faith in its performance or enforcement. The act defines "good faith" as honesty in fact and the observance of reasonable commercial standards of fair dealing.

UNCONSCIONABILITY (§ 10)

The act allows a court to refuse to enforce a lease or lease term if it finds, as a matter of law, that the lease or term is unconscionable. Further, it allows a court to (1) enforce only the part of the lease that is not unconscionable or (2) limit the application of the unconscionable term to avoid an unconscionable result.

The court may grant appropriate relief if it finds, as a matter of law, that the lease or term was induced by unconscionable conduct, or if the conduct occurred in the collection of a claim from a lease agreement. The act requires the court to give the parties a reasonable opportunity to present evidence about the setting, purpose, and effect of the consumer lease, provision, or conduct before making a finding of unconscionability.

In suits in which the consumer claims unconscionability, the act requires the court to award reasonable attorney's fees if it finds unconscionability. Under the act, the amount of recovery on behalf of the consumer is not controlling when the court determines reasonableness of attorney's fees.

FEDERAL "E-SIGN" LAW (§ 11)

The act provides that it modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, except for the provision that preserves existing consumer rights (15 USC § 7001(c)), but does not authorize electronic delivery of notices described in the federal law (see BACKGROUND).

ADVERTISEMENTS (§ 12)

The act extends to consumer leases with a consumer obligation of up to \$150,000 the requirement that advertisements promoting leases comply with the federal advertisement requirements of the Consumer

Leasing Act (see BACKGROUND). Federal law applies to leases in which the consumer incurs an obligation of up to \$25,000. The act defines “advertisement” as a commercial message in any medium that directly or indirectly promotes a consumer lease.

The act prohibits anyone from publishing, broadcasting, or distributing a false, deceptive, or misleading advertisement. It states that these requirements and prohibitions do not apply to someone who acts only as an owner or employee of a medium in which an advertisement appears or through which it is disseminated.

LESSOR DUTIES BEFORE CONSUMMATION (§ 13)

The act requires a lessor to give a copy of its current consumer lease form to an individual who asks for it at the lessor’s place of business before a lease is signed. If the lessor is contracting with the consumer by mail and receives a request by mail, the lessor must mail the form to the consumer. If the lessor is contracting with the consumer electronically and the request is made electronically, the lessor must provide a copy electronically or by mail.

A lessor must provide the first copy without charge and may charge a reasonable amount for additional copies. If a lessor uses more than one form, it may meet this requirement by providing the relevant form.

DISCLOSURES (§ 14)

The act requires lessors to make the disclosures required by the federal Consumer Leasing Act, regardless of whether the lease is subject to that act. As with the advertisement requirements and prohibitions, this has the effect of applying the federal law to leases in which the consumer incurs an obligation above \$25,000 and up to \$150,000. The act requires lessors to make the disclosures again if a lease is renegotiated or extended.

When a lease is signed, it must be put in a record that:

1. clearly states in the beginning that it is a lease;
2. conspicuously states near the consumer’s signature the following statement or one substantially similar: “NOTICE TO THE LESSEE: This is a lease. You are not buying the [insert the name of the goods or vehicle]. Do not sign this lease before you read it. You are entitled to a completed copy of this lease when you sign it;”
3. identifies the lessor’s place of business and consumer’s residence;
4. identifies any property traded in or applied as a

- capitalized cost reduction or similar credit; and
5. in a motor vehicle lease, itemizes the gross capitalized cost by type and amount, unless the itemization is in a separate record that accompanies the lease.

The act defines “conspicuous” with reference to a statement as one that is written, displayed, or presented in a way that a reasonable person should have noticed it. Under the act, whether a statement is conspicuous is a decision for a court.

The act prohibits lessors from presenting a consumer lease or lease application for signature that includes any blank spaces to be filled in later unless the goods are scheduled for future delivery. In this case, the lease may include blanks for periodic payment due dates and specific identifying numbers or similar marks.

Promptly after a lease is signed, the lessor must give the consumer, without charge, (1) a written copy of the signed lease and (2) if not previously provided, written copies of all other records that the consumer has signed. A consumer’s written acknowledgement of receipt creates a presumption of delivery.

INSURANCE (§ 15)

The act explicitly allows a lease agreement to require a consumer to maintain casualty insurance on the leased goods, liability insurance against personal injury or property damage caused to others, or both. If the agreement does not provide required coverages at no additional cost to the consumer, the holder must disclose in a record that the consumer may purchase the required insurance from any provider, subject to the holder’s right to reject for reasonable cause.

If casualty insurance is neither required nor provided, the agreement must so state or be accompanied by a record that substantially states, “No insurance coverage for physical damage to the leased goods, or loss of the leased goods, is provided under this lease.”

A holder may not require a consumer to purchase credit life, accident, health, loss-of-income, or similar insurance in connection with the agreement. If the lessor provides such insurance in connection with a consumer lease, the lessor must disclose in a record that insurance is not required. The consumer’s choice to purchase the insurance is effective only if the consumer, after receiving the disclosure, signs a separate record requesting the insurance.

Under the act, if a consumer is obligated to pay for insurance provided by the lessor, the lessor must either give a copy of the policy or insurance certificate to the consumer or arrange for it to be provided.

GUARANTORS (§ 16)

The act defines “guarantor” as an individual who becomes obligated under a consumer lease because the original consumer does not meet credit standards or is in default. A guarantor does not include a co-lessee or an assignor. Under the act, a guarantor obligation is not enforceable unless (1) the lessor provided the guarantor, before the guarantor signed, a record containing a clear statement that identified the obligation, the consumer, and the lessor and reasonably informed the guarantor of the obligation and (2) the lessor provided the guarantor with a copy of the signed record of his obligation and, if requested, of the consumer lease.

The act includes an example of such a statement. A guarantor’s written acknowledgement of receipt creates a presumption that the records were delivered.

INFORMATION THAT MUST BE PROVIDED DURING THE TERM OF THE AGREEMENT (§ 17)

Anyone who receives a lease payment must give a consumer a written receipt for a cash payment. If a consumer requests in a record, holders must, within two weeks, give a record showing (1) the dates and amounts of the periodic payments received and the total amount of remaining periodic payments and (2) the consumer’s total obligation required to pay off the agreement if terminated at a specified point during the term, and a statement that the amount due will be reduced by the “realized value” of the leased goods, if that is the case. The act prescribes several different ways to determine the realized value of goods, described below.

The act requires lease holders, if a lease provides for a purchase option that may be exercised at the consumer’s request, to provide in a record the purchase option price as of a specified date if the consumer asks.

If any amount provided to a consumer in accordance with these requirements is an estimate, the holder must identify it as such. The act prohibits holders from charging consumers for supplying one record in a 12-month period in response to a request for: the total amount of payments made, the total amount due to satisfy a lease, and the purchase option price. A holder may not charge more than \$5 for providing additional statements.

The act requires holders, within two weeks after a lease has been discharged, to send either (1) a copy of the lease marked “discharged,” “paid in full,” or with a similar term or (2) a record indicating that the lease has been satisfied. The record of satisfaction does not release the consumer from liability under the lease for any acts or events the holder discovers after he sends the record.

DISAPPROVED APPLICATIONS AND PAYMENTS OR TRADE-INS MADE PRIOR TO LEASE APPROVAL (§ 18)

Lessors sometimes accept a trade-in or cash payment before the lease agreement is approved. The act requires lessors to give the consumer a record of the consumer’s rights and obligations under the act whenever the consumer takes possession of a leased motor vehicle before the lease has been approved. If the lessor disapproves a lease application, the lessor must (1) return any property (such as a traded-in vehicle) within one business day and (2) promptly, at least within five days, refund any consumer payment except an application fee.

There are two exceptions. One, the lessor may withhold traded-in property and any payment until the consumer returns any leased property. Two, the lessor of a motor vehicle may impose a mileage charge for the consumer’s use of the vehicle. The charge may not be more than the mileage rate authorized for deduction under federal tax law. The act allows a lessor to charge for mileage only if he has disclosed the charge and its amount in an acknowledged record at time of delivery. The act allows lessors to offset a mileage charge against any refund due. The limitations on charging for the use of a vehicle and mileage charges do not affect a lessor’s right to recover for damage to or loss of a vehicle while in a consumer’s possession, if the damage or loss is attributable to the consumer’s act or omission, or forfeiture or confiscation by a governmental authority.

The act prohibits a lessor from selling or otherwise disposing of a consumer’s property until the consumer’s lease application has been approved. If a lessor has contracted to purchase property from a prospective consumer separately from the lease agreement, he cannot withhold or otherwise condition payment for that property on the consummation of the lease agreement.

PROHIBITED LEASE TERMS (§ 19)

The act prohibits a lease agreement from (1) authorizing the lease holder to accelerate payments when the holder deems himself insecure; (2) requiring the consumer to sign a confession of judgment or a wage assignment; or (3) authorizing the lease holder or any other person to enter the consumer’s premises or to commit a breach of peace to repossess the goods. (In a “confession of judgment,” a person agrees beforehand to the entry of a judgment against him if a specified event occurs, or fails to occur, such as making a required payment.) The act makes any such prohibited term unenforceable, but the presence of the terms does not otherwise affect the lease’s validity.

SECURITY DEPOSITS AND SECURITY INTEREST (§ 20)

The act allows consumer leases to require a security deposit, advance lease payment, or other prepayment. It, with three exceptions, prohibits consumer leases from creating a security interest in the consumer's real or personal property in connection with the lease to secure lease payments. A security interest in the consumer's property created in violation of the act is unenforceable but does not otherwise invalidate the lease.

The act allows a consumer lease to create a security interest in (1) unearned insurance premiums or rebates of charges for a contract for services or a service contract, extended warranty, or maintenance agreement regarding the leased goods; (2) the proceeds or benefits of insurance or of a contract for services, service contract, extended warranty, or maintenance agreement on the leased goods, except to the extent they represent reimbursement for incurred expenses; and (3) an improvement that has been made a part of the leased goods.

The act states that it does not prevent a lease holder from making a permissive filing of a financing statement under Article 9 of the Uniform Commercial Code (see BACKGROUND). It also states that it does not require lease holders to pay interest on security deposits, advance lease payments, or other prepayments. The act requires lease holders to account for the application of a security deposit to the consumer in a record within two weeks of applying it.

LATE CHARGES (§ 21)

The act allows a lease holder to impose a late charge on a periodic payment that is at least 10 days overdue in an amount the lease specifies. It prohibits this amount from being more than the lesser of \$10 or 5% of the unpaid portion of the periodic payment. A larger late fee is not enforceable to the extent that it exceeds the limit.

The act prohibits a lease holder from imposing a late charge on a current periodic payment if the only delinquency is an amount equal to or less than the amount of the late charge on an earlier payment. It allows a lease to impose an additional charge if all or part of a periodic payment remains delinquent.

The act allows a consumer lease to impose charges for collection, repossession, and court costs in an amount that is reasonable in light of anticipated or actual harm, difficulties of proof of loss, and inconvenience or unfeasibility of obtaining another adequate remedy.

The act also allows a consumer lease to impose on the consumer the lease holder's reasonable attorney's

fees. These fees are recoverable only if the lease holder is represented by an attorney who is not the lease holder's employee. If the lease provides for the recovery of these attorney's fees, the act entitles the consumer who successfully defends a collection action to reasonable attorney's fees from the lease holder.

PAYMENTS MADE AFTER A LEASE IS ASSIGNED AND LEASE HOLDER'S CLAIMS AND DEFENSES (§ 22)

Lessors sometimes assign their leases to other parties. The person who assigns the lease is called the "assignor." The person to whom the lease is assigned is called the "assignee." The act allows a consumer to continue to send payments to an assignor for 30 days after being notified of the assignment. During this period, the act prohibits an assignor from imposing a late charge if the payment is made on time. After 30 days, the act requires a consumer to pay an assignee. Despite this requirement, the act allows a consumer to pay the assignor if an assignee had sent notice of the assignment, the consumer had asked for proof, and the assignee had not sent proof "seasonably." (Although undefined in the act, an event is generally understood to be "seasonable" if it is made in good or proper time.) The act requires an assignor who receives a payment after the notification is sent to either return the payment or forward it to the assignee.

The act makes the assignee subject to all claims and defenses, with certain exceptions, that a consumer could assert against a previous lease holder, and if the original lessor did not select, manufacture, or supply the goods, against the person from whom the original lessor obtained them. A consumer's recovery under this provision is limited to the amount he paid to all holders.

SUBLEASING (§ 23)

The act allows a consumer to sublease or assign his rights and interest. But the act allows a consumer lease to include a specific and conspicuous provision requiring the lease holder's consent to the sublease or assignment and to payment of a reasonable fee. In a lease of more than 12 months, the provision must require the lease holder to agree unless he believes in good faith that the sublease or assignment will jeopardize his rights or increase his risk.

Under the act, unless the lease holder agrees otherwise, (1) a consumer's obligations under a lease are unaffected by a sublease or assignment and (2) the original consumer and the sublessee are jointly and separately liable under the lease.

RESIDUAL VALUE (§ 24)

In an open-end lease, the act requires the estimated residual value to be a reasonable approximation of the anticipated fair market value of the goods when the lease expires. The act states that such estimated residual value is presumed to be unreasonable and not in good faith to the extent that it exceeds the realized value by more than three times the average monthly payment. The act prohibits a lease holder from collecting more than that unless it has successfully sued for the amount. In all suits, the lease holder must pay the consumer's reasonable attorney's fees.

The act establishes that a presumption does not arise that the difference between estimated and actual residual value is caused by excessive use of, or physical damage to, the goods beyond reasonable wear and tear. The act permits a consumer, after a lease expires, to agree to a final adjustment concerning residual value.

The act authorizes the consumer, when the lease expires, to obtain at his own expense a professional appraisal of the goods by an independent third party agreed to by both the consumer and lessor. The act makes the appraisal final and binding on both parties.

INSURANCE CHARGES (§ 25)

The act prohibits charges for casualty, liability, or credit insurance included in a consumer lease from being more than the premium the insurer charges. It permits the lessor to (1) impose rent charges on insurance charges capitalized in the lease and (2) earn commissions, experience rebates, or similar compensation from the insurer. If insurance is canceled or terminated, the act requires the lessor to use a refund of unearned premiums to (1) pay a refund to the consumer or (2) credit the amount and the unearned part of the rent charge applicable to the premium to the consumer's debt.

The act allows a lease holder to purchase substitute insurance if a consumer does not maintain required insurance. The substitute insurance must cover substantially the same risks. The act subjects the amount paid to purchase substitute insurance and added to the consumer's debt under the lease to (1) the rent charge as if it were part of the adjusted capitalized cost and (2) the lease's default and repayment provisions. The act states that it does not prevent the lease holder from pursuing other default remedies the lease or law allows.

INDUCEMENT WITH REBATES OR COMMISSION (§ 26)

The act prohibits anyone from inducing or trying to induce someone to sign a consumer lease by offering a

post-consummation rebate, discount, commission, or other consideration on the condition that the consumer help the lessor sell or lease goods to someone else.

WARRANTIES (§ 27)

The law makes unenforceable lease provisions that attempt to exclude or modify (1) an implied warranty of merchantability or fitness or (2) a remedy for breach of such warranties in a consumer lease of a motor vehicle. The act extends this prohibition to all consumer leases. The act also allows such warranties to be limited under certain conditions.

The act defines "written warranty" in two ways. It can mean a recorded affirmation of fact or recorded promise made in connection with a consumer lease by a supplier to a consumer. It relates to the nature of the material or workmanship and affirms or promises that the material or workmanship is defect free or will meet a specified level of performance over a certain time period. It becomes a part of the basis of the bargain between supplier and consumer. "Written warranty" can also mean a supplier's undertaking in a written record in connection with the lease to refund, repair, replace, or otherwise remediate if the goods fail to meet the specifications in the undertaking, which becomes a part of the bargain.

The act prohibits a supplier from disclaiming or modifying, except as the act allows, an implied warranty to a consumer, if the supplier (1) makes a written warranty to the consumer or (2) enters into a service contract with the consumer when the consumer signs the lease or within the next 90 days.

Unless a supplier has offered a warranty that would qualify as a full warranty under the federal Magnuson-Moss Warranty Act (see BACKGROUND) if the goods were being sold, the act allows a supplier to limit the duration of implied warranties to the reasonable duration of a written warranty, if the limit is conscionable and conspicuously displayed. Disclaimers, modifications, or limitations violating the act are not enforceable, nor are lease terms that exclude or modify implied warranties of merchantability and fitness or exclude or modify a remedy for their breach.

LIABILITY FOR THE GAP AMOUNT (§ 28)

The act prohibits a lease agreement from making the consumer responsible for the gap amount, except in certain circumstances. It defines the "gap amount" as the amount a consumer would owe if a total loss of the goods—due to theft, physical damage, or other occurrence before the end of the lease term—were considered an early termination, minus the amount the holder receives from the consumer's insurance or any

other source. The act excludes (1) any deductible on the insurance policy, (2) past due lease payments or any other unpaid amounts the consumer owes on the lease, and (3) amounts by which insurance proceeds are reduced due to past due premiums or the conditions of the goods before the loss.

The act allows leases to provide that the holder may recover the portion of the gap amount caused by (1) the consumer's failure to maintain required casualty insurance; (2) the consumer's fraud, intentional wrongdoing, or gross negligence; or (3) forfeiture or confiscation by a governmental authority.

DEFAULT AND THE RIGHT TO CURE (§29)

The act allows consumer leases to prescribe the events to take place in the event of default only if (1) the consumer causes the default by failing to make a payment or (2) the holder establishes that the consumer's ability to pay is significantly impaired.

If the consumer does not voluntarily surrender the leased goods, the act requires the holder to give him a chance to cure the default before the holder accelerates payments, goes to court to collect, or repossesses the leased goods. The act requires holders to give a consumer the opportunity to cure by sending a notice to him after the consumer has been in default for at least 10 days stating that there is a right to cure. The notice must be in a record; contain a conspicuous statement that the consumer is entitled to cure; and state the amount due, the date by which payment must be made, and the name, address, and telephone number of the holder from which pertinent information may be obtained. The payment date must be at least 20 days after the notice is sent to the consumer.

To cure, the consumer must tender full payment, including delinquency or default charges, but without additional security deposit or prepayment of payments not yet due. Once a default is cured, the rights of the holder and consumer are restored as if the default had never taken place. The act gives a consumer the right to cure a default only once in any 12-month period.

REPOSSESSION AND LIMITATION ON "ELECTRONIC SELF-HELP" (§ 30)

If a consumer has not cured a default after having been given an opportunity to do so, the act authorizes a lease holder to repossess leased goods (1) through the courts or (2) directly if it does not result in a breach of peace. It requires the holder to apply the realized value of the leased goods as stated in the lease. If the lease does not have such a provision, the act requires the holder to apply the realized value in the following order: (1) to default charges and collection costs imposed by

the lease, (2) to the lease obligations that are due or in default, and (3) to the consumer's early termination liability. Unless otherwise agreed, the consumer is liable for any remainder after the holder has deducted the realized value from the consumer's debt. The act allows the holder to apply the security deposit to any deficiency, but it requires the holder to refund any amount of security remaining after the consumer's debt has been paid.

The act allows electronic self-help in connection with a consumer lease under specified conditions. It defines "electronic self-help" as using electronic means to locate and repossess goods. "Electronic" includes technology that has electrical, digital, magnetic, or wireless optical electromagnetic properties or similar capabilities.

The act allows electronic self-help if the consumer separately agrees to a lease provision authorizing it and the provision requires the lease holder, before using electronic self-help, to notify the consumer (1) that the lease holder intends to use it; (2) that the use may occur 15 days or more after the notice is sent; (3) of the nature of the consumer's breach of contract; and (4) of the name, title, address, and telephone number of someone the consumer may contact concerning the leased goods. The act authorizes the consumer to recover direct and incidental damages caused by the wrongful use of electronic self-help. Further, the consumer may recover consequential damages for wrongful use even if such damages are excluded by the lease. ("Direct damages," also called "general damages," refers to damages that naturally follow from a breach of contract. "Incidental damages" refers to damages that are reasonably associated with actual damages. "Consequential damages" refers to damages that do not flow directly from the violation but result indirectly from it.)

The act prohibits electronic self-help if the lease holder has reason to know that its use will cause substantial injury or harm to the public health or safety or grave harm to the public interest that substantially affects third parties.

DETERMINING THE REALIZED VALUE AFTER A LEASE IS TERMINATED (§ 31)

Under the act, the "realized value" is used to determine the consumer's liability when a lease is terminated. It is the sum of the amount of the rebate of premiums or insurance charges, extended warranty, or service or maintenance contract to the extent the holder receives them and one of the following:

1. if the goods are sold, the amount the lease holder receives;
2. if the goods are re-leased, the total amount of periodic payments and residual value under the

new lease; or

3. if the goods are not disposed of, the higher of any best offer or the fair market value.

The act allows the lease holder and consumer to agree on the realized value or a method for determining it. The act provides that the agreed-upon value is the realized value unless it is unreasonable. A value is not unreasonable if it is determined by a mutually agreed upon appraiser or by reference to a generally accepted reference source.

The act allows the lease holder to dispose of the goods by public or private sale or re-lease on any terms, but it requires all aspects of the disposition to be commercially reasonable. It provides that disposition in a wholesale market is not reasonable. If the goods are not disposed of in a commercially reasonable way, their realized value must be established by referring to their retail market value. If the goods are disposed of to someone who is related or obligated to the lease holder, their realized value may not be less than their fair market value.

EARLY TERMINATION LIABILITY (§ 32)

The act allows a lease to set a measure or formula to determine a consumer's liability if a lease is terminated early. However, it requires the liability to be a reasonable amount in the light of anticipated or actual harm caused by the early termination, the difficulties of proving loss, and the inconvenience or unfeasibility of otherwise obtaining an adequate remedy.

In a consumer lease that is not open-ended, the act prohibits an early termination charge from being more than the total of remaining periodic payments. Under the act, an early termination charge does not include (1) unpaid periodic payments or unpaid late, delinquency, or default charges accrued through the date of early termination; (2) charges established under the lease agreement for excess wear and tear or excess mileage, but only to the extent they are not otherwise accounted for in the charge; (3) other unpaid amounts for which the consumer is responsible; (4) official fees and taxes imposed in connection with the termination; or (5) the greater of a reasonable disposition fee stated in the lease or the reasonable costs incurred in retaking, storing, and disposing of the goods.

REPORTING EARLY TERMINATIONS (§ 33)

The act prohibits lease holders from reporting a mutually agreed upon early termination to a credit reporting agency as a default. It does not prohibit a lease holder from reporting a previous or later default.

EXCESS WEAR AND TEAR (§ 34)

The act allows consumer leases, for goods other than motor vehicles, to set standards for determining the lessor's charges for excess wear and tear, but sets criteria for those standards. The standards and amounts of liability must be reasonable and reasonably applied to compensate for the damage, abuse, or lack of maintenance, but the amount must not be more than the actual or estimated cost of repair and refurbishing. The law already sets standards for motor vehicle leases under which wear and tear charges may be imposed.

The act prohibits making the consumer liable for (1) ordinary wear; (2) depreciation; or (3) damage to the extent that (a) the goods are covered by insurance or a warranty, (b) repair under the insurance or warranty coverage is available to the lease holder, and (c) the consumer cooperates to submit and process an insurance or warranty claim.

For goods other than a motor vehicle, if the lease holder charges for excess wear and tear, the holder must notify the consumer of the nature and amount of the charges. The notice must be sent within five business days after the goods are received from the consumer and provide the consumer with reasonable time and access for the consumer or his designee to examine the goods. Under the act, the time is reasonable if it is at least 12 business days after the lease holder sends the notice.

The act allows motor vehicle lease holders to impose a reasonable charge for excess mileage in addition to any excess wear and tear charges imposed by leases under current law.

PRIVATE REMEDIES (§ 35)

The act allows consumers to sue lease holders and recover actual damages for violating the act. If actual damages are claimed for alleged violation of a disclosure requirement, the act requires the consumer to show that he relied on the lease holder's conduct to his detriment. The act allows the consumer to sue for declaratory or injunctive relief regardless of whether he seeks or is entitled to damages.

In addition, the act generally makes the holder liable for statutory damages, except in class action suits. For the following violations, a holder is liable for 25% of the amount of scheduled payments but at least \$500 and no more than \$1,000:

1. failing to make required disclosures when a lease is signed, renegotiated, or extended (§ 14(a) and (b));
2. failing to include certain notices in the lease (§ 14(c)(1) and (c)(2));
3. failing to identify in a lease property that has been traded in or to provide an itemized gross

capitalized cost in a motor vehicle lease (§ 14(c)(4) and (5));

4. presenting a lease for signature that includes a blank (§ 14(d));
5. failing to comply with the act concerning insurance included in a consumer lease (§ 15);
6. failing to provide required information during the term of the lease (§ 17);
7. failing to comply with the act concerning the return of items traded in and payments made before a lease application is disapproved (§ 18);
8. failing to state how a security deposit has been applied (§ 20(d));
9. failing to comply with the act concerning the imposition of late charges (§ 21(b));
10. failing to comply with the act concerning the purchase of substitute insurance if a consumer fails to maintain required insurance (§ 25(c));
11. offering rebates or commissions to induce a consumer to sign (§ 26);
12. reporting a mutually agreed upon early termination as a default (§ 33); and
13. violating the act concerning excess wear and tear charges for goods other than a motor vehicle (§ 34(c)).

The act entitles a consumer who successfully sues a holder to court costs and certain consumers to reasonable attorney's fees. In determining the award of attorney's fees, the act provides that the amount of recovery is not controlling. Under the act, a successful plaintiff consumer is entitled to attorney's fees if:

1. before suing, the consumer sent a notice of the alleged violation and the damages sought to the lease holder and
2. the lease holder failed, within 20 days, to provide the consumer with a settlement offer that equals or is greater than the damages eventually awarded.

Sending the notice tolls the statute of limitation for 60 days. Nevertheless, a consumer may recover attorney's fees incurred before he receives a settlement offer in an amount the court determines based on a reasonable hourly rate.

RELIANCE ON THE CONSUMER'S STATEMENTS (§ 36)

A lease holder is not liable and his rights are unaffected by any act or omission caused by his reasonable belief that a transaction is not a consumer lease based on his reasonable reliance on the consumer's representation in a record concerning the purpose for which the goods are being leased.

STATUTE OF LIMITATIONS (§ 37)

Under the act, with three exceptions, suits must be brought within three years after the lease's termination. The act allows (1) class action suits to be brought within three years of the occurrence of a violation; (2) suits for violations of the act's provisions concerning the lessor's duties before the lease is signed, mandatory disclosures, and required insurance to be brought within three years after the date the lease is signed; and (3) claims for actual or statutory damages to be raised by the consumer at a time in any action by the lessor against him.

LIMITS ON PRIVATE REMEDIES (§ 38)

The act relieves a lease holder from liability for statutory damages in the following circumstances.

1. The holder notifies the consumer and corrects a violation within 60 days of discovering it and before the consumer sues or sends a written notice of the violation. The lease holder's correction may include a refund, restitution, or crediting charges improperly disclosed or imposed.
2. The holder proves by a preponderance of the evidence that the violation (a) was unintentional and (b) resulted from an error in good faith despite maintaining procedures designed to prevent the error. For this purpose, the act states that "errors in good faith" includes clerical errors, calculation errors, computer malfunctions, and programming errors. It states that an error in good faith does not include an error of legal judgment concerning the lease holder's obligations.

The act allows only one recovery of statutory damages for a violation, regardless of the number of consumers in the lease. It entitles a consumer to a single recovery of statutory damages, regardless of the number of violations of a single consumer lease. If the lessor continues to fail to comply after a recovery, the consumer has a right to additional recoveries.

The act provides that a lease holder is not liable for damages concerning acts or omissions made in good faith conforming to:

1. a rule, interpretation, or approval by the consumer protection commissioner, even if after the act or omission occurred, the rule, interpretation, or approval was changed, rescinded, or held invalid in court; or
2. rules, regulations, or interpretations of the federal Consumer Leasing Act by the Federal Reserve Board, even if after the act or omission occurred, the rule, interpretation, or approval

was changed, rescinded, or held invalid in court.

LIABILITY OF ASSIGNEES (§ 39)

The act generally makes the assignee (a subsequent lease holder) subject to all claims and defenses that a consumer could assert against a previous lease holder. The act, in limited circumstances, allows a consumer to sue for specified violations only if (1) a required disclosure is omitted or can be determined to be incomplete or inaccurate from the face of the assigned record and documents or (2) the record does not contain a required notice, provision, or statement. The specified violations are failing to (1) provide a copy of an insurance policy that the consumer is obligated to pay through the lessor (§ 15(d)), (2) provide information about lease payment status (§ 17), (3) comply with the law prohibiting pre-consummation inducement (§ 26), (4) provide a copy of a blank lease form on request before a lease is signed (§ 13), (5) make the federal Consumer Leasing Act disclosures (§ 14), and (6) make disclosures about required casualty or liability insurance (§ 15 (a), (b), and (c)).

EFFECT OF A VIOLATION ON THE RIGHTS OF THE PARTIES (§ 40)

The act provides that a lease holder's violation of the act does not impair its rights under a lease. If the lease holder's act or omission violates the act and other law, the act entitles the consumer to the larger of the monetary remedies authorized by the act or the other law.

CONSUMER PROTECTION COMMISSIONER ENFORCES (§ 41)

The act requires the consumer protection commissioner to enforce the act's provisions and, for this purpose, he has the power and is entitled to the remedies of the Connecticut Unfair Trade Practices Act (see BACKGROUND).

REGULATIONS (§ 42)

The act requires the commissioner to administer it and authorizes him to adopt regulations to protect consumers and prevent evasion of the act's provisions, avoid preemption by the federal Consumer Leasing Act, and assure interpretations consistent with those of other states with similar acts. The act requires him to take other states' regulations into consideration when adopting and amending regulations.

SEVERABILITY (§ 43)

The act provides that if any of its provisions are deemed invalid, the determination does not affect the validity of any of its other provisions, if they are effective without the invalid provision.

EFFECT ON CURRENT LEASES (§ 44)

The act provides that leases entered into before the act takes effect may be terminated, completed, or enforced as required or allowed by law as if the act had not taken effect. The act does apply to a consumer lease that replaces a lease that is satisfied after the act takes effect.

UNIFORMITY (§ 45)

The act requires anyone applying or construing it to give consideration to the need to promote uniformity among the states that have adopted it.

EXCESS WEAR AND TEAR FOR MOTOR VEHICLES (§§ 46, 47, & 48)

The law allows motor vehicle lessors to charge for excess wear and tear only if the lease sets reasonable wear and tear standards. It establishes procedures that consumers must follow to contest a lessor's charges and requires lessors to give a consumer's appraiser or repair shop reasonable access to inspect the motor vehicle. The act applies its definitions of "consumer leases," "motor vehicles," "lessors," "holders," and "lessees," to the motor vehicle lease law. These revisions apply to motor vehicle leases entered into on or after July 1, 2003.

LEASE RATE REQUIREMENT REPEALED (§§ 49 & 50)

The act eliminates the requirement that lessors disclose to consumers the lease rate in a motor vehicle lease. Prior law defined "lease rate" as the nominal annual percentage rate that reflected the amortization of the lease amount financed to the ending balance over the scheduled term, calculated by an actuarial method of allocating base periodic payments made on a debt between the lease finance charge and the amount financed, according to which a payment was applied first to the accrued finance charge and then to the unpaid amount financed. The disclosure requirement would have become effective on July 1, 2002.

BACKGROUND

Federal Electronic Signatures In Global And National Commerce Act (15 USC § 7001 et. seq.)

The Electronic Signatures in Global and National Commerce Act applies to transactions in interstate or foreign commerce. The act validates the use of electronic records and electronic signatures in transactions but does not require anyone to agree to use or accept electronic records or signatures. It does not apply to (1) court documents; (2) notices relating to default, cure, repossession, foreclosure, eviction, or health or life insurance benefit cancellation or termination; or (3) required documents accompanying the transport or handling of hazardous or dangerous materials.

Disclosures Required by the Federal Consumer Leasing Act

The federal Consumer Leasing Act's purpose is to ensure that consumers receive meaningful disclosures that enable them to compare leases and to provide for accurate disclosure of lease terms in advertising. It applies to leases for the use of personal property for more than four months and for a total contractual obligation of \$25,000 or less primarily for personal, family, or household purposes. The act requires lessors to disclose:

1. a brief description of the property;
2. the amount the consumer must pay at the start of the contract;
3. the amount the consumer must pay for official fees, registration, certificate of title, or license fees or taxes;
4. the amount and description of other charges the consumer must pay, other than the periodic payments, and whether the consumer is liable for the differential, if any, between the anticipated fair market value of the property and its appraised value at the end of the lease;
5. a statement of the amount of, or a method of determining, liabilities the lease imposes on the consumer at the end of the lease and whether the consumer has the option to purchase;
6. a statement identifying all express warranties and guarantees made by the manufacturer or lessor;
7. a brief description of the insurance provided or paid for by the lessor or required of the consumer;
8. a description of the security interest kept by the lessor;
9. the number, amount, and due dates of lease

payments and their total amount;

10. if the lease makes the consumer responsible for the fair market value of the property at the end of the lease term, the fair market value at the start of the lease, the aggregate cost of the lease, and the difference between the two; and
11. a statement of the conditions under which both the consumer and the lessor may terminate the lease before the end of its term and the amount, or method of determining the amount of any penalty or other charge (15 USC § 1667a).

Regulation M implements the federal statute and includes model disclosure forms (12 CFR Part 213).

Uniform Commercial Code Article 9 Filings

Article 9 of the UCC covers security interests in personal property that secure payments or other performance that the debtor is obligated to make. Property subject to the security interest is the collateral. An example is when someone buys furniture and the seller keeps an interest in it as collateral until the buyer pays the entire purchase price. Article 9 sets out the requirements for a security interest to attach to the collateral (the moment when the security interest becomes enforceable) and to perfect a security interest in the collateral (this allows the secured party's interest to prevail over a creditor who gets a lien from a court). Filing a financing statement in the Secretary of the State's Office perfects a security interest in some types of collateral. These financing statements are generally valid for five years but can remain valid by filing a continuation statement. Under Article 9, someone who files or perfects a security interest generally has priority in the collateral over those who do so later.

Magnuson-Moss Warranty Act (§ 27)

The act generally applies to the sale of consumer products. It requires all written warranties to be designated as either "full" or "limited." If a warranty is designated as "full," the act requires it to (1) promise to remedy a defect within a reasonable period of time and (2) give a consumer a choice of refund or replacement if the defect cannot be repaired after a reasonable number of attempts. The act prohibits a warranty designated as "full" from (1) limiting the duration of an implied warranty or (2) excluding or limiting consequential damages unless the exclusion appears on the face of the warranty.

Connecticut Unfair Trade Practices Act (CUTPA)

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows

the DCP commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. The act also allows individuals to bring suit. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

Related Act

PA 02-131, An Act Adding Article 2A on Leases to the Uniform Commercial Code, codifies the law on leased goods.

PA 02-82—sHB 5251

General Law Committee

Transportation Committee

Finance, Revenue and Bonding Committee

AN ACT CONCERNING WELL DRILLERS, PHARMACISTS, ELECTRONIC SHELF-PRICE LABELING, HEALTH CLUBS, THE LIQUOR CONTROL ACT, BUILDING PERMITS FOR TRADESPERSONS, HOME IMPROVEMENT BONDS, LEMON LAW FUNDING AND SHORTHAND REPORTERS

SUMMARY: This act:

1. prohibits plumbers, electricians, sheet metal workers, and other specified tradesmen from starting to work on a project, unless the required state and local building or construction permits relating to their trade have been obtained;
2. allows people making a claim for payment from the Connecticut Health Club Guaranty Fund to prove club membership using other forms of proof than their health club contract, if the consumer protection commissioner finds the alternative form of proof suitable;
3. allows, rather than requires, the Department of Consumer Protection (DCP) to suspend the liquor permit of someone whose license has been suspended or revoked by the Gaming Policy Board or the Division of Special Revenue;
4. creates a new exemption from the item pricing law for stores that are using an approved electronic shelf labeling system;

5. exempts registered well drillers working in their trade from the law concerning home improvement contractor registration (the law already exempts licensed professionals and tradesmen, provided they are working in their field);
6. eliminates an avenue to licensure as a shorthand reporter based on experience;
7. imposes the \$3 surcharge used to fund the operation of the Lemon Law program on each type of vehicle and transaction covered by the program;
8. increases, from \$10,000 to \$15,000, the maximum bond the DCP commissioner may impose on a registered home improvement contractor as a result of a disciplinary action; and
9. specifies that to receive a pharmacist's license, an individual must have earned a degree from a college or school of pharmacy that was an entry-level professional pharmacy degree when he graduated.

EFFECTIVE DATE: October 1, 2002

ITEM PRICING LAW EXEMPTION

The law generally requires stores that use Universal Product Coding (UPC) and bar scanners to charge consumers to mark each item with its price. The law exempts stores that use an electronic shelf labeling (ESL) system if (1) the DCP commissioner allows them by regulation, (2) the commissioner grants permission to the retailer, and (3) the retailer has demonstrated to the commissioner's satisfaction that the system is supported by an electronic pricing system that uses UPC and bar code scanners to charge a consumer for his purchases. The act also allows these stores to remain exempt while their ESL system is being reset, remodeled, repaired, or otherwise modified if they have received permission from the commissioner. The act authorizes the commissioner to grant such permission for up to 30 days.

SHORTHAND REPORTERS

Under the act, an applicant for licensure as a shorthand reporter can no longer qualify for a license by demonstrating to the State Board of Examiners Short Hand Reporters that he was a practicing shorthand reporter before October 1, 1997, the date the shorthand reporter licensing law took effect. The act maintains the requirements that an applicant either (1) pass an examination substantially similar to the examination given by the National Court Reporters Association or (2) prove to the board that he is a registered professional

reporter of the National Court Reporters Association.

LEMON LAW SURCHARGE

The \$3 Lemon Law surcharge was imposed on the sale of each new passenger vehicle and motorcycle in 2001. The law requires the proceeds to be deposited in the New Automobile Warranties Account and used to fund the Lemon Law program. The Lemon Law applies to the sale or lease of passenger motor vehicles, passenger and commercial motor vehicles, and motorcycles. The act imposes the surcharge on each type of vehicle and transaction covered by the Lemon Law.

BACKGROUND

Health Club Guaranty Fund

The fund is designed to prevent health club members from losing their investment when a club closes. It is funded with annual fees paid by health clubs and administered by DCP. If a club closes and does not reimburse its members for the unfulfilled portion of their contracts, members may seek reimbursement from the fund.

PA 02-142—sSB 501

General Law Committee

Appropriations Committee

AN ACT CONCERNING CONTINUING PROFESSIONAL EDUCATION REQUIREMENTS FOR ELECTRICIANS AND PLUMBERS

SUMMARY: This act requires the consumer protection commissioner to adopt regulations to (1) establish requirements for accredited continuing professional education for electricians and plumbers, (2) establish qualifying criteria for accredited continuing professional education programs, (3) establish qualifying criteria for acceptable certificates of continuing education, and (4) provide for waiving continuing education requirements for good cause. The commissioner must work with the advice and assistance of the licensing boards for electrical and plumbing work concerning their respective trades when adopting the regulations. The act requires electricians and plumbers, at times prescribed in regulation by the commissioner, to prove that they have met any continuing education requirements.

It authorizes the consumer protection department to contract for services to monitor continuing professional education requirements and to require a payment to the contractor.

The act defines “accredited continuing professional education” as education of an electrician or plumber (1) designed to maintain professional competence in the pursuit, practice, and standards of his trade; (2) approved by the commissioner; and (3) provided by an organization, institution, or agency approved by the commissioner.

It defines “certificate of continuing education” as a document issued to an electrician or plumber by an approved accredited continuing professional education organization, institution, or agency that (1) certifies that the tradesman satisfactorily completed a specified number of continuing education hours and (2) bears the name of the organization, title of the program, dates the program was conducted, number of satisfactorily completed hours of continuing education, and signature of the organization’s director or his authorized agent.

EFFECTIVE DATE: Upon passage

BACKGROUND

Occupational Licensing System

State law establishes a licensing system for several trades overseen by different licensing boards, including the Examining Board for Electrical Work and the Examining Board for Plumbing and Piping Work. They have the power to determine who qualifies for a license and to enforce standards by disciplining licensees. Boards may create limited licenses authorizing their holders to work in a specific area of a trade. Each trade has different levels of expertise—apprentice, journeyman, and contractor. Workers must meet education, training, and experience requirements to qualify for each level. The boards establish less extensive requirements for workers attempting to qualify for a limited license. The consumer protection department’s duties to the boards include receiving complaints; carrying out investigations; and performing administrative tasks, such as physically issuing licenses and renewals.

PA 02-46—sSB 383

Government Administration and Elections Committee

AN ACT CONCERNING THE CONNECTICUT RESOURCES RECOVERY AUTHORITY AND PROHIBITING QUASI-PUBLIC AND STATE AGENCIES FROM RETAINING LOBBYISTS

SUMMARY: This act:

1. vests the powers of the Connecticut Resources Recovery Authority's (CRRA) board of directors in members who take office on June 1, 2002;
2. increases, from two to five, the number of directors who must represent municipalities who are members of the authority, as defined in the act;
3. establishes criteria for certain other directors;
4. gives the attorney general authority to supervise legal matters and claims related to the CRRA-Enron-Connecticut Light and Power Company transaction;
5. allows CRRA to borrow up to \$115 million from the state, under certain conditions;
6. creates a steering committee made up of directors who must establish and implement a financial restructuring plan for the authority between June 1 and December 31, 2002;
7. requires the CRRA board to report on its efforts to mitigate the effects of lost revenue from the CRRA-Enron-Connecticut Light and Power Company transaction and to send copies of audit reports to the Finance, Revenue and Bonding Committee;
8. requires the state treasurer's approval before CRRA can issue any debt backed by a state capital reserve fund;
9. requires the board to develop written contract procedures that include standards for determining when to award contracts based on competitive bidding or competitive negotiation;
10. requires, rather than permits, contracts for the authority's business, design, operating, management, transportation, marketing, planning, and research and development functions to be awarded by competitive bidding or competitive negotiation;
11. allows CRRA to become an electric supplier, if it gets a license from the Department of Public Utility Control;
12. requires performance incentive plans that CRRA offers to its officers and employees to be (a) based on the performance of the authority and the person, (b) written, (c)

applicable to all officers and employees, and (d) approved by the board;

13. requires CRRA to post specified records and information on the Internet; and
14. requires the Program Review Committee to study whether CRRA's powers and duties should be exercised by a state agency or a quasi-public agency.

The act also prevents CRRA, other quasi-public agencies, and state agencies from retaining a lobbyist but does not prohibit their directors, officers, and employees from lobbying on the agencies' behalf.

EFFECTIVE DATE: Upon passage for the provisions on (1) the board of directors and steering committee, (2) the attorney general, (3) CRRA's audit reports and report on its mitigation efforts, (4) its authority to borrow and act as an electric supplier and the treasurer's approval for borrowing or issuing bonds, and (5) the program review study; and January 1, 2003 for the remaining provisions.

BOARD OF DIRECTORS

The act terminates the offices of the current 13-member board of directors effective May 31, 2002 and vests their powers in another board, also composed of 13 members, 11 appointed by the governor and legislative leaders and two who serve by virtue of their state agency positions.

The act reduces the ex-officio members from three to two; reduces the governor's appointees from four to three; increases the municipal representation from two to five; increases, from one to two, the number of appointments the minority leaders of the Senate and House can make; increases the number of members who must have experience with finance, business, or industry from two to three; and adds representatives of the energy and environment fields. The act adds the chief financial officer of a town to those municipal officials who can be appointed to the board; the others are the first selectman, mayor, or city or town manager.

The act bars the governor and legislative leaders from appointing legislators as directors, which they could under prior law. It limits municipal representation to municipalities that have (1) a solid waste disposal services contract with CRRA and (2) pledged their full faith and credit to pay obligations under the contract. Among the appointees from those municipalities, three must come from towns with a population of 50,000 or fewer and the remaining two from towns over 50,000. Table 1 shows the appointing authorities and the qualifications required for members of the CRRA board of directors under prior law and under the act's provisions.

Table 1: CRRA Board of Directors

Appointing Authority	Prior Law	The Act
Ex-officio	Office of Policy and Management (OPM) secretary	OPM secretary
Ex-officio	Transportation commissioner	State Treasurer
Ex-officio	Economic and Community Development commissioner	(Eliminated)
Governor	First selectman, mayor, or town manager from town < 50,000 population	Municipal official from a member town with a population < 50,000
Governor	First selectman, mayor, or town manager from town > 50,000 population	No specified criteria
Governor	Public member with experience in finance, business, or industry	Public member with experience in energy field
Governor	Public member with experience in finance, business, or industry	(Eliminated)
Senate president pro tempore	No specified criteria	Municipal official from a member town with a population > 50,000
Senate president pro tempore	No specified criteria	Public member with experience in finance, business, or industry
House speaker	No specified criteria	Municipal official from a member town with a population > 50,000
House speaker	No specified criteria	Public member with experience in finance, business, or industry
Senate minority leader	No specified criteria	Municipal official from a member town with a population < 50,000
Senate minority leader	--	Public member with experience in finance, business, or industry
House minority leader	No specified criteria	Municipal official from a member town with a population < 50,000
House minority leader	--	Public member with experience in environmental field

The appointed members serve four-year staggered terms, as the gubernatorial appointees did under prior law. Two of the governor's three appointees and one of the two appointees of each legislative leader serve a two-year and one-month term initially. The other initial appointees serve a term of four-years and one-month, so that after the initial appointments, directors' terms will begin on July 1. Previously, no more than two of the four gubernatorial appointees could be from the same political party; under the act, only two of his three appointees can be from the same party. As under prior law, the governor designates the board's chairman with the advice and consent of the House and Senate. The act requires both houses of the legislature to approve all directors appointed after June 1, 2004 (after the initial appointees have been named).

The act imposes an attendance requirement on members. A member who misses half of the meetings in a year or three in a row is considered to have resigned. The act increases the quorum requirement from six to seven and requires one ex-officio member rather than two, and two directors from municipal government rather than one, to be part of the quorum necessary to transact business. The act removes the provision that allowed appointed board members to designate a representative to act in their absence, but ex-officio members (the OPM secretary and state treasurer) can still name a designee.

By law, the board may designate its powers and duties to a group of three or more directors. The act requires at least one director in the group to be a municipal official.

It also gives every appointing authority, rather than just the governor, the power to remove a director he or she appointed for inefficiency, neglect, or misconduct in office.

ATTORNEY GENERAL

The act gives the attorney general the duty to supervise all legal matters and claims arising from the CRRA-Enron-Connecticut Light and Power Company transaction. It authorizes him to appear in all civil suits and other proceedings relating to the transaction. It requires that he conduct or direct all such suits and proceedings (see BACKGROUND).

AUTHORITY TO BORROW FROM THE STATE

The act gives the CRRA conditional authority to borrow up to \$115 million from the state to make payments on its debt for the Mid-Connecticut Project. The decision to borrow must first be approved by two-thirds of the authority's 11 appointed directors at a duly called meeting and then by the state treasurer and the OPM secretary (the two ex-officio board members).

Before the CRRA borrows from the state or draws on any credit line supplied under a master loan agreement between the authority and the state, CRRA must give the OPM secretary and treasurer a financial mitigation plan and any other information they request. The officials must give their approval before the CRRA takes any action. The financial mitigation plan must (1) include a plan to minimize tipping fees for municipalities and (2) detail the authority's efforts to reduce the amount it borrows from the state. Its efforts must include:

1. reducing general administration and costs,
2. renegotiating vendor contracts,
3. efforts to increase prices for the steam or electricity it sells, and

4. assessing the viability of selling the Mid-Connecticut project's physical assets.

CRRA must also submit a proposed budget for the following fiscal year, a three-year financial plan, a cash-flow analysis showing current and projected borrowing needs, and its most recent certified audit.

The act requires the authority to repay the principal and interest on state loans to the treasurer according to a schedule the treasurer and the secretary establish. The treasurer must determine the loan interest rates according to the state's best interest. The rates may be either fixed or variable based on Short Term Investment Fund rates or on rates payable on any state borrowing needed to fund the loans.

Under the act, CRRA's debt payments for all its projects take precedence over its state loan repayments.

STEERING COMMITTEE

The act creates a board of directors' steering committee as of June 1, 2002, composed of from three to five directors appointed jointly by the governor, Senate president pro tempore, and House speaker. At least one of the committee members must be a director from municipal government. The steering committee must establish and implement a financial restructuring plan for CRRA to determine the authority's financial condition and mitigate the impact of its transaction related to Enron and Connecticut Light and Power Company on towns that have solid waste disposal services contracts with CRRA. The entire board of directors must approve the plan.

The act requires the committee to also review all aspects of CRRA's finances and administration, including:

1. tipping fees and changes to them;
2. the annual budget and budget transfers;
3. use of its reserves;
4. all contracts, including an assessment of the alignment of interests between CRRA and its contractors;
5. all financing and debt restructuring;
6. the sale, other disposition, or valuation of assets, including the sale of electricity and steam;
7. joint ventures and strategic partnerships; and
8. the initiation and resolution of litigation, arbitration, and other disputes.

The act gives the steering committee access to all CRRA information, files, and records. It can retain consultants, utilize necessary resources for performing its duties at a cost of up to \$500,000 without the board's approval, and draw on CRRA accounts to do so. The committee must report to the board and the legislature by December 31, 2002 on its findings, progress, and

recommendations for future action the board should take. The report must include information on any loans the state has made to CRRA to support debt repayment for the Mid-Connecticut project. The committee terminates on December 31, 2002, unless the board extends it.

REPORTS ON MITIGATION EFFORTS AND AUDITS

The act requires the board of directors to include in the annual report required of all quasi-public agencies a description of its efforts to mitigate the effects of the revenue loss from the CRRA-Enron-Connecticut Light and Power Company transaction. The board's report, which already goes to the governor, the auditors of public accounts, and the Environment Committee, must also be sent to the Finance, Revenue and Bonding Committee.

The act requires the board to forward to the Finance, Revenue and Bonding Committee a copy of each CRRA audit that an independent auditing firm conducts. It must do so no later than seven days after it receives the audit.

AUTHORITY TO BORROW FROM OTHERS

The act requires CRRA to have the state treasurer's or deputy treasurer's approval before borrowing money or issuing bonds and notes that (1) are guaranteed by the state or (2) for which there is a capital reserve fund that the state contributes to or guarantees. When requesting her approval, CRRA must provide the treasurer with documentation showing that it has enough revenues to (1) pay principal and interest; (2) establish, increase, and maintain necessary reserves; (3) insure the purpose for which the bond proceeds are to be issued; and (4) pay other required costs. These provisions already apply to borrowings by several other quasi-public agencies.

POWERS TO CONTRACT

Written Procedures

The act requires CRRA to develop written procedures before entering any contract instead of just contracts for professional services. By law, these procedures must be adopted in compliance with requirements all quasi-public agencies must follow, including publication of a notice in the *Connecticut Law Journal* of its intent, along with information on how the public can present views and adoption of the procedures by a two-thirds vote of the board's full membership. The new requirement covers contracts for (1) business,

design, operation, management, construction, transportation, marketing, planning, and research and development functions, as well as for supplies, materials, and equipment and (2) professional and technical services like architectural and engineering design, design and construction supervision, system and facility management, solid waste facility construction, and solid waste processing equipment purchases that the law authorizes CRRA to enter.

The act also requires that (1) standards for determining when contracts are to be awarded pursuant to competitive bidding or competitive negotiation, (2) criteria for waiving competitive bidding or competitive negotiation, and (3) exemptions for small purchases be included in the written procedures.

Requirement for Competitive Awards

The act requires, rather than permits, the board to enter contracts on a competitive negotiation or competitive bidding basis for business, design, operating, management, transportation, marketing, planning, and research and development functions provided by a private person or company.

PERSONNEL MATTERS

Incentive Plans

The act requires the board to approve any performance incentive plan in addition to salary for CRRA officers and employees. Such a payment plan must be (1) based on the person's job performance and CRRA's overall performance, (2) in writing, and (3) applicable to all CRRA officers and employees. The act bans payments under an incentive plan in a year when annual salary increases are suspended. The process required to offer an incentive does not limit rights under a collective bargaining agreement or prohibit extra or overtime payments made in accordance with existing written procedures.

Lobbying

The act prohibits all quasi-public agencies (see BACKGROUND) and state agencies from hiring a lobbyist. By law, a "lobbyist" is anyone who pays or spends or expects to pay or spend at least \$2,000 a year to communicate with government officials in the legislative or executive branch or in a quasi-public agency for the purpose of influencing any legislative or administrative action.

A state or quasi-public agency's director, officer, or employee can lobby on the agency's behalf.

ELECTRICITY TRANSACTIONS

The act amends the public utility laws to explicitly allow CRRA to become an electric supplier and sell electricity to end users, if it obtains a license from the Department of Public Utility Control.

By law, CRRA can serve as an electric aggregator, i.e., an entity that gathers retail customers together to help them negotiate with a supplier to buy electricity. Under prior law, CRRA had to use the net revenues it earned as an aggregator to reduce the costs of its services on a pro rata basis, proportional to its users' costs. The act (1) requires CRRA to first use the net revenues to pay the principal and interest on its bonds and repay its loans and notes and (2) extends the requirement to the net revenues CRRA earns from acting as a supplier.

The act allows CRRA, in its role as a supplier or aggregator, to enter into contracts to buy and sell electricity and electric generation services solely to ensure safe and reliable electric service and protect its position with respect to capacity and prices.

INTERNET INFORMATION

The act requires CRRA to post on the Internet specified information, other than records that may be kept confidential under the Freedom of Information Act. The information that must be available is:

1. schedules of board and committee meetings;
2. drafts of meeting minutes;
3. reports to the Commission on Human Rights and Opportunities on Small and Minority Business Set-Aside Program goals and achievement progress;
4. the authority's annual plan of operations;
5. reports the authority must submit to the legislature;
6. audits conducted by the auditors of public accounts, compliance audits as required for all quasi-public agencies, and its independent audits; and
7. reports on contracts with people who provide legal advice or lobby (for less than \$2,000 since retaining a lobbyist for \$2,000 or more is banned), including the contractor's name, the contract cost and terms, a summary of the services and CRRA's need for them, and the method used to award the contract.

In each case except the last, CRRA must make the information available on the Internet within seven days of the event. For the report on contracts, it must post the information no later than 15 days after the contract is signed.

PROGRAM REVIEW STUDY

The act requires the Legislative Program Review and Investigations Committee to study the advantages and disadvantages associated with exercising CRRA's powers and duties as a state agency instead of as a quasi-public agency. But the study must recognize that any structural change must include provisions ensuring payment of CRRA's outstanding obligations and performance of its contracts and agreements. It must report its findings and recommendations to the legislature by January 1, 2003.

BACKGROUND

Attorney General's Authority

The law gives the attorney general supervision over all legal matters in which the state is an interested party, except legal matters that prosecuting officers direct. He is required to appear for the state, and for all heads of departments and state boards, commissioners, and agents in all suits and other civil proceedings in which the state is a party or is interested, or in which official acts and doings of state officers are called into question. All such suits must be conducted by him or be under his direction (CGS § 3-125).

Quasi-Public Agencies

Quasi-public agencies as defined in CGS § 1-120 are the Connecticut Development Authority, Connecticut Innovations, Inc., Connecticut Health and Educational Facilities Authority, Connecticut Higher Education Supplemental Loan Authority, Connecticut Housing Finance Authority, Connecticut Housing Authority, Connecticut Resources Recovery Authority, Connecticut Hazardous Waste Management Service, Connecticut Port Authority, Capital City Economic Development Authority, and Connecticut Lottery Corporation.

PA 02-83—sHB 5258

*Government Administration and Elections Committee
Judiciary Committee*

AN ACT REQUIRING NOTIFICATION OF VOTING OR VOTING REGISTRATION TO CONSERVATORS OF RESIDENTS IN CERTAIN INSTITUTIONS, MAIL-IN VOTER REGISTRATION PROCEDURES, AND SERVICE BY MUNICIPAL EMPLOYEES ON MUNICIPAL BOARDS AND COMMISSIONS

SUMMARY: This act (1) creates a receipt for people who register to vote using the so-called "mail-in" voter registration application form provided by the Department of Motor Vehicles (DMV) or a state voter registration agency and (2) permits a person to vote whose name is not on the official checklist but who has such a receipt and identification.

The act requires the secretary of the state to provide a poster for each polling place that states the Voter's Bill of Rights.

It also requires administrators of certain institutions, residential facilities for people with mental retardation, and community residences to use their best efforts to notify probate court-appointed conservators and guardians when voting or voter registration opportunities are presented to their facility residents. The act permits the administrators to give the same notice to people with a power of attorney for a resident. The notification requirement does not apply when a member of the resident's immediate family gives him an absentee ballot application or takes him to a polling place to vote.

The act permits the resident's guardian or conservator to file a petition asking the probate court to determine the resident's competency to vote. The court must conduct a hearing on the petition no later than 15 days after it is filed. These hearings must be given priority.

Finally, the act expands the number of municipal offices that a municipal employee can hold if the town adopts an ordinance to permit it.

EFFECTIVE DATE: October 1, 2002, except the provisions on the voter registration receipt are effective January 1, 2003, and on the Voter's Bill of Rights upon passage.

AGENCY VOTER REGISTRATION RECEIPT

The act requires the DMV and any other voter registration agency (see BACKGROUND) to provide a receipt for voter registration applications they receive when the applicant applies there, either in person or by mail. The secretary of the state must approve the receipt form, which the department or agency must stamp with its name and the date it receives the application.

It allows a person appearing at a polling place whose name is not on the official checklist on election or primary day to vote if (1) the voter presents the receipt to the moderator, (2) a registrar finds the original application or the person completes another one, and (3) the voter provides proper identification. The voter must show his Social Security card or other form of identification that has his name and signature or photograph. He cannot simply sign the statement

attesting to his identification; other voters with no identification can do this under existing law. The voter's name is added to the list and he must be permitted to vote. The law already allowed a person to vote when his name is not on the list if he presents the notice of acceptance that he received from the registrars.

Under the act, the mail-in voter registration application form must include a notice that the applicant should contact the registrars of voters where he lives if he does not receive a notice of acceptance or rejection for his application.

VOTER'S BILL OF RIGHTS

The act requires the secretary of the state to distribute to municipalities posters listing the Voter's Bill of Rights. The posters must be at least 18" by 24" and be conspicuously placed in every polling place. The act includes the wording of the Voter's Bill of Rights that inform voters that they have the right to:

1. inspect a sample ballot,
2. receive instruction on how to operate voting equipment,
3. cast a ballot as long as they are in line to vote when the polls close,
4. ask for and receive assistance,
5. vote free from coercion or intimidation, and
6. cast a ballot using equipment that accurately counts all votes.

The poster must be printed and assistance given in a language other than English where federal and state law requires ballots to be available in another language.

Under the act, anyone waiting in line when the polls close must be allowed to cast a ballot.

NOTIFICATION OF VOTING OR VOTING REGISTRATION TO CONSERVATORS

Administrators Required To Provide Notice

The act's notice requirement applies to administrators of veterans' health care facilities; residential care homes; health care facilities for the handicapped; nursing homes, rest homes, and mental health facilities; educational institution infirmaries; licensed residential facilities for people with mental retardation; and licensed community residential facilities for adults with mental illness.

Notice Requirements

The administrator must use his best efforts to give conservators and guardians (see BACKGROUND) written notice at least seven days before a resident ward is (1) presented with any voter registration or voting

opportunities regarding a primary, referendum, or election or (2) brought to a polling place to vote.

The notice must indicate a resident ward's existing rights to register and cast a vote unless the probate court has made a determination of incompetence or the registrars of voters (or their designees) jointly conclude at a supervised voting session that they cannot determine how the resident desires to vote or that the resident declines to vote.

The notice must also specify that a resident ward who needs assistance to vote because of blindness, disability, or inability to read or write may receive assistance from anyone he chooses.

Voter Registration And Voting Opportunities

Under the act, voter registration and voting opportunities include the solicitation or completion of a voter registration application or an absentee ballot.

POLITICAL ACTIVITIES OF MUNICIPAL EMPLOYEES

The act allows municipalities to adopt an ordinance allowing their employees to serve on bodies (1) exercising planning, zoning, or land use powers and (2) regulating inland wetlands and watercourses. Prior law banned all municipal employees from serving on these boards and a board of finance unless (1) the town's charter or home rule ordinance allows it or (2) the employee serves on these boards because of his membership on the town's legislative body. The prohibition on service on a finance board or a governmental body that directly supervises the employee still applies. The act also removes the ban on salaried municipal officeholders' service on a planning commission if the town has adopted the ordinance described here.

BACKGROUND

Voter Registration Agencies

"Voter registration agency" includes offices that provide public assistance such as Food Stamps and Medicaid, all offices that provide state-funded programs that serve primarily people with disabilities, libraries open to the public, and other appropriate offices designated by the secretary of the state. Offices that provide services to people with disabilities can include agencies providing vocational rehabilitation, job training, education counseling, or independent living services. A state-funded agency primarily providing in-home services to people with disabilities must also provide voter registration services there.

Conservators

By law, the probate court may appoint a person; municipal or state official; or a private corporation, other than a hospital or nursing home, to be a conservator for a person whom the court determines is incapable of managing his affairs or who voluntarily requests the appointment. A conservator of the estate supervises the person's financial affairs. A conservator of the person supervises the person's personal affairs.

Guardians

By law, the probate court may appoint a person, state official, or a private nonprofit corporation, other than a hospital or nursing home, to supervise either all or limited aspects of the care of an adult with mental retardation who cannot meet any or some of his essential needs.

PA 02-91—sHB 5487

*Government Administration and Elections Committee
Labor and Public Employees Committee
Judiciary Committee*

**AN ACT CONCERNING STATE EMPLOYEE
AND CONTRACTOR WHISTLEBLOWING
COMPLAINTS**

SUMMARY: This act establishes a new, alternative process for disposing of allegations of retaliation filed by employees of the state, quasi-public agencies, and large state contractors who have made whistleblower complaints against their employers. It requires the chief human rights referee to adopt regulations that establish the procedure for filing complaints and noticing and conducting hearings under the new process. Finally, it creates a rebuttable presumption that any personnel action taken or threatened against an employee who makes a whistleblower complaint is retaliatory if it occurs within one year of the complaint.

EFFECTIVE DATE: Upon passage

**ALTERNATIVE PROCESS FOR RETALIATORY
COMPLAINTS**

The act gives whistleblowers who believe they are being retaliated against (or threatened with retaliation) for their action the option of following the existing complaint process or a new one. Under the existing process, (1) state and quasi-public agency employees can file allegations of retaliation with the Employees' Review Board or, if they are covered by a collective bargaining contract, in accordance with contract

procedure and (2) employees of large state contractors can avail themselves of administrative remedies and, if still unsatisfied, bring a civil cause of action.

Under the complaint procedure the act establishes, any of these employees alleging retaliation could notify the attorney general, who must conduct an investigation. After the investigation is concluded and apparently regardless of the outcome, the attorney general, employee, or the employee's attorney can file a complaint with the chief human rights referee.

The chief referee must assign it to a human rights referee who must conduct a hearing and determine whether the personnel action or threatened action was in retaliation for whistleblowing. If he finds that the action or threatened action was retaliatory, he may order the aggrieved employee to (1) be reinstated to his former position, (2) receive back pay, (3) have his benefits reestablished to the level for which he would have been eligible but for the violation, and (4) receive reasonable attorney fees and any other damages. Any party may appeal the referee's decision to Superior Court. For purposes of the act, the human rights referee is an independent hearing officer.

BACKGROUND

Whistleblower Law

Anyone who knows of any corruption, unethical practices, state law or regulation violations, mismanagement, gross waste of funds, abuse of authority, or danger to public safety occurring in any state department or agency, quasi-public agency, or large state contract may send information to the auditors of public accounts. They must review the matter and report their findings and recommendations to the attorney general, who must conduct any investigation he considers proper. The auditors may assist with the investigations.

After his investigation, the attorney general must, when necessary, report his findings to the governor. If the matter involves a crime, he must report it to the chief state's attorney. Neither the auditors nor the attorney general may reveal the name of their informant without his consent, except where it is unavoidable during the course of the investigation.

State officers, employees, and appointing authorities may not take or threaten to take any negative personnel action against an employee in retaliation for disclosing information to the auditors or the attorney general. Any employee who knowingly or maliciously makes false charges can be disciplined or discharged.

Large State Contractor and Contract

A large state contractor is an entity that enters into at least a \$5 million contract with a state or quasi-public agency, other than a contract to construct, alter, or repair a public building or public work.

PA 02-130—sSB 190*Government Administration and Elections Committee**Judiciary Committee**Finance, Revenue and Bonding Committee*

AN ACT REVISING CERTAIN ELECTIONS AND CAMPAIGN FINANCE STATUTES AND CONCERNING CAMPAIGN CONTRIBUTIONS BY PERSONS ASSOCIATED WITH INVESTMENT FIRMS DOING BUSINESS WITH THE STATE TREASURER AND MEETINGS OF CAUCUSES UNDER THE FREEDOM OF INFORMATION ACT

SUMMARY: This act:

1. expands the campaign contribution solicitation restriction that applies to the state treasurer, deputy treasurer, candidates for treasurer, and members of the Investment Advisory Council (IAC); removes the ban on contributions that individuals associated with firms doing business with the State Treasurer's Office can give to candidates for offices other than the treasurer; exempts from the law's restrictions a treasurer running for another office; redefines the group associated with an investment services firm who are banned from contributing; adds such a person's spouse, children, and political committee to the contribution ban; and adds a requirement concerning the distribution of an incumbent state treasurer's exploratory committee surplus;
2. expands the definition of a caucus under the exemptions to the Freedom of Information Act's (FOIA) open meeting requirements;
3. raises the threshold amount for the exemption from forming a committee and reporting contributions and expenditures;
4. creates an exemption from the campaign contribution definition;
5. authorizes the use of debit cards for party committee spending and credit cards for campaign contributions;
6. requires (a) voters at an election where paper ballots are used to show identification and (b) voting officials to determine voters' eligibility before, rather than after, they mark their

ballots;

7. extends the State Elections Enforcement Commission's (SEEC) authority to include personal jurisdiction over a nonresident, or his agent, who contributes to or makes expenditures for any candidate, party committee, or political committee (known as a PAC) of more than \$200;
8. conforms a provision designating illegal practices in the campaign finance law to the law on an individual's maximum allowable cash contribution;
9. clarifies a provision on who may vote at a town meeting; and
10. permits the notice that registrars of voters give of the date and time they will be compiling the voter registry list before an election to be published in a newspaper other than as a legal notice.

EFFECTIVE DATE: Upon passage for the provisions on investment services firms and campaign contributions, FOIA, SEEC's jurisdiction, town meetings, and the registrars of voters' notice; July 1, 2002 for the provisions on voting by paper ballots; and January 1, 2003 and applicable to primaries and elections held on and after that date for the provisions on campaign committee reporting requirements, campaign contributions, the use of debit and credit cards, illegal practices, and the state treasurer's exploratory committee distribution.

INVESTMENT SERVICES FIRMS

Prior law banned high-ranking people associated with investment services firms to which the treasurer pays compensation, expenses, or fees or issues a contract, from contributing to the campaign of any candidate for public office. The act permits those individuals associated with a covered investment services firm to contribute to the campaigns of candidates for public offices other than state treasurer. It exempts an otherwise covered individual who is a candidate for office from the ban on soliciting contributions for his own campaign.

The law prohibits the treasurer, the deputy treasurer, candidates for treasurer, and IAC members from soliciting campaign contributions for any candidate from covered investment services company individuals. The act adds (1) unclassified employees of the State Treasurer's Office acting on the treasurer's or deputy treasurer's behalf and (2) a treasurer's office candidate's agent to the list of those who cannot solicit contributions. It prohibits these officials, candidates, employees, and agents from soliciting contributions for PACs and party committees from the covered

investment services company principals. But it exempts an incumbent state treasurer who is running for another office from the solicitation ban.

The act expands the group banned from making campaign contributions and makes the description of others currently covered by the ban more specific. In its definition of the principal of an investment services firm, the act covers anyone with an ownership interest of 5% or more, rather than simply an “owner.” It applies the ban to the firm’s president, executive or senior vice president, and treasurer, instead of any officer. It restricts the ban’s application to employees with managerial or discretionary responsibilities to the people in those positions who work on investment services provided to the state treasurer. A director of such a firm is covered under the act, as under prior law. It (1) prohibits soliciting contributions from such an employee’s spouse or dependent child or from a PAC established by an individual who is an investment firm principal and (2) extends to them the ban on making contributions to a candidate for treasurer.

The act makes the same changes to the definition of a “principal of an investment services firm” in the Code of Ethics provision that prohibits the treasurer from paying compensation or issuing a contract for investment services to anyone who has contributed to, or solicited contributions for, his exploratory or candidate committee.

The act requires a state treasurer’s exploratory committee to return any pro rata portion of a surplus to contributors who are principals of an investment firm (or their PACs) when the treasurer decides not to pursue the office for which the exploratory committee was established.

CAUCUS EXEMPTION

The act allows members of a public agency to register with either the secretary of the state or town clerk their intention to act as a caucus, regardless of their political party affiliation, and thereby meet without being subject to the open meeting provisions of the Freedom of Information Act. The agency members who decide to form either a majority or minority caucus must register with:

1. the secretary of the state, if the agency is a state agency;
2. the town clerk or clerk of a political subdivision, if the agency is a local agency; or
3. the town clerk in each town of a multi-town district or agency, such as a regional school district.

The act restricts each agency member to registering in only one caucus at a time. A member cannot change his caucus affiliation for FOIA purposes for the duration

of his term of office and he retains his caucus membership regardless of any change in his political party enrollment.

CAMPAIGN COMMITTEES

The act increases, from \$500 to \$1,000, the threshold for (1) candidates and (2) groups that have joined to promote the success or defeat of a referendum question to form a committee and file financial statements. Those who expect to raise or spend less than the threshold are exempt.

It creates a filing requirement for candidates who personally finance their own campaigns and spend over \$1,000.

CAMPAIGN CONTRIBUTIONS

The act exempts from the definition of a campaign contribution a town committee’s sale of food or beverages costing an individual less than an aggregate of \$50 that takes place at a fair or similar gathering. It thereby removes the requirements that a town committee disclose the names of purchasers and that the purchases count toward an individual’s campaign contribution limit.

DEBIT AND CREDIT CARDS

The act allows campaign treasurers to use a debit card to pay a party committee’s expense. If they do so, they must keep the debit card slips and bank statements for four years from the time payments are made.

The act permits individuals to make campaign contributions over \$100 by credit card. It codifies practice and the SEEC’s position that credit card contributions are acceptable (Advisory Opinion No. 83-4), but broadens the commission’s guidelines by allowing a contributor to use a credit card without requiring him to give the campaign treasurer a signed slip.

PAPER BALLOT ELECTIONS

The act applies to voting by paper ballots the same procedures that voters follow when they use voting machines. The procedures apply at a primary, election, or referendum and require each voter to announce his name and address and show identification or sign a statement attesting to his identity. Officials check the voter’s name on the official checklist and resolve any challenge before permitting the voter to cast a ballot. Under prior law, at an event using paper ballots, officials verified a voter’s eligibility after he marked his ballot. If they determined that he was not entitled to

vote, the ballot was not deposited in the ballot box. The act's provisions apply where two or more political parties are conducting a primary, including a primary in which one party permits unaffiliated voters to cast ballots for some or all offices when separate checklists are used.

SEEC AUTHORITY

The act allows the SEEC to exercise personal jurisdiction over a nonresident, or his agent, who makes a campaign contribution or expenditure on behalf of a committee or candidate in excess of \$200. It thereby authorizes the commission to require the person to appear personally or to present documents. It allows service of process on the secretary of the state for a nonresident with a copy sent by registered or certified mail, postage prepaid, return receipt requested, to the person's last-known address.

ILLEGAL PRACTICE

The act increases, from \$50 to \$100, the threshold over which a cash contribution is considered to be an illegal practice subject to penalties. This conforms to the law that requires contributions over \$100 to be made by personal check (or the use of a credit card, under the act).

TOWN MEETING

Those who can vote at a town meeting are:

1. registered voters and
2. citizens who are at least 18 years old who own property in the town assessed at \$1,000 or more.

The act specifies that the "citizens" must be U.S. citizens.

PA 02-133—sHB 5627

*Government Administration and Elections Committee
Planning and Development Committee
Public Safety Committee
Judiciary Committee*

AN ACT CONCERNING THE DISCLOSURE OF SECURITY INFORMATION UNDER THE FREEDOM OF INFORMATION ACT

SUMMARY: By law, the public works commissioner and the chief court administrator can direct public agencies to withhold certain security-related records about buildings and facilities under their management or control from members of the public who request

disclosure under the Freedom of Information Act (FOIA). (The correction and mental health and addiction services commissioners can keep confidential similar records relating to their facilities.)

This act gives the Legislative Management Committee's executive director the same authority with respect to buildings and facilities under her management or control. Agencies that receive requests for such records must notify the executive director in the same way they currently notify other officials.

The act broadens the public works commissioner's authority, allowing him to decide whether to disclose security-related records of all state executive branch agencies, municipalities, and districts and regional agencies. He must consult with the head of each such agency before deciding on records for buildings and facilities under his management or control.

The act specifies that the authority of the public works commissioner, chief court administrator, and Legislative Management Committee's executive director to keep these records confidential does not affect law enforcement agencies' ability to access them. These officials must provide copies of records to law enforcement agencies that ask for them.

EFFECTIVE DATE: October 1, 2002

EXEMPT RECORDS

The act exempts the following records from disclosure under the FOIA if reasonable grounds exist to believe their release could pose a safety risk, including harm to anyone or any facility or equipment owned or leased by the state; a town; public service company; certified telecommunications provider; or municipal gas, electric, or water services utility:

1. engineering and architectural drawings;
2. security systems' operational specifications (except a general description, cost, and quality of such a system);
3. training manuals that describe security procedures, emergency plans, or security equipment;
4. internal security audits; and
5. logs or other documents containing information on security personnel movement or assignments.

The act also exempts, under the same circumstances: (1) security manuals; (2) emergency plans and emergency recovery or response plans; and (3) staff meeting minutes or records, or portions of them, that contain or reveal security information or otherwise exempt records.

NOTIFICATION

When a public agency, other than the Judicial Department and the Division of Criminal Justice, receives a request for a public record covered under the act, it must promptly notify the public works commissioner or the Legislative Management executive director, in the case of legislative records, in the manner he prescribes. The commissioner or director can deny the request if the act exempts the record from disclosure. The act makes the public works commissioner, rather than the executive branch agency, municipality, or district or regional agency, as the case may be, the defendant in any appeal by an aggrieved party to the Freedom of Information Commission.

PA 02-137—sHB 5625

Government Administration and Elections Committee

AN ACT CONCERNING THE CONFIDENTIALITY AND RETENTION OF MILITARY DISCHARGE DOCUMENTS, THE APPOINTMENT OF ASSISTANT TOWN CLERKS, THE WAIVER OF VENDING FEES FOR CERTAIN VETERANS, THE MUNICIPAL OPTION TO PROVIDE AN ADDITIONAL PROPERTY TAX EXEMPTION FOR VETERANS, THE MAXIMUM PROPERTY VALUE FOR MUNICIPAL TAX LIEN FORECLOSURES, THE ELECTRONIC SCANNING OF PUBLIC RECORDS, THE WAIVER OF PUBLIC RECORD FEES FOR CERTAIN OFFICIALS AND THE DISCLOSURE OF CERTAIN AUTOPSY RECORDS

SUMMARY: This act:

1. with a few exceptions, requires public agencies to keep military discharge documents apart from other records and confidential for at least 75 years after the date they are filed;
2. makes public chief medical examiner's reports, autopsies, and other scientific findings related to people in state custody at the time of death;
3. exempts certain resident veterans from paying the fee for a town hawker and peddler permit;
4. doubles, from \$50,000 to \$100,000, the maximum value of a parcel of property against which a municipal tax collector can bring a summary tax foreclosure action;
5. allows the tax collector to file summary foreclosure petitions in Superior Court twice, rather than once, in each calendar year;
6. allows municipalities to increase their optional property tax assessment reduction for low-

income wartime veterans or their surviving spouses;

7. gives members of the public the right to copy public records using hand-held scanners;
8. removes the cap on the number of assistants a town clerk can appoint (previously limited to three) and eliminates a requirement that the town clerk get a town selectman's approval on such appointments, unless the town charter or ordinance provides otherwise; and
9. eliminates a requirement that the registrar of vital statistics get a town selectman's approval when appointing assistants, unless the town charter or ordinance provides otherwise.

EFFECTIVE DATE: October 1, 2002; except July 1, 2002 for the change in the veterans' property tax exemption and January 1, 2003 for the appointment of assistant town clerks and registrars.

MILITARY DISCHARGE DOCUMENTS

The act allows veterans or their designees to file military discharge documents related to the business of a town or other public agency with the town clerk or the agency. With a few exceptions, it requires the town or agency, as the case may be, to keep the documents apart from other records and confidential for at least 75 years after the date they are filed. The retention requirement does not apply to the State Library Board or state librarian. It applies to military documents, other than those recorded on land records, filed before, on, and after October 1, 2002. It applies to land records filed only on and after that date. "Military discharge documents" are those that contain personal information and that evidence a veteran's discharge or retirement from the U.S. Army, Navy, Marine Corps, Coast Guard, or Air Force. "Veteran" means a person honorably discharged from active service or the reserves.

Public agencies must make these records available at all times to:

1. the veteran subject of the record or the conservator of his estate or person;
2. the public, if the information is necessary to or helpful in establishing a veteran's eligibility for any local, state, or federal benefit or program;
3. people who need the information to provide a benefit to, or acquire a benefit for, the veteran or his estate, if they submit satisfactory evidence of the need to the agency;
4. the state librarian in the performance of his duties; or
5. a state-incorporated or authorized genealogical society or its members.

AUTOPSY REPORTS

By law, anyone with a legitimate interest in copies of the Office of the Chief Medical Examiner's records, including autopsy reports, may obtain them upon conditions the Commission on Medicolegal Investigations establishes. Requests from these interested parties, including next of kin, an attorney acting on behalf of an estate, or insurance agent, must be in writing.

The act permits anyone access to the chief medical examiner's reports, autopsies, and other scientific findings related to a person who was in state custody at the time of death. The provision applies to those in the custody of the commissioners of correction (confined to a correctional institution, facility, or community residence), children and families, or mental retardation.

HAWKERS' AND PEDDLERS' PERMIT FEES

The law allows towns to impose a fee up to \$200 for a town hawker and peddler permit. The act exempts certain resident veterans from paying the fee, but not the requirement to get a permit. The act applies to veterans who (1) served in time of war, (2) have lived in the state for at least two years before applying for a permit, and (3) are themselves the hawker or peddler. To be a "veteran who serves in time of war," a veteran must have at least 90 days of wartime service, unless separated from service earlier because of a Veterans' Administration-rated, service-connected disability or the military operation lasted fewer than 90 days and the veteran served for its duration. The law lists which wars qualify as wartime service and when they occurred.

VETERANS' PROPERTY TAX EXEMPTION

The act allows municipalities to increase their optional property tax assessment reduction for low-income wartime veterans or their surviving spouses from a maximum of \$1,000 to a maximum of \$10,000. To qualify for the exemption a veteran or surviving spouse generally must have an annual income of no more than \$25,400 if single or \$31,100 if married.

The municipal option veterans' exemption is in addition to other property tax exemptions for veterans and disabled veterans, some of which are also income-based.

HAND-HELD SCANNERS AND COPYING FEES

The act gives members of the public the right to copy public records, using a battery operated electronic scanning device that leaves no marks or impressions on the record and that does not unreasonably interfere with

the operations of the agency that maintains the record. It allows public agencies to establish a fee of up to \$10 for this purpose. The act requires each municipal agency to waive all copying fees for the municipality's elected officials who certify that the records pertain to their official duties. By law, state agencies can charge up to 25 cents per page for copies and municipal agencies can charge up to 50 cents.

BACKGROUND

Summary Tax Foreclosure

The summary tax foreclosure process is designed to expedite foreclosure on groups of less valuable properties. Individual suits are not required, and the town can recover only the interest in the lien property. Foreclosure on more valuable properties entails separate suits, and in these cases, the town can recover other assets of the owner.

Real estate may not be foreclosed in this way if court-appointed appraisers determine its fair market value exceeds the amount of the tax liens and other encumbrances, or if the owner or encumbrancer files a bona fide defense with the court.

PA 02-79—HB 5138

*Select Committee on Housing
Planning and Development Committee*

**AN ACT CONFORMING HOUSING AUTHORITY
PROCUREMENT PROCEDURES TO FEDERAL
REQUIREMENTS AND CONCERNING THE
SECURITY DEPOSIT GUARANTEE AND
GRANT PROGRAM**

SUMMARY: This act makes (1) people with state or federal housing subsidy certificates eligible for the security deposit guarantee and grant program and (2) local housing authorities' purchasing procedures consistent with federal law.

The act makes a new group of people potentially eligible for the guarantee and grant program and it clarifies that applicants must meet a two-part criterion. Under the act, eligible people must (1) be on public assistance or have a documented financial need and (2) have a housing crisis or a state Rental Assistance Program (RAP) or federal Section 8 housing certificate or voucher. Under prior law, it appeared that a person receiving public assistance did not need to document a financial need or a housing crisis to qualify. But in practice, the Department of Social Services (DSS) required applicants to be on public assistance, have a documented financial need, and have a housing crisis in order to qualify. The new law clarifies that receiving public assistance is not enough to be automatically eligible. Possession of a RAP or Section 8 certificate indicates that a person meets the low-income guidelines of those programs, but documented "financial need" is not defined in prior law or the act.

The act also makes the criteria for security deposit grants the same as the criteria for security deposit guarantees. It also makes related changes, such as allowing the social services commissioner to set priorities for allocating security deposit guarantees between certain eligible people.

The act makes state housing authority purchasing and procurement procedures consistent with federal law in three ways. It:

1. raises the spending threshold that triggers bidding requirements from more than \$25,000 to more than \$100,000 (federal threshold) and specifies that the requirements apply only to housing project construction work, supplies, or personal property;
2. imposes federal competitive proposal requirements for purchases at or below \$100,000; and
3. removes procurement of professional services from bidding requirements and places it under federal competitive proposal requirements.

Under prior law, all contracts or purchases of more than \$25,000 had to follow a competitive bidding process, and no distinction was made between construction work and professional services. Prior law allowed an authority to waive the bidding process for contracts up to \$30,000 by a vote of the authority board if it stated that the waiver was in the public interest.

EFFECTIVE DATE: July 1, 2002

**SECURITY DEPOSIT GUARANTEE AND GRANT
PROGRAM**

Guarantee Changes

The act makes people with state RAP or federal Section 8 certificates or vouchers eligible for security deposit guarantees if they show a documented financial need or are on public assistance. By law, DSS provides security deposit guarantees, within available appropriations, to people meeting the program's criteria. DSS provides the guarantee to the landlord on behalf of a tenant who is unable to provide his own security deposit.

Prior law allowed guarantees to people who received temporary family assistance, state supplemental aid, state-administered general assistance, or general assistance, and to people who had a documented financial need and (1) lived in emergency shelters or other emergency housing, (2) could not remain in permanent housing due to circumstances beyond their control (specified in statutes), or (3) had received an eviction action notice. Under the act, a person on public assistance must also have a housing crisis (e.g., the three types of situations mentioned above) or a rental subsidy certificate to qualify.

The act allows the DSS commissioner to establish priorities for allocating guarantees between those who have a housing emergency and those who have a rental subsidy certificate.

Grant Changes

Under prior law, DSS could offer a limited number of security deposit grants to people (1) living in emergency shelters, (2) in danger of losing their housing due to circumstances beyond their control, or (3) who received eviction action notices. The act narrows the criteria for security deposit grants to make them the same as the act makes them for guarantees. Eligible applicants must (1) be on public assistance or have a documented financial need and (2) have a housing crisis (such as living in a shelter) or a state RAP or federal Section 8 voucher. The grants are payments to landlords for security deposits on behalf of a tenant. Grants cannot exceed one month's rent (the law limits what a landlord

can demand for security to a maximum of two months rent).

Regulations

The act extends the deadline for adopting new program regulations from January 1, 2002 to June 30, 2003.

BIDDING REQUIREMENTS

Contracts and Purchases Subject to State Requirements

The act defines “housing project construction work” as the construction, reconstruction, improvement, alteration, or repair of a housing project or any part of a housing project. It also states that “simplified acquisition threshold” has the same meaning as in federal public contract law, which currently sets the threshold at \$100,000. The act applies the existing state bidding requirements (including bid advertising, public bid opening, and awarding the contract to the lowest responsible bidder) to housing project construction work, supply contracts, and personal property purchases of more than \$100,000.

Contracts, Purchases, and Professional Services Exempt From State Requirements

The act makes (1) contracts and purchases of \$100,000 or less and (2) professional services of any price subject to the federal competitive proposals process. This process requires (1) public requests for proposals; (2) soliciting proposals from qualified sources; (3) technical evaluations of proposals; and (4) contract awards to be made to the responsible entity deemed most advantageous to the housing authority, considering price and other factors.

PA 02-87—sHB 5434

*Select Committee on Housing
Planning and Development Committee
Finance, Revenue and Bonding Committee*

AN ACT CONCERNING THE AFFORDABLE HOUSING LAND USE APPEALS PROCEDURE

SUMMARY: This act makes several changes to the affordable housing appeals procedure law. It extends, from three to four years, the length of an appeals procedure moratorium a town can obtain. It also extends, by one year, any moratorium in effect on the act’s effective date (October 1, 2002). By law, a town qualifies for a moratorium by obtaining a certification

from the economic and community development commissioner showing it meets a specific threshold of affordable housing units created since 1990.

The act also adds deed-restricted mobile manufactured homes and accessory (“in-law”) apartments to the list of affordable housing units that count toward a town earning an exemption from the appeals procedure. The deed restriction must be recorded on the land record and for at least 10 years require the units to be sold or rented at prices so that low- and moderate-income individuals or families will pay no more than 30% of their income for them. It requires the commissioner to produce, pursuant to regulations, model deed restrictions that satisfy these requirements.

Finally, the act eliminates the owner-occupied requirement for local-option property tax credits triggered by an affordable housing deed restriction.

EFFECTIVE DATE: October 1, 2002

MOBILE HOMES AND ACCESSORY APARTMENTS

To count toward an appeals procedure exemption, mobile homes must be located in a mobile home park, and accessory apartments must be “legally approved,” presumably through local zoning procedures.

The act defines an “accessory apartment” as a separate living unit that:

1. is attached to the primary unit of a house that appears to be a single-family residence,
2. has a full kitchen,
3. is no larger than 30% of the house’s square footage,
4. has an internal doorway connecting the two units,
5. shares utility billing with the primary unit, and
6. complies with building code and health and safety regulations.

DEED RESTRICTION CHANGES

Removes Owner-Occupied Requirement for Local Tax Credits

The act expands eligibility for local property tax credits by eliminating a requirement that property owners live on the property. Under prior law, a town could adopt an ordinance providing such credits only to owner-occupants of single-family or multi-family dwellings who placed long-term affordable housing deed restrictions on their dwellings. By law, the deed restrictions must be covenants or restrictions filed on the land record requiring the dwellings to be sold or rented only to people whose income is 80% or less of the area

or state median income, whichever is less. The restriction must last 40 years and cannot be revoked by the owner or subsequent owner.

Binding and Recorded Restrictions

The act specifies that to count toward the procedure exemption, deed restrictions to keep units affordable must be binding and recorded on the land record.

Fee Waiver

The act permits towns to waive any filing fee for affordability deed restrictions on town land records.

BACKGROUND

Appeals Procedure Law

Under the procedure, a town bears the burden of proving certain facts in court if a developer appeals its decision rejecting a proposed affordable housing development. (Normally, developers bear this burden in land-use appeals.) The procedure applies to towns with less than 10% of their housing stock in affordable housing, as defined by law. Currently, the procedure applies to 137 towns, with the remaining 32 towns exempt (because at least 10% of their housing stock is certified as affordable).

Procedure Moratorium

A town qualifies for a moratorium each time it adds certain types of affordable housing units that equal 2% of the total number of housing units it had as of the last 10-year census, or 75 unit-equivalent points, whichever is greater. A unit-equivalent point is the value the law assigns to types of units. The lower the income level of the unit's tenant or buyer, the more points awarded for that unit. For example, family units restricted for tenants with incomes at or below 80% of median income are awarded one and one-half points each. When the income level is restricted to 60% and 40% of median, the units are awarded two and two and one-half points each, respectively.

PA 02-99—HB 5103

Select Committee on Housing

Planning and Development Committee

AN ACT CONCERNING THE DISPOSITION OF STATE-ASSISTED HOUSING PROPERTIES IN DEFAULT

SUMMARY: This act allows the economic and community development commissioner to operate a housing project and receive state and federal funds on its behalf when he acquires the project to preserve the state's interest under the contract that initially funded it. It also allows, rather than requires, him to adopt regulations implementing the department's statutory purposes.

The act sets a condition under which the commissioner must construct or renovate housing near the former Rice Heights public housing project in Hartford. The 388-unit project was demolished to make way for about 80 new homes, most of which are to be sold to the project's former tenants. The commissioner must develop the housing if the proposed number of new units at the site is reduced to make way for a new school. Former Rice Heights tenants must get priority for the housing.

The act sets a very narrow exception under which a public housing authority commissioner can serve as its executive director. The law requires a housing authority to wait at least two years before hiring someone who served as one of its commissioners. This requirement applies to any position. The act allows a current commissioner to serve as the authority's director if the authority was awarded "Moving to Work" status on January 19, 2001 under a federally funded program designed to help families living in government-funded housing secure better paying jobs. The commissioner can serve as director only until October 1, 2003.

EFFECTIVE DATE: Upon passage except for the provision regarding the economic and community development commissioner's power, which takes effect July 1, 2002.

RICE HEIGHTS

The act requires the commissioner to develop additional housing in the immediate area of the site of the former Rice Heights if the proposed number of new units to be constructed there is reduced to make way for a new school. He must determine the cost of developing the additional units and report it to the legislature by July 1, 2002. The report must identify the cost of building (1) the original number of new units and (2) the number that would be built if a school is built on the site. It must include the cost of the supporting infrastructure and the financial assistance provided to the homebuyers and renters.

The commissioner must develop the additional housing if the school reduces the number of units to be constructed there. He must allocate an amount for this purpose that equals the cost of these foregone units, as identified in the study. The average amount of mortgage and financial assistance given to the families buying or

renting these units must at least equal the average amount of assistance provided to families buying or renting units at the former Rice Heights site.

Former residents of Rice Heights must get priority for the additional housing. This requirement applies to families who applied and qualified for units at the former site but could not obtain one because none were available.

BACKGROUND

Moving to Work Program

The 1996 federal Omnibus Consolidated Rescissions and Appropriations Act (P.L. 104-134) authorized a national demonstration program giving local public housing authorities the means to help low-income families find better paying jobs and, consequently, become less dependent on government subsidies.

PA 02-37—sHB 5556

Human Services Committee

Government Administration and Elections Committee

**AN ACT CONCERNING FOOD STAMP
ELIGIBILITY**

activities that will accomplish the act's purposes, giving states a great deal of flexibility. Most of Connecticut's TANF block grant funds the TFA program, with smaller amounts going to pay for child care, employment services, and other forms of family assistance.

SUMMARY: This act requires the Department of Social Services (DSS) commissioner to allow Food Stamp applicants and recipients to own a car valued up to the limit established in the Temporary Family Assistance (TFA) program. This effectively increases the limit from \$4,650 to \$9,500.

The act also requires DSS to pursue the maximum Food Stamp benefit extensions permitted for households leaving the Temporary Assistance for Needy Families (TANF) program. Federal regulations limit this extension to three months.

EFFECTIVE DATE: July 1, 2002 for the motor vehicle allowance change and October 1, 2002 for the benefit extension.

BACKGROUND

Federal Food Stamp Provisions

Federal law allows states to increase their Food Stamp program's vehicle allowance to the same allowance used in their TANF-funded "assistance" program if this would make the household eligible for Food Stamps (7 USC § 2014 (g)(2)(D)). TFA is the state's largest TANF-funded program.

Federal Food Stamp regulations allow state Food Stamp agencies (DSS in Connecticut) to provide certain households leaving TANF with transitional Food Stamp benefits (7 CFR § 273.12). The regulations allow the state agency to freeze, for up to three months, the household's Food Stamp benefit at the level it received while still receiving TANF assistance. (States must adjust upwards the Food Stamp benefits of households losing income as a result of losing TANF assistance before beginning this transitional period.) Doing so enables families to continue to receive uninterrupted benefits without having to go through a recertification process until the transition period expires.

TANF

The federal welfare reform legislation of 1996, which is scheduled for re-authorization this year, established the TANF block grants to replace the old Aid to Families with Dependent Children entitlement program. States receive block grants based on their family welfare caseloads in the mid-1990s. The law broadly requires that states spend block grant funds on

PA 02-19—SB 353*Insurance and Real Estate Committee***AN ACT CONCERNING THE LICENSING OF INSURANCE PRODUCERS****SUMMARY:** This act:

1. requires applicants for an insurance producers license to satisfy certain pre-examination requirements,
2. reduces the time period that an insurance producer must have been licensed in this state before the insurance commissioner may waive the licensing examination from within two to within one year after applying for the license,
3. eliminates pre-licensing and examination requirements for limited lines producer license applicants,
4. exempts resident and nonresident applicants for an insurance producers license from the standard application requirement, and
5. permits the commissioner to bill applicants for the license application fee instead of returning a new or renewal application that was not accompanied by the required fee.

EFFECTIVE DATE: September 1, 2002

PRE-EXAMINATION REQUIREMENTS

The act requires applicants for an insurance producer's license to satisfy one of two requirements before being admitted to the examination: (1) successful completion of at least 40 hours of approved courses for each line of insurance for which a license is being sought or (2) possession of equivalent experience or training as determined by the commissioner.

INSURANCE PRODUCERS EXEMPTION

The act exempts applicants for a resident or nonresident insurance producers license from the standard written application requirement applicable to other insurance-related occupations (public and casualty adjusters, motor vehicle physical damage appraisers, certified insurance consultants, and surplus line brokers).

Existing law requires resident and nonresident applicants for an insurance producers license to apply on the National Association of Insurance Commissioners' uniform application or uniform business application forms.

PA 02-24—sSB 250*Insurance and Real Estate Committee***AN ACT IMPLEMENTING THE LEGISLATIVE COMMISSIONERS' RECOMMENDATIONS FOR TECHNICAL REVISIONS TO CERTAIN INSURANCE AND REAL ESTATE STATUTES**

SUMMARY: This act makes minor technical revisions to the insurance and real estate statutes.

EFFECTIVE DATE: October 1, 2002, except for the section on nonresident producer license reciprocity, which is effective September 1, 2002

PA 02-40—sSB 352*Insurance and Real Estate Committee***AN ACT CONCERNING THE REQUIREMENTS OF THE FEDERAL GRAMM-LEACH-BLILEY ACT**

SUMMARY: This act authorizes the insurance commissioner to adopt regulations establishing security and privacy standards for consumer information that are consistent with the federal Gramm-Leach-Bliley Financial Modernization Act of 1999 and applicable to people and other financial institutions regulated under Connecticut's insurance laws.

The federal act requires all financial institutions, including insurance companies, to disclose to customers their policies and practices for protecting the privacy of nonpublic personal information. Customers must receive the disclosure when they purchase the insurance and at least annually thereafter. The policies must also allow customers to "opt-out" of information-sharing arrangements with unaffiliated third parties. The act permits financial institutions to share personal customer information with affiliates. It imposes criminal sanctions on any person (including firm employees) who obtain or attempt to obtain customer information relating to another person from any financial institution by making false or fraudulent statements to an employee of that financial institution.

EFFECTIVE DATE: Upon passage

PA 02-55—SB 253*Insurance and Real Estate Committee***AN ACT CONCERNING EXTENSION OF HEALTH BENEFITS UNDER GROUP INSURANCE PLANS**

SUMMARY: This act requires health insurers that provide comprehensive health coverage to offer policyholders and their dependents the option to continue group coverage during illness, injury, and certain disabilities, regardless of eligibility for other group coverage.

The option must be available to (1) employees and their dependents during the employee's absence from work due to illness or injury or (2) employees, their spouses, and dependents who are totally disabled on the date the group policy terminates.

Coverage for absence due to illness or injury must continue through the period of the illness or injury or for up to 12 months beginning on the first day the employee is absent from work. Coverage for the totally disabled must continue without premium payment while the disability lasts for 12 months following the calendar month in which the policy is terminated, if a claim for coverage is made within one year of the termination.

EFFECTIVE DATE: October 1, 2002

BACKGROUND

Comprehensive Health Care Policy

As a condition of conducting business in Connecticut, insurers must offer individual and group comprehensive health care policies to state residents who are under age 65 and not eligible for Medicare. The policies must provide minimum levels of medical, surgical, and hospital benefits to people unable to obtain coverage in the voluntary market.

PA 02-60—sHB 5641

Insurance and Real Estate Committee

AN ACT ALLOWING SENIOR CITIZENS TO DESIGNATE A THIRD PARTY TO RECEIVE CERTAIN CANCELLATION NOTICES

SUMMARY: This act requires insurers that offer automobile and homeowners' insurance to include a conspicuous statement with each policy informing policyholders age 55 and older that they may designate a third party to receive cancellation or nonrenewal notices. The insurance commissioner must approve the statement, which must (1) include a designation form and a mailing address that the policyholder may use to designate a third party and (2) satisfy other requirements for it to be effective.

The act adds automobile liability policy third-party designees as recipients of (1) a cancellation notice and (2) the proof of notice required to cancel, nonrenew, or provide reasons for canceling. In the standard fire

insurance policy form, the act adds homeowners' insurance policy third-party designees as recipients of the cancellation notice that insurers must send to cancel the policy. When a designation is made, insurers must give the designee notice for the cancellation or nonrenewal to be effective.

The act requires automobile and homeowners' insurers that send, deliver, mail, or otherwise provide cancellation or nonrenewal notices to an insured to use the same method to send, deliver, mail or provide a copy of the notice to any third-party designee.

EFFECTIVE DATE: October 1, 2002

THIRD-PARTY DESIGNATION

The act requires the designation form to include a written acceptance by the third-party designee to receive copies of notices of cancellation or nonrenewal on the policyholder's behalf. The designation is effective within 10 days after the date the insurer receives the form and designee's acceptance. Third-party designees may end the designation by providing the insurer and policyholder with written notice, and policyholders may end the designation by providing the insurer and third-party designee with written notice. The insurer may require termination notices to be sent by certified mail, return receipt requested.

The act specifies that the insurer's delivery of any copy of a notice of cancellation or nonrenewal to a third-party designee is in addition to the original notice the insurer must deliver to the policyholder. It requires all original notices and copies to be mailed in an envelope marked on its face with the following:

“IMPORTANT INSURANCE POLICY
INFORMATION: OPEN IMMEDIATELY”

The act specifies that the same law and policy provisions that govern notices to the policyholder must govern copies of third-party designee notices. It also states that designation of a third party does not constitute acceptance of any liability by the third party or insurer for services provided to the policyholder.

NOTICE OF AUTOMOBILE POLICY CANCELLATION

The act requires insurers to mail or deliver cancellation notices to the third party designee at least 45 days before the cancellation's effective date. But, when the first premium on a new policy is not paid, the act requires insurers to mail or deliver the cancellation notice to the third-party designee at least 15 days before the cancellation is effective.

PROOF OF NOTICE

The act specifies notices of cancellation, nonrenewal, or reasons for cancellation that are mailed by certified mail, return receipt requested to the insured and any third-party designee at the address shown in the policy is proof of notice.

PA 02-96—sHB 5644

Insurance and Real Estate Committee

**AN ACT CONCERNING HEALTH INSURANCE
COVERAGE FOR ADOPTED CHILDREN**

SUMMARY: By law, certain individual and group health insurance policies delivered, issued for delivery, amended, or renewed in this state to an insured adoptive parent must cover a child legally adopted by or placed for adoption with the insured.

This act (1) requires the policy to cover the adopted child on the same basis as other dependents of the insured adoptive parent and (2) prohibits the policy from containing any preexisting condition, insurability, eligibility, or health underwriting approval provision relating to a legally adopted child.

The act also extends the law's application to individual and group health insurance policies continued in the state.

EFFECTIVE DATE: October 1, 2002

**TYPES OF HEALTH INSURANCE POLICIES
COVERED**

The act applies to policies delivered, issued for delivery, amended, continued, or renewed in the state on or after October 1, 2002 that pay for (1) basic hospital expenses, (2) basic medical-surgical expenses, (3) major medical expenses, (4) accident only expenses, (5) limited benefit expenses, (6) hospital or medical expenses, and (7) hospital and medical expenses covered by HMOs.

Insurance policies may require the insured adoptive parent to notify the insurer about the adoption and pay any additional premium within 31 days after the adoption in order to continue coverage beyond the 31-day period.

PA 02-112—sHB 5457

*Insurance and Real Estate Committee
Banks Committee
Judiciary Committee*

**AN ACT CONCERNING PAYMENT OF
MORTGAGE LOAN PROCEEDS BY WIRE
TRANSFER**

SUMMARY: This act requires any licensed person or business making first mortgage loans in Connecticut and using wire transfers to send loan proceeds to transfer such proceeds to the bank holding the account of the mortgagee's attorney in a timely manner, but no later than the scheduled date and time of closing. In a mortgage refinancing, after termination of the three-day "right of rescission" period, the act requires transfers to be made in a timely manner, but no later than the disbursement date.

The act authorizes the banking commissioner to suspend, revoke, or refuse to renew the license of any person or business that fails to comply with the wire transfer requirements.

EFFECTIVE DATE: October 1, 2002

PA 02-122—sHB 5456

*Insurance and Real Estate Committee
Planning and Development Committee
Environment Committee
Appropriations Committee*

**AN ACT CONCERNING THE DISCLOSURE OF
CERTAIN CONDITIONS IN CONNECTION
WITH THE SALE OF REAL ESTATE**

SUMMARY: This act allows a seller and real estate licensee to fully satisfy any duty to disclose the presence of hazardous waste facilities to a purchaser by providing him with written notice of the availability of the list of hazardous waste facilities kept by municipal clerks. The notice applies to contracts for the sale of one-to-four family residential real estate and must be provided before or at the time the parties enter into a contract for sale. The duty to disclose is satisfied even if (1) the required list has not been submitted; (2) the list has not been received or made available; or (3) there is an error, omission, or inaccuracy in the list.

The act prohibits anyone from interpreting its provisions to impose liability on a seller or real estate licensee for failing to disclose the existence of hazardous waste facilities. It also specifies that sellers and real estate licensees are not required to compile or contribute to the compilation of the list.

Finally, the act eliminates the duty of a real estate owner or his agent to provide a purchaser who asks with information on whether the occupant was or was suspected to be infected with HIV. The owner or agent still has to tell a purchaser who asks whether he (owner or agent) knows if the property was the site of a

homicide, other felony, or suicide.

EFFECTIVE DATE: October 1, 2002

BACKGROUND

Hazardous Waste Facilities List

The environmental protection commissioner must provide each municipal clerk with a list of all hazardous wastes facilities located within the clerk's municipality. The clerk must maintain the list and post a notice about its availability where municipal land records are kept. Current law, unchanged by this act, defines "hazardous waste facility" as land and appurtenances or structures used to dispose, treat, store, or recover hazardous waste.

PA 02-124—sHB 5566

Insurance and Real Estate Committee

Planning and Development Committee

Public Health Committee

AN ACT CONCERNING HEALTH INSURANCE COVERAGE FOR AMBULANCE SERVICES

SUMMARY: This act eliminates the \$500 maximum ambulance service benefit required in certain individual and group health insurance policies and instead makes the cap the maximum allowable rate established by the Department of Public Health. It also expands ambulance coverage for group policyholders.

The act requires individual, as well as group policies that cover ambulance services, to pay ambulance service providers directly, if the service is an emergency and (1) it complies with the act and (2) is not paid from another source. It also adds health care centers, including HMOs and other entities, to the list of providers that are exempt from the direct payment requirement if the centers or other entities have a direct payment contract with the service. Under prior law, only transactions between ambulance service providers and insurers, hospitals or medical service corporations were eligible for the exemption.

The act requires only that group policy coverage for ambulance services be medically necessary. Under prior law, coverage was required (1) in emergencies and (2) when the insured was admitted as an inpatient.

The act applies to individual and group policies that pay (1) basic hospital expenses, (2) basic medical-surgical expenses, (3) major medical expenses, (4) accident--only expenses, (5) hospital or medical expenses, and (6) hospital and medical expenses covered by HMOs. It also applies to individual limited benefit policies.

EFFECTIVE DATE: October 1, 2002

PA 02-2—HB 5146
Judiciary Committee

AN ACT CONCERNING THE MERGER OF THE PROBATE DISTRICTS OF NEW HARTFORD, BARKHAMSTED AND HARTLAND

SUMMARY: This act eliminates the probate districts of Hartland and Barkhamsted. It adds these towns to the probate district of New Hartford, which was limited to New Hartford.

The act requires a probate judge to be elected in November 2002 to serve this district and makes the newly constituted district effective January 8, 2003.
EFFECTIVE DATE: Upon passage, except for the elimination of the Hartland and Barkhamsted probate districts, which takes effect January 8, 2003.

BACKGROUND

Related Act

PA 02-5 eliminates five single-town probate districts and adds these towns into four existing probate districts.

PA 02-5—sSB 522
Judiciary Committee

AN ACT CONCERNING THE MERGER OF THE PROBATE DISTRICTS OF WOODBURY AND WATERTOWN, THE MERGER OF THE PROBATE DISTRICTS OF NEW FAIRFIELD AND SHERMAN, THE MERGER OF THE PROBATE DISTRICTS OF PLAINFIELD, CANTERBURY AND STERLING AND THE MERGER OF THE PROBATE DISTRICTS OF COLCHESTER AND LEBANON

SUMMARY: This act eliminates five single-town probate districts and adds these towns to four existing probate districts. The act eliminates the probate district of (1) Lebanon and adds Lebanon to the probate district of Colchester, which previously was limited to Colchester; (2) Sherman and adds Sherman to the probate district of New Fairfield, which was previously limited to New Fairfield; (3) Canterbury and Sterling and adds Canterbury and Sterling to the probate district of Plainfield which was previously limited to Plainfield; and (4) Watertown and adds Watertown to the probate district of Woodbury, which previously consisted of Woodbury and Bethlehem.

The act requires probate judges to be elected to serve their combined districts in November 2002 and makes the newly constructed districts effective January 8, 2003.

EFFECTIVE DATE: Upon passage, except the provisions eliminating the current districts and merging them with existing ones become effective January 8, 2003.

BACKGROUND

Related Act

PA 02-02 eliminates the probate districts of Hartford and Barkhamsted. It adds these towns to the probate district of New Hartford.

PA 02-18—sHB 5679
Judiciary Committee

AN ACT CONCERNING CREDIT AGAINST UNPAID FINES FOR TIME SPENT IN CONFINEMENT OR PERFORMING COMMUNITY SERVICE

SUMMARY: This act increases the credit someone earns toward payment of a fine, from \$10 to \$50 for each day of confinement, when he is convicted of a crime and held in a Department of Correction (DOC) facility only for payment of the fine. It also increases, from \$10 to \$50, the additional credit that someone can earn for each day of productive or maintenance work, if the person has a satisfactory work record.

The act also allows these individuals to be released by DOC, with the agreement of the Judicial Department's Court Support Services Division (CSSD), to perform community service under CSSD supervision. A person earns a credit towards payment of his fine of \$50 per day for this service. He remains under DOC jurisdiction during this time and is released after completing the period of required service or when the fine is paid in full. The person can be returned to confinement if DOC determines that the person's conduct makes him unsuitable to continue in community service.

The act also increases, from \$10 to \$50, the credit someone earns towards payment of a fine for each day he spends confined in a DOC facility before sentencing because he could not obtain or was denied bail.

In addition, a person can earn a reduction of his fine for good conduct if he obeys the facility rules while confined before sentencing in a DOC facility or police or courthouse lock-up. The act increases this amount from \$100 to \$500 for each 30 days of confinement.

EFFECTIVE DATE: October 1, 2002

PA 02-28—SB 555

Judiciary Committee

AN ACT CONCERNING SERVICE OF PROCESS FOR THE JUDICIAL BRANCH AND THE DIVISION OF CRIMINAL JUSTICE

SUMMARY: This act increases the fee an officer or person receives for serving process for the Judicial Department or Division of Criminal Justice. Under prior law, the person serving process received 20 cents per mile for travel from the point where he received the process to where he served it and, for civil process, the same rate for return travel. Under the act, the fee is (1) up to \$30; (2) an additional \$10 for service on each additional person; and (3) the rate set for travel by state employees, currently 36.5 cents per mile, for travel from where he receives the process to where he serves it and, for civil process, the same rate for return travel. But the act does not change the fee for service of process to enforce an attorney's obligation to pay an annual fee to the Client Security Fund, which remains 20 cents per mile for travel each way.

The act also deletes specific fees of 20 cents for serving a summons or attachment by reading or copy and \$20 for serving a summons in support enforcement cases, making them subject to the act's higher fees.

EFFECTIVE DATE: October 1, 2002

PA 02-29—sSB 412

Judiciary Committee

AN ACT CONCERNING RECORD RETENTION

SUMMARY: This act extends the time period during which official court records of felony cases must be preserved. When a defendant is convicted after a trial, (1) non-capital felony case records must be retained for at least 20 years from the date the case is disposed of or the defendant completes his sentence, whichever is later and (2) capital felony case records must be retained for at least 25 years after the defendant's death. The act specifies that official records include the complete court file, exhibits, and the transcripts of all related proceedings, including jury selection. Under prior law, a judge could order these records, like other criminal records, destroyed after seven years.

EFFECTIVE DATE: October 1, 2002

PA 02-30—sSB 591

Judiciary Committee

AN ACT CONCERNING INNKEEPERS AND GUESTS

SUMMARY: This act establishes a statutory rule for determining when a person is a "transient occupant" in a hotel, motel, or similar lodging as that phrase is used in landlord and tenant law. Under the act, anyone who occupies such an establishment for less than 30 days is deemed transient, unless he uses it as his primary residence from the beginning of the occupancy. Occupancy of 30 days or more is deemed non-transient, unless the establishment is not the occupant's primary residence. Occupancy of 90 or more days is non-transient regardless of whether the occupant has another residence. Non-transient occupants are protected under landlord and tenant laws but transient occupants are not; thus, they are subject to, for example, lockout as opposed to eviction.

EFFECTIVE DATE: October 1, 2002

BACKGROUND

Case Law

The state Supreme Court has held that merely because a person pays rent on a weekly basis does not make him a transient occupant (as opposed to a tenant). Rather, the Court suggested that transience be decided case-by-case, based on several factors, including (1) the period of occupancy; (2) nature of the accommodations (i.e., hotel, rooming house, etc.); and (3) presence or absence of cooking, bathing, or toilet facilities in the room. Ultimately, according to the Court, the issue can be decided only on the basis of reasonable inferences drawn from the circumstances of the transaction between the parties (*Bourque v. Morris*, 190 Conn. 364 (1983)).

PA 02-53—SB 203

Judiciary Committee

Government Administration and Elections Committee

AN ACT CONCERNING NONDISCLOSURE OF INFORMATION OF EMPLOYEES OF THE COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES

SUMMARY: This act adds Commission on Human Rights and Opportunities members and employees to the list of federal, state, and local employees whose home addresses state and local agencies cannot disclose

to the public. Their business addresses remain open to disclosure. The prohibition does not apply to personal information in Department of Motor Vehicle records, which is disclosable to governmental agencies and anyone else who agrees to use it for specified limited purposes.

Other exempt employees are federal and state court judges and magistrates, state and municipal police officers, departments of Correction and Children and Families employees, past or present state prosecutors and public defenders, Criminal Justice Division inspectors, judicial employees, firefighters, and Parole Board members and employees.

EFFECTIVE DATE: October 1, 2002

PA 02-66—SB 556

Judiciary Committee

Environment Committee

AN ACT CONCERNING CERTAIN LAND RECORDS AND ADVERSE POSSESSION OF CLASS I AND CLASS II LAND BELONGING TO INVESTOR-OWNED WATER COMPANIES

SUMMARY: By law, a real estate conveyance must be recorded on the land records of the town where the real estate is located to be effective against anyone other than the grantor and his heirs. (In real estate law, the person conveying title or some other interest in real estate is called a grantor, and the person receiving the title or other interest is called a grantee.) The act specifies that a conveyance that is otherwise effective and properly recorded before, on, or after October 1, 2002, is not invalid or unenforceable merely because the original documents evidencing it are converted into digital or electronic form, lost, or destroyed after the town clerk records it.

The law requires each town clerk, within five days after receiving an instrument for recording, to enter the names of all the grantors in a grantor index and all the grantees in a grantee index, in alphabetical order, and cross-indexed as to the party first identified as grantor or grantee on the instrument; the nature of the instrument; and the date of its receipt as endorsed upon the recorded instrument. Attorneys and others use this index to conduct title searches.

The act specifies that if an instrument is a grant or assignment of a mortgage to a party it designates as the nominee for another, the nominee is deemed to be the grantee of the mortgage or assignment. Thus, the act requires town clerks to record the nominee's name in the grantee index. A "nominee" is someone who is designated to act in someone else's place, usually in a limited way.

The act prohibits adverse possession claims to Class I or Class II land owned by investor-owned water companies. But it specifies that this prohibition does not affect any adverse possession right in or to the land acquired before October 1, 2002.

EFFECTIVE DATE: October 1, 2002

BACKGROUND

Water Company

"Water company" includes every person owning, leasing, maintaining, operating, managing, or controlling any pond, lake, reservoir, stream, well, or distributing plant or system employed to supply water to 50 or more consumers. A water company does not include homeowners; condominium associations providing water only to their members; homeowners associations providing water to customers at least 80% of whom are members of the associations; a municipal waterworks system; a district, metropolitan district, municipal district, or special services district authorized to supply water; or any other waterworks system owned, leased, maintained, operated, managed or controlled by any unit of local government under any general statute or any public or special act (CGS § 16-1).

Class I Land

Class I land includes all land owned by a water company or acquired from a water company through foreclosure or other involuntary transfer of ownership or control that is either (1) within 250 feet of high water of a reservoir or 100 feet of all watercourses as defined in agency regulations; (2) within the areas along watercourses that are covered by any of the critical components of a stream belt; (3) land with slopes 15% or greater without significant interception by wetlands, swales, and natural depressions between the slopes and the watercourses; (4) within 200 feet of groundwater wells; (5) an identified direct recharge area or outcrop of an aquifer now in use or available for future use; or (6) an area with shallow depth to bedrock, 20 inches or less, or poorly drained or very poorly drained soils as defined by the US Soil Conservation Service that are contiguous to land described under (3) or (4) and that extend to the top of the slope above the receiving watercourse (CGS § 25-37c(a)).

Class II Land

Class II land includes all land owned by a water company or acquired from a water company through foreclosure or other involuntary transfer of ownership or control that is either (1) on a public drinking supply

watershed that is not Class I land or (2) completely off a public drinking supply watershed and within 150 feet of a distribution reservoir or a first-order stream tributary to a distribution reservoir (CGS § 25-37c(b)).

Adverse Possession

Adverse possession is a method of acquiring title to real estate, accomplished by an open, visible, and exclusive possession uninterrupted for a period of 15 years (CGS § 52-575; *Whitney v. Turmel* 180 Conn. 147 (1980)).

Related Law

No one may acquire a right-of-way or any other easement from, in, upon, or over land, by adverse use, unless the use has continued uninterrupted for 15 years (CGS § 47-37).

PA 02-68—sSB 561

Judiciary Committee

Government Administration and Elections Committee

AN ACT CONCERNING THE CONNECTICUT UNIFORM ELECTRONIC TRANSACTIONS ACT

SUMMARY: This act establishes as state law a version of the Uniform Electronic Transaction Act (UETA), which the National Conference of Commissioners on Uniform State Laws adopted on July 29, 1999. UETA provides uniform rules governing electronic commerce transactions.

The act, referred to as “CUETA” (Connecticut UETA), establishes a legal foundation for the use of electronic communications in transactions where the parties have agreed to conduct business electronically. It validates the use of electronic records and signatures and places electronic commerce and paper-based commerce on the same legal footing. An “electronic record” is one created, generated, sent, communicated, received, or stored by electronic means. E-mails, faxes, and Internet messaging are examples of electronic records. “Electronic signatures” are electronic sounds, symbols, or processes that people attach to or logically associate with a record to indicate their signature.

The act supersedes and repeals the electronic records and signature law enacted in 1999.

EFFECTIVE DATE: October 1, 2002

PURPOSE OF CUETA (§ 6)

The act requires that its provisions (1) be construed and applied to facilitate electronic transactions consistent with other applicable laws, (2) be consistent with reasonable electronic transaction practices and with continued practice expansions, and (3) be read in uniformity with other states.

SCOPE (§§ 2 - 5)

The act governs transactions in electronic commerce when parties have agreed to transact business electronically. Parties have a right to refuse to transact business electronically.

The act applies to transactions subject to E-SIGN; but it does not limit, notify, or supersede E-SIGN’s consumer disclosure provisions (15 USC 7001(c)) regarding such matters as consent to use electronic records and record retention.

Except where it provides otherwise, the act establishes default rules that apply unless the parties to a transaction make other arrangements.

The act applies to electronic records and signatures created, generated, sent, communicated, received, or stored on and after October 1, 2002. “Transaction” means an action or set of actions involving two or more people relating to business, consumer, commercial, charitable, or governmental affairs.

Transactions covered under the act are subject to other applicable substantive law.

The act does not apply to:

1. wills, codicils, or testamentary trusts if other laws apply;
2. transactions covered by the state’s Uniform Commercial Code (UCC), except the rights of parties after a breach of contract, the statute of frauds, and sales;
3. most land transactions;
4. court practices and procedures in the Connecticut Practice Book;
5. utility termination notices, including water, gas, cable television or other services, electric, heat, oil, and telephone services; or
6. documents required in transporting or handling hazardous materials, pesticides, or other toxic or dangerous materials.

The act applies to the following only if they are subject to E-SIGN:

1. notice that health or health insurance benefits or life insurance are being cancelled or terminated, other than with respect to annuities;
2. recall notices of products that could endanger health or safety;

3. notice of the material failure of products that could endanger health or safety; or
4. notice of eviction, foreclosure, repossession, acceleration, default, or the right to cure, under a rental or credit agreement secured by someone's primary residence.

Determining Scope

The context of the agreement and the surrounding circumstances, including the parties' conduct, are the determining factors when the parties' agreement to conduct a transaction electronically is at issue.

LEGAL RECOGNITION OF ELECTRONIC RECORDS, SIGNATURES, AND CONTRACTS (§§ 7, 5 (D) AND (E), AND 13)

The act:

1. prohibits a record or signature from being denied legal effect or enforceability solely because it is in electronic form,
2. prohibits a contract from being denied legal effect or enforceability solely because an electronic record was used in its formation,
3. specifies that an electronic record satisfies a law that requires a record to be in writing,
4. specifies that an electronic signature satisfies a law that requires a signature, and
5. prohibits electronic records from being denied admissibility into evidence solely because they are electronic.

The act and other applicable law determine whether an electronic record or signature has legal consequences. Unless the act states otherwise, parties to a transaction may vary the effect of its provisions.

PROVIDING ELECTRONIC INFORMATION (§ 8)

The act establishes standards for determining whether information provided in an electronic record is equivalent to information provided in writing. These standards may not be varied by agreement.

A law that requires information to be provided, sent, or delivered in writing to another person is satisfied if it is provided, sent, or delivered in an electronic record that the recipient can retain upon receipt. If the sender or the electronic system he uses to send it inhibits the recipient's ability to print or store an electronic record, it is not considered retained under the act.

If the law specifies the manner in which a record must be posted, displayed, sent, communicated, transmitted, or formatted, the law governs and the information cannot be presented electronically unless

the law permits a waiver.

SECURITY PROCEDURES (§ 9)

An electronic record or signature is attributable to the person who created it. Creation may be proven in any manner, including a showing of the efficacy of a security procedure. "Security procedure" means a procedure employed to verify that an electronic signature, record, or performance is that of a specific person, or to detect changes or errors in the electronic record formation.

The legal effect of the attribution is determined from the context and surrounding circumstances at the time the record or signature was created, executed, or adopted, including the parties' agreement and any other applicable law.

ERRORS AND CHANGES (§ 10)

If a change or error occurs in an electronic record sent between parties to a transaction, the following rules apply.

1. A person may avoid a transaction caused by an inadvertent error if, upon learning of the error, he gives prompt notice of it, does not use or receive a benefit from the transaction, and complies with any instructions for returning or destroying any received consideration.
2. If the parties agreed to use a security procedure to detect changes or errors and only one party conforms, the conforming party may avoid the effect of any error or change if the nonconforming party would have detected it had he conformed.
3. In all other instances, the change or error has the effect provided by law, including the law of mistake and the parties' contract.

The rules on error and change cannot be varied by agreement.

NOTARIZATION AND ACKNOWLEDGEMENT (§ 11)

The act permits a notary and other officers authorized to acknowledge, verify, or take a statement made under oath to act electronically, effectively removing requirements for a stamp or a seal. The notary's or officer's electronic signature, together with all other information required by law, must be attached or logically associated with the electronic record.

RETAINING ELECTRONIC RECORDS (§ 12)

The act validates electronic records as originals when the law requires retention of the original. Specifically, an electronic record that accurately reproduces information required by law and that is accessible at a later time satisfies legal requirements for a record to be retained, unless a law passed after October 1, 2002 prohibits the use of an electronic record. An electronic record of a check is valid only if the information on the front and back of the check is recorded. The act does not preclude a state or local government agency located in Connecticut from imposing additional retention requirements. Any additional requirements are subject to the record retention schedule established by the state librarian or public records administrator.

A third party may be used to retain records.

AUTOMATED TRANSACTIONS (§ 14)

The act allows two or more electronic agents to form a contract even if no individual is aware of or reviews the agents' actions or the resulting terms and agreements. In such contracts, the principal is bound by the contract his agent makes. Contracts can also be formed when individuals perform acts with electronic agents that they know will cause the agent to complete a transaction or performance. For example, the click of a button to purchase an article from a website obligates the person who clicked the button to purchase the product if he knew that his actions would complete the sale. Applicable law determines the contract's terms.

SENDING AND RECEIVING ELECTRONIC RECORDS (§§ 15 AND 19)

The act establishes default rules regarding when and from where an electronic record is sent and received. It does not address what happens when a record is unintelligible or unusable by a recipient. The effectiveness of an illegible record and whether it binds any party are left to other law.

Unless otherwise agreed, an electronic record is sent when it:

1. is properly addressed or otherwise properly directed to an information processing system
 - (a) that the recipient has designated or uses to receive electronic records of the type sent and
 - (b) where the recipient can retrieve the electronic record,
2. is in a form that the system can process, and
3. enters a system outside of the sender's control or enters a region of the system the recipient controls and designates or uses.

With one exception and unless otherwise agreed, an electronic record is received when it:

1. enters a system the recipient has designated or uses to receive electronic records of the type sent, and from which he can retrieve the record and
2. is in a form capable of being processed by that system.

The record is received even if no one is aware of its arrival. An acknowledgement of receipt sent by an information processing system establishes that a record was received but, by itself, does not establish that the contents sent correspond to those received. The act creates a presumption that an electronic record is not sent to or received by a consumer if the sender knows that the consumer did not receive it, or having received it could not open or read it. This presumption may not be varied by agreement. "Consumer" has the same meaning as it does under E-SIGN (i.e., a person who transacts to get personal, family, or household products or services, or his legal representative).

Unless otherwise expressly provided, an electronic record is deemed sent from and received at the parties' places of business. If a party has more than one place of business, the business with the closest relationship to the transaction is considered the place of business. If a party does not have a place of business, his residence substitutes as the place of business. A record is received even if the information-processing center that received it is not located at the recipient's place of business.

TRANSFERABLE RECORDS (§ 16)

The act allows for the creation of a system for transferring negotiable instruments and documents in electronic form in the same way that their paper equivalents are transferred.

The provision is limited to notes and documents that (1) are recognized as negotiable instruments and documents under the state's UCC or other similar law if the notes and documents were in writing and (2) the issuer has expressly agreed are transferable records.

The act considers a person to have control of a transferable record in electronic form ("the holder") if a system reliably establishes his ownership. The holder has the same rights and defenses as a holder of a note or document under the state's UCC or other similar law, including those of a holder in due course where applicable.

A system establishes that a person is the holder if the record was created, stored, and assigned so that:

1. a single, unique, identifiable, authoritative copy exists;
2. the copy identifies the person asserting control

- as the person to whom the record was issued or the most recent transferee;
3. the copy is communicated to and maintained by the person asserting control or his custodian;
 4. the person asserting control must consent to copies or revisions that add or change the name of an identified assignee;
 5. copies of the authoritative copy are readily identifiable; and
 6. revisions to the authoritative copy are readily identifiable as authorized or unauthorized.

The act requires the holder to provide reasonable proof that he is in control of the transferable record if the obligor (person who must honor it) requests it. The proof may include access to the authoritative copy of the record and related business records that show the record's terms and establish the identity of the person asserting control. Unless otherwise agreed, an obligor has the same rights and defenses as an equivalent obligor for equivalent records or writings under the UCC or other similar law.

GOVERNMENT RECORDS (§§ 17 AND 18)

The act does not require a state or local government agency or entity to use or permit the use of electronic records or signatures. But if an agency decides to use or allow them, it must determine whether, and to what extent, it will (1) create and retain electronic records, (2) convert written records to electronic records, (3) send and accept electronic records and signatures, and (4) communicate and use and rely upon electronic records and signatures. But any law passed after October 1, 2002 that prohibits the use of electronic records for evidentiary, audit, or like purposes will prevent a governmental agency from retaining them in electronic form. State agency decisions regarding the retention and destruction of public records are subject to the laws giving the state librarian and the public records administrator retention authority over all public records.

If a state executive branch agency uses electronic records and signatures, the act authorizes the Department of Information Technology (DOIT), after considering security, to adopt regulations specifying:

1. how the electronic records will be created, generated, sent, communicated, received, and stored and the systems established for this purpose;
2. acceptable types of electronic signatures, the manner and format for affixing the signature to the record, how to identify any third party assisting someone to file an electronic record, and any criteria the third party must meet;
3. how the records will be preserved, disposed of,

secured, and audited and how their integrity and confidentiality will be maintained; and

4. any other requirements concerning non-electronic records that apply to electronic records.

Regulations

DOIT's regulations regarding electronic records may encourage and promote consistency and interoperability with similar regulatory requirements adopted by governmental agencies in this and other states, the federal government, and nongovernmental entities and people interacting with Connecticut executive branch agencies.

The regulations may allow state agencies to choose, from differing standard levels, the most appropriate level for a particular application.

DOIT's regulations do not apply to the offices of the state treasurer, comptroller, attorney general, or secretary of the state. These offices may each adopt regulations to carry out the purposes of the regulations adopted by DOIT as they pertain to each office.

SEVERABILITY (§ 20)

The act includes a severability clause, which allows each of its provisions to be given legal effect irrespective of other provisions. If any of its provisions are held invalid or inconsistent with E-SIGN, the invalidity or inconsistency does not alter the effect of its other provisions.

E-SIGN AS IT RELATES TO CUETA (§ 21)

The act states that its provisions on the effectiveness, validity, and enforceability of electronic records and signatures and related contracts conform to the requirements of E-SIGN, which allows states to supersede, modify, or limit its electronic contracting provisions. But it does not limit, nullify, or supersede E-SIGN's consumer disclosure provisions.

BACKGROUND

National Conference of Commissioners on Uniform State Laws

NCCUSL is a nonprofit, unincorporated association, comprised of state commissions on uniform laws from each state, the District of Columbia, the Commonwealth of Puerto Rico, and the U.S. Virgin Islands. Each jurisdiction determines the method of appointment and the number of commissioners appointed. Most jurisdictions provide for their

commissions by statute. NCCUSL promotes the passage of uniform state laws.

*Electronic Records and Signatures Act of 1999
Repealed by the Act*

This 1999 act permitted state agencies to electronically create, use, distribute, and maintain governmental records, other than wills, codicils, and land conveyances. It also permitted them to (1) receive electronic records and (2) allow these records to be signed with an electronic signature. An “electronic signature” means a signature in electronic form attached to or logically associated with an electronic record.

It permitted DOIT’s chief information officer, in consultation with the Office of Policy and Management secretary, to adopt regulations applicable to all executive branch agencies on the creation, use, distribution, and maintenance of electronic records.

The executive branch regulations adopted by the chief information officer did not apply to offices of the state treasurer, comptroller, secretary of the state, and attorney general. These offices could adopt their own regulations. Additionally, all state agencies could adopt regulations regarding electronic records that (1) address the adopting agency’s needs and circumstances, (2) carry out the purpose of the executive branch regulations adopted by the chief information officer, and (3) are consistent with the executive branch regulations.

E-SIGN

Congress passed and the president approved the law on June 30, 2000. It became effective on October 1, 2000. Like CUETA, E-SIGN validates the use of electronic records and signatures. While the two overlap significantly, they are not identical. For example, E-SIGN applies only to interstate transactions, not intrastate transactions.

Where E-SIGN and any state law address the same aspects of interstate and foreign commerce, Section 102 of E-SIGN states that federal law preempts state law. However, E-SIGN has a reverse preemption provision that allows states to modify, limit, or supersede its electronic contracting provisions when a state adopts:

1. UETA or
2. alternative procedures or requirements for the use or acceptance of electronic records or electronic signatures, if the alternative procedures or requirements (a) are consistent with the federal act, (b) do not require or accord greater legal status or effect to a specific technology, or (c) make specific reference to the federal act (Pub. Law 106-229, 114 Stat. 464 (2000), codified at 15 USC §§

7001 to 7006, 7021, and 7031).

PA 02-71—sHB 5651
Judiciary Committee

**AN ACT CONCERNING STATUTORY OATHS
AND THE VALIDATION OF CERTAIN
MARRIAGES**

SUMMARY: This act modernizes the language in oaths people take as:

1. attorneys;
2. civil, criminal, and potential jurors;
3. witnesses;
4. court interpreters;
5. town assessors;
6. plaintiffs, when directing an indifferent person to serve a writ immediately; and
7. required in circumstances not otherwise covered by a specific oath.

The act includes in each of these oaths language requiring people who choose to affirm, rather than solemnly swear the oath, to state that they are doing so solemnly and sincerely. It also requires all who take these oaths to state that they are swearing or affirming upon penalty of perjury. Perjury is a class D felony, (See Table on Penalties). It also authorizes judge trial referees to administer oaths.

The act eliminates an oath for court-empanelled grand jurors and adds one for investigatory grand jury witnesses.

Finally, it validates certain marriages where the formal requirements of law have not been met.

EFFECTIVE DATE: October 1, 2002 for the provisions concerning oaths; on passage for the marriage validations.

MARRIAGE VALIDATIONS

The act validates all marriages performed between April 27, 2001 and the date of the act’s passage (June 3, 2002) that would have been valid except that they were (1) performed by justices of the peace who did not have valid certificates of qualification or (2) not performed in the towns that issued the marriage licenses.

It also validates, regardless of the date of the ceremony, marriages performed by a person who failed to return the marriage license certificate to the registrar of vital statistics as required by law. In that circumstance, the persons joined in marriage must provide the registrar with a notarized affidavit stating that they were married and the date and place of the marriage. When the registrar records the affidavit, the marriage is deemed valid retroactive to the marital date

contained in the affidavit.

Recorded affidavits are given the same evidentiary weight under the act as is accorded by law to marriage license certificates (i.e., there is a legal presumption that the facts they recite are true).

PA 02-89—sHB 5574

Judiciary Committee

AN ACT REPEALING CERTAIN OBSOLETE SECTIONS AND PROVISIONS OF THE GENERAL STATUTES

SUMMARY: This act repeals statutes and portions of statutes relating to:

1. the environment,
2. transportation,
3. government operations,
4. building safety,
5. hotels and inns, and
6. consumer protection.

It also repeals statutes applicable to activities that must occur by a certain date that has passed.

EFFECTIVE DATE: October 1, 2002

ENVIRONMENTAL LAWS

The act repeals a law prohibiting gambling, strip shows, prostitution, and similar activities at or near agricultural fairs, including fines and other criminal penalties for violations.

Solid Waste Management

It also repeals a law directing the Connecticut Resources Recovery Authority (CRRA) and the Department of Mental Health and Addiction Services (DMHAS) to study the feasibility of building resource recovery systems at certain state mental health hospitals and requiring DMHAS to buy steam and electricity from the facilities if CRRA builds them.

Fish and Shellfish

The act repeals requirements (and fines for violations) that anyone removing mud or refuse material by boat from any harbor with, or north of, oyster beds (1) give the agriculture commissioner written notice, including when it will begin the job and which boats it will use and (2) dump this material only within areas the commissioner designates. It also repeals another provision requiring people dumping material on private oyster beds to give the environmental protection commissioner reasonable notice, under penalty of fines,

and requiring the commissioner to notify adjoining owners that they can object.

It eliminates:

1. a fine of up to \$50 for anyone gathering seed oysters or oysters less than three years old from channels of the Mianus River or Greenwich Cove;
2. a law limiting oystering activities in the Branford and Farm rivers by imposing a \$14 fine on anyone who (a) takes oyster shells or seed oysters for planting in a private bed, (b) gathers more than two bushels of oysters in a day, or (c) uses implements of any kind to gather oysters or shells between April 1 and October 1; and
3. a fine of up to \$25 on anyone taking more than a half-bushel of oysters during a tide from Branford's clam flats and the area between the East Haven River and the Guilford town line.

Ice Sales

The act also eliminates requirements that (1) anyone importing ice into the state for domestic use notify the Department of Public Health (DPH) and (2) DPH examine samples and determine if they are fit for consumption.

The act repeals another law imposing fines and jail penalties for selling ice cut from specified polluted locations to homes, hotels, and restaurants.

TRANSPORTATION

The act eliminates the general penalty of a fine of up to \$500 for violating several state laws relating to railroads and railways for which no other penalty is prescribed. It also eliminates other laws:

1. authorizing railroads to make contracts with any other connecting or intersecting railroads with respect to their business or property and to make leases with respect to it or another railroad's property or franchises;
2. allowing a railroad to petition the transportation commissioner to order a change in the location of a highway at the railroad's expense when the road's location endangers public travel;
3. requiring every railroad company to maintain warning boards the transportation commissioner approves at each railroad-highway grade crossing where there are no gates; and
4. preventing any railroad from being required to open a drawbridge on its line, or keep it open, except on signal from, and during the passage

of, vessels through the bridge.

GOVERNMENT OPERATIONS

Year 2000

The act eliminates the state's chief information officer's responsibilities related to the year 2000 date change.

Fines Imposed on Town Clerks

The act eliminates the maximum \$50 fine that may be imposed on town clerks who neglect their duties. The law still requires state's attorneys to investigate complaints alleging, among other things, that a clerk was guilty of willful and material neglect or incompetence in performing his duties.

Fines Imposed on Elected Officials

The act also eliminates the maximum fines that may be imposed on certain local elected officials for refusing to perform duties. Specifically, it eliminates the:

1. maximum \$30 fine on elected tax assessors who refuse to be sworn or perform their duties;
2. maximum \$10 fine on any other elected official (except a town clerk) who neglects to perform his duties or declares his intention not to perform them; and
3. \$5 fine on anyone elected to any office who refuses to accept the office and take the required oath.

BUILDING SAFETY

The act eliminates a law prescribing the number and placement of stairways and fire escapes in certain public buildings and apartment houses. It also eliminates civil liability, fines, and jail penalties for owners whose buildings do not either comply with that law or conform with building and fire codes.

The act also repeals a law requiring factory owners to remove stained, painted, or corrugated glass windows that are injurious to employees' eyes, if ordered to do so by the labor commissioner, and a fine of up to \$50 for violations.

HOTELS AND INNS

The act eliminates a requirement (and \$10 fine for noncompliance) that hotels and inns post their rates conspicuously in each sleeping room.

CONSUMER PROTECTION

Adulteration of Turpentine

The act eliminates criminal penalties of up to \$500 and 30 days in prison for selling anything as "turpentine" unless it is wholly distilled from rosin, turpentine gum, or scrapings from pine trees, and prohibits selling turpentine that has been adulterated with oil, benzene, or anything else unless it is so labeled.

BACKGROUND

Related Act

Like this act, SA 02-12 repeals statutes relating to environmental protection, transportation, government operations, and building safety.

PA 02-93—sHB 5514

Judiciary Committee

Banks Committee

AN ACT CONCERNING BANK ACCOUNT EXECUTIONS AND THE OPENING OF JUDGMENTS OF STRICT FORECLOSURE

SUMMARY: By law, a creditor may obtain a court-ordered judgment against someone who owes him money (debtor) in certain circumstances. The creditor can execute or serve this order on any banking institution (banks, savings and loans, and credit unions; hereafter "bank") where the debtor has an account. This act increases, from \$800 to \$1,000, the amount the bank must leave in the account if the debtor recently received by electronic direct deposit "readily identifiable" exempt federal veterans' or Social Security benefits. It also makes child support payments the state collects and electronically deposits into a parent's bank account subject to the same protection.

The act also automatically opens strict foreclosure judgments when a mortgagor/debtor files a bankruptcy petition under Chapter 13 of the federal Bankruptcy Code, so long as full ownership of the property has not already passed to someone else. The act states that the only portion of the foreclosure judgment that can be set aside is the setting of "law days," which is the period within which a debtor must repay the debt or lose all rights to the property.

The opening of the judgment appears to trigger the federal bankruptcy law's automatic stay provision, thus permitting the bankruptcy court to give the debtor/mortgagor more time to work out a repayment or

reorganization plan.

EFFECTIVE DATE: January 1, 2003, except the bankruptcy filing provisions are effective upon passage.

BACKGROUND

Related Bankruptcy Case

In *Canney v. Merchants Bank*, the U.S. Court of Appeals for the Second Circuit ruled that debtor/mortgagors cannot use the federal Bankruptcy Code's automatic stay provisions to stop the running of "law days" set by a strict foreclosure judgment (284 F.3d 362 (2d Cir. 2002)). Overruling prior Bankruptcy Court holdings, *Canney* allowed the bank that had obtained a foreclosure judgment to take full title to the property when neither the bankruptcy trustee nor the debtor/mortgagor redeemed the mortgage within the later of (1) the passing of the law days set in the foreclosure judgment or (2) 60 days of the bankruptcy filing.

PA 02-97—sHB 5759

Judiciary Committee

General Law Committee

AN ACT CONCERNING ACTS OF TERRORISM

SUMMARY: This act:

1. creates the crimes of (a) terrorism; (b) fabricating weapons involving chemicals, disease organisms, or radiation; (c) damage to public transportation property for terrorist purposes; (d) contaminating a public water or food supply for terrorist purposes; and (e) criminal misrepresentation;
2. increases the penalty when someone hinders prosecution of a person who committed, for terrorist purposes, a class A or B felony or an unclassified felony with a possible prison term of more than 10 years;
3. increases the penalty for most computer crimes when they are committed to further terrorist purposes;
4. adds felonies involving the unlawful or threatened use of physical force or violence with intent to intimidate or coerce the civilian population or a government unit to the list of crimes that can be the subject of a grand jury investigation or a wiretap order;
5. makes increasing prices during an emergency an unfair trade practice;
6. provides that wiretap evidence obtained validly under federal law is admissible in state court

regardless of state law on obtaining wiretap evidence; and

7. reduces the penalty for certain types of threats.

EFFECTIVE DATE: October 1, 2002

ACT OF TERRORISM

Under the act, an act of terrorism is a felony involving the use or threatened use of physical force or violence with intent to intimidate or coerce the civilian population or a government unit. A person who commits this crime is subject to the penalties for the next highest degree of felony if the court finds that the person's history and character and the nature and circumstances of his criminal conduct indicate that the increased penalty will best serve the public interest.

FABRICATING WEAPONS INVOLVING CHEMICALS, DISEASE ORGANISMS, OR RADIATION

The act makes it a class B felony (see Table on Penalties) to illegally fabricate a weapon (1) designed or intended to cause death or serious physical injury by the release, dissemination, or impact of toxic or poisonous chemicals or their precursors; (2) involving a disease organism; or (3) designed to release radiation or radioactivity at a level dangerous to human life. It does not apply to the lawful manufacture of these weapons.

DAMAGE TO PUBLIC TRANSPORTATION PROPERTY

The act creates the crime of damage to public transportation property for terrorist purposes. A person commits this crime when he:

1. intends to damage bus, railroad, or other public transportation property or interrupt or impair transportation services to the public;
2. damages such property or tampers with it and causes the property to be in danger of damage; and
3. intends to intimidate or coerce the civilian population or a government unit.

The act makes this a class C felony (see Table on Penalties). By law, someone who damages railroad property is subject to penalties ranging from a class B misdemeanor to a class D felony, depending on the circumstances or the amount of damage caused.

CONTAMINATING A PUBLIC WATER OR FOOD SUPPLY

The act creates the crime of contaminating a public water or food supply for terrorist purposes. A person

commits this crime when he:

1. intends to intimidate or coerce the civilian population or a government unit and
2. introduces a hazardous substance into a (a) storage or distribution reservoir, lake, pond, or stream tributary that is used for supplying town, city, or borough inhabitants with water or (b) food source or supply intended for human consumption.

The act defines a hazardous substance as a physical, chemical, biological, or radiological substance or matter that by its quantity, concentration, or physical, chemical, or infectious characteristics may (1) cause or significantly contribute to an increase in mortality or an increase in serious irreversible or incapacitating reversible illness or (2) pose a substantial present or potential hazard to human health.

This is a class C felony (see Table on Penalties) It carries a five-year mandatory minimum sentence. By law, someone who causes or allows a pollutant or harmful substance to enter a reservoir, tributary, lake, pond, or stream is subject to up to 30 days in prison, a fine of up to \$100, or both.

CRIMINAL MISREPRESENTATION

The act creates the crime of criminal misrepresentation. A person commits this crime when, with respect to a criminal matter under investigation by a state or local agency or official, he:

1. knowingly and willfully (a) falsifies, conceals, or covers up a material fact by trick, scheme, or device; (b) makes a materially false, fictitious, or fraudulent statement or representation; or (c) makes or uses a false writing or document knowing it has a materially false, fictitious, or fraudulent statement or entry;
2. intends to intimidate or coerce the civilian population or a government unit; and
3. materially impairs the investigation.

This is a class C felony.

HINDERING PROSECUTION

By law, it a class D felony to render criminal assistance to a person who committed a class A or B felony or an unclassified felony with a possible prison term of more than 10 years.

The act increases the penalty to a class C felony if the person assisted committed the felony with intent to intimidate or coerce the civilian population or a government unit. The act also imposes a five-year mandatory minimum sentence.

COMPUTER CRIME

The act establishes the offense of computer crime in furtherance of terrorist purposes, which raises the penalty for computer crimes in most instances when they are done with intent to intimidate or coerce the civilian population or a government unit. Computer crimes cover:

1. unauthorized access to a computer system;
2. theft of computer services;
3. interruption of computer services;
4. misuse of computer system information;
5. destruction of computer equipment;
6. unauthorized use of a computer or computer network for certain purposes; and
7. unlawful sale, distribution, or possession of software designed to falsify electronic mail transmission information.

The act makes this a class B felony (see Table on Penalties). It also imposes a five-year mandatory minimum sentence if the crime was directed at a public agency charged with protecting public safety.

Computer crimes carry penalties ranging from a class B misdemeanor to a class B felony, depending on the conduct and the amount of property damage caused.

INVESTIGATORY GRAND JURY

The act adds felonies involving the unlawful use or threatened use of physical force or violence committed with intent to intimidate or coerce the civilian population or a government unit to the list of crimes that can be the subject of a grand jury investigation.

By law, an investigatory grand jury can be empanelled to investigate (1) government corruption, (2) Medicaid vendor fraud, (3) racketeering, (4) election law violations, and (5) felonies punishable by more than five years' imprisonment for which the chief state's attorney or state's attorney shows there is no other means of obtaining information about whether a crime has been committed, or the perpetrator's identity.

WIRETAPPING

The act adds felonies involving the unlawful or threatened use of physical force or violence committed with intent to intimidate or coerce the civilian population or a government unit to the list of crimes for which wiretaps are authorized.

By law, wiretaps are authorized for the crimes of gambling, bribery, racketeering, manufacturing and selling narcotics or hallucinogens, and felonies involving violence.

RETAIL PRICES DURING EMERGENCIES

It is illegal for a person, firm, or corporation to increase the price of an item that the person or entity sells or offers at retail in an area under a (1) disaster emergency declared by the governor under the civil preparedness laws, (2) transportation emergency declared by the governor, or (3) major disaster or emergency declared by the U.S. President. A violator is subject to a fine of up to \$99.

The act makes a violation an unfair or deceptive trade practice. By law, this does not prohibit price fluctuations that occur during the normal course of business.

THREATENING

The act reduces the penalty, from a class D felony to a class A misdemeanor, for threatening to commit a violent crime with intent to, or with reckless disregard of the risk of, terrorizing someone.

The act eliminates a provision making it a class D felony to threaten to commit a violent crime with the intent of causing evacuation of a building, place of assembly, or public transportation facility or causing serious public inconvenience. But this conduct appears to be covered by the class A misdemeanor crime (see Table on Penalties).

BACKGROUND

Connecticut Unfair Trade Practices Act (CUTPA)

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the consumer protection commissioner to issue regulations defining what constitutes an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$5,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. The act also allows individuals to bring suit. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorneys' fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

Related Act

PA 01-2, November Special Session, increased penalties for false reports, prohibited placing imitation hazardous substances, increased the penalty for placing imitation bombs, and increased penalties for certain types of threats.

PA 02-105—HB 5763

Judiciary Committee
Transportation Committee
Appropriations Committee
Public Health Committee
Human Services Committee
Legislative Management Committee

AN ACT AUTHORIZING THE DESIGNATION OF A PERSON TO ASSUME OWNERSHIP OF A MOTOR VEHICLE UPON THE DEATH OF THE OWNER AND AUTHORIZING THE DESIGNATION OF A PERSON FOR CERTAIN OTHER PURPOSES

SUMMARY: This act requires people to honor documents executed by one adult designating another adult to make certain decisions on the maker's behalf or giving the designee limited rights or responsibilities. The designations must be recognized:

1. in psychiatric hospitals, when informed consent for medical treatment is required from someone other than the patient;
2. in nursing homes, when private visitation and room transfer decisions are made;
3. in health care settings, when medical personnel (a) need information about a patient's wishes from people other than the patient or (b) plan to withdraw life support ;
4. in the workplace, when an employee receives an emergency telephone call;
5. in court and administrative proceedings involving crime victims; and
6. upon the death of the maker, regarding ownership of the maker's motor vehicle.

The act allows a natural person who is the only owner of a motor vehicle to designate in writing on the registration certificate a beneficiary who will assume ownership on his death.

Finally, the act requires the Judiciary Committee to deliberate on the public policy reasons for permitting or prohibiting the marriage or civil union of two people of the same sex and report its findings and recommendations to the General Assembly by January 1, 2003.

EFFECTIVE DATE: October 1, 2002, except the provision requiring the Judiciary Committee to deliberate and report to the legislature is effective upon passage and the provisions concerning motor vehicle transfers are effective January 1, 2003.

DOCUMENT REQUIREMENTS

Both the maker of the document and the person it designates for one of the approved purposes must be at

least 18 years old. The maker must sign, date, and acknowledge the document in the presence of two witnesses and a notary public or other person authorized to take acknowledgments, such as an attorney or judge.

Any person presented with a document meeting these requirements must honor it for the purposes the document specifies. The act appears to authorize the use of such documents to designate a person to assume ownership of the maker's vehicle as an alternative to a new procedure (described below) for designating a beneficiary on the vehicle registration.

REVOCAATION

The maker or anyone he requests can revoke a document at any time by burning, canceling, tearing, or obliterating it or by executing a new document.

INFORMED CONSENT

The act adds the person designated under its procedures to the people who may consent to critically needed medical or surgical procedures on behalf of involuntarily committed psychiatric patients who are unable to consent themselves. Hospital personnel may perform such procedures under this circumstance if they get the informed, written consent of the designee or, as under existing law, the patient's conservator or guardian, next of kin, or a doctor appointed by the probate court.

NURSING HOME PATIENT'S BILL OF RIGHTS

The act gives nursing home (including residential care homes, chronic disease hospitals, and rest homes with nursing supervision) residents the right to have designees (1) receive between 30 and 60 days' advance notice of involuntary, non-emergency room transfers, including moving Medicaid patients from private to non-private rooms; (2) included in consultations prior to transfer (prior law required notice to, and consultation with, certain relatives, conservators and guardians, or other representatives); (3) visit them in private (prior law applied to spouses only); and (4) meet with other patients' families at the facility (prior law was limited to family members).

By law, nursing homes must give patients written notice of their rights, which under the act would include the above. Patients who are injured by a facility's violation of the Nursing Home Patient's Bill of Rights can sue for money damages. They are entitled to punitive damages for a facility's willful or reckless actions.

LIFE SUPPORT AND ANATOMICAL GIFT DECISIONS

By law, a physician treating an incapacitated person in a terminal or permanently unconscious condition must consider the patient's wishes concerning the withholding or withdrawal of life support. When the doctor does not have a patient's living will in his possession, he must determine those wishes by asking the patient's health care agent, next of kin, legal guardian or conservator, or anyone else he knows has talked with the patient about his wishes, where this is possible. He must also make reasonable efforts to give advance notice to a person's health care agent, legal guardian, or conservator before withdrawing life support.

The act adds a patient's designee to the list of people the doctor must consult about a patient's wishes and notify before removing life support. It also requires health care providers to include in a patient's medical record reported communications the patient made to his designee, in addition to the people listed above, about any aspect of his health care preferences, including the withholding or withdrawal of life support.

Finally, the act gives a deceased person's designee priority in making anatomical gift decisions over his guardian, health care agent, conservator, and all family members except the surviving spouse. As under existing law, no one can override an earlier unrevoked decision the deceased made not to make the gift.

EMERGENCY CALLS AT WORK

By law, an employer commits an infraction when it fails to make reasonable efforts to notify an employee of an incoming emergency telephone call about a situation in which a family member has died or experienced a serious physical injury or is ill and in need of medical attention. The act subjects the employer to the infraction when the emergency call concerns an employee's designee.

CRIME VICTIMS

The act includes several provisions concerning crime victims. It provides employment protection for a person designated by the crime victim, rather than specified family members only, when they miss work to attend court proceedings about the criminal case.

It also includes a homicide victim's designee in the definition of "victim," entitling that person to make a court statement prior to the sentencing of the perpetrator and to get advance notice of the terms of plea agreements, if he requests this. It also allows designees to express their views at parole hearings.

Finally, it permits designees who were financially dependent on the crime victim at the time of his death to seek monetary awards from the Office of Victim Services.

TRANSFER UPON DEATH OPTION FOR MOTOR VEHICLES

Under the act, when a vehicle's registration names a beneficiary to assume ownership upon death, the owner has all ownership rights during his life and the beneficiary has none until the owner dies and the beneficiary applies to the motor vehicles commissioner. A beneficiary must apply for title and a registration certificate within 60 days of the owner's death by submitting (1) the original registration naming the beneficiary, (2) the owner's death certificate, (3) proof of the beneficiary's identity as required by the commissioner, and (4) a \$12 transfer fee and any applicable registration, title, and license plate fees. If the beneficiary fails to apply within the 60-day period, he has no rights to ownership and title.

Under the act, the beneficiary's right to obtain ownership and title is subordinate to the rights of any lienholder with a recorded security interest.

The commissioner can adopt regulations to implement these provisions.

PA 02-106—sHB 5722

Judiciary Committee

Education Committee

AN ACT CONCERNING SEXUAL ASSAULT BY A COACH OR INSTRUCTOR, MANDATED REPORTING OF CHILD ABUSE OR NEGLECT AND ISSUANCE AND REVOCATION OF EDUCATOR CERTIFICATES

SUMMARY: This act creates separate forms of sexual assault crimes based on the relationship between the actor and the victim. It makes it a crime for a person who provides intensive, ongoing instruction or a coach of an athletic activity to engage in sexual intercourse or have sexual contact with (1) a secondary school student receiving coaching or instruction in a secondary school setting or (2) anyone under age 18 receiving such coaching or instruction.

The act makes sexual intercourse with a person under these circumstances 2nd degree sexual assault, punishable by one to 10 years in prison (with a nine-month mandatory minimum), a fine of up to \$10,000, or both. It makes sexual contact with a person under these circumstances 4th degree sexual assault, punishable by up to one year in prison, a fine of up to \$2,000, or both.

The act makes coaches of intramural or interscholastic athletics mandated child abuse reporters. Currently, mandated reporters include school teachers, principals, guidance counselors, and school paraprofessionals. A mandated reporter must report to the Department of Children and Families when, acting in his professional capacity, he has reasonable cause to suspect that a child under age 18 has been abused, neglected, or is at risk of abuse or neglect. The act raises the penalty for any mandated reporter who fails to report from a maximum of \$500 to between \$500 and \$2,500.

If a person holding a State Board of Education certificate, authorization, or permit is convicted of a felony or fined for being a mandated reporter who fails to report, the act requires the state's attorney or assistant state's attorney in the judicial district where the conviction or fine occurred to notify the education commissioner in writing.

The act also allows a school superintendent to designate someone to (1) attest that a person successfully completed a beginning educator program and one year of teaching, for purposes of an application for a provisional educator certificate, and (2) sign a recommendation as evidence of competency, for purposes of an application for a professional educator certificate. Previously, only a superintendent could do this.

If a person bases his eligibility for a provisional certificate on completing three years of successful teaching in a public or private school within the previous 10 years, the act requires that it be attested by the (1) superintendent or his designee in the school district where the person was employed or (2) supervising agent of the nonpublic school where the person was employed.

The act also makes technical changes.

EFFECTIVE DATE: October 1, 2002, except for the provisions on notice to the education commissioner and provisional and professional educator certificates, which are effective July 1, 2002.

BACKGROUND

Mandated Reporters

The following people are mandated reporters:

1. licensed physicians and surgeons and licensed and unlicensed medical residents;
2. registered nurses and licensed practical nurses;
3. medical examiners;
4. dentists and dental hygienists;
5. psychologists, social workers, and licensed marital and family therapists;
6. school teachers, principals, guidance

- counselors, and paraprofessionals;
7. police officers;
 8. clergy;
 9. pharmacists;
 10. physical therapists;
 11. optometrists, chiropractors, and podiatrists;
 12. mental health professionals and physician assistants;
 13. licensed substance abuse counselors;
 14. sexual assault and battered women's counselors;
 15. child care providers in licensed facilities; and
 16. the child advocate and Office of Child Advocate employees.

Related Act

Among other provisions, PA 02-138 (1) increases the classification and maximum penalty for sex crimes involving minors under age 16; (2) makes changes to the mandated reporter statutes, including adding to the list of such reporters and requiring those who fail to report to attend a training program; and (3) makes a teacher's personal misconduct records public and subject to disclosure under the Freedom of Information Act without the teacher's consent.

PA 02-120—sHB 5692

Judiciary Committee
Public Safety Committee

AN ACT CONCERNING THE SEIZURE OF FIREARMS IN FAMILY VIOLENCE CASES, THE TRANSFER OF FIREARMS BY PERSONS INELIGIBLE TO POSSESS SUCH FIREARMS AND THE POSSESSION OF CERTAIN ASSAULT WEAPONS

SUMMARY: By law, illegal possession of an assault weapon is a class D felony (see Table on Penalties). This act exempts possession of certain types of assault weapons if they were purchased or acquired between October 1, 1993 and May 8, 2002 and the purchase and buyer meet certain conditions. (It does not affect other restrictions on the weapons, such as those governing sales and transportation.) The act establishes an affirmative defense for possessing any of the listed weapons.

The act requires people to surrender any firearm, instead of just handguns, within two business days after the occurrence of any event that makes them ineligible to possess the firearm.

The act (1) allows a peace officer to seize a firearm in plain view at the scene of a family violence crime

even if no arrest is made; (2) expands the circumstances under which the firearm may be seized to include crimes involving dating relationships; (3) allows for the seizure from someone suspected of committing a crime but not arrested; and (4) increases, from up to 48 hours to up to seven days, the time a peace officer has to return a firearm seized at a domestic violence crime scene to its rightful owner.

PA 01-130 required the Department of Public Safety (DPS) commissioner, chief state's attorney, and Connecticut Police Chiefs Association to work together to update the protocol they developed to ensure that people who become ineligible to possess handguns either transfer them to someone eligible or surrender them to the commissioner. This act requires them to include in the protocol specific transfer instructions when several law enforcement agencies must be involved to complete the transfer or surrender.

EFFECTIVE DATE: October 1, 2002

WEAPONS EXEMPT FROM THE ASSAULT WEAPONS POSSESSION BAN

With certain exceptions, it is a class D felony to possess assault weapons. This act exempts possession (but not other transactions) of Auto-Ordnance Thompson type; Avtomat Kalashnikov AK-47 type; and MAC-10, MAC-11, and MAC-11 Carbine type assault weapons by anyone who:

1. purchased legally and in good faith, or otherwise obtained title to, any of these weapons between October 1, 1993 and May 8, 2002;
2. is not otherwise disqualified or prohibited from possessing them;
3. has notified DPS that he possesses the weapon by sending the department a copy of the proof of purchase for the weapon; and
4. provides DPS with either (a) a copy of state form DPS-3 for the weapon, (b) a copy of federal Bureau of Alcohol, Tobacco, and Firearms form 4473 for the weapon, or (c) a sworn affidavit that the weapon was purchased or acquired in compliance with any pertinent state and federal laws. If the person does not have a copy of the proof of purchase, he may, by January 1, 2003, provide such information as DPS may require on a DPS form together with a sworn affidavit that specifies that he purchased or acquired the weapon in compliance with pertinent laws.

Once a person complies with the notice requirement and DPS has received the notice, DPS must issue a certificate of possession for the weapon. The certificate must describe the weapon's unique characteristics,

including all identification marks, and the gun owner's full name, address, and date of birth.

Military or naval personnel stationed out-of-state on official duty may file the notice with DPS within 90 days after returning to the state.

PROSECUTION FOR ILLEGAL ASSAULT WEAPON POSSESSION

In any prosecution for illegal assault weapon possession, based on the possession of the types of weapons in this act, it is an affirmative defense that the defendant:

1. in good faith purchased or otherwise obtained title to the weapon between October 1, 1993 and May 8, 2002 in compliance with pertinent state and federal laws;
2. has possessed the weapon in compliance with the existing law's conditions for possessing assault weapons; and
3. is not otherwise disqualified or prohibited from possessing such weapon.

If the defendant proves such affirmative defense by a preponderance of the evidence, DPS must return the weapon to him once he notifies the department before October 1, 2003 and gets a certification of possession.

FIREARM SURRENDER

The act requires that within two business days after any event that makes a person ineligible to possess firearms, other than handguns, he must (1) surrender any firearms he possesses to DPS, which must exercise due care in holding them, or (2) transfer them to someone eligible to possess them, in accordance with pertinent laws, by obtaining an authorization number for their sale or transfer and submitting a sale or transfer of firearms form to DPS. Failure to transfer or surrender the firearms is a class D felony (see Table on Penalties). A similar law already applies to handguns.

The owner has up to one year to transfer the firearms in DPS' possession to an eligible person. If he does not do so by the end of the year, DPS must destroy them.

PA 02-128—sHB 5088

Judiciary Committee

AN ACT CONCERNING EDUCATIONAL SUPPORT ORDERS

SUMMARY: This act permits judges and family support magistrates to order parents to support their children for up to four full academic years when

enrolled in accredited college or vocational programs after high school and until they reach age 23. Courts can do this only if they find it more likely than not that the parents would have provided this support if the family remained intact. The act specifies other circumstances courts must consider and conditions the parents and students must satisfy.

The act states that it does not give children the right to sue their parents for educational support and that its coverage does not include support for graduate or post-graduate studies. It applies to cases where the first child support order is entered on or after October 1, 2002.

EFFECTIVE DATE: October 1, 2002

EDUCATIONAL SUPPORT ORDERS

Under the act, a court can enter an educational support order at a parent's request when it enters a (1) divorce, legal separation, or annulment decree; (2) pendente lite order (temporary support while a divorce case is pending); or (3) support order in a paternity matter or other situation where the parents live apart. It can order educational support at any time before the child's 23rd birthday in cases where the parents never married or are living apart.

When the court enters a divorce, separation, or annulment decree involving parents who have offspring under age 23 that does not include educational support, it must tell the parents that they will not be able to seek this type of support at a later date. A court may accept parents' waiver of future educational support rights only if it finds that they understand its consequences.

Contents of Orders

Orders may include support for any necessary educational expense, including room, board, dues, tuition, fees, registration, and application costs. But such expenses cannot exceed the amount UConn charges full-time, in-state students at the time the child covered by the order enrolls, unless the parents agree to pay more. Orders can also include the costs of books and the child's medical insurance.

The court can order that payments be made (1) to a parent to be forwarded to the college or school, (2) directly to the educational institution, or (3) otherwise as the court determines appropriate.

COURT CONSIDERATIONS

After finding that the parents would have provided educational support had the family remained intact, the act requires courts to consider all relevant circumstances. These include:

1. the parents' income, assets, and other obligations, including obligations to other dependents;
2. the child's need for support to attend school, taking into account his own assets and earning capacity;
3. the availability of financial aid from other sources, including grants and loans;
4. the reasonableness of the higher education to be funded, considering the child's academic record and the financial resources available;
5. the child's preparation and aptitude for, and commitment to, higher education; and
6. any evidence about the school the child would attend.

PARENTAL INVOLVEMENT IN SCHOOL SELECTION

The act requires, at the appropriate time, that both parents discuss and agree on the school the child will attend. If they do not agree, the matter must be resolved by court order.

STUDENT'S OBLIGATIONS

To qualify for educational support payments, the student must:

1. enroll at least half-time in an accredited institution of higher education or private occupational school and pursue a course of study commensurate with his vocational goals,
2. maintain good academic standing, and
3. make all academic records available to both parents.

Orders must be suspended after any academic period during which the child fails to comply with these conditions.

MODIFYING ORDERS

The act makes existing criteria and procedures for modifying support orders applicable to educational support orders, including the requirement that the party seeking the modification show a substantial change in circumstances.

PA 02-131—sHB 5653
Judiciary Committee

AN ACT ADDING ARTICLE 2A ON LEASES TO THE UNIFORM COMMERCIAL CODE

SUMMARY: This act codifies the law on leasing

goods and clarifies ambiguities in the Uniform Commercial Code (UCC) Article 2 rules on sales and common law contracts and remedies.

The act distinguishes between true leases, finance leases, and consumer leases. In a true lease the lessor gives possession and the right to use the goods to a lessee for a period of time in return for rent. Title to the goods and a residual interest remain with the lessor.

Finance leases are made by lessors who are not the fundamental supplier of the leased goods. They lease goods to lessees as a means of financing their acquisition. Consumer leases are those between a merchant and a consumer, in which the lessee takes the lease primarily for a personal, family, or household purpose. The act provides certain protections for consumers, such as provisions on unconscionable leases, choice of law, and options to accelerate.

The act establishes criteria for creating and interpreting lease contracts. It specifies how the contract must be performed and how it can be modified, rescinded, or waived. It establishes criteria for identifying the goods subject to the contract. It specifies who can insure the goods and who bears the risk of loss. It imposes express and implied warranties.

The act defines conditions for performance and repudiation of a lease contract, as well as the responsibility of parties when performance is impaired. It creates a structure of remedies in the event the lessor or lessee defaults.

The act creates rules governing lessor and lessee relationships with third parties. In particular, it specifies when lessors and lessees can assign their rights and the effect of this assignment. It identifies the effect of subsequent leases or sales of the goods on the rights of the lessor, lessee, and subsequent lessee or buyer. It establishes lien priorities and the priority of interests when the leased goods are fixtures or accessions (goods that are installed or affixed to other goods). The act does not prevent a party agreement to subordinate his priority.

The act delineates the distinctions between leases and security interests and establishes when leases are subject to the UCC's secured transactions requirements (Article 9).

The act allows parties to agree on provisions different from those in the act unless it prohibits them.

The act also makes conforming changes.

EFFECTIVE DATE: October 1, 2002

SCOPE OF THE ACT

Under the act, transactions subject to its provisions are also subject to certificate of title statutes of this state and other jurisdictions, laws that set different rules for consumer leases, and certain other Connecticut laws.

Transactions are subject to Connecticut certificate of title statutes on motor vehicles, trailers, mobile homes, boats, farm tractors, and similar vehicles and certain provisions relating to public utilities and public service companies. But these statutes do not apply to the rights of a lessee in the ordinary course of business that arose before the certificate of title became effective in another purchaser.

The other Connecticut laws that apply include those covering (1) sale or lease of agricultural products; (2) consignment or transfer of works of art or fine prints by artists; (3) distribution agreements, franchises, and other relationships through which goods are leased; (4) liability for products that cause personal or property injury; (5) making and disclaimer of warranties; (6) dealers in particular products such as automobiles, motorized wheelchairs, agricultural equipment, and hearing aids; and (7) noncommercial motor vehicle leases.

GENERAL PROVISIONS

Authenticated Records

The act requires the use of an authenticated record in many circumstances. A “record” is information in a tangible medium or an electronic or other medium that can be retrieved in a perceivable form. To “authenticate” is to (1) sign or (2) execute or adopt a symbol, encrypt, or process a record in whole or part with the intent of the person to identify himself and adopt or accept a record.

Under the act, a record or authentication (1) cannot be denied effect or enforceability because it is in electronic form and (2) need not be generated, stored, sent, received, or otherwise processed by electronic means or in electronic form. A person can set reasonable requirements for the type of authentication or record that is acceptable.

Electronic Agents

The act allows a person to use an electronic agent for authentication, agreement, or performance. An electronic agent is a computer program or electronic or other automated means used to initiate an action or respond to electronic messages or performances without intervention by a person. A person who uses an electronic agent is bound by its operations even if no one is aware of or reviews the actions or their results.

Conspicuous Terms

In some instances, the act requires a term in a record or agreement to be conspicuous. Under the act, a

term is “conspicuous” if it is written, displayed, or presented so that a reasonable person (against whom it is to operate) should have noticed it. For electronic records that are to evoke a response from an electronic agent, a term is conspicuous if it is presented in a form that would enable a reasonably configured electronic agent to take it into account or react to it without review by an individual. The act specifies that to a person, conspicuous terms include (1) headings in capitals of equal or greater size or contrasting type, font, or color to the surrounding text; (2) language in the body of a record or display that is larger or in contrasting type, font, or color or set off from surrounding text by symbols or marks that call attention to it; or (3) terms prominently referenced in an electronic record or display that is readily accessible and reviewable. For a person or electronic agent, a conspicuous term includes a term or reference to one placed in a record or display so that the person or agent cannot proceed without taking some action on the term or reference.

Notice

Under the act, notice is received when it (1) comes to a person’s attention or (2) is delivered and available (a) at a location designated by agreement or (b) if no location is designated, the person’s residence, place of business where the contract was made, any other place held out as a place to receive notices, or, for electronic records, in an information processing system in a form capable of being processed or perceived if the recipient uses, designates, or holds out that the system as a place for receiving notices.

Altering the Act’s Provisions

The act allows parties to agree on provisions different than those in the act unless it prohibits them. Terms such as “must” or “shall” or the lack of language such as “unless otherwise agreed” does not necessarily prohibit the parties from agreeing to a different provision. The act specifies that parties may shift an allocation of risk or apportion the risk or burden even if it is set by a provision of the act.

FINANCE LEASES

The act creates a separate category of leases known as “finance leases,” which are three-party transactions. A supplier manufactures or supplies the goods, the lessor enters into a sales or lease agreement with the supplier, and the lessor and lessee enter into the finance lease of the goods. The lessor acts as a financier for the acquisition of the leased goods. The lessor does not select, manufacture, or supply the goods. It acquires

them or the right to possess or use them in connection with the particular lease, or in connection with another lease, if the goods were previously leased by the lessor and are not being leased to a consumer.

For a transaction to qualify as a finance lease, one of the following must occur:

1. before authenticating the lease agreement, the lessee receives a copy of the supply agreement by which the lessor acquired or proposes to acquire the goods or the right to possess or use them;
2. the lessee's approval of the supply agreement becomes a condition to the effectiveness of the lease contract;
3. before authenticating the lease agreement, the lessee is given a complete statement of the promises and warranties, any disclaimers of warranties, limitations or modifications of remedies, and liquidated damages provided to the lessor by the supplier, including those of third parties such as the manufacturer; or
4. if the lease is not a consumer lease, the lessor informs the lessee in writing before he authenticates the lease agreement (a) of the supplier's identity, (b) that the lessee is entitled under the act to the promises and warranties provided to the lessor by the supplier, and (c) that the lessee may communicate with the supplier and receive a complete statement of the promises and warranties.

The finance lessee is the automatic beneficiary of all warranties under the supply contract.

The finance lessor is held only to express warranties and an implied warranty that for the lease term no person holds a claim to the goods arising from the lessor's act or omission. The act exempts the finance lessor from implied warranties of fitness and merchantability and that goods are delivered free of rightful claims.

Upon the lessee's acceptance of the goods, his promises to the lessor under the lease contract become irrevocable and independent. The lessee must perform even if the lessor's performance is not in accordance with the contract provisions.

An independent and irrevocable promise is one that:

1. is enforceable between the parties and by or against their assignees or other third parties and
2. cannot be cancelled, terminated, modified, repudiated, excused, or substituted for without the consent of the party who is owed the promised performance.

The act states that this provision does not affect the

validity under any other law of a lease covenant making the lessee's promises irrevocable and independent when the lessee accepts the goods.

Supply Contracts Affecting Finance Leases

The lessee in a finance lease has an enforceable right under the act to the benefits of a supplier's contractual promises to the lessor, as well as any applicable express or implied warranties. (A supply contract is one under which the lessor buys or leases goods to be leased to another person or entity.) But the lessee's rights are subject to the terms of the supply contract and warranty and all defenses or claims arising from them.

Under the act, any modification or rescission of the supply contract is effective between the supplier and lessee unless, before it occurred, the supplier knew that the lessee had entered into the finance lease. Where the supply contract is rescinded or modified, the act requires the lessor to provide to the lessee what he would otherwise lose due to the action.

CONSUMER LEASES

Under the act, a consumer lease is one in which the lessee is an individual who takes the lease primarily for a personal, family, or household purpose, and the lessor is regularly engaged in the business of leasing or selling.

The act makes unenforceable a consumer lease provision that applies the law of a jurisdiction other than where the (1) lessee resides when the lease becomes enforceable or within 30 days thereafter or (2) goods are to be used. The parties can choose a judicial forum, but it must be the judicial district where the consumer resides or where the transaction occurred.

Under the act, if the court finds that a consumer lease contract or term was induced by unconscionable conduct, or that unconscionable conduct occurred in collecting money due under the contract, it may award appropriate relief. If, for any type of lease, the court finds the contract or a term was unconscionable when it was made, it may refuse to enforce the entire contract or the term or may require the term to be applied in a way that would not be unconscionable. When a consumer lessee successfully raises an unconscionability claim, the act requires the court to award him reasonable attorney's fees.

If a lease authorizes a party to accelerate payment or performance or require collateral or additional collateral, either "at will" or "when he deems himself insecure," the party may do so only if, in good faith, he believes that the prospect of payment or performance is impaired. For consumer leases, the burden of establishing good faith is on the party who exercised the

power; for other leases, it is on the party against whom the provision was exercised.

FORMATION OF LEASE CONTRACTS

Under the act, a lease contract may be made in any way. This includes offer and acceptance, conduct by the parties that shows agreement, and the interaction of electronic agents (see below). A contract is sufficient even if (1) it has indefinite terms, as long as the parties intended to make a contract and there is a reasonably certain basis for providing a remedy; (2) the time of its creation is undetermined; (3) the records do not otherwise establish a lease contract; or (4) one party reserves the right to modify terms.

An offer to make a contract invites acceptance in any way and by any medium that is reasonable in the circumstances unless its language or circumstances unambiguously show otherwise. If beginning requested performance is a reasonable way to show acceptance, the person who makes the offer can treat the offer as lapsed if he is not notified of acceptance within a reasonable time.

The act limits the ability of a merchant to revoke an offer made in an authenticated record that states that it will be held open. The period of irrevocability is (1) the amount of time stated in the offer, if there has been no payment or (2) a reasonable period up to 90 days, if no deadline is stated. An assurance in the record is ineffective unless it is conspicuous.

Electronic Agents

Under the act, the interaction of electronic agents can form a lease contract if it satisfies the act's provisions on contract formation, unless it resulted from fraud, electronic mistake, or similar reasons.

The interaction of an electronic agent and an individual acting on his own or someone else's behalf can also form a lease contract. The contract is formed if the individual takes actions that he can refuse to take or makes a statement that he has reason to know will (1) cause the electronic agent to complete the transaction or performance or (2) indicate acceptance of an offer regardless of the individual's other expressions or actions that the electronic agent cannot react to.

In an interaction between individuals, an offer that evokes an electronic message in response forms a lease contract when (1) the offer is accepted validly under the act's provisions and the acceptance is received or (2) electronic performance is received (unless acceptance was required in a different manner).

An electronic record is effective when it is received even if no one is aware of its receipt. If an offer in an electronic message evokes an electronic message in

response, a lease contract can be formed under these provisions.

An electronic agent is attributed to a person if (1) the person or his electronic agent acted or (2) the person is bound by it under the law of agency. The party relying on the attribution of an electronic message to another person has the burden of establishing it.

An electronic message is an electronic record or display that is stored, generated, or transmitted by electronic means to communicate with a person or electronic agent.

Enforceability

Under the act, to be enforceable, a lease must either be (1) authenticated in a record by the party against whom enforcement is sought (or his agent) or (2) require total payments, excluding payments for options to renew or buy, of under \$1,000.

An authenticated record must indicate that a contract has been made between the parties and describe the leased goods and the lease duration. The description of the goods or duration, whether or not specific, is sufficient if it reasonably identifies what is described. A lease that omits or incorrectly states certain terms is enforceable, but if it states an amount it is enforceable only up to that amount.

If a contract is made that does not meet the requirements described above but is valid in other respects, it is enforceable:

1. if the goods are specially made or obtained for the lessee and are unsuitable for other customers and, before receiving a notice of repudiation, the lessor has substantially begun their manufacture or procurement under circumstances that indicate that they are for the lessee;
2. if a party being sued admits in legal proceedings that a lease was made (but it is only enforceable as to the quantity of goods admitted); or
3. with respect to goods that have been received and accepted by the lessee.

For these leases, the lease duration is (1) the duration specified in a record authenticated by a defendant in a suit, (2) the duration admitted to by the defendant in court, or (3) a reasonable duration.

An enforceable lease contract does not become unenforceable just because it cannot be performed within a year or any other applicable period after its making.

If the parties agree on final terms in records, they cannot be contradicted by evidence of prior agreement or simultaneous oral agreement. But they can be supplemented by evidence of (1) the course of dealing

or performance or the usage of trade (the court need not first find the record ambiguous) or (2) consistent additional terms unless the court finds that the record was meant to be the exclusive statement of the terms. The court can use other sources to explain terms under applicable law.

Course of Performance

Under the act, any course of performance accepted without objection is relevant to the interpretation of an agreement regarding a contract that involves repeated chances for performance and an opportunity for the other party to object. (Course of performance is the parties' conduct in performing a contract that creates an understanding between them about performance.)

The agreement's express terms and any course of performance, course of dealing, and usage of trade must be construed as consistent with each other when this is reasonable. If this is not reasonable, the act establishes the following hierarchy in interpreting the agreement: (1) its express terms prevail over the course of performance, course of dealing, and usage of trade; (2) the course of performance prevails over the course of dealing and usage of trade; and (3) the course of dealing prevails over usage of trade. Generally, the course of performance is relevant in showing that there has been a waiver or modification of a term inconsistent with the course of performance.

Modification, Rescission, and Waiver

An agreement made in good faith to modify a lease does not require consideration to be binding. (Consideration refers to something of value given in return for a performance or a promise of performance by another.) A term in an authenticated record that prohibits modification or rescission except by an authenticated record cannot be modified or rescinded in any other way. If the term is in a form or record from a merchant to a non-merchant, it must be separately authenticated. A party whose language or conduct is inconsistent with such a term, cannot enforce the term if it would be unjust because the other party relied on that language or conduct and materially changed his position.

A party can waive a lease condition if it was included for his benefit. Language or conduct is relevant to showing waiver. The party who has made a waiver can retract it by providing reasonable notice to the other party, who must receive it, stating that strict performance will be required. This provision does not apply if the retraction would be unjust due to a material change of position of a party in relying on the waiver.

IDENTIFICATION OF GOODS SUBJECT TO THE CONTRACT

The act allows the parties to agree on the time and manner of identifying goods subject to the lease contract. If there is no explicit agreement, the identification is made when:

1. the contract is made, if it is a lease of existing and designated goods or
2. the goods are shipped, marked, or otherwise designated by the lessor as being the ones referred to in the contract, if the lease involves goods that are not existing and identified.

The act also covers leases of animals, including their unborn young. For the latter type of lease, identification occurs when the young are conceived.

INSURANCE

A lessee obtains an insurable interest in existing goods once they are identified, even if they are nonconforming and he can reject them. If the lessee's interest is based only on the lessor's identification of goods, the lessor can substitute other goods for them until default, insolvency, or notification to the lessee that the identification is final.

The lessor retains an insurable interest until the lessee exercises an option to buy them and assumes the risk of loss.

The parties can agree as to (1) who must obtain and pay for insurance and (2) who the beneficiary is. These provisions do not affect insurable interests recognized under other law.

RISK OF LOSS

Under the act, for finance leases, the lessee bears the risk of loss. For all other types of leases, the lessor bears this risk.

If the risk of loss passes to the lessee under the lease contract and the contract does not specify when the risk changes hands, the following rules apply:

1. if the contract allows or requires goods to be shipped by a carrier and does not require delivery at a specific destination, the risk passes when they are delivered to the carrier;
2. if such a contract specifies a delivery point and the carrier brings them to the lessee, the risk passes when tendered;
3. if the goods are held by a bailee to be delivered without being moved, the risk passes when the bailee acknowledges to the lessee that he has the right to possess the goods (a bailee is a person or entity to whom property is delivered in trust to carry out some

- object or purpose); or
4. the risk passes when the lessee receives the goods (or control of them if the lessee does not intend to take possession).

In three situations, default under the contract by either party affects the risk of loss.

1. If the lessee rightfully rejects the goods or justifiably revokes acceptance, the lessor has the risk of loss once the rejection or revocation is effective.
2. If (a) the lessor tenders nonconforming goods that the lessee could rightfully reject or revoke acceptance of, (b) the goods are damaged or lost before rejection or revocation, and (c) the lessee would otherwise have the risk of loss, the lessor has the risk of loss to the extent the nonconformity caused the damage or loss.
3. If a lessee repudiates or breaches a contract when conforming goods are identified to him and the risk of loss has not passed to him, he has the risk of loss for a commercially reasonable time after the breach or repudiation.

DAMAGE TO IDENTIFIED GOODS

Under the act, if a contract requires that goods be identified when the contract is made and they are damaged or destroyed because of a third party's fault or before the risk of loss has passed to the lessee, the following rules apply.

1. If the loss occurs before delivery to the lessee, the lessor or supplier must notify the lessee of the nature and extent of the loss within a reasonable time.
2. The contract is voided if the loss is total.
3. If the loss is partial or the goods have become nonconforming, the lessee may demand to inspect the goods and choose to treat the contract as voided or accept the goods with an allowance against the rent.

If the lessee chooses the last option, he waives further rights against the lessor. The option concerning partial loss of nonconforming goods is not applicable for finance leases unless they are consumer leases.

WARRANTIES

The act clarifies the law of warranties for leases. (A warranty is a promise that the goods that are part of the sale or lease have the character, quality, or title that the seller or lessor states).

Warranties on Interference and Infringement

Under the act, a finance lessor warrants that no one, due to the lessor's acts or omissions, has a claim or interest in the goods that will (1) interfere with the lessee's enjoyment of the leasehold interest or (2) unreasonably expose the lessee to litigation. Other lessors warrant that no one has such a claim or interest.

Except in a finance lease, when the lessor is a merchant who regularly deals in the kind of goods included in the lease, the act imposes an implied warranty that the goods are delivered free of any rightful claim of infringement.

These warranties can be disclaimed or modified only by specific language or by circumstances that give the lessee reason to know that the lessor purports to transfer only his or a third party's rights.

Express Warranties

Under the act, any representation (a description of the goods, affirmation of fact, or promise about the goods' quality or performance) a lessor makes to a lessee that relates to the goods and becomes part of the bargain is an express warranty that they will conform to the representation. A sample or model represents that all the goods will conform to it. A representation includes those made in any communication to the public, such as advertising.

It is not necessary to use formal words such as "warranty" or "guaranty" to create an express warranty and there need not be a specific intent to do so. A representation merely of the good's value or an affirmation that is merely the lessor's opinion or recommendation is not an express warranty.

The representation becomes part of the basis of the bargain unless (1) the lessee knew it was not true; (2) a reasonable person in the lessee's position would not believe it was part of the agreement; or (3) for representations to the public, the lessee did not know of it at the time of the agreement.

A lessee can sue for breach of warranty under the act's provisions.

Words or conduct that are relevant to creation, disclaimer, or modification of an express warranty must be construed as consistent with each other whenever reasonable. Words or conduct that disclaim or modify an express warranty are not effective to the extent that construction is unreasonable.

Implied Warranties

Under the act, there are implied warranties of (1) merchantability and (2) fitness for a particular purpose. These two warranties do not apply to lessors in finance

leases. The warranty of merchantability operates where the lessor is a merchant in goods of that kind. It assures, among other things, that the goods (1) are considered by the trade to meet the description in the lease agreement, (2) are fit for the ordinary purposes for which goods of that type are used, and (3) conform to any representation on the container or label. The implied warranty of fitness for a particular purpose operates when the lessor, when the contract is made, has reason to know of any particular purpose for which the goods are required and that the lessee is relying on his skill or judgment to provide suitable goods.

These implied warranties can be disclaimed or modified in a record with conspicuous language. The act includes certain wording requirements and examples for such agreements. It specifies that all implied warranties are disclaimed, unless the circumstances show otherwise, by (1) expressions such as “as is,” “with all faults,” or similar language or (2) conduct that in common understanding makes it clear to the lessee that the lessor assumes no responsibility for the quality or fitness of the goods. For consumer contracts, this must be done by conspicuous language in a record.

Any language by a lessor or manufacturer of consumer goods that excludes or modifies an implied warranty of merchantability or fitness for a particular purpose or excludes or modifies the consumer’s remedies for breach of warranty is not enforceable. But the provisions on disclaimer or modification do apply to leases of consumer goods that are marked irregular, factory seconds, or damaged.

If the lessee fully examined the goods or a sample or model, or he refused to do so, there is no implied warranty regarding defects that a reasonable examination in the circumstances should have revealed.

Under the act, other implied warranties can arise from the course of dealing or usage of trade.

Provisions on Warranties

Under the act, an express or implied warranty that benefits the lessee also extends to any person who suffers a personal injury due to a breach of the warranty if that person could reasonably be expected to use or be affected by the goods (the lessor cannot disclaim or limit this provision). For consumer leases, these warranties extend to family, the household, their invitees, and transferees from the lessee for non-personal injuries (the lessor cannot disclaim, modify, or limit these damages). The act prohibits any lease provision, which would limit, modify, or exclude warranties that assure against personal injury.

Remedies for a breach of warranty can be limited according to the act’s provisions for liquidation or limitation of damages and modification of remedy.

Under the act, warranties must be construed as consistent and cumulative. If this is unreasonable, the parties’ intention determines which warranty is dominant according to the following rules: (1) exact specifications prevail over an inconsistent sample, model, or general description; (2) a sample from bulk or a model prevails over an inconsistent general description; and (3) an express warranty prevails over inconsistent implied warranties other than the warranty of fitness for a particular purpose (except for consumer leases).

The act does not limit rights and remedies of third party beneficiaries or assignees under contract law or those to which goods are transferred by law. It does not replace any law that extends a warranty to benefit another person.

A warranty to someone other than the immediate lessee and remedies for breach can be limited by terms of the contract between the lessor and immediate lessee, subject to certain exceptions.

Breach of Warranty and Infringement Claims

Under the act, if delivery is accepted, the following rules apply to claims.

1. A lessee or person entitled to enforce a warranty must provide notice of a claim within a reasonable time after default or breach of warranty is, or should have been, discovered. Untimely notice prohibits the use of remedies to the extent the party entitled to notice proves it was prejudiced.
2. Except for consumer leases, a lessee must notify the lessor or supplier within a reasonable time if the lessee is sued for infringement or a similar claim for which the lessor or supplier is answerable. Otherwise, the lessee can be barred from a remedy for liability in the claim.

Unless agreed otherwise, the measure of damages for breach of warranty of quality is the present value (at the time and place of acceptance) of the difference between the value of the goods and the value if they had been as warranted. Special circumstances can show damages of a different amount. A lessee can also recover incidental and consequential damages.

A person claiming breach of a lessor’s express or implied warranty must prove the breach.

The following rules apply to claims against the lessee for breach of warranty, indemnity, or other obligations when another party is answerable.

1. The lessee must notify the other party in a record and that party can notify any other person who is answerable. If the notice invites the person to intervene and defend and

- states that failure to do so will bind the person in future suits by the lessor for facts common to the two actions, the person must intervene after receiving the notice or be bound.
2. If the claim is for infringement, the original lessor or supplier can demand in a record that the lessee turn over control of the litigation or be barred from having a remedy. If the lessor or supplier also agrees to pay expenses and any judgment, the lessee is barred unless he turns over control after receiving the demand.

PERFORMANCE UNDER A LEASE CONTRACT

A lease imposes performance obligations on both parties. The act allows several ways for the parties to deal with failure to perform these obligations, whether through the fault of one of them or through circumstances beyond their control.

Insecurity

The act allows a party who has reasonable grounds for believing that the other party will not perform its lease obligations to demand assurances in a record and, if commercially reasonable, suspend its own obligations until it receives the assurance. If the assurance is not given within a reasonable time (not more than 30 days after the demand), the lease is considered repudiated.

Under the act, the fact that a party accepts a delivery or payment that does not conform to the lease terms does not mean that it cannot demand assurance of future performance. The act requires that, between merchants, the reasonableness of the grounds for insecurity and the adequacy of assurances be judged according to commercial standards.

Repudiation Before Performance is Due

Under the act, repudiation includes (1) language that a party cannot or will not perform according to the contract or (2) voluntary, affirmative conduct that reasonably appears to the other party to make a future performance impossible.

When one party repudiates a lease over something not yet due under the lease terms, the act gives the other party certain remedies if the repudiation substantially impairs the lease's value to him. The aggrieved party may:

1. wait a commercially reasonable time for the other party to change its mind and perform its lease obligations;
2. use any other default remedy even if he has urged retraction or given notice that he will wait for performance;

3. suspend performance; or
4. if a lessor, identify goods to the contract and dispose of them.

If the aggrieved party has not cancelled the lease, materially changed its position, or otherwise indicated that it considers the repudiation final, the other party may change its mind and, before the time for performing its obligation, clearly retract its repudiation. Such a retraction reinstates the repudiating party's rights under the lease, allowing for any delay the repudiation has caused.

The retraction must include any assurance justifiably demanded under the act's provisions.

CHANGES IN PERFORMANCE CAUSED BY OUTSIDE CIRCUMSTANCES

Delivery Facilities

Under the act, if through no fault of the lessee, lessor, or supplier, an agreed-upon delivery facility, carrier, or manner of delivery becomes unavailable or commercially impracticable, a commercially reasonable substitute, if available, must be offered and accepted.

Payment Method

If the agreed-upon payment method is not available because of domestic or foreign government regulations and the lessee fails to provide a payment method that is commercially substantially equivalent, the lessor may withhold or stop delivery or stop its supplier from delivering the released goods. If the lessee has already taken delivery, the act requires the lessor to accept payment by whatever means or manner is provided for in the government regulations. This requirement applies as long as those regulations are not discriminatory, oppressive, or predatory.

Excused Performance

A lessor or lessor's supplier who fails to make or delays a performance is not considered to be in default if its performance is affected by (1) something the parties assumed would not happen or (2) good faith compliance with a foreign or domestic government statute, order, or regulation. This provision applies even if the government statute, order, or regulation is later invalidated.

If the event or government action affects only part of the lessor's or supplier's ability to perform, it must reasonably and fairly allocate its production and deliveries among its customers. The lessor or supplier can allocate part of the reduced capacity to regular customers who are not under contract at the moment

and for its own needs for further production.

The act requires the lessor to notify the lessee of the delay or nondelivery or of its estimated share of a reduced delivery within a reasonable time. If the lease does not require the lessor itself to supply the goods, the burden is on the actual supplier to notify the lessor and the lessee of the delay, nondelivery, or reduced delivery.

A party who receives notice of a reduced delivery or indefinite or material delay may, by notice in a record, either terminate the lease or modify it (except in a finance lease) by accepting the reduced delivery or accept delivery and make an appropriate allowance in the rent.

If a party fails to modify or terminate the lease within a reasonable time, but no more than 30 days after receiving notice of the delay or reduced delivery, the lease contract terminates with respect to any affected performance.

TERMINATION

Under the act, termination is the ending of a contract (or part of it) by a party's action under a power created by agreement or law or by operation of the agreement's terms for a reason other than a party's default.

Under the act, termination of a lease discharges all obligations except:

1. rights based on a previous default or performance of the lease;
2. terms limiting the scope, manner, method, or location of the exercise of rights in the goods;
3. obligations of confidentiality, nondisclosure, or noncompetition;
4. a choice of law or forum;
5. obligations to return or dispose of goods or return an unearned part of rent;
6. obligations to arbitrate or use alternative dispute resolution procedures;
7. terms limiting the time to bring an action or provide notice;
8. indemnity terms;
9. limitations on remedies or warranty disclaimers;
10. obligations to account and make payments on an accounting;
11. other rights, remedies, or limitations in the agreement to the extent enforceable under the law; and
12. other rights, remedies, or limitations if necessary to achieve the purposes of the parties under the circumstances.

CANCELLATION

An aggrieved party can cancel a lease when allowed by either the act's provisions or the agreement unless there is a waiver of default or the right to cancel or the act provides a right to cure the default.

When a lease is cancelled, the lessee has the same obligations and duties with respect to goods he possesses or controls as if he had rejected a nonconforming tender and remained in control or if the lease terminated on its own terms.

On cancellation, all obligations are discharged except for:

1. rights based on previous default or performance of the lease;
2. terms limiting disclosure of information;
3. an obligation to return or dispose of goods;
4. a choice of law or forum;
5. obligations to arbitrate or use alternative dispute resolution;
6. terms limiting the time to bring an action or give notice;
7. a remedy for breach of the whole lease contract or any unperformed balance;
8. other rights, remedies, or obligations that the agreement states survive cancellation to the extent they are enforceable under other law; and
9. other rights, remedies, or limitations if necessary to achieve the purposes of the parties under the circumstances.

Language of cancellation, rescission, avoidance, or similar language does not renounce or discharge a claim for damages for an earlier default unless that intention is clear.

ACCEPTANCE

Under the act, goods are accepted when (1) after a reasonable opportunity to inspect them the lessee either (a) signifies that they conform or will be kept in spite of their nonconformity or (b) does not effectively reject them or (2) the lessee's actions are inconsistent with the lessor's or supplier's interest in the goods or the lessor's claim of rejection or revocation of acceptance, and the lessor or supplier treats this as acceptance.

Acceptance of part of a commercial unit is acceptance of the entire unit.

A lessee must pay rent under the lease contract for any goods accepted. Acceptance precludes rejection but does not impair any other remedy in the act or the agreement regarding nonconformity.

REMEDIES FOR DEFAULT

General Provisions

Whether a lessor or lessee is in default is determined by the act's provisions as well as the lease agreement. The injured party can avail himself of the remedies specified in both. The agreement may provide for rights and remedies in addition to or in substitution for those in the act and may (except in a consumer lease) change or limit the measure of damages under the act unless the act specifically prohibits it. If an exclusive or limited contract remedy fails to achieve its purpose or a provision for an exclusive remedy is unconscionable, the remedies under the act apply.

The cumulative effect of individual, insubstantial defaults may substantially impair the value of the whole lease contract. A party in default is not entitled to notice of default or enforcement unless the act or the lease agreement requires it.

The party seeking enforcement can seek a judgment or use self-help or any available administrative or judicial procedure, including arbitration or dispute resolution if agreed to by the parties. A party can enforce rights and remedies available in other law. If the lease covers real property and goods, a party can proceed under the act's provisions or other law regarding real property and goods, according to the party's rights and remedies in the real property.

The act's remedies must be liberally administered to place the aggrieved party in as good a position as if the other party had fully performed.

Unless the lease contract provides for liquidated damages or a limited remedy enforceable under the act, an aggrieved party cannot recover for the loss resulting from default that could have been avoided by reasonable measures under the circumstances (the defaulting party must prove reasonable measures were not taken).

The act's rights and remedies are cumulative, but a party can only recover once for an injury.

The act does not affect a remedy for breach of an obligation or promise that is collateral or ancillary to a lease contract.

A party can pursue all remedies under the act for material misrepresentation or fraud. Rescission or a claim of it or rejection or return of goods is not inconsistent with a claim for damages or other remedies.

Damages

Under the act, the aggrieved party can recover for (1) the loss that results in the ordinary course from default as determined by the act or any reasonable manner, (2) incidental damages, and (3) consequential damages. This is reduced by expenses and costs saved

as a result of the default.

Consequential damages include (1) any loss resulting from the aggrieved party's needs or requirements that the defaulting party had reason to know at the time of contracting and that could not be reasonably prevented and (2) personal or property injury resulting from a breach of warranty.

Consequential damages may be liquidated or otherwise limited, altered, or excluded unless this is unconscionable. On its face, a provision to limit, alter, or exclude consequential damages for personal injury involving consumer goods is unconscionable. But such a provision that applies where the loss is commercial is not on its face unconscionable.

The lease agreement may provide for the liquidation of damages payable for default or any other act or omission (including indemnity for loss, diminution of expected tax benefits, or damage to the lessor's residual interest). But the liquidation amount or formula must be reasonable in light of the actual harm or the harm anticipated at the time the agreement was entered.

When the lessor justifiably withholds delivery or stops performance because of the lessee's default or insolvency, the lessee is entitled to restitution of any amount paid to the lessor that is above the amount provided in a lease's liquidated damages terms. But in a consumer lease, the lessor is entitled to no more than \$500.

The lessee's amount of restitution is set off to the extent the lessor has a right to recover damages under the act and to the amount or value the lessee received under the lease contract.

The act defines incidental damages as commercially reasonable charges for:

1. inspection, receipt, transportation, care, or custody of the goods;
2. delivery or shipment stoppage;
3. cover, return, or disposition of the goods;
4. reasonable efforts to minimize or avoid the consequences of default; and
5. other remedies after default or dealing with the goods.

Specific Performance

The act authorizes a court to order specific performance of the agreement if the goods or the agreed performance are unique, or in other proper circumstances. In commercial leases, the court can order specific performance if the parties agreed to it but not if the breaching party's sole remaining contractual obligation is to pay money. The court order can include terms and conditions such as payment of rent, damages, or other just relief.

Statute of Limitations

For an action for default under a lease contract, including breach of warranty or indemnity, the act makes the statute of limitations four years after the cause of action accrued. In the original lease contract, the parties may reduce the period to no less than one year (but not in a consumer lease or an action for indemnity). A cause of action accrues when the act or omission on which the default is based is, or should have been, discovered by the aggrieved party. A cause of action for indemnity accrues when the underlying act or omission is, or should have been, discovered by the indemnified party.

If an action is terminated, but a remedy in another action is available, the party can bring the other action after the limitations period has expired if it is within six months after the first action terminated. This rule does not apply if the first action ended voluntarily or was dismissed for failure to prosecute. The act does not alter the law on tolling a limitations period and does not apply to rights of action that accrued before its effective date.

Default by Lessor

Under the act, a lessor defaults when (1) he fails to deliver goods in conformity with the contract or repudiates the contract or (2) the lessee rightfully rejects the goods or justifiably revokes their acceptance.

If the lessor defaults, the lessee may:

1. cancel the lease contract,
2. recover as much of the rent and security as has been paid and is just,
3. obtain substitute goods and pursue damages,
4. recover damages,
5. enforce a security interest,
6. recover identified goods,
7. obtain specific performance,
8. recover incidental and consequential damages,
9. recover liquidated damages,
10. enforce remedies as limited by agreement, and
11. exercise any right or remedy in the lease contract.

On rightful rejection or justifiable revocation of acceptance, the lessee retains a security interest in goods in his possession or control for rent and security paid, and any expenses reasonably incurred in the inspection, receipt, transportation, and care and custody of the goods. The lessee may dispose of the goods in good faith and in a commercially reasonable manner. If the goods or their delivery fail to conform to the lease contract, the lessee may reject or accept the goods or any commercial units. He must reject and provide notice in a reasonable time.

For contracts that authorize or require the delivery of goods in separate lots to be separately accepted (installment lease contracts), a lessee may reject any nonconforming delivery if it substantially impairs the value of the delivery. If a nonconformity or default for one or more installments is a substantial impairment of the value of the whole lease, it is a breach of the whole lease and the aggrieved party can reject any nonconforming, unaccepted installment and cancel the contract. The lease is not cancelled if the party (1) accepts a nonconforming installment without reasonable notice of cancellation, (2) brings an action about past installments, or (3) demands performance for future installments.

Lessee's Disposal of Goods. If a lessor or supplier has no agent or place of business where the goods are rejected or acceptance was revoked, the act requires a merchant lessee to follow reasonable instructions regarding the goods from the lessor or supplier. Instructions are not reasonable if payment for expenses is not available when demanded.

If the goods might rapidly decline in value and no instructions have been given, the merchant lessee must attempt to sell, lease, or otherwise dispose of them for the lessor's account. If the goods are not likely to rapidly decline in value or are not subject to a security interest of the lessee, the lessee must hold them for a reasonable time to await the lessor's or supplier's instructions, and then may store the rejected goods, ship them to the lessor or supplier, or dispose of them for the lessor's account. The lessee must act in good faith and hold the goods with reasonable care.

A merchant lessee that sells or leases the goods is entitled to reimbursement for the reasonable expenses of caring for and disposing of them. If this does not include a commission, he is entitled to the commission usual in the trade or a reasonable sum up to 10% of gross proceeds.

Someone who buys these goods in good faith takes them free of any rights of the lessor and supplier.

Nonconforming Goods and Revocations. If the lessee rejects any nonconforming delivery or revokes acceptance and the time for performance has not yet expired, the act allows the lessor or supplier (after posting notice within a reasonable time and at his own expense) to make a conforming delivery within the time provided in the lease. If the time for performance has passed, the lessor can still cure if it is appropriate and timely under the circumstances. The lessor must pay the lessee's reasonable and necessary expenses caused by the nonconformity.

When a nonconformity substantially impairs the value to the lessee of a lot or commercial unit, the lessee may revoke acceptance if he accepted on the reasonable assumption the nonconformity would be cured (and it

has not been cured within a reasonable time). This does not apply to finance leases. He may also revoke acceptance if he had not discovered the nonconformity, and his acceptance was induced by the lessor's assurances or, except with a finance lease, by the difficulty of discovery before acceptance.

A lessee may revoke acceptance for defaults that do not relate to nonconformity of the goods themselves. Specifically, the lessee may revoke acceptance of a lot or commercial unit if the lessor defaults under the lease contract and the default substantially impairs the value of the lot or unit to the lessee. This provision does not apply to commercial finance leases.

A lessee can revoke acceptance of a lot or a commercial unit for other defaults if the lease agreement provides for it.

A lessee must revoke in a reasonable time after the grounds for it are, or should have been, discovered and before any substantial change in the conditions of the goods occurs. Revocation is effective on notice to the lessor. A revocation creates the same rights and duties with regard to the goods as a rejection.

Damages and Right to Cover. After a lessor defaults, in specified instances the lessee may cover by purchasing or leasing (in good faith and without unreasonable delay) additional goods in substitution for those due from the lessor. Under the act, the right of cover applies if the (1) lessor fails to deliver goods that conform to the lease or he repudiates the lease, (2) lessee rightfully rejects the goods or justifiably revokes acceptance, or (3) parties agree that this right applies. The act establishes how to calculate the cost of cover when a new lease is made in good faith and in a commercially reasonable manner. The lessee can recover the present value (as of the date the new agreement begins) of the rent under the new lease applicable to the remaining period of the original lease agreement, less the present value of the rent for the remaining period under the original lease and expenses saved due to the default plus incidental or consequential damages.

The act establishes the measure of damages if the lessee elects not to cover or the act's cover provisions do not apply. The measure of damages is the present value, as of the date of default, of the market rent for the remaining term of the lease, less the present value of the original rent for the remaining term of the lease, plus incidental and consequential damages less expenses saved because of the default. Market rent is determined at the place of tender (or place of arrival for rejection after arrival or revocation).

The act also grants a lessee the right of replevin or similar actions for goods identified to the contract if, after reasonable efforts, the lessee cannot cover or attempting to cover would be useless. (Replevin is a

legal proceeding to recover possession of property wrongfully taken or withheld.)

Market Rent. If evidence of market rent is not readily available, the act allows use of the rent (1) prevailing in a reasonable time before or after the time required and (2) prevailing at another place or for a different period which in commercial judgment or usage of trade is a reasonable substitute (with allowance for differences including transportation costs).

Evidence of relevant rent at another time or place or for a period other than the period described is not admissible unless the party offering it gives notice that prevents unfair surprise. Reports in official publications, trade journals, newspapers, or other general circulation communications about markets are admissible. The circumstances of the report's preparation can affect the weight of the evidence but not its admissibility.

Default by Lessee

Under the act, the lessee defaults when he (1) wrongfully rejects or revokes acceptance of goods, (2) fails to make a payment when due, or (3) repudiates all or part of the agreement.

For these defaults, the lessor may:

1. withhold delivery of the goods and take possession of goods previously delivered,
2. stop delivery of the goods by any carrier or bailee,
3. dispose of goods not identified to the contract,
4. obtain specific performance or recover rent,
5. dispose of or retain the goods and recover damages,
6. recover incidental and consequential damages,
7. cancel the lease contract,
8. recover liquidated damages,
9. enforce the limited remedies in the agreement (if allowed by the act),
10. recover damages as allowed by the act for loss resulting in the ordinary course, or
11. exercise other rights and remedies under the lease agreement.

If a lessor does not pursue a right to completion or actually obtain one of the above remedies, he may recover damages determined in a reasonable manner for loss resulting in the ordinary course from the default, plus incidental damages minus expenses avoided. (If the default does not substantially impair the value of the lease contract he can also recover these damages.)

After a statutory or other material default by the lessee or other contractual default if agreed to, the lessor can take possession of the goods. If the lease requires it, the lessor can require the lessee to assemble the goods and make them available to the lessor. The lessor

can also, without removal, render unusable any goods employed in trade and dispose of goods on the lessee's premises.

The lessor can also (1) identify conforming goods that are in the lessor's or supplier's possession or control at the time of learning of the default and (2) dispose of goods that were intended for the lease contract even if they are unfinished. For unfinished goods, the lessor or supplier can, using reasonable commercial judgment to minimize loss, (1) complete manufacturing and identify the goods to the lease, (2) cease manufacture and lease, (3) sell or dispose of the goods for scrap or salvage, or (4) proceed in any reasonable manner.

If a lessee is insolvent, the lessor can refuse to deliver the goods. He can stop their delivery by a carrier or bailee if the lessee is insolvent, repudiates, or fails to make a payment, or if the lessor has a right to withhold or reclaim the goods. The lessor can stop delivery until the lessee receives the goods or the bailee or carrier acknowledges it holds the goods for the lessee. The act includes provisions on notice to a carrier or bailee and how they must proceed.

The act also entitles the lessor to recover for any loss or damage to his residual interest caused by the lessee's default. (The lessor's residual interest is his interest in the goods after expiration, termination, or cancellation of the lease contract.)

Disposing of Goods and Damages. The lessor can dispose of the goods after default by the lessee; after the lessor refuses to deliver or takes possession of the goods; or, if agreed, after other contractual default.

The act establishes how damages are to be calculated when the lessor disposes of the goods through a new lease, the new lease agreement is substantially similar to the original lease agreement, and the disposition is in good faith and in a commercially reasonable manner. The lessor can recover (1) the unpaid rent as of the date the new lease starts; (2) the present value of the rent under the original lease for the remaining term, less the present value of the rent under the new lease for a comparable period; and (3) incidental damages, less expenses saved because of the lessee's default.

If the new lease does not qualify for this treatment, or if the lessor disposes of the goods by sale or in a manner other than leasing, the lessor may recover damages from the lessee just as if he had elected not to dispose of the goods. Someone who in good faith takes the goods from the lessor for value takes them free of the original lease and any rights of the original lessee. A lessor is not accountable for any profit. A lessee that rightfully rejects or justifiably revokes acceptance must account to the lessor for any amount over the lessee's security interest.

If the lessee has never taken possession of the goods, the measure of damages is based on factors assessed as of the default date: (1) the accrued and unpaid rent; (2) the present value of the original rent for the remaining term of the lease, less the present value of market rent; and (3) incidental or consequential damages, less expenses saved because of the default. If the lessee has taken possession of the goods, the same items comprise the damage award, but the date used in calculation is the earlier of the date the lessor repossesses the goods or the date the lessee tenders the goods to the lessor.

If this measure of damages does not put the lessor in as good a position as performance would have, damages can be measured in another way including lost profits (including overhead) and reasonable expenses incurred in preparing for or performing the contract, together with incidental and consequential damages.

Rent. A lessor may sue for unpaid rent for goods that are (1) retained by the lessee; (2) in the possession of the lessor and identified to the lease, but unable to be disposed of at a reasonable price after reasonable effort; or (3) lost or damaged after risk of loss passes to the lessee (but if the lessor retained or regained control, the loss or damage must occur in a commercially reasonable time after the risk passed to the lessee). In general, a lessor who elects to sue for rent due under a lease must hold identified goods in his possession for the lessee for the remaining lease term. If the lessor disposes of them before collection of the judgment and the end of the remaining lease term, he recovers damages under the provisions of the act dealing with disposition of the goods after default.

The lessor can obtain unpaid rent as of the date of judgment, the present value as of that date of the rent for the remaining term of the lease, and incidental and consequential damages allowed under the act, minus expenses avoided.

Payment of the judgment entitles the lessee to use and possess goods not disposed of for the rest of the lease.

Electronic Self-Help. The act defines electronic self-help as using electronic means to exercise a term of the lease agreement with respect to the lessor's rights and includes using electronic means to locate the goods.

The act allows a lessor to use electronic self-help if the lessee separately agrees to a term in the lease agreement authorizing it and requiring notice. The lessor must give notice stating (1) that it will use electronic self-help no sooner than 15 days later; (2) the nature of the claimed breach; and (3) the name, title, address, and phone number of the lessor's representative that the lessee can contact about the lease agreement.

The act allows a lessee to recover damages, including incidental damages. He can also recover consequential damages (even if prohibited by the lease agreement) for a lessor's wrongful use of electronic self-help.

The act prohibits a lessor from using electronic self-help if he has reason to know that it will cause substantial injury or harm to public health or safety or grave harm to the public interest that substantially affects third parties not involved in the dispute.

Non-Conforming Performance

The act prohibits a lessee from relying on a nonconforming performance in certain circumstances.

1. If in making a rejection the lessee fails to state a particular nonconformity that he could know by reasonable inspection, he cannot rely on it for rejection or default if (a) the lessor had a right to cure and would have done so or (b) between merchants, the lessor or supplier made a request in a record after rejection for a full and final statement in a record of all nonconformities.
2. If the lessee fails to state the nonconformity that justifies his revocation of acceptance, he cannot rely on it for revocation or to establish default if the lessor had a right to cure and could have done so.

RELATIONSHIPS WITH THIRD PARTIES

Transfer of Lease Interest or Residual Interest

Under the act, the transfer of a party's interest under the lease agreement or of the lessor's residual interest is effective even if the contract prohibits the transfer or makes it an event of default. This applies even for transfers that occur by virtue of the creation or enforcement of a security interest. The creation and enforcement of security interests is subject to UCC Article 9.

Although the transfers are effective, the lease provisions are generally enforceable to the extent that the act authorizes remedies for their violation. Thus, if the transfer is an event of default, the aggrieved party has the rights and remedies the act generally provides for default, unless the party waives default or agrees otherwise. If the transfer is prohibited by the lease or materially impairs performance, changes duties, or increases risks, the aggrieved party may recover damages (to the extent he could not reasonably prevent them) from the transferor and a court may grant other appropriate relief, including cancellation of the lease contract and an injunction against the transfer.

A lease agreement provision is not enforceable if it (1) prohibits the transfer of a right to damages for default with respect to the whole contract or a right to payment arising from the transferor's performance of his entire obligation or (2) makes such a transfer an event of default. Such a transfer does not materially impair performance, change duties, or increase risks so as to permit recovery for damages under the act.

A provision in a consumer lease that prohibits a transfer or makes it an event of default must be specific, in a record, and conspicuous.

Voidable Rights, Title, and Leasehold Interests

A lessor with voidable rights or voidable title acquired in a purchase of goods from a transferor can transfer a good leasehold interest to a good faith subsequent lessee for value. Voidable rights or voidable title is acquired when the goods are delivered under a purchase transaction even if (1) the transferor was deceived about the lessor's identity, (2) the delivery was in exchange for a check that was later dishonored, (3) it was agreed that it was to be a cash sale transaction, or (4) the delivery was made through criminal fraud.

A lessee with a voidable leasehold interest acquired in a lease transaction can transfer a good leasehold interest to a good faith subsequent lessee for value to which the goods have been delivered. A voidable leasehold interest is acquired when the goods are delivered under the lease contract even if (1) the lessor was deceived about the lessee's identity, (2) the delivery was in exchange for a check that was later dishonored, or (3) the delivery was made through criminal fraud.

Subsequent Leases or Sales of Goods

A subsequent lease of goods made by a lessor is subject to the prior lease. But, a subsequent lessee in the ordinary course of business will take the goods free of the prior lease contract if the lessor is a merchant dealing in goods of the kind leased and the goods were entrusted to him by the existing lessee.

If a lessee makes a subsequent lease or sale of the goods, the buyer or sublessee takes the goods subject to the prior lease. He takes them free of the prior lease if he buys or leases in the ordinary course of business from a lessee who is a merchant dealing in goods of that kind and the goods were entrusted to that lessee by the lessor. (A person is a buyer in the ordinary course of business if he buys (1) in good faith and without knowledge that the sale to him violates the rights of a third party and (2) in ordinary course from a person in the business of selling goods of that kind.)

A subsequent lessee of goods covered by a certificate of title statute takes no greater rights than

those provided by the act and the certificate of title statute.

Damages By a Third Party

If a third party deals with goods that are identified to a lease contract and damages them, the lessor has an action against the third party. A lessee has an action if he has (1) a security interest in the goods, (2) an insurable interest in the goods, or (3) the risk of loss under the contract or has since assumed the risk of loss and the goods were converted or destroyed.

Lien Priorities

Under the act, a lien for services or materials furnished in the ordinary course of business with respect to the leased goods takes priority over any interest of the lessee or lessor under a lease contract, unless the law which creates the lien provides otherwise.

In general, a creditor's lien or security interest can only attach to what the lessee has. A creditor of the lessor has rights superior to the lease contract if the creditor's lien attached before the lease contract became enforceable. The creditor's interest is also superior if it holds a security interest in the goods, but not if the lessee gave value and took delivery without knowledge of the interest and the creditor's security interest was perfected after the lease agreement became enforceable.

A lessee in the ordinary course of business takes the leased goods free of any security interest in them created by the lessor. A lessee other than in the ordinary course of business takes them free of any security interest to the extent that the security interest secures future advances made after the secured party learned about the lease or more than 45 days after the lease contract became enforceable (this does not apply to advances under a commitment made without knowledge of the lease and before the end of the 45-day period).

Fixtures

Under the act, "fixtures" are goods that become so related to particular real property that an interest in them arises under real property law. "Encumbrances" are mortgages and liens on real property and other nonownership interests.

In general, a lessor of fixtures has priority over a conflicting interest of an encumbrancer or owner of the real estate when the lessee has an interest in or possesses the real property and either:

1. the lease is a purchase money lease (when the lessee does not possess or use the goods or have the right to do so before the lease is

enforceable), the interest of the encumbrancer or owner arises before the goods become fixtures, and the lessor perfects his interest by a fixture filing under UCC Article 9 within 20 days of the goods becoming fixtures or

2. the lessor perfects his interest by a fixture filing before the encumbrancer or owner records its interest on the land records and the lessor has priority over the conflicting interest of a predecessor in title of the encumbrancer or owner.

Generally, the interest of a lessor of fixtures is subordinate to the conflicting interest of an encumbrancer under a construction mortgage (a mortgage that secures construction, including acquiring the land, if it is stated in a recorded record). The construction mortgage must be recorded before the goods become fixtures, and the goods must become fixtures before completing construction. A mortgage also has this priority to the extent it refinances a construction mortgage.

The act gives the lessor priority, regardless of whether he has filed, if (1) the fixtures are readily removable factory or office machines or readily removable replacements of domestic appliances that are subject to a consumer lease and the lease is enforceable before they become fixtures; (2) the conflicting interest is a lien on real property obtained through a court proceeding after the lease became enforceable; (3) the encumbrancer or owner consented to the lease in an authenticated record; or (4) the lessee has a right to remove the goods against the encumbrancer or owner (if the lessee's right terminates, the lessor's priority continues for a reasonable time). For cases not covered by the act, the priority rules governing conflicting interests in real property apply.

If a lessor of fixtures has priority over conflicting real property interests, the lessor or lessee may remove the goods, as long as he reimburses the encumbrancer or owner of the real property (but not the lessee) for the cost of repairing any physical damage. He is not responsible for the diminution in value of the real property caused by the removal of the goods. A person entitled to reimbursement can refuse permission to remove the goods until given adequate security.

The act does not permit a lease for ordinary building materials incorporated into an improvement on land.

Accessions

Under the act, goods are "accessions" when they are installed in, or affixed to, other goods. In general, existing rights in a lease contract entered into before the goods became accessions are superior to any rights in

the whole (the goods with the accessions installed or affixed to them), including all those with subsequent interests in the whole. But it is not valid against an interest in the whole if that person did not consent to the lease in a record or disclaim an interest in the goods. The interest of a lessor or lessee under a lease contract is subordinate to the interest of a buyer or lessee in the ordinary course of business of any interest in the whole acquired after the goods became accessions. It is also subordinate to the interest of a creditor with a security interest in the whole that was perfected before the lease contract was made, to the extent the creditor makes subsequent advances without knowing about the lease contract.

If a lessor or lessee of accessions has an interest superior to all interests in the whole, he may remove the goods on default, expiration, termination, or cancellation of the lease subject to the provisions of the act and the lease. But he must reimburse any holder of an interest in the whole for the cost of repairing any physical damage. He is not responsible for the diminution in value of the whole caused by removing the goods. A person entitled to reimbursement can refuse permission to remove the goods until given adequate security.

Creditors and Identified Goods

Under the act, the rights of a lessor's creditor regarding goods identified to a lease and retained by the lessor are subject to the lessee's rights to obtain the goods under certain circumstances when his rights vest before a creditor's claim attaches.

A creditor can treat the lease or the identification of goods to a lease contract as void if a retention of possession or identification is fraudulent under the law of the state where the goods are located. It is not fraudulent for a merchant lessor to retain the goods in good faith and course of trade for a commercially reasonable time after a lease or identification.

Except as otherwise provided, the act does not impair the rights of lessors' creditors if the identification to the lease or delivery is not made in the course of trade but is made in satisfaction of or as security for a preexisting claim for money or security under circumstances that the law would consider a fraudulent transfer or voidable.

A seller's creditor can treat a sale or identification of goods to the contract as void if the seller's retention of the goods is fraudulent under the law of the state where the goods are located. It is not fraudulent if the seller retains the goods under a lease contract between him as lessee and the buyer as lessor in connection with the sale or identification of goods, if the buyer bought for value and in good faith.

SECURITY INTEREST OR LEASE

A security interest arising solely under the act is generally subject to the UCC's secured transactions provisions. As under prior law, whether a transaction creates a lease or security interest is determined by factual circumstances. Under the act, a security interest is created if the lessee's payment to possess and use the goods is an obligation the lessee cannot terminate during the lease and:

1. the original lease term is at least as long as the remaining economic life of the goods;
2. the lessee must renew the lease for the duration of the goods' remaining economic life or become the owner; or
3. the lessee has an option to renew the lease for the duration of the goods' remaining economic life or become their owner for no, or nominal, additional consideration upon compliance with the lease.

No security interest is created merely because:

1. at the time of the transaction, the present value of the amount paid for use of the goods is substantially equal to or greater than the goods' fair market value;
2. the lessee assumes risk of loss or agrees to pay taxes, insurance, filing, recording, registration fees, or service or maintenance costs;
3. the lessee has an option to renew the lease or become owner of the goods;
4. the lessee has an option to renew the lease for a fixed rent equal to or greater than the reasonably predictable fair market rent for use of the goods for the renewal term at the time the option is to be performed; or
5. the lessee has an option to become owner for a fixed price equal to or greater than the reasonably predictable fair market value at the time the option is to be performed.

In delineating the distinctions between leases and security interests, the additional amount the lessee must pay to renew is not "nominal" if:

1. when the renewal option is granted, the rent is stated to be the fair market rent for the use of the goods for the renewal term determined at the time of exercising the option or
2. when the option to become owner is granted, the price to the lessee is stated to be the fair market value at the time of exercising the option.

An additional amount is considered nominal if it is less than the lessee's reasonably predictable performance cost if the option is unexercised.

In describing what does not create security interests, the term "present value" means the amount, as

of a date certain, payable in the future and discounted to the date certain. The discount is based on an interest rate the parties specify if not “manifestly unreasonable” at the time the transaction is entered into, or on a commercially reasonable rate taking into consideration the transaction’s facts and circumstances at the time it was entered into. “Reasonably predictable” and “remaining economic life of the goods” are determined with reference to the facts and circumstances at the time the transaction is entered into.

BACKGROUND

Related Act

PA 02-81, “An Act Concerning the Uniform Consumer Leases Act,” applies to consumer leases, which it defines as a lease that lasts at least four months with a total obligation of up to \$150,000 in which the goods are leased for a personal, family, or household purpose.

PA 02-132—sHB 5748

Judiciary Committee

Government Administration and Elections Committee

AN ACT CONCERNING THE COURT SUPPORT SERVICES DIVISION, COURT OPERATIONS, CONCILIATION PROCEDURES IN A DISSOLUTION OF MARRIAGE AND EXPANSION OF THE PARENTING EDUCATION PROGRAM

SUMMARY: This act:

1. requires the chief court administrator to establish and maintain an automated registry of protective and restraining orders issued by Connecticut courts (it may also include protective orders issued by courts in other states registered with the Superior Court) and changes other procedures involving protective orders;
2. allows parties to resolve appeals from certain watercourse or wetland decisions through mediation, amends the mediation procedures that apply to land use appeals, and makes these amended procedures apply to wetlands appeals;
3. makes a retired judge’s maximum compensation (retirement salary plus fees for serving as a senior judge or state referee) equal to the highest annual salary during the fiscal year for the judicial office the judge held at retirement, rather than the highest salary on which his retirement salary is based during the fiscal year;
4. exempts any Judicial Department employee, rather than employees of the department’s Family Division or Support Enforcement Services, from certain court costs and fees in matters involving their duties and exempts them and certain other state employees from the recently enacted \$5 additional fee for civil actions;
5. authorizes the chief court administrator to set policies and procedures on access and disclosure of department records;
6. allows the court to order additional consultations in conciliation procedures in dissolution or legal separation cases, if the conciliator recommends it and either party agrees;
7. requires the advisory committee on the Judicial Department’s parenting education program to make recommendations on a separate program for children whose parents are involved in a divorce or legal separation;
8. authorizes judges and judge trial referees, instead of state referees, to handle various aspects of redevelopment and Department of Transportation (DOT) eminent domain proceedings;
9. eliminates the ability to petition a Supreme or Appellate Court judge to appeal a habeas corpus judgment, but authorizes a petition to a Superior Court judge the chief court administrator designates, if the trial judge is unavailable;
10. replaces statutory references to various offices and divisions with Court Support Services Division or the Judicial Department to reflect the change made by PA 99-215, deletes specific provisions on certain jobs in those offices, and makes other changes related to PA 99-215;
11. eliminates (a) a requirement that only probation officers in the Office of Adult Probation supervise convicted class B and C felons on probation, (b) the duty of the Office of Alternative Sanctions to report annually to the legislature on its evaluation of alternative sanctions; and (c) a requirement that the intensive probation program operate separately from regular probation;
12. makes other changes to judicial procedures including (a) appeals of decisions on municipal citations and parking violations, (b) small claims, (c) victim compensation, (d) appeals of certain decisions of the State Marshal Commission, and (e) the venue for infractions

and violations; and

13. makes other technical changes and deletes obsolete provisions.

EFFECTIVE DATE: October 1, 2002, except the (1) provisions on court fee exemptions, access to Judicial Department records, and venue in small claims, infraction, and violation cases are effective on passage; (2) provision on recommendations about the parenting education program is effective July 1, 2002; and (3) provisions on the protective order registry and other provisions on protective orders are effective January 1, 2003.

REGISTRY OF PROTECTIVE ORDERS

Under prior law, the Department of Public Safety (DPS), in cooperation with the Office of the Chief Court Administrator, was required to establish a 24-hour registry of protective orders on the Connecticut On-Line Law Enforcement Communications Teleprocessing (COLLECT) System. The act instead requires the chief court administrator to establish an automated registry of protective orders that may be accessed through that system. The registry must clearly indicate the order's beginning date, ending date (if specified), and duration. The administrator must adopt policies and procedures to operate the registry.

The act allows the administrator to approve written or electronic methods of entering information in the registry. It specifies that an order is contained in the registry if it is entered in an approved manner.

Disclosure and Access to Information

Under the act, certain information may not be disclosed and may be accessed only according to the act, unless a court orders otherwise. This applies to information that (1) would identify a person protected by an order in the registry; (2) is confidential under state or federal law, including information that is confidential by court order; and (3) is contained in an ex parte order entered in the registry before having a court hearing.

The act gives any Judicial Department employee authorized by policies and procedures adopted by the chief court administrator access to the information. It also allows the administrator to grant access to personnel from the following organizations: (1) DPS, (2) Department of Correction, (3) Board of Parole, (4) Psychiatric Security Review Board, (5) Division of Criminal Justice, and (6) municipal or tribal police departments in Connecticut. It also allows access by any other agency, organization, or people the administrator determines, pursuant to policies and procedures he adopts, has a legitimate interest in the information.

The act authorizes anyone given access to the information under its provisions to use and disclose it only to perform his duties.

The act allows anyone protected by an order in the registry to request in writing, on a form prescribed by the administrator, that the registry not disclose her name or address except to the law enforcement agency for the town in which (1) she resides or is employed or (2) the person subject to the order resides.

The act requires that the information in the registry be provided to, and be accessible through, the COLLECT system. It specifies that this does not apply to information that a person requests not to be disclosed under the act's provisions. It also specifies that it cannot be construed to permit public access to the COLLECT system.

The act also requires information about a protective order issued in a case involving sexual assault or injury or risk of injury, or impairing of morals, or an attempt to commit such an offense to be entered in the registry. Under prior law, the victim's name and address could be disclosed only by Superior Court order.

Youthful Offenders

The act requires that information contained in a protective order issued in a case in which a person was found eligible to be adjudged a youthful offender be entered in the registry of protective orders and be disclosed as specified in the act.

Erasure of Records

By law, all police, court, and state's attorneys' records are erased whenever (1) a criminal defendant, by a final judgment, is found not guilty of the charge or the charge is dismissed; (2) any charge in a criminal case has been nolle and at least 13 months have elapsed since the nolle; or (3) the defendant received an absolute pardon. The act specifies that these provisions do not require the erasure of information in the registry.

Contesting Information in the Registry

Under the act, a person who has reason to believe that information about him in the registry is not consistent with a valid court order may submit a written request to the Superior Court clerk in the judicial district where the order was issued to verify the information. The clerk must promptly have the information removed if he finds it inconsistent with the order.

OTHER PROVISIONS ON PROTECTIVE ORDERS

The act allows information provided to a family relations officer in a local family violence intervention unit to be used to prepare criminal protective order forms.

Prior law required the clerk to send a certified copy of a protective order to law enforcement. The act instead allows the clerk to send a copy of the order or its information by facsimile or other means. The act requires the information in, and concerning, the protective order to be entered in the registry.

The act eliminates a requirement that a copy of an ex parte protective order or order after notice and hearing be given to the Family Division. It requires the court clerk to send a copy by facsimile or other means, rather than a certified copy, to law enforcement in the town where the applicant and subject of the order reside. The act allows sending a copy of the order or the information in it.

The act also makes the same changes when sending copies to law enforcement in the town where the applicant works, and it requires that this information be sent. Prior law required sending the information only when the applicant requested it.

MEDIATION

By law, parties can resolve disputes involving land use decisions or locally cited violations of state dumping laws through mediation instead of litigation. They can do this for appeals from decisions of zoning commissions, planning commissions, combined planning and zoning commissions, zoning boards of appeals, historic district commissions, and the Connecticut and Niantic rivers gateway commissions. They can also try mediation for appeals from local decisions enforcing stream and channel encroachment ordinances and state dumping laws.

The act makes eligible for these mediation procedures (1) appeals by someone aggrieved by a decision on a permit application for activities on tidal or inland wetlands regulated by the environmental protection commissioner and (2) appeals by the commissioner or an aggrieved person about regulations, orders, decisions, and actions by the commissioner, a district, or a municipality related to inland wetlands and watercourses.

The act also eliminates a requirement that the parties publish notice of mediation in a newspaper with substantial circulation in the municipality within 15 days of notifying the court about the mediation. It eliminates a provision allowing aggrieved parties to petition the court to participate in the mediation process. It also makes conforming changes.

EXEMPTION FROM COURT FEES

The act exempts any Judicial Department employee, rather than employees of the department's Family Division or Support Enforcement Services, from the following court costs and fees in matters involving their duties: (1) court costs; (2) jury fees; (3) fees to open, set aside, modify, extend, or reargue a judgment; (4) application fees to execute a judgment or garnish wages; or (5) fees associated with the appeal of a family support magistrate's decision.

It also exempts Judicial Department employees and certain other state employees from the recently enacted additional \$5 fee for filing a civil action, other than a small claims case. The other state employees are (1) any member of the Division of Criminal Justice or the Division of Public Defender Services; (2) the attorney general or an assistant attorney general; (3) the consumer counsel; or (4) any attorney employed by the Office of Consumer Counsel within the Department of Public Utility Control, Department of Revenue Services, Commission on Human Rights and Opportunities, Freedom of Information Commission, Board of Labor Relations, Office of Protection and Advocacy for Persons with Disabilities, or Office of the Victim Advocate or any attorney appointed by the court to assist any of them or to act for any of them in a special case.

ACCESS AND DISCLOSURE OF JUDICIAL DEPARTMENT RECORDS

The act eliminates the explicit statutory authority for Judicial Department employees, contractors, and authorized agents to access and disclose department records in the performance of their duties and instead authorizes the chief court administrator to adopt controlling policies and procedures.

CONCILIATION IN DISSOLUTION OR LEGAL SEPARATION CASES

By law, in a dissolution of marriage or legal separation, either spouse or the counsel for any minor child of the marriage may request conciliation proceedings. The law requires two mandatory consultations with the conciliator by each party and further consultations with the consent of both parties. The act allows the court to order additional consultations if the conciliator recommends it and either party agrees.

PARENTING EDUCATION PROGRAM

The law establishes an advisory committee to make recommendations to the Judicial Department on developing and modifying a curriculum for a parenting education program that educates people involved in family relations cases. The act requires the committee, by January 15, 2003, to make recommendations to the Judicial Department on expanding the parenting education program to include a separate program for children whose parents are involved in a dissolution of marriage action. The program must (1) be designed to help children cope more effectively with the problems resulting from dissolution and (2) have the goals of (a) preventing or reducing the child's anxiety, aggression, depression, and behavioral problems and (b) increasing social competencies critical to a child's post-dissolution adjustment.

EMINENT DOMAIN

By law, when a redevelopment agency acquires property by eminent domain, it files a statement of compensation with the Superior Court. Under the act, a Superior Court judge or a judge trial referee, rather than a state referee, must approve an amount that exceeds \$10,000 before the clerk can certify it.

By law, a person aggrieved by the statement of compensation can apply for review in the Superior Court for the judicial district where the property is located. The act eliminates the option of applying to any judge when that court is not in session.

The act imposes the same requirements on a judge trial referee appointed by the court as prior law imposed on state referees. The act imposes similar requirements on the court if it does not appoint a judge trial referee, but the court is not required to view the property, as a judge trial referee is. The act also provides that the court's findings are conclusive on the owner and redevelopment agency.

By law, anyone applying for payment of money deposited in court or claiming an interest in the compensation can make a motion in the Superior Court for the judicial district where the property is located. The act eliminates the option of applying to any judge when that court is not in session. It allows the court to appoint a judge trial referee, rather than a state referee, to hear the facts and determine the case. It imposes the same requirements on judge trial referees as prior law imposed on state referees. The act imposes similar requirements on the court if it does not appoint a judge trial referee and provides that the court's findings and determinations are conclusive on all parties given notice of the hearing, subject to an appeal to the Appellate Court. If the court rejects a report of a judge trial

referee, the act allows, rather than requires, the court to appoint another judge trial referee.

The act makes similar changes regarding the authority of judges and judge trial referees, instead of referees, with respect to approval of DOT's offer in an eminent domain proceeding. But it allows the court or judge trial referee to view the property while prior law required a trial referee to do so.

COURT SUPPORT SERVICES DIVISION (CSSD)

PA 99-215 established the CSSD within the Judicial Department, consisting of the Office of Adult Probation, Office of Alternative Sanctions, Office of Bail Commission, Family Division, and Juvenile Detention Services Division. The act dissolved these offices and transferred their functions, duties, and responsibilities to CSSD, regardless of any statutory provisions.

This act replaces references to the following offices with CSSD or the Judicial Department: (1) Office of Adult Probation, (2) Office of Alternative Sanctions, (3) Bail Commission, (4) Family Division, (5) Family Relations Division of the Superior Court, (6) juvenile probation unit, and (7) Support Enforcement Services.

Jobs

PA 99-215 also authorized the Judicial Department to establish job titles and assign units and functions to CSSD to carry out its duties efficiently and effectively.

The act eliminates provisions on the Superior Court judges or their committee appointing a chief bail commissioner, assistant chief bail commissioner, bail commissioners, assistant bail commissioners, and other necessary personnel. It also eliminates the duties of the chief bail commissioner.

The act requires CSSD, instead of the chief bail commissioner, to establish written, uniform, and weighted release criteria.

It makes the CSSD executive director, rather than the chief bail commissioner, a member of the Commission on Prison and Jail Overcrowding.

Regarding probation officers, the act:

1. deletes provisions on judges or their committees (a) supervising probation services, (b) appointing a probation director and probation officers, and (c) appointing and setting salaries for officers and employees;
2. gives the Judicial Department, rather than judges or their committees, responsibilities regarding qualifications of probation officers and their removal; and
3. makes the CSSD executive director, rather than the probation director, responsible for

supervising probation officers and employees.

Other Provisions

The act allows CSSD employees to access and disclose information obtained from bail interviews and investigations under the chief court administrator's policies and procedures. Prior law allowed disclosure to specific agencies (which are now part of CSSD) to perform their functions.

MUNICIPAL CITATIONS AND PARKING VIOLATIONS

When a hearing officer assesses an amount against someone for a municipal citation or parking violation, the hearing officer must send notice to the clerk of the Superior Court. Under the act, the chief court administrator can designate any Superior Court facility to receive this notice instead of just one within the boundaries of the judicial district where the municipality is located. Under the act, an appeal from an assessment must be made at the Superior Court facility designated by the administrator, rather than the Superior Court for the geographical area where the municipality is located.

SMALL CLAIMS

Under prior law, a corporation or limited liability company that was a plaintiff in a small claims case had to file the claim in a Superior Court facility designated by the chief court administrator to serve the small claims area within the judicial district where the defendant resided or was doing business, or where the transaction or injury occurred. The act removes the requirement that the small claims area be within such judicial district.

VICTIM COMPENSATION

By law, the Office of Victim Services can make payments (1) to, or for the benefit of, an injured person; (2) to any person responsible for the maintenance of a victim who suffered a pecuniary loss because of the victim's personal injury; and (3) to, or for the benefit of, dependents of a victim who died. The applicant for compensation has 45 days after notice of an award to claim it or the award is vacated. The act also gives the office the option, if the applicant has not claimed the award after 45 days, of ordering payments from the award to health care providers or victim service providers and vacating any remaining amount.

STATE MARSHALS

By law, the State Marshal Commission must appoint as state marshal an individual who applies for the position and (1) was a deputy sheriff or special deputy sheriff of a corporation on or after May 31, 1995; (2) served for at least four years; (3) applied to the commission by July 31, 2001; and (4) submitted an initial application dated on or before June 30, 2000. The act provides that applicants who are determined ineligible for appointment by the commission may appeal to the Superior Court for the judicial district of New Britain, rather than Hartford.

VENUE FOR INFRACTIONS AND VIOLATIONS

The act specifies that infractions and violation matters, instead of just motor vehicle matters, that a magistrate may hear and decide may be held at Superior Court facilities the chief court administrator designates.

BACKGROUND

On-Line Law Enforcement Communications Teleprocessing System

The COLLECT system is a computerized data base maintained by DPS. Police have access to this system and use it to check on such things as outstanding arrest warrants. The legislature in 1993 required DPS, in cooperation with the chief court administrator, to establish a 24-hour protective order registry in the system.

Mediation Procedures

By law, a party must first file an appeal to Superior Court and all of the parties to the appeal must agree to mediation before the process can begin. They must share its cost equally. The contents of mediation sessions are not admissible as evidence. A mediator may not act or be summoned as a witness in a court proceeding on an appeal if mediation has not resolved the issues.

The parties must begin mediating on the same day they notify the court that they intend to try this option. Their agreement stays the appeal once the mediation begins. The appeal resumes if they stop mediation. They must finish within 180 days after they notified the court. The parties can extend the deadline for another 180 days if they all agree to do so but must get the court's approval for a subsequent extension. Any party to the mediation can request an extension and any party can oppose it. The court can set any deadline for a subsequent extension after the first 180-day extension

has elapsed. Any party can end the mediation by withdrawing from it.

The mediator can ask anyone he believes is needed to resolve the issue to participate in the mediation. Potential participants include interveners, people who own land abutting the land that is the subject of the appeal, representatives of government agencies not involved in the mediation, and other people significantly involved in the issue. Within 15 days after the mediation ends, the mediator must report to the court about the process and its outcome. His report becomes part of the court's record if the mediation failed to resolve the issue.

Judge Trial Referees and State Referees

At age 70, a judge or senior judge becomes a state referee for the remainder of his term and can be appointed as a state referee for subsequent terms. The chief justice may also appoint qualified members of the bar who are residents and electors of Connecticut as state referees. He may also designate a state referee as a judge trial referee. A judge trial referee may hear criminal and civil cases and juvenile matters referred from the Superior Court.

PA 02-138—sHB 5680
Judiciary Committee

AN ACT CONCERNING PENALTIES FOR SEXUAL ASSAULT OF A MINOR, CIVIL AND CRIMINAL STATUTES OF LIMITATIONS IN SEXUAL ASSAULT CASES, REPORTING AND INVESTIGATION OF CHILD ABUSE AND NEGLECT, DISCLOSURE OF RECORDS OF TEACHER MISCONDUCT AND ESTABLISHMENT OF SEXUAL OFFENDER RISK ASSESSMENT BOARDS

SUMMARY: This act:

1. increases the classification and maximum penalty for sex crimes involving minors under age 16;
2. requires courts to include a five-year period of special parole in any sentence for first-degree aggravated sexual assault;
3. extends, from two to 30 years after the victim reaches age 18, or up to five years from the date he notifies the police or a prosecutor of the crime, the statute of limitations for prosecuting sexual abuse, sexual exploitation, or sexual assault of a minor, except when the offense is a class A felony;

4. extends, from 17 to 30 years after age 18, the civil statute of limitations for a minor victim of sexual abuse, sexual exploitation, or sexual assault to file a personal injury action based on the crime;
5. eliminates the statute of limitations for bringing a personal injury action to recover damages caused by sexual assault when the party legally at fault for the injury is convicted of first-degree sexual assault or first-degree aggravated sexual assault for such conduct;
6. eliminates the time a person has to enforce, or institute an action based on, a judgment rendered under these facts;
7. makes numerous changes to the mandated reporter statutes, including adding to the list of such reporters and requiring those who fail to report to attend a training program;
8. establishes a 23-member advisory committee to make recommendations on the need for one or more sexual offender risk assessment boards and the process for reporting people in state custody or receiving state service who are at risk of engaging in illegal sexual behavior;
9. prohibits courts from entering orders or judgments or approving settlements that prevent or restrict anyone from reporting allegations of sexual abuse, sexual exploitation, or sexual assault of a minor, which were the subject of a personal injury action for damages, to the Department of Children and Families (DCF) commissioner or a law enforcement agency; and
10. makes a teacher's personal misconduct records public and subject to disclosure under the Freedom of Information Act without the teacher's consent.

EFFECTIVE DATE: October 1, 2002, except (1) the provisions extending the criminal statute of limitations is effective upon passage and applicable to crimes committed on and after that date; (2) provisions eliminating secrecy in personal injury actions involving minor victims of sex crimes and establishing an advisory committee are effective upon passage; and (3) the two civil statute of limitations provisions are effective upon passage and applicable to any cause of action arising from an incident committed prior to, on, and after that date.

SEXUAL ASSAULT CRIMES INVOLVING MINORS

The act increases the classification and thus the maximum penalty for certain risk of injury and sexual assault crimes committed against minors under age 16.

Table 1: Sexual Assault Crimes Involving Minors

Crime Description	Prior Classification and Penalty	Classification and Penalty Under Act
The form of risk of injury to a minor involving sexual or indecent contact with the intimate parts of a child under age 16 or subjecting such child to contact with the intimate parts of the actor in a way likely to impair the child's health or morals.	A class C felony, punishable by up to 10 years' imprisonment, a \$10,000 fine, or both.	A class B felony, punishable by up to 20 years' imprisonment, a \$15,000 fine, or both.
The form of first-degree sexual assault involving sexual intercourse with a child (1) under age 16 by force or (2) under age 13 where the actor is at least two years older.	A class B felony, punishable by up to 20 years' imprisonment, a \$15,000 fine, or both. The mandatory minimum sentence is at least two years but the combined sentence and special parole must equal at least 10 years.	A class A felony, punishable by 10 to 25 years' imprisonment, up to a \$20,000 fine, or both. The mandatory minimum penalty is 5 years if the victim is between 10 and 16, 10 years if the victim is under 10 years old. The combined sentence and special parole must equal at least 10 years.
The form of first-degree aggravated sexual assault involving first-degree sexual assault against a minor under age 16 while armed, with intent to disfigure the victim, with an extreme indifference to human life, or while aided by two or more people.	A class B felony, punishable by up to 20 years' imprisonment, up to a \$15,000 fine, or both. The crime carries a five-year mandatory minimum sentence, but the combination of imprisonment and special parole must be 20 years.	A class A felony, punishable by 10 to 25 years' imprisonment, up to a \$20,000 fine, or both. The crime carries a five-year mandatory minimum sentence. But if force is involved and the victim is under age 16, the mandatory minimum is 20 years. The combination of imprisonment and special parole must be 20 years.
The form of second-degree sexual assault involving sexual intercourse (1) when one person is between age 13 and 16 and the other is at least two years older, (2) with a mentally defective person, (3) with a physically helpless person, (4) between a guardian and minor, (5) between a psychotherapist and patient, (6) through false representation, (7) between a person in custody or institutionalized and his supervisor or disciplinary authority, or (8) between a school employee and a student who attends	A class C felony, punishable by up to 10 years' imprisonment, a \$10,000 fine, or both. This crime carries a nine-month mandatory minimum sentence.	A class B felony, punishable by up to 20 years' imprisonment, a \$15,000 fine, or both. This crime carries a nine-month mandatory minimum sentence.

the same school or one under the jurisdiction of the same local or regional board of education.		
The form of third-degree sexual assault involving (1) sexual contact by force or (2) sexual intercourse knowing that the relationship between the offender and the victim is that of parent and child, grandparent and grandchild, siblings, aunt or uncle and niece or nephew, or stepparent and stepchild.	A class D felony, punishable by up to five years' imprisonment, a \$5,000 fine, or both.	A class C felony, punishable by up to 10 years' imprisonment, a \$10,000 fine, or both.
The form of third-degree sexual assault with a firearm involving third-degree sexual assault while using, being armed with and threatening to use, or displaying or representing that he has a pistol, revolver, machine gun, rifle, shotgun, or other firearm.	A class C felony, punishable by up to 10 years' imprisonment, a \$10,000 fine, or both. The crime carries a two-year mandatory minimum sentence but the combination of imprisonment and special parole must be 10 years.	A class B felony, punishable by up to 20 years' imprisonment, a \$15,000 fine, or both. The crime carries a two-year mandatory minimum sentence but the combination of imprisonment and special parole must be 10 years.
The form of fourth-degree sexual assault involving intentional sexual contact with a person under age (1) 15, (2) 18 when the offender is the person's guardian or otherwise responsible for his welfare, or (3) 16 if the offender is a school employee and the victim is a student who attends the same school or one under the jurisdiction of the same local or regional board of education.	A class A misdemeanor, punishable by up to one year imprisonment, a \$2,000 fine, or both.	A class D felony, punishable by up to five years' imprisonment, a \$5,000 fine, or both.

STATUTE OF LIMITATIONS

Criminal

Under prior law, the statute of limitations for prosecuting sexual abuse, sexual exploitation, or sexual assault of a minor was the earlier of (1) two years after the victim reaches age 18 or (2) up to five years from the date he notifies the police or a prosecutor of the crime. But in either case, the statute of limitations ran for at least five years after the crime was committed.

With two exceptions, this act extends the period after the victim reaches age 18 from two to 30 years, or

up to five years from the date he notifies the police or a prosecutor of the crime, whichever is earlier, and eliminates the mandatory minimum period for bringing the action. Cases involving second-degree sexual assault where the victim is between ages 13 and 16 and the offender is more than two years older must be prosecuted not later than five years after the crime is committed. First-degree sexual assault and first-degree aggravated sexual assault, both class A felonies under the act, may be prosecuted at any time.

Civil

With one exception, the act extends, from 17 to 30 years after age 18, the civil statute of limitations for a minor victim of sexual abuse, sexual exploitation, or sexual assault to file a personal injury action based on the crime.

It eliminates the statute of limitations for bringing a personal injury action to recover damages caused by sexual assault when the party legally at fault for the injury is convicted of first-degree sexual assault or first-degree aggravated sexual assault for such action. These actions may be brought at any time. It also eliminates the time a person has to enforce, or institute an action to collect money damages awarded in such an action. Under prior law, people had 20 years to enforce these judgments (10 years for judgment rendered in small claims court) and 25 years to institute an action based on the judgment (15 for small claims).

MANDATED REPORTER LAWS

By law, certain professionals who have some degree of contact with children must report suspected abuse, neglect, and at-risk situations to DCF. They must make an oral report within 24 hours of suspecting the problem, followed by a written report 48 hours after that. People who fail to report can be fined up to \$500. Reporters call a dedicated, toll-free hotline to make reports. The act makes numerous changes to the law, including adding to the list of mandated reporters, shortening the reporting period, increasing the fine, and specifying that the hotline accept all calls concerning child abuse and neglect.

Mandated Reporters

The act adds to the list of mandated child abuse reporters juvenile or adult probation officers; juvenile or adult parole officers; school coaches; licensed or certified emergency medical services providers; licensed professional counselors; certified substance alcohol and drug abuse counselors; child care providers in licensed group day care homes; DCF employees; and Department of Public Health employees who are responsible for licensing child day care centers, group

and family day care homes, and youth camps. (PA 02-106 adds intramural and interscholastic athletic coaches.)

It requires mandated reporters, engaged in the ordinary course of business rather than acting in their professional capacity, to report to DCF when they have reasonable cause to suspect that a child under age 18 has been abused, neglected, or is at risk of abuse or neglect.

Under the act, mandated reporters no longer have to report suspected child abuse or neglect at the hands of institutional or school staff to the head of such institution or school. Instead, the act requires the DCF commissioner or her designee to notify the head, except when the head is the alleged perpetrator. Once notified, the law continues to require the head or his designee to immediately notify the child's parent or other caregiver that a report has been made.

Timeframe for Making Reports

The act reduces, from 24 hours to 12 hours, the maximum period during which mandated reporters must orally report suspected cases of abuse or neglect to the DCF commissioner or a law enforcement agency. It broadens the circumstances under which the report must be made to include cases where the reporter has reasonable cause to suspect or believe a child has been placed in imminent risk of serious harm by any person, rather than only those responsible for the child's health, welfare, or care.

The act reduces from 24 to 12, the maximum number of hours the commissioner or her designee has after receipt of a report of sexual or serious abuse to notify appropriate law enforcement agencies.

Penalty for Failure to Report

In addition to a \$500 fine imposed by law, the act requires a mandated reporter who fails to report child abuse or neglect to participate in an educational and training program that the DCF commissioner establishes through one or more private organizations. The program must be funded entirely from participant fees, which the commissioner must approve. (PA 02-106 raises the penalty for any mandated reporter who fails to report to between \$500 and \$2,500.)

Child Abuse Hotline

The act requires the child abuse telephone hotline to accept all reports of abuse or neglect regardless of the offender-victim relationship or the alleged offender's affiliation with any organization or entity. The DCF commissioner must classify and evaluate all reports in accordance with the law.

DCF CLASSIFICATION AND EVALUATION OF REPORTS OF CHILD ABUSE

By law, the DCF commissioner or her designee must have classified and immediately evaluated any report of child abuse or neglect. The act limits this duty to reports of alleged abuse or neglect committed by people (1) responsible for the child's health, welfare, or care; (2) given access to the child by the responsible person; or (3) entrusted with the child's care. A person is "entrusted with the care of a child or youth" when someone responsible for the child's or youth's health, welfare, or care gives him access to educate, care, counsel, spiritually guide, coach, train, instruct, tutor, or mentor the child or youth.

In all other cases of reported abuse or neglect, the commissioner must refer the report to the appropriate local law enforcement authority where either the child resides or the abuse or neglect occurred.

The act limits to parents and guardians, the people the DCF commissioner may refer for substance abuse treatment after an investigation indicates they probably abused or neglected a child.

STATE POLICE CHILD ABUSE AND NEGLECT UNIT

The act requires the State Police Child Abuse and Neglect Unit to help multidisciplinary teams investigate reports of child abuse or neglect at the DCF commissioner's request. The unit must already provide this assistance at the request of the head of a local law enforcement agency. Multidisciplinary teams are located in each judicial district. They review selected child abuse or neglect cases, reduce the trauma to child victims, and ensure the child's protection and treatment.

ADVISORY COMMITTEE

The act establishes a 23-member advisory committee to make recommendations concerning the (1) establishment of one or more sexual offender risk assessment boards and (2) process for someone to report, in confidence, that a person in state custody or receiving state services is at risk of engaging in illegal sexual behavior. The board(s)' duty would be to assess and evaluate adjudicated and non-adjudicated sexual offenders who are in state custody or receiving services from a state contract provider and determine if they pose a risk of engaging in illegal sexual behavior and make recommendations concerning their appropriate placement and level of supervision.

The committee must report its findings and recommendations to the Judiciary Committee by January 1, 2003. The committee terminates on the date

it submits its report or January 1, 2003, whichever is earlier.

Committee Composition

The committee members are the following officials or their designees, with the OPM secretary or his designee serving as chair:

1. chief court administrator;
 2. attorney general;
 3. chief state's attorney;
 4. chief public defender;
 5. DCF, correction, mental health and addiction services, mental retardation, public health, and public safety commissioners;
 6. OPM secretary;
 7. Office of Protection and Advocacy and Office of Victim Services directors;
 8. Psychiatric Security Review Board and Parole Board chairs;
 9. Court Support Services Division executive director;
 10. the victim advocate; and
 11. a representative each from the Connecticut Sexual Assault Crisis Services, Inc., Connecticut Police Chiefs Association, Connecticut Association for the Treatment of Sexual Offenders, The Connections, Inc., Connecticut Psychological Association, and American Psychiatric Association.
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PA 02-33—sHB 5057

*Labor and Public Employees Committee
Planning and Development Committee
Appropriations Committee*

AN ACT INCREASING THE MINIMUM WAGE

SUMMARY: This act increases the minimum wage from \$6.70 to \$6.90 on January 1, 2003 and to \$7.10 on January 1, 2004. In both cases, if 100.5% of the highest federal minimum wage rounded to the nearest whole cent is higher, it becomes the minimum wage.

The act extends, from December 31, 2002 to December 31, 2004, the sunset date of a provision, commonly called a tip credit, that gives employers an offset against the minimum wage for certain employees. By law, the credit is 29.3% of the minimum wage for people employed in the hotel and restaurant industry and 8.2% of the minimum wage for bartenders, in both cases for people who customarily and regularly receive tips. As a result of the wage increase and the tip credit extension, the minimum wage for hotel and restaurant employees will be \$4.88 and \$5.02 in 2003 and 2004, respectively. For bartenders, the minimum will be \$6.33 in 2003 and \$6.52 in 2004.

EFFECTIVE DATE: July 1, 2002

PA 02-44—sHB 5062

Labor and Public Employees Committee

AN ACT CONCERNING THE EMPLOYMENT OF FIFTEEN-YEAR-OLD MINORS

SUMMARY: This act extends the expiration date of the law allowing 15-year-olds to work certain days and hours as baggers, cashiers, or stock clerks in stores (such as supermarkets and department stores) for five more years, from September 30, 2002 to September 30, 2007.

EFFECTIVE DATE: October 1, 2002

BACKGROUND

Day and Hour Restrictions

Fifteen-year-olds can work in stores only during school vacations that last at least five consecutive days, except they may work in retail food stores on any Saturday. They cannot work more than 40 hours per week or 8 hours per day and can work only between 7:00 a.m. and 7:00 p.m., except during the summer when they can work until 9:00 p.m.

Exemptions From Law

The restrictions on 15-year-olds working do not apply to children (1) participating in work-study or school-to-work programs approved by the education and labor commissioners; (2) participating in certain summer work-recreation programs approved by the labor commissioner; or (3) placed on vocational probation by the Superior Court or on vocational parole by the Department of Children and Families, if they are at least 14 years old.

PA 02-54—sHB 5580

*Labor and Public Employees Committee
Appropriations Committee*

AN ACT CONCERNING THE SELF-SUFFICIENCY MEASUREMENT FOR THE STATE OF CONNECTICUT

SUMMARY: This act requires the Office of Workforce Competitiveness (OWC) to update, within available appropriations and in consultation with the Office of Policy and Management, the state's self-sufficiency measurement by January 1, 2003, and every three years thereafter.

OWC must distribute the updated measurement to state agencies that help people looking for education, training, or employment. On or after January 1, 2003, it may also distribute the measurement to anyone who requests it. The measurement may be used to (1) estimate how much money people looking for education, training, or employment need to support their families and (2) help such people set financial goals.

The self-sufficiency measurement indicates the income a worker needs to care for his family.

EFFECTIVE DATE: Upon passage

PA 02-69—sSB 63

*Labor and Public Employees Committee
Government Administration and Elections Committee
Planning and Development Committee
Transportation Committee
Appropriations Committee*

AN ACT CONCERNING ANNUAL ADJUSTMENTS TO PREVAILING WAGES

SUMMARY: This act requires contractors awarded contracts on and after October 1, 2002 for state and municipal prevailing wage projects to adjust wage and benefit contributions each July 1 during the contract to reflect changes in the prevailing wage. It requires

contractors to contact the labor commissioner by each July 1 during the contract to find out the current prevailing wage and contribution rates.

EFFECTIVE DATE: October 1, 2002

BACKGROUND

Prevailing Wage Law

The state prevailing wage law requires contractors on state highway projects and large state or local public works projects to pay laborers and mechanics working on the projects at least the same wages customarily paid for similar work in the town or city where the work is being performed. Contractors must also make the customary contribution to any employee welfare fund that covers employees or, if there is none, pay the contributions directly to the employees.

PA 02-134—sHB 5575

Labor and Public Employees Committee

Judiciary Committee

Transportation Committee

Appropriations Committee

AN ACT PROTECTING DISPLACED WORKERS

SUMMARY: This act requires entities that take over contracts to provide food and beverage services at Bradley International Airport to retain their predecessors' employees for at least 90 days. The successor contractor does not have to retain an employee with a poor attendance or performance record.

The act imposes responsibilities on the authority that initially awards the contract, the original contractor, and successor contractors who have 10 or more employees. It bars the successor contractor from firing the retained employees during the 90-day period except for just cause. The successor contractor can lay them off, but must do so by seniority. An employee displaced or terminated in violation of these provisions can sue for damages and reinstatement to his job. If a retained employee's performance during the 90-day period is satisfactory, the successor contractor must offer him continued employment under terms and conditions it sets, or as required by law.

An awarding authority or contractor that knowingly violates these provisions is subject to a fine of up to \$100 per employee for each day the violation continues.

The act applies to contracts entered on or after July 1, 2002 with (1) entities that agree to provide the covered services and (2) their subcontractors at any tier who employ 10 or more people. It does not apply to employees in managerial, supervisory, or confidential

positions, or who work fewer than 15 hours per week. The act also applies to contracts awarded between July 1, 2001 and July 1, 2002, if the successor contractor actually knew that the legislature was considering legislation like the act.

EFFECTIVE DATE: July 1, 2002

AWARDING AUTHORITY'S RESPONSIBILITIES

Under the act, an awarding authority is any person or entity that awards or otherwise enters into a contract to perform food and beverage services at Bradley. It can be an individual, business, the state or its political subdivisions, or any other entity that may employ people or enter into contracts.

The awarding authority must give advance notice to a contractor whose contract will be terminated or not renewed and to the union representing any of the contractor's employees. It must give the contractor and union the name, address, and telephone number of the successor contractor or contractors, if known.

TERMINATED CONTRACTOR'S RESPONSIBILITY

Within three days of receiving the notice, the terminated contractor must provide its successor with the name, hiring date, and job classification of each person it employed at the site covered by the contract as of the date it received the notice. On the date the contract ends, the terminated contractor must provide the successor contractor with updated information on these employees.

If the awarding authority failed to notify the terminated contractor of the name of the successor contractor, the terminated contractor must provide the information about its employees to the authority within three days of receiving the termination notice. The authority must give this notice information to the successor contractor, once it has been selected.

RESPONSIBILITIES OF SUCCESSOR CONTRACTORS

A successor contractor generally must retain all of the employees that the terminated contractor continuously employed at the affected site during the six-month period before its contract was terminated. An employee is considered to have been continuously employed during this time if he was laid off or on leave with recall rights. However, a successor contractor does not have to retain an employee whose attendance and performance while working for the terminated contractor would have led a prudent employer to terminate him.

The successor contractor must retain the employee for at least 90 days from the date it begins to provide service. If it is terminated before the end of the 90 days, the subsequent successor contractor must retain all of the employees who were continuously employed by any of the terminated contractors at the site covered by the contract during the six months before the most recent termination. Periods of lay-off or leave with recall rights count as employment for this purpose. The new contractor must retain these employees for a new 90-day period, which starts when it begins its contract.

The successor contractor must hand deliver a written employment offer to each employee eligible for retention. It must be written in a language the employee understands and delivered by the later of five days before the termination of the original contract or 15 days before the contractor begins to provide service.

The act specifies the notice's content. Among other things, the contractor must inform the employee of pay rate, hours (per shift and per week), and benefits it is offering. The notice must describe the employee's rights under the act and the contractor's name, address, and telephone number. It must state that the employee has 10 days to respond.

During the 90-day period, the contractor must (1) keep a preferential hiring list of employees eligible for retention that it did not initially retain and (2) must hire additional employees, if needed, from this list. During this period, the employer can fire a retained employee only for just cause, i.e., poor performance or misconduct. However, if the contractor determines at any time that it needs fewer employees than the terminated contractor had, he can lay employees off. In doing so, it must retain employees by seniority within each job class, based on an employee's total length of service at the affected site. It appears that laid off employees are not eligible to be placed on the preferential hiring list.

REMEDIES FOR A DISPLACED EMPLOYEE

An employee displaced or terminated in violation of the above provisions can sue the awarding authority, terminated contractor, successor, or all these parties, for damages. If the employee wins the case, the court can award back pay and benefits and reinstatement to his former position at his most recent salary and benefit level. Back pay must be at least the higher of (1) the employee's regular pay rate for his last year on the job (his average pay during his employment times his average number of hours over his last four months on the job if employed for less than one year) or (2) his final regular pay rate on his last day multiplied by his average number of hours worked per day over the last four months. The court must award prevailing

employees reasonable attorneys' fees and costs.

These provisions do not limit an employee's right to file suit against the awarding authority, terminated contractor, or successor contractor for wrongful termination under common law.

PA 02-136—sSB 456

*Labor and Public Employees Committee
Judiciary Committee*

AN ACT CONCERNING EMPLOYMENT PROTECTION FOR CRIME VICTIMS AND PERSONS WHOSE CRIMINAL RECORDS HAVE BEEN ERASED

SUMMARY: This act bars employers from firing or otherwise penalizing, threatening, or coercing an employee for:

1. attending a court proceeding or participating in a police investigation related to a criminal case in which he was a victim;
2. having a restraining order issued on his behalf in a domestic violence case; or
3. having a protective order issued on his behalf by a court in Connecticut or another state, as long as the out-of-state order is registered here.

An employee is a crime victim if he (1) suffered direct or threatened physical, emotional, or financial harm as a result of a crime or (2) is the guardian or immediate family member of a minor, physically disabled, or incompetent person who suffered such harm, or of a homicide victim.

An employee's recourse for violations is the same as that for an employee retaliated against for obeying a court order to testify as a witness in a criminal case. He can, no later than 90 days after an employer's violation, file suit for damages and for reinstatement or other means of rescinding the violation.

The act also prohibits all employers, including the state and its political subdivisions, from taking certain actions against people who have had their arrest, criminal charge, or conviction records erased. An employer cannot require an employee or prospective employee to disclose such records or deny employment or discharge an employee solely because of records. Any employment application form asking for criminal history information must contain clear notice that the applicant need not disclose such erased information and that he is considered never to have been arrested and can so swear under oath. The erased records covered by the bill include delinquency; family with service needs; youthful offender status; criminal charges that have been dismissed, nolle, or resulted in a not guilty finding; and absolute pardons.

Under prior law, the portion of a job application containing an applicant's arrest record information was available only to members of an employer's personnel department or the person in charge of hiring. The act allows the information to be given also to employees or agents of the employer involved in interviewing the applicant. But it extends the confidentiality requirements to the entire criminal history record of job applicants and employees.

EFFECTIVE DATE: October 1, 2002

PA 02-42—SB 464

*Planning and Development Committee
Transportation Committee*

**AN ACT CONCERNING ESTABLISHMENT OF A
NEW HAVEN PORT AUTHORITY**

SUMMARY: This act authorizes New Haven to create a port authority. By law, any town can create a port district (a geographic designation) by a vote of its legislative body. But prior law authorized only Bridgeport and New London to create port authorities. By law, a town’s chief executive officer appoints between five and seven members to form an authority board, which manages the affairs of a port district.
EFFECTIVE DATE: Upon passage

appeals in any year, not just in the year when a revaluation becomes effective or the years before or after it becomes effective; and

3. requires the local assessor, rather than the OPM secretary, to prepare property tax exemption forms for non-religious organizations that own cemeteries to file with the assessor every four years.

The act’s provisions concerning revaluation exemptions and early revaluations supersede contrary special acts, charters, and home rule ordinances, starting July 1, 2002.

EFFECTIVE DATE: Upon passage

EXEMPTION CRITERIA

Statistical Measures

To qualify for the exemption, a town must meet various statistical criteria that measure the stability of its property values. Most of the criteria compare sales prices to assessed values in various ways, both on a town-wide basis and within specific property classes. The act sets limits on the degree of variation allowed for a town to qualify for the exemption. A town cannot qualify if its variations fall outside the limits. Among the criteria the act uses are (1) the “coefficient of dispersion,” which measures how much assessment-to-sale ratios on particular properties vary from typical assessment-to-sale ratios and (2) “price-related differential,” which tests whether high- and low-valued properties within a particular class are assessed at the same level.

Specific Criteria

To be eligible for an exemption, a town must have a median assessment ratio for all property of between 63% and 77% (i.e., within 10% of the statutorily required 70% of fair-market value). In addition, each property class with 15 or more market sales must have:

1. an assessment level within 5% of the median assessment level for all such classes,
2. a coefficient of dispersion no greater than (a) 15% for all property and for residential property and (b) 20% for commercial property and vacant land, and
3. a price-related differential between 0.98 and 1.03.

The act takes its definitions of property types, “market sale,” and statistical calculations from state regulations that set municipal revaluation standards (Conn. Agencies Reg. § 12-62i-1).

PA 02-49—sSB 74

*Planning and Development Committee
Finance, Revenue and Bonding Committee*

**AN ACT CONCERNING PERIODIC
REVALUATION OF REAL PROPERTY BY
TOWNS**

SUMMARY: This act exempts a municipality from conducting its next scheduled revaluation if it can show through statistical calculations that the fair-market value of its properties is relatively stable. It applies to revaluations required from October 1, 2003 to September 30, 2007.

The act establishes an 11-member committee appointed by the Office of Policy and Management (OPM) secretary to review the accuracy of the statistical data and calculations towns use to certify revaluation exemptions. The committee consists of past and present local assessors, representatives from towns of various sizes, a person with expertise in statistical analysis, and an OPM employee.

The act requires the OPM secretary to follow the committee’s recommendation either to approve or rescind the exemption. If the secretary rescinds, he may impose unspecified monetary penalties on towns that intentionally use the act’s exemption to subvert revaluation requirements.

The act also:

1. starting October 1, 2002, requires a town that does its quadrennial revaluation ahead of its statutory schedule to follow the statutory schedule for its subsequent revaluations instead of doing its subsequent revaluation four years after its early revaluation date;
2. allows municipal legislative bodies to appoint additional members to the board of assessment

SCHEDULE

Towns claiming exemptions must perform the required statistical calculations between April 2 and April 10 of the year before the scheduled October 1 revaluation year. All 169 towns have a revaluation scheduled during the four-year life of the act. The 52 towns scheduled for revaluation for the October 1, 2003 assessment year could claim an exemption if they performed the calculations by June 9, 2002 (30 days after the act was enacted). The statutory revaluation schedule for the upcoming assessment years is:

1. October 1, 2004 – 42 towns;
2. October 1, 2005 – 38; and
3. October 1, 2006 – 37.

The act expires on October 1, 2007 and does not apply to revaluations implemented on or after this date.

CALCULATIONS

Under the act, exemption calculations must be based on market sales occurring in the six months (i.e., between October 1 and April 1) immediately preceding the calculations. If there were fewer than 30 such sales during that time, the period must be extended back in no more than 12 monthly increments from the beginning of the six-month period (i.e., to the preceding October 1) until at least 30 market sales are in the sample.

The act allows the assessor to adjust the sales price of any property to take into account:

1. whether the property is leased for a below-market rent,
2. personal property included in the sale price, or
3. any other factor he considers appropriate and can document based on objective criteria.

If the time period is adjusted back to before the October 1 preceding the calculation, the act also allows the assessor to adjust for real estate market price changes.

Information on market sales and the statistical analysis must be publicly available for at least one year from the date a town certifies its exemption from the next revaluation, unless the OPM secretary rescinds the exemption under the act.

CERTIFICATION

Towns that meet the act's statistical criteria must certify their exemptions to OPM within five days after making their calculations. Certifications must be signed by the town's assessor and chief executive officer, filed in their respective offices, and submitted to the town clerk for filing on the town's land records. If the OPM secretary rescinds the certification, the secretary's rescission notice must also be filed on the land records.

Along with their certifications, towns must submit required documentation, including at least:

1. information on all real property sales in each property class during the time period its calculations cover;
2. information on market sales used in its analysis of each class;
3. amounts of, and reasons for, any sale price adjustments;
4. documentation supporting exclusion of any real property sale from the analysis; and
5. the results of the required statistical calculations.

Towns must promptly provide the OPM secretary and the exemption review committee with any additional information either may require.

EXEMPTION REVIEW COMMITTEE

Duties

The act establishes a committee to analyze data on which towns base their exemption certifications, as well as other data a town considered or should have considered. The committee has three months after a town submits its certification to file a report of its findings with the OPM secretary. The report must give the committee's opinion on the validity of the town's certification and recommend action by the secretary.

In its analysis, the committee must determine whether a town complied with the act's requirements in its calculations and whether its assessor:

1. excluded market sales he should have included;
2. made sales price adjustments that were not based on objective criteria, not documented, or not substantiated;
3. included sales that were not market sales; or
4. did not make necessary and appropriate sales price adjustments.

If it (1) finds any of these shortcomings, and (2) finds they materially affected the town's calculations, the committee must recommend that the OPM secretary rescind the town's certification. If it finds the town's calculations were correct or that any mistakes did not materially affect them, it must recommend that the secretary validate the certification.

Membership

The review committee must have 11 members. Six members, who serve four-year terms, must be (1) OPM-certified assessment personnel and (2) either currently, or within five years before appointment, employed in a municipal assessment position in a Connecticut town. The committee must also include one OPM employee

and one person competent in statistical analysis, each of who will serve two-year terms.

The remaining three members, also serving two-year terms, must include at least one representative from towns of each of the following populations:

1. 10,000 or fewer,
2. between 10,000 and 40,000, and
3. more than 40,000.

Appointments and Compensation

The OPM secretary must appoint all the committee members by July 1, 2002. He must fill vacancies at the end of the terms or to fill out unexpired terms of members who no longer qualify because they cease to be either certified assessors or OPM employees. All members, except the OPM employee, must serve without pay. Towns applying for exemptions must reimburse members for their reasonable expenses in analyzing their data.

The committee must elect its chairman and adopt rules and procedures for carrying out its duties. No member may vote on the validity of a certification from a town where he (1) lives, (2) owns or has substantial interest in taxable property, or (3) is a municipal employee.

VALIDATING OR RESCINDING CERTIFICATIONS

The act requires the OPM secretary to (1) follow the committee's recommendation either to approve or rescind the exemption and (2) notify the town of his decision by certified or registered mail within five days of receiving the committee's report.

If the secretary rescinds the certification, the town must revalue its real property as soon as possible and no later than the October 1 following the scheduled revaluation date for which its certification is rescinded. Such a town must also implement its next revaluation four years after the assessment date for which the exemption is rescinded and follow its statutory revaluation schedule thereafter. The town remains ineligible for an exemption for five years after the date of its rescinded certification, although this provision appears to be unnecessary since the act's exemption provisions remain in effect for only four years.

PENALTIES

If the OPM secretary determines that a town deliberately disregarded the act to subvert revaluation requirements, he may impose a monetary penalty on it. The secretary decides the penalty amount and payment method, which can include withholding money from state grants in the year of the penalty or the following

year.

Before imposing a penalty, the secretary or his designee must hold a hearing and give the town at least 10 business days written notice of its date, time, and place. The secretary has 30 days after the hearing to decide whether to impose a penalty and to notify the town in writing, by certified or registered mail, of his decision. If he imposes a penalty, the notice must include the penalty amount and payment method.

A town can appeal a decision to impose a penalty to the Superior Court for the judicial district where it is located within 10 business days after it receives the penalty notice. The act requires such appeals be given priority.

PA 02-74—sSB 68

Planning and Development Committee

AN ACT CONCERNING ZONING AND THE MUNICIPAL PLAN OF CONSERVATION AND DEVELOPMENT, APPEALS OF SITE PLAN DECISIONS AND MUNICIPAL PENALTIES FOR VIOLATIONS OF ZONING LAWS

SUMMARY: This act allows towns to fine zoning violators for each day a zoning violation continues. The law allows towns to adopt ordinances imposing up to \$150 fines for these violations, but prior law did not explicitly allow them to reimpose a fine each day a violation continued.

The act also explicitly allows anyone aggrieved by a zoning commission's decision to approve or deny a site plan to appeal the decision directly to the Superior Court. In doing so, the act overrules a Connecticut Appellate Court decision, which dismissed a site plan appeal because the aggrieved property owner did not first appeal it to the local zoning board of appeals (*Borden v. Planning and Zoning Commission*, 58 Conn. App. 399, *cert. den.* 254 Conn. 921 (2000)).

Finally, the act requires zoning commissions to consider the town's plan of conservation and development when changing or repealing zoning regulations or zoning boundaries. The law already requires them to consider the plan when adopting regulations. The act also requires commissions to state on the record whether a proposal to adopt, change, or repeal a regulation or boundary is consistent with the plan.

EFFECTIVE DATE: October 1, 2002, except for the provision regarding site plan appeals, which is effective upon passage.

PA 02-77—HB 5068*Planning and Development Committee***AN ACT CONCERNING ACTIONS OF ZONING COMMISSIONS ON PETITIONS**

SUMMARY: This act removes the limits on the kinds of actions zoning commissions can take on a request to change a zoning regulation or a zoning map's boundaries. Prior law allowed them to adopt or deny these requests. The Superior Court has issued conflicting rulings as to whether the power to approve a request encompasses the power to modify it. The act allows commissions to act upon the requests without limitation.

EFFECTIVE DATE: Upon passage and applicable to petitions filed on or after that date.

BACKGROUND*Related Cases*

The Superior Court has issued conflicting rulings on whether CGS Sec. 8-3(c) allows commissions to modify and approve a developer's request to change a zoning regulation or a zoning map's boundaries. The court initially ruled that the law "clearly and unambiguously grants a planning and zoning commission the authority to adopt or deny a petition requesting a zone change. It does not, however, grant the authority to *modify* a petition" (*Joseph Maccio. v. Town of Southington Planning and Zoning Commission, et. al.*, 10 Conn. L. Rptr. 6 (1993), emphasis in the original).

But in a subsequent case, the court rejected a plaintiff's claim that the statute allowed the commission only to approve or deny the request. The court found "strong policy reasons for not giving CGS § 8-3 (c) the restrictive meaning that Verderame [the plaintiff] claims." A commission acts as a legislative body when it decides zone change requests, the court found (*Verderame v. West Haven Planning and Zoning Commission*, 19 Conn. L. Rptr. 638 (1997)).

PA 02-114—sSB 315*Planning and Development Committee
Finance, Revenue and Bonding Committee***AN ACT CONCERNING SHORT TERM BORROWING BY MUNICIPALITIES**

SUMMARY: When towns decide to issue general obligation bonds to fund a project, the law allows them to issue temporary notes in anticipation of receiving the

bonds' proceeds. This act extends the maximum time period during which towns can renew these notes from four to eight years.

The act correspondingly extends the period during which towns must begin to repay the notes. Under prior law, they had to begin repaying the notes in the third year and finish repaying them by the fourth year. Under the act, they must still begin the repayments in the third year and continue them in each of the subsequent years the notes remain outstanding. By law, towns must annually budget an amount equal to at least 5% of the project's net cost to repay the original notes. The funds for this budgeted item can come from any source except grants received to fund the project or proceeds from the notes.

The law also requires towns to issue and begin repaying the general obligation bonds within a prescribed time period if they decide to issue temporary notes. The act extends the date when annual payments must begin to pay off the bonds from five to nine years after the original notes were issued.

EFFECTIVE DATE: October 1, 2002

PA 02-129—sSB 465*Planning and Development Committee
Environment Committee
Appropriations Committee***AN ACT CONCERNING WASTEWATER DISCHARGES IN DRINKING WATER SUPPLY WATERSHEDS**

SUMMARY: This act bars the environmental protection commissioner from issuing a discharge permit for an alternative on-site sewage treatment system within a drinking water supply watershed, unless he determines that such a system is:

1. the only feasible solution to an existing water pollution problem and its capacity does not exceed that of the failed on-site system, or
2. necessary to expand a municipal or public school project or construct a new one on the site of an existing municipal or public school project in a town where a majority of the land is located within a drinking water supply watershed.

The act applies specifically to alternative on-site sewage treatment systems defined in the Public Health Code as "a system serving one or more buildings on one property which utilizes a method of treatment other than a subsurface sewage disposal system and which involves a discharge to the waters of the state." Subsurface sewage treatment systems include septic tanks and accompanying leaching systems. Alternative

on-site sewage treatment systems usually involve some means of pre-treating sewage before it enters a septic system.

Prior law required the commissioner to issue a discharge permit for any facility if the application was consistent with the federal Clean Water Act and (1) the discharge would not pollute state waters or (2) the system proposed to treat the discharge would protect state waters from pollution.

EFFECTIVE DATE: October 1, 2002

PA 02-26—SB 357

*Program Review and Investigations Committee
Public Health Committee*

**AN ACT IMPLEMENTING THE
RECOMMENDATIONS OF THE LEGISLATIVE
PROGRAM REVIEW AND INVESTIGATIONS
COMMITTEE CONCERNING CONSULTATIVE
SERVICES TO CHILD CARE PROVIDERS**

SUMMARY: This act requires Department of Public Health licensing specialists to provide technical assistance, instead of consultative services, to child day care facilities. And it requires them to provide such assistance to family day care homes in addition to the day care centers and group day care homes they already assisted under prior law.

EFFECTIVE DATE: October 1, 2002

PA 02-6—SB 212*Public Health Committee***AN ACT CONCERNING LATE OR MISSING DATA AND THE OFFICE OF HEALTH CARE ACCESS**

SUMMARY: This act allows the Office of Health Care Access (OHCA) to refuse to accept a letter of intent for a certificate of need (CON) or a CON application from any facility that failed to submit any required data or information to OHCA or submitted incomplete data. This includes required data and information unrelated to the CON proposal.

Prior to the refusal, OHCA must provide written notice to the affected party identifying the missing or incomplete data. The party has 10 days after receiving the notice to provide OHCA with the data. OHCA then has 15 days to notify the party submitting the data whether the CON letter of intent or application is refused.

Under the act, OHCA's refusal to accept the letter of intent or application remains in effect at the OHCA commissioner's discretion until OHCA determines all required data have been submitted.

The act specifies that it does not prohibit OHCA from taking any other allowed action against the party concerning late, incomplete, or inaccurate data submissions.

EFFECTIVE DATE: Upon passage

BACKGROUND*Certificate of Need (CON)*

Under the CON program, OHCA reviews health care facilities' proposed capital expenditures, acquisition of major medical equipment, institution of new services or functions, termination of services, transfer of ownership, and decreases in bed capacity. Generally, a CON is a formal statement by OHCA that a health care facility, medical equipment purchase, or service change is needed.

PA 02-9—SB 86*Public Health Committee***AN ACT AMENDING STATUTES GOVERNING THE DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES**

SUMMARY: This act (1) allows clinical staff in Department of Mental Health and Addiction Services (DMHAS) facilities and other DMHAS-funded

programs to release a patient's treatment records without his consent to other such staff who ask for them in order to make a referral; (2) makes DMHAS report biennially, rather than annually, on drug and alcohol abuse; and (3) requires DMHAS' subregional action councils' annual plans to conform to the State Substance Abuse Plan, not the State Health Plan as prior law required.

EFFECTIVE DATE: October 1, 2002

PATIENT RECORD DISCLOSURE

The act allows clinical staff in DMHAS facilities and in DHMAS-funded crisis intervention programs to disclose the records of a patient they have treated to other such staff who ask for them in order to refer the patient for treatment. Records maintained at DMHAS facilities and DMHAS-funded crisis intervention programs can be disclosed, but only if the staff in possession of them determines disclosure would help the referral process and only to the extent allowed by federal and state law. Prior law allowed such disclosures, under the same conditions, just for diagnosis and treatment purposes.

ALCOHOL AND DRUG ABUSE REPORTING

The act makes biennial, rather than annual, DMHAS' alcohol and drug abuse report to the legislature, the Office of Policy and Management, and the Drug and Alcohol Policy Council. The report covers (1) client and patient demographics, (2) alcohol and drug use and abuse trends and risk factors, (3) service effectiveness, and (4) statewide costs.

PA 02-10—sSB 213*Public Health Committee***AN ACT CONCERNING THE PREVENTION OF INFLUENZA AND PNEUMONIA IN NURSING HOMES**

SUMMARY: This act requires the public health commissioner to adopt regulations for the prevention of influenza and pneumococcal disease in nursing homes. The regulations must assure that each nursing home patient is immunized annually against influenza, and against pneumonia according to recommendations of the National Advisory Committee on Immunization. The regulations must also provide appropriate exemptions for patients (1) for whom immunization is medically contraindicated or (2) who object on religious grounds.

EFFECTIVE DATE: October 1, 2002

PA 02-23—sSB 122*Public Health Committee***AN ACT EXTENDING THE COMPLETION DATE FOR THE CONSOLIDATION PROGRAM AT THE CONNECTICUT VALLEY HOSPITAL**

SUMMARY: This act extends, by six months, the time by which the Department of Mental Health and Addiction Services (DMHAS) must complete the consolidation program at Connecticut Valley Hospital (CVH) in Middletown. Under the act, DMHAS has until December 31, 2002 to finish consolidating inpatient mental health and substance abuse services throughout the state at CVH.

EFFECTIVE DATE: Upon passage

PA 02-41—sSB 528*Public Health Committee
General Law Committee***AN ACT CONCERNING COLLABORATIVE PRACTICE BETWEEN PHYSICIANS AND PHARMACISTS**

SUMMARY: This act permits physicians and hospital pharmacists to enter collaborative agreements to manage the drug therapy of individuals receiving inpatient hospital services. The agreements must be based on written protocols and approved by the hospital. They can authorize a pharmacist to implement, modify, or discontinue a drug therapy the physician prescribes for the patient. He can also order associated lab tests and administer drugs. All treatments must be based on a written protocol specific to each patient.

The act allows the public health commissioner, in consultation with the consumer protection commissioner, to adopt regulations governing the minimum content of these collaborative agreements, the written protocols, and any other areas necessary to carry out the act's purpose.

EFFECTIVE DATE: October 1, 2002

COLLABORATIVE DRUG THERAPY AGREEMENTS*Eligibility to Enter an Agreement*

The act allows licensed pharmacists employed by a hospital to enter into an agreement with licensed physicians to manage the drug therapy of individuals receiving hospital inpatient services. The hospital that employs the pharmacist must determine that he is competent to participate in each such agreement and

must file the criteria it uses to judge competence with the Pharmacy Commission.

Terms of Agreements and Protocols

The pharmacist-physician agreement must be based on written protocols, and the drug therapy management collaboration for each patient must be governed by a written protocol specific to him that the treating physician establishes in consultation with the pharmacist. Each agreement and related protocols must be available for inspection at the Public Health and Consumer Protection departments. The patient-specific protocol must be placed in the patient's medical records.

An agreement can authorize a pharmacist to start, modify, or discontinue a drug therapy the physician prescribes; administer drugs; and order associated lab tests. The patient-specific protocol must contain detailed directions about what the pharmacist can do. At a minimum, it must include the:

1. specific drug or drugs the pharmacist will manage;
2. terms and conditions under which the therapy can be implemented, modified, or discontinued;
3. conditions and events that require the pharmacist to contact the physician; and
4. lab tests the pharmacist can order.

A participating pharmacist must notify the treating physician within 24 hours after discontinuing a drug therapy and report to him at least every 30 days on the patient's therapy. Any action the pharmacist performs under the protocol must be documented in the patient's medical record.

PA 02-58—HB 5525*Public Health Committee***AN ACT CONCERNING EXPERIMENTAL DRUG USE BY PERSONS WITH MENTAL RETARDATION**

SUMMARY: By law, a plenary or limited guardian of a mentally retarded person cannot consent, on behalf of the person, to any experimental biomedical or behavioral medical procedure or participation in any biomedical or behavioral experiment unless it is intended to (1) preserve the person's life or prevent serious health impairment or (2) assist him in regaining his abilities and is approved by the probate court.

This act also allows such guardians to consent to these procedures or experiments if they have been (1) approved by a recognized institutional review board, as defined in federal law, that is not part of the Department

of Mental Retardation (DMR); (2) endorsed or supported by DMR; and (3) approved for the person by his primary care physician.

EFFECTIVE DATE: October 1, 2002

PA 02-63—SB 218

Public Health Committee

Judiciary Committee

Government Administration and Elections Committee

AN ACT REQUIRING THE TESTING OF INMATES FOR TUBERCULOSIS

SUMMARY: This act requires anyone committed to the custody of the Department of Correction (DOC) commissioner and in custody for at least five consecutive days to undergo a tuberculosis (TB) test to determine if he has active TB or latent TB infection. A person testing positive for active or infectious TB is subject to existing law concerning treatment plans; responsibility for treatment costs; reporting to and by public health officials; adequate instruction and necessary precautions by attending physicians and local health officials; and tuberculosis control requirements and procedures, including emergency commitment.

Anyone testing positive for latent TB infection must be medically evaluated for infectious TB and then offered treatment for latent TB infection as recommended by the National Centers for Disease Control and Prevention (CDC). The act appears to require treatment to be offered only if it can be completed before the person is released from custody.

The act requires certain DOC facility officials to ensure that inmates are tested, screened, and treated for TB. It also requires DOC to establish a TB infection control committee.

The act requires any inmate found to have evidence of infectious TB to be isolated from any public contact until he has been treated and is no longer infected. It also requires notifying visitors or employees who may have been exposed to infectious TB by an inmate and encouraging them to be evaluated for infection.

EFFECTIVE DATE: October 1, 2002

TYPES OF TUBERCULOSIS

Active Tuberculosis

“Active tuberculosis” means (1) a specimen taken from a pulmonary, laryngeal, or other airway source has tested positive for TB and the person did not subsequently complete a standard recommended course of medication or (2) a specimen from an extra-pulmonary source has tested positive for TB, there is

clinical evidence or clinical suspicion of pulmonary TB, and the person did not complete the recommended course of medication. “Active tuberculosis” also covers situations where sputum (material spat out of the mouth), smears, or cultures are unobtainable, but radiographic and current clinical or laboratory evidence is sufficient to establish a medical diagnosis of pulmonary TB for which treatment is indicated but has not been completed.

Infectious TB

Infectious TB is TB disease in a communicable or infectious state as determined by chest X-ray, bacteriologic examination of body tissue or secretions, or other diagnostic procedures. A person is considered infectious until sputum smears from a pulmonary, laryngeal, or other airway source collected on three consecutive days have tested negative for TB and the person shows clinical improvement, such as resolution of cough or fever.

Latent TB

The act defines “latent TB infection” as having a positive tuberculin skin test with no clinical, bacteriological, or radiological evidence of active TB.

DOC FACILITIES

Under the act, the medical director, contractor, and chief administrator of a DOC facility must ensure that each incarcerated inmate has (1) a tuberculin skin test upon incarceration (unless already known to be positive), a symptom evaluation, and a chest X-ray for TB if indicated by the most recent CDC recommendations (except that an inmate who is asymptomatic and has had a chest X-ray in a correctional facility within six months of incarceration does not have to get another one); (2) an evaluation for active or infectious TB when a cough lasts for more than two weeks; and (3) at least an annual tuberculin skin test, unless he is already known to be positive.

These DOC officials must promptly report to DOC’s TB central registry: (1) test results, (2) all efforts to treat each inmate for active TB or latent TB infection, and (3) discharges of inmates who did not complete TB-related therapy.

DOC can contract with an appropriate health care provider to manage its TB testing, screening, and treatment responsibilities.

TUBERCULOSIS INFECTION CONTROL COMMITTEE

The act requires DOC to establish a TB infection control committee that includes, at a minimum, the DOC commissioner or his designee, DOC medical director, and a current medical director or consultant executing a TB-control contract with DOC. The committee can consult with the public health commissioner.

The committee must establish guidelines and protocols for TB infection control including inmate screening, containment, and guideline implementation assessment. Guidelines must be consistent with the most recent CDC recommendations.

PA 02-65—SB 573

Public Health Committee

Human Services Committee

Government Administration and Elections Committee

AN ACT CONCERNING ACCESS TO DATA BY THE DEPARTMENT OF PUBLIC HEALTH

SUMMARY: This act directs the Department of Social Services (DSS) and Public Health (DPH) commissioners to enter into a memorandum of understanding to improve public health service delivery and outcomes for low-income populations by sharing Medicaid, HUSKY Plan Part B, HUSKY Plus, and Title V data. (Title V of the Social Security Act is a federal block grant program concerning the health of mothers, infants, children, adolescents, and children with special health care needs.)

Under the act, the data sharing must (1) be directly related to administration of Medicaid or any other applicable state plan administered by DSS or DPH; (2) follow federal and state law on the privacy, security, confidentiality, and safe guarding of individually identifiable information; and (3) include a detailed description of the intended public health service delivery and public health outcome goals achieved by the data sharing. The cost of data compiling and transmitting must be within the agencies' available resources.

EFFECTIVE DATE: October 1, 2002

PA 02-67—sSB 543

Public Health Committee

Finance, Revenue and Bonding Committee

AN ACT CONCERNING CREMATORIES

SUMMARY: This act requires the Department of Public Health (DPH) to inspect crematories annually and issue and renew inspection certificates. It sets a \$250 certificate renewal fee. By law, DPH must also approve plans for new crematories and inspect and approve them before they can begin operating. The initial inspection and approval fee is \$1,000.

EFFECTIVE DATE: October 1, 2002

CREMATORY INSPECTION REQUIREMENTS

The act requires DPH to issue an inspection certificate when it first approves a crematory's operation. It requires the certificate holder (which could be a funeral home, public agency, or independent operator) to apply annually in writing to renew the certificate. The application must be submitted by July 1 and be accompanied by a \$250 fee. The renewal is good for one year unless subsequently revoked or suspended.

The act requires DPH to inspect the crematory after it receives the renewal application. The inspections can be conducted by someone DPH designates or by a representative of the DPH commissioner. The crematory must be open for inspection at all times; DPH may inspect whenever it deems advisable.

If DPH's inspection finds a crematory's condition is detrimental to public health, the act requires it to notify the applicant or crematory operator of his right to a hearing pursuant to DPH regulations. If the commissioner finds cause at the hearing to do so, he may revoke, suspend, or refuse to renew an inspection certificate. A person aggrieved by the commissioner's finding or action may appeal to Superior Court.

PA 02-75—sSB 319

Public Health Committee

Appropriations Committee

Labor and Public Employees Committee

Judiciary Committee

AN ACT CONCERNING ALCOHOL AND DRUG COUNSELORS EMPLOYED BY THE DEPARTMENT OF CORRECTION

SUMMARY: This act requires alcohol and drug counselors (substance abuse counselors) employed by the Department of Correction (DOC) to be licensed or certified, depending on when they are hired. This does not apply to trainees or student interns. The law previously exempted all state-employed alcohol and drug counselors from licensure and certification.

Under the act, anyone DOC hires on or after October 1, 2002 as a substance abuse counselor or supervisor must be a licensed or certified alcohol and drug counselor. Those counselors or supervisors already employed by DOC before October 1, 2002 have five years to become licensed or certified (until October 1, 2007). Anyone employed by DOC on or after October 1, 2007 also must be licensed or certified.
EFFECTIVE DATE: October 1, 2002

PA 02-84—sHB 5289

Public Health Committee
Human Services Committee
Appropriations Committee
Legislative Management Committee

**AN ACT CONCERNING THE USE OF
AUTOMATIC INJECTABLES**

SUMMARY: This act requires the public health commissioner to adopt regulations prohibiting child day care centers and group day care homes, beginning January 1, 2003, from denying services to a child because he has a known or suspected allergy or a prescription for an automatic prefilled cartridge injector or similar device that administers medication to treat allergic reactions. The regulations must specify that:

1. centers and homes, within three weeks of enrolling a child with such a condition or prescription, have staff trained to administer medication on site whenever the child is there;
2. when the child is enrolled, the child's parent or guardian must provide the device and a copy of the prescription for the medication; and
3. the parent or guardian is responsible for ensuring the medication and device are replaced before their expiration date.

EFFECTIVE DATE: October 1, 2002

PA 02-101—sHB 5154

Public Health Committee

**AN ACT CONCERNING HOSPITAL FINANCE
AND DATA REPORTING**

SUMMARY: This act makes several changes concerning financial and other data hospitals report to the Office of Health Care Access (OHCA). It (1) repeals the hospital net revenue system and related provisions, (2) extends the deadline by which short-term acute-care and children's hospitals must submit their budgets to OHCA, (3) requires certain reporting by specialty hospitals, (4) requires payers to file discount

agreements with the hospital's business office instead of OHCA, and (5) makes several technical changes.
EFFECTIVE DATE: July 1, 2002

REPEAL OF HOSPITAL NET REVENUE SYSTEM

Until 1994, the Commission on Hospitals and Health Care (OHCA's predecessor) had to approve hospitals' rates. PA 94-9 allowed hospitals to determine their own rates or charges without OHCA's approval. OHCA instead authorized a net revenue limit for each hospital, which was its total net revenue divided by the number of equivalent discharges. Under this net revenue system, hospitals had to report their budgets to OHCA, based on the rate-setting formula that existed in 1994. The act repeals the net revenue system.

REVISED BUDGET DATA SUBMISSION DATE

Previously, acute-care and children's hospitals had to submit budget data to OHCA by July 1 annually for the upcoming hospital fiscal year, which begins on October 1. The act pushes back these hospitals' budget submission dates to September 1. The submitted budget must be approved by the hospital's governing body and include its budgeted revenue and expenses and utilization amounts for the next fiscal year and any other data OHCA may require.

SPECIALTY HOSPITALS

Under the act, OHCA must require each specialty hospital to file copies of its prior year's audited financial statement with OHCA. This report is due by the last business day of the fifth month following the month in which the hospital's fiscal year ends. (Specialty hospitals generally are categorized as chronic disease, substance abuse, or rehabilitation hospitals—see BACKGROUND.)

DISCOUNT AGREEMENTS

The act eliminates the requirement for acute care hospitals to file with OHCA any payer discount, alternate method of payment, or alternate schedule of price agreements. Instead, it requires that these agreements be on file with the hospital's business office within 24 hours after their execution and also applies the requirement to children's hospitals. An agreement between the hospital and payer is not effective until it is complete and on file at the hospital. It must be available to OHCA for inspection or be submitted to the office upon request for at least three years after the end of the applicable fiscal year. As under prior law, agreements filed with OHCA are trade secrets and cannot be

disclosed.

REPEALED SECTIONS

The act repeals several statutory provisions on obsolete budget and net revenue system procedures and obsolete specialty hospital rate setting procedures. These are: specialty hospital rate setting and requests for approval of lesser increases (§§ 19a-635 and 636); hospital budget calculations for hospital fiscal year 1993 (§ 19a-655); and obsolete net revenue system provisions addressing adjustments to orders (§ 19a-660), net revenue limits (§ 19a-674), filings for partial or detailed budget review (§ 19a-675), termination of net revenue compliance payments (§ 19a-676a), inflation factors (§ 19a-678), and net revenue limit interim adjustments (§ 19a-680).

BACKGROUND

Specialty Hospitals

The act affects these specialty hospitals: the Connecticut Childbirth and Women's Center (Danbury); the Connecticut Hospice (Branford); Gaylord Hospital (Wallingford); Hall-Brooke Hospital (Westport); Hebrew Home and Hospital (West Hartford); Hospital for Special Care (New Britain); Masonic Geriatric Healthcare Center (Wallingford); Natchaug Hospital (Mansfield Center); the Rehabilitation Hospital of Connecticut (Hartford); St. Francis Care Behavioral Health (Portland); Silver Hill Hospital (New Canaan); and Stamford Rehabilitation Hospital (Stamford).

PA 02-102—sHB 5153

Public Health Committee

Environment Committee

Government Administration and Elections Committee

AN ACT CONCERNING WATER SUPPLY PLANS AND WATER DIVERSIONS

SUMMARY: This act:

1. requires water companies' supply plans, beginning January 1, 2004, to include an evaluation of source water protection measures for all sources of water supply;
2. requires water companies to give the Public Health Department (DPH) sabotage prevention and response procedures separate from their water supply plans and exempts these procedures from disclosure under the Freedom of Information Act;

3. changes the deadline for entities required to submit information on their water diversions to the Department of Environmental Protection (DEP) from July 1, 2002 to no later than six months after DEP publishes notice of the deadline and a form on which to submit the information;
4. changes the conditions under which local health directors may issue a permit for a new well on residential property within 200 feet of a public water supply and allows them to issue permits to replace wells under the same conditions;
5. requires the DPH commissioner to adopt regulations clarifying the conditions under which well permit exceptions can be granted when premises are connected to a public water supply; and
6. sets conditions under which a local health director, regardless of DPH regulations, can permit use of a well or installation of a replacement well for a single family home within 200 feet of a public water supply.

EFFECTIVE DATE: October 1, 2002, except for the water diversion data submission deadline change, which is effective on passage.

WATER SUPPLY PLANS

Beginning January 1, 2004, the act requires water companies' supply plans to include an evaluation of source water protection measures for all sources of their water supply. The evaluation must be based on identification of critical lands to be protected and incompatible land uses that could contaminate a public water drinking source. By law, water companies serving over 1,000 people or 250 consumers must submit a plan at least every five years to the public health commissioner. The commissioner must distribute copies to the DEP, Department of Public Utility Control (DPUC), and Office of Policy and Management.

The act also requires DPH to include in its currently required water supply plan regulations describing the contents of these evaluations. They must be adopted in consultation with DEP and DPUC.

SABOTAGE PLANS

The act requires water companies to give the DPH sabotage prevention and response procedures separate from their water supply plans and makes these plans confidential and exempt from disclosure under the Freedom of Information Act. It specifically exempts from disclosure procedures established by municipally

owned water companies.

WATER DIVERSION INFORMATION

PA 01-202 required companies, towns, and other entities that withdraw substantial amounts of water from wells or surface sources to provide DEP with information about their water diversions by July 1, 2002, whether or not the diversion was registered or eligible for registration. The act eliminates this deadline and, instead, requires the information to be submitted within six months after DEP publishes a dated notice of the deadline. As under current law, the data must be submitted on a form DEP develops in consultation with DPH, DPUC, and the Agriculture Department. The act requires DEP to publish a dated notice of the form's availability.

WELL PERMITS

Residential Exceptions

DPH regulations generally prohibit private wells on residential property within 200 feet of a public water supply. Prior law allowed local health directors to issue permits for wells in this situation only if:

1. the DPUC had ordered the public water system to reduce the demand on it,
2. the well water was not used for human consumption,
3. the well was not connected to the public water supply, and
4. use of the well did not impair the purity or adequacy of the supply or service to the system's customers.

The act allows local health directors to issue a permit for a new or replacement well only if:

1. the well water is used only for irrigation or other outdoor purpose, is not used for human consumption, and a reduced pressure device is installed to protect against a cross-connection with the public water supply;
2. the well replaces one that was used at the premises for domestic purposes (DPH regulations define domestic purposes as drinking, bathing, washing clothes and dishes, and cooking) and is subject to water quality testing when it is installed and at least every 10 years afterward or as requested by the health director; or
3. DPUC has ordered the public water system to reduce the demand on it, the well is not connected to the public water supply, and use of the well does not impair the purity or

adequacy of the supply or service to the system's customers.

Regulation Authorization

The act requires the DPH commissioner to adopt regulations clarifying criteria under which a well permit exception may be granted and describing conditions that must be imposed when a well is permitted at premises that are connected to the public water supply. The regulations must:

1. address the well's water quality,
2. address the extent to which the well is not to be connected to the public water supply and the means to achieve that end,
3. address installation of reduced pressure devices for backflow prevention and inspecting and testing these devices,
4. provide for notice of the permit to the public water supplier, and
5. identify the extent and frequency for testing the well's water quality.

Single Family Regulatory Exception

The act allows a local health director, regardless of DPH regulations, to authorize under certain conditions an existing well's use or its replacement at a single family residence located within 200 feet of a public water supply. This can occur:

1. for a replacement well used for domestic purposes if (a) the premises are not connected to the public water supply, (b) the water quality is tested at installation and at least every 10 years afterward or as requested by the health director, (c) the testing shows the well meets the Public Health Code's water quality standards for wells, and (d) all other regulatory requirements are met and
2. for a new or replacement well on a premises served by a public water supply if (a) it is used solely for irrigation or some other outdoor purpose, (b) it is permanently and physically separated from the home's internal plumbing, and (c) a reduced pressure device is installed to protect against a cross-connection with the public water supply.

BACKGROUND

DPH Well Regulations

DPH regulations prohibit a local health director from approving a well permit for a residential dwelling if a community water system is available and the lot line

of the parcel where the dwelling is located is within 200 feet of the water line. But the DPH commissioner can waive this prohibition if (1) he finds the situation will not adversely affect the quality or adequacy of the water supply or the water company's service, (2) the water system cannot adequately supply pure water, or (3) construction problems warrant an exception (*Conn. Agency Regs.*, § 19-13-B51m).

PA 02-110—sHB 5290
Public Health Committee
Education Committee

AN ACT CONCERNING SMOKING IN DORMITORIES OF PUBLIC INSTITUTIONS OF HIGHER EDUCATION

SUMMARY: This act prohibits smoking in public college or university dormitories. Prior law exempted dorm rooms from the general prohibition on smoking in public buildings.
EFFECTIVE DATE: July 1, 2003

PA 02-113—sHB 5686
Public Health Committee
Appropriations Committee
Finance, Revenue and Bonding Committee

AN ACT REQUIRING THE SCREENING OF NEWBORNS FOR METABOLIC DISEASES

SUMMARY: This act sets a \$28 minimum fee the Department of Public Health (DPH) must charge hospitals for its newborn screening program. By law, the DPH commissioner must establish a fee that covers all program expenses, including initial testing; tracking to assure that infants who initially test positive are referred for comprehensive testing and parent counseling; and treatment. DPH previously set the fee at \$18. The act also requires DPH to buy two tandem mass spectrometers to screen newborns for metabolic disorders.

The law requires screening for eight named conditions, including phenylketonuria, biotinidase deficiency, hypothyroidism, and "other inborn errors of metabolism." It also requires the DPH commissioner to adopt regulations specifying the conditions to be tested for. The act requires these regulations to include, by January 1, 2003, testing for amino and organic acid disorders and fatty oxidation disorders, including medium-chain acyl-CoA dehydrogenase (MCAD) deficiency and long chain 3-hydroxyacyl CoA dehydrogenase (LCHAD) deficiency. And it requires

testing for other metabolic diseases.

EFFECTIVE DATE: October 1, 2002 for the fee increase and testing changes; July 1, 2002 for the mass tandem spectrometer purchase.

BACKGROUND

LCHAD and MCAD

LCHAD and MCAD are genetic deficiencies that result in the body's inability to break down fatty acids as a usable energy source. LCHAD can result in dangerously low blood sugar levels, poor muscle tone, and heart problems. It can also cause medical complications in the pregnant mother, including liver failure. Children with MCAD can develop seizures, respiratory failure, and heart problems. Treatment for both is based on diet.

PA 02-125—sHB 5715
Public Health Committee
Appropriations Committee
Government Administration and Elections Committee
Legislative Management Committee
Education Committee

AN ACT CREATING A PROGRAM FOR QUALITY IN HEALTH CARE

SUMMARY: This act requires the Department of Public Health (DPH) to establish a quality of care program for health care facilities. DPH must develop a health care quality performance measurement and reporting system initially applicable to the state's hospitals. Other health care facilities come under the quality program in later years as it develops. An advisory committee, chaired by the DPH commissioner, advises the program.

The act directs DPH to produce a report that compares the state's hospitals based on quality performance measures. The act requires all hospitals to implement performance improvement plans. These plans must be submitted annually to DPH as a condition of licensure, beginning June 30, 2003.

The act allows DPH to seek and apply for funding to implement the quality of care program provisions. These provisions must be implemented upon receiving this funding.

The act requires hospitals and outpatient surgical facilities to report adverse events to DPH. An "adverse event" is an injury caused by or associated with medical management that results in death or measurable disability.

EFFECTIVE DATE: October 1, 2002, except July 1,

2002 for the adverse event reporting provisions.

QUALITY OF CARE PROGRAM

Program Establishment

The act directs DPH to develop a quality of care program for health care facilities in the state. DPH must develop (1) a standardized data set of clinical performance measures that must be collected and reported periodically to the department, including data to measure patient satisfaction and (2) methods to provide public health accountability for health care delivery systems by such facilities. DPH must develop the data set and methods for hospitals during FY 2002-03 and may recommend to the General Assembly that other health care facilities be included in subsequent years.

Other health care facilities include outpatient clinics; freestanding outpatient surgical facilities; imaging centers; home health agencies; clinical laboratories; residential care, nursing, and rest homes; nonprofit health centers; and diagnostic and treatment, rehabilitation, and mental health facilities.

Program Elements

DPH must develop the following elements for the quality of care program: (1) reportable comparable performance measures; (2) patient satisfaction survey measures and instrument selection; (3) data collection methods and format; (4) a format for a public quality performance measurement report; (5) human resources and quality measurements; (6) medical error reduction methods; (7) systems for sharing and implementing universally accepted best practices; (8) outcome data reporting systems; (9) continuum of care systems; (10) recommendations on the use of an ISO 9000 auditing program; (11) recommendations on statutory protections needed prior to collecting any data; and (12) any other issues DPH deems appropriate.

QUALITY OF CARE ADVISORY COMMITTEE

The act establishes a 24-member advisory committee to advise DPH on the quality of care issues listed above and on other issues it deems appropriate. The committee must meet at least quarterly and is chaired by the DPH commissioner or his designee. The Department of Social Services commissioner and the Office of Policy and Management (OPM) secretary are also members. The following members both represent and are appointed by the following:

1. four members by the Connecticut Hospital Association, including three who represent three separate unaffiliated hospitals, one of which is an academic medical center;
2. one by the Connecticut Nursing Association;
3. two by the Connecticut Medical Society, including one who is an active medical provider;
4. two by the Connecticut Business and Industry Association, one who represents a large business and one a small one;
5. one by the Home Health Care Association;
6. two by the AFL-CIO;
7. one by the Office of Health Care Access;
8. two representing licensed health plans appointed by the Connecticut Association of Health Care Plans;
9. one by the federally designated state peer review organization;
10. one by the Connecticut Pharmaceutical Association;
11. one by the Connecticut Association of Health Care Facilities; and
12. one by the Connecticut Association of Not-for-Profit Providers for the Aging.

The final two members are appointed by the DPH commissioner to represent (1) health care consumers and (2) a school of public health.

The chairperson, with a majority vote of the members present, can appoint ex-officio nonvoting members in specialties not represented by the voting members. Vacancies must be filled by the person or group making the appointment.

The chairperson can designate working groups to address specific issues and appoints their members. Each working group must report its findings and recommendations to the full committee.

REPORTING REQUIREMENTS

Annual Report

The act requires the DPH commissioner to report annually, beginning June 30, 2003, on the quality of care program to the Public Health Committee and the governor. Each report must address the program's activities in the prior year and its plan for the upcoming year.

Hospital Comparison Report

The act also requires DPH to prepare a report for the public, by April 1, 2004, that compares all licensed hospitals in the state based on the quality performance measures developed by the quality program.

REPORTING OF ADVERSE EVENTS

Definition and Classification

The act requires hospitals and outpatient surgical facilities to report adverse events to DPH. An “adverse event” is an injury caused by or associated with medical management that results in death or measurable disability. It includes those sentinel events for which remediation plans are required by the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO), an independent, not-for-profit organization that evaluates and accredits health care organizations, including hospitals, in the United States. A “sentinel event,” according to JCAHO, is an unexpected occurrence involving death or serious physical or psychological injury, or the risk thereof.

The act creates four categories of adverse events:

1. Class A - an adverse event resulting in or associated with a patient’s death or immediate danger of death;
2. Class B – an adverse event resulting in or associated with a patient’s serious injury or disability or immediate danger of such;
3. Class C – an adverse event resulting in or associated with a patient’s physical or sexual abuse; and
4. Class D – an adverse event not reported under 1 through 3 above.

Reporting of Adverse Events

Beginning October 1, 2002, the act requires hospitals and outpatient surgical facilities, to report Class A, B and C adverse events to DPH as follows:

1. a verbal report within 24 hours of the event,
2. a written report within 72 hours of occurrence, and
3. a corrective action plan within seven days of occurrence.

Such facilities must report Class D adverse events to DPH quarterly and include corrective action plans that implement strategies to reduce the risk of future similar events. Failure to implement a plan can result in DPH disciplinary action.

Regulations

DPH must adopt regulations that include a prescribed form for reporting adverse events. DPH can use these forms before the regulations are adopted.

Reporting and Information Disclosure

The act requires DPH to report annually to the Public Health Committee, by March 1, on adverse event reporting. It specifies that information collected on adverse events does not have to be disclosed for a six-month period from the date the required written report is submitted (72 hours after the adverse event).

The information is not subject to subpoena, discovery, or introduction into evidence in any judicial or administrative proceeding except as otherwise specifically provided by law.

PA 02-135—sSB 360

Public Health Committee

Human Services Committee

AN ACT CONCERNING NOTICE AND PUBLIC HEARING PRIOR TO A NURSING HOME CLOSURE

SUMMARY: This act establishes notification requirements for nursing homes and other health care facilities undertaking certain activities that require a certificate of need (CON) from the Department of Social Services (DSS). It requires any nursing home, intermediate care facility for the mentally retarded, rest home, or residential care home submitting a “request for permission” (a CON application) to DSS to concurrently notify the Office of the Long-Term Care Ombudsman.

The act also requires the facility to notify the ombudsman’s office at the same time it submits its CON letter of intent (a notice that the facility intends to apply for a CON) to DSS. Facilities submitting a CON letter of intent to terminate a service or decrease their bed capacity substantially (e.g. closure of a facility) must also concurrently notify in writing all residents, guardians or conservators, legally liable relatives or other responsible party, if known. The facility must post a notice in a conspicuous location at the facility.

The act permits the DSS commissioner to hold a public hearing on such applications, as well as those involving capital expenditures. Under prior law, hearings in the latter situation were mandatory, with a waiver allowed in emergencies. There was no hearing option for the other type of CON. The act allows the commissioner to hold a hearing on more than one application if they are similar.

Currently, there is a CON moratorium on new nursing home beds until June 30, 2007, with certain exceptions. This act permits DSS to approve one CON request for no more than 20 beds for the provision of lifetime nursing home services. The applicant must be a

licensed nursing home and cannot participate in the Medicaid or Medicare programs. It must (1) admit residents and provide health care without regard to their income or assets and (2) demonstrate to DSS's satisfaction that it is financially able to provide lifetime care without Medicaid participation.

EFFECTIVE DATE: October 1, 2002

REQUIRED NOTICE FOR PENDING SERVICE REDUCTIONS

The required notice must state (1) the projected date the facility will submit its CON application; (2) that only DSS may grant, modify, or deny the application; (3) that DSS has up to 90 days to act on it; (4) the reasons for submitting the application; (5) that no patient can be involuntarily transferred or discharged within or from a facility under state or federal law because it files for a CON, and that patients have a right to appeal any proposed transfer or discharge; and (6) the name, mailing address, and telephone number of the ombudsman's office and local legal aid office.

BACKGROUND

Certificate of Need (CON)

Under the CON program, DSS reviews a facility's (1) transfer of all or part of its ownership or control prior to licensure; (2) introduction of any additional function or service into its program of care, or expansion of an existing function or service; (3) termination of a service or substantial decrease in its total bed capacity; or (4) certain proposed capital expenditures. The facility seeking to do any of these must file a CON application, beginning with a letter of intent, using DSS forms and instructions. If the application is approved, the CON is granted.

PA 02-139—SB 536

Public Health Committee

Energy and Technology Committee

Environment Committee

AN ACT CONCERNING WATER UTILITY COORDINATING COMMITTEES

SUMMARY: By law, a water utility coordinating committee (WUCC) establishes the exclusive service area of the water utilities in its area. If the WUCC cannot agree on the exclusive service area boundaries, it has to consult with the Department of Public Utility Control (DPUC). If there is no agreement after the consultation, the Department of Public Health (DPH)

commissioner must establish the boundaries.

This act authorizes a WUCC to change the exclusive water service area boundaries. As under current law, the WUCC must consult with DPUC if there is no agreement on the changes. The act gives DPH the authority to also make a final determination when there is no agreement after the consultation with DPUC. In considering any change to the boundaries, the act requires the DPH commissioner to (1) maintain existing service areas, (2) consider established exclusive service areas, and (3) consider the orderly and efficient development of public water supplies.

By law, each WUCC must prepare a coordinated water system plan in the public water supply management area. DPH must approve the plan and adopt regulations establishing plan contents and the approval procedure. This act also requires DPH to adopt regulations on procedures for amending a plan.

EFFECTIVE DATE: October 1, 2002

BACKGROUND

WUCC

State law provides for DPH to convene a WUCC for each of seven public water supply management areas in the state. Each WUCC must develop a preliminary assessment of water supply conditions and problems in its management area in consultation with DPH, DPUC, the Department of Environmental Protection, and the Office of Policy and Management. The WUCC must establish preliminary exclusive service area boundaries for each public water system within the management area.

The WUCC consists of (1) one representative from each public water system with a source of supply or a service area within the water supply management area and (2) one representative from each regional planning agency within that area, elected by majority vote of the chief elected officials of its member towns.

PA 02-20—sSB 393
Public Safety Committee

AN ACT ALLOWING FIRE POLICE OFFICERS TO WEAR LIME GREEN OUTER CLOTHING

SUMMARY: This act allows fire police officers directing traffic while wearing their regulation dress uniform cap after dark or in inclement weather to wear lime green raincoats or outer clothing as an alternative to orange, which prior law required.
EFFECTIVE DATE: Upon passage

PA 02-27—SB 396
Public Safety Committee
General Law Committee

AN ACT AMENDING THE DEFINITION OF “FIRE PROTECTION SPRINKLER SYSTEMS WORK”

SUMMARY: This act adds fire sprinkler maintenance to the definition of “fire protection sprinkler systems work,” thus requiring people doing maintenance work to be licensed by the Department of Consumer Protection (DCP). By law, the annual license fees are \$75 for a contractor and \$60 for a journeyman.
EFFECTIVE DATE: October 1, 2002

BACKGROUND

Licensing Requirements

By law, with certain exceptions, anyone performing fire protection sprinkler work must be licensed. DCP may issue a contractor’s license to an applicant who presents evidence of appropriate education and experience in fire protection sprinkler work and who passes the required examination. It may issue a journeyman’s license to an applicant who has completed an apprenticeship program and has at least four years of experience in fire protection sprinkler work or is licensed in this area and has passed an examination.

PA 02-72—sSB 390
Public Safety Committee

AN ACT CONCERNING VARIATIONS AND EXEMPTIONS FROM THE STATE BUILDING CODE AND THE FIRE SAFETY CODE

SUMMARY: By January 1, 2003, this act requires the state building inspector and state Codes and Standards

Committee to create a list of state building code exemptions, variations, and equivalent or alternate compliance that the building inspector granted for existing buildings (as opposed to new construction) in the previous two calendar years. It requires the state fire marshal to create a similar list for the state fire safety code by the same date. The building inspector must create his list in conjunction with the public safety commissioner. The officials must update the lists every two years.

By April 1, 2003, the act requires the commissioner, within available appropriations, to take appropriate actions to publicize the building code list, send it to local building officials, and educate these officials and the public on how to use it. The state fire marshal must do the same for the fire code list with regard to local fire marshals.

The act gives local building officials 15 business days to send to the state building inspector, by first class mail, applications people submit for building code exemptions, variations, or alternate or equivalent compliance, and their comments on the merits of the applications.

In a process paralleling that for building code applications, the act conforms the law to practice by requiring local fire marshals to send to the state fire marshal applications for fire code exemptions, variations, or alternate or equivalent compliance, and comments on the merits of the applications. It requires fire marshals to send the applications to the state fire marshal, by first class mail, within 15 business days of getting them.

By law, the state building inspector and state fire marshal may grant code exemptions, variations, or alternate or equivalent compliance where strict compliance is considered unwarranted or would entail practical difficulty or unnecessary hardship.
EFFECTIVE DATE: October 1, 2002

PA 02-92—sHB 5505
Public Safety Committee
Public Health Committee
General Law Committee
Finance, Revenue and Bonding Committee

AN ACT ENSURING THE PROPER INSTALLATION AND MAINTENANCE OF MEDICAL GAS AND VACUUM SYSTEMS

SUMMARY: Beginning July 1, 2003, this act requires anyone performing medical gas and vacuum systems work to obtain a medical gas and vacuum systems certificate from the Department of Consumer Protection (DCP). DCP may issue the certificate, upon the

authorization of the Plumbing and Piping Work Board or Heating, Piping and Cooling Work Board, whichever is applicable. The certificate costs \$25 and must be renewed annually.

The act requires hospitals and nursing homes to include on their admission forms a conspicuous notice that informs self-pay patients that they may, upon request, get a copy of their hospital charges and specifies the name of, and contact information for, a person who can provide it. The act requires a hospital to provide an itemized bill to a self-pay patient within 30 days after he asks. The bill must identify, in plain language, each individual service, supply, or medication the hospital provided the patient and the specific charge for each.

EFFECTIVE DATE: July 1, 2002 for the hospital charges; July 1, 2003 for the medical gas and vacuum system certification.

MEDICAL GAS AND VACUUM SYSTEMS WORK

The act defines medical gas and vacuum systems work as “the work and practice, materials, instrumentation and fixtures used in the construction, installation, alteration, extension, removal, repair, maintenance or renovation of gas and vacuum systems and equipment used solely to transport gases for medical purposes and to remove liquids, air-gases, or solids from such systems.”

Qualifications for Licensure

The act requires that a certificate applicant be (1) licensed as an unlimited plumbing-piping contractor or journeyman, unlimited heating-cooling contractor or journeyman, or limited heating-cooling contractor or journeyman; (2) certified as a medical gas and vacuum system brazer in accordance with the American Society of Mechanical Engineers Boiler and Pressure Vessel Code; and (3) certified as having completed an approved training course on medical gas and vacuum system installation as required by the American National Standards Institute-American Society of Sanitary Engineering Series 6000.

BACKGROUND

Occupational Licenses

State law establishes a licensing system for several trades overseen by different licensing boards, including the Heating, Piping and Cooling Work Board and Plumbing and Piping Work Board. The boards have the power to determine who qualifies for a license and to enforce standards by disciplining licensees. Each trade

has three levels of expertise—apprentice, journeyman, and contractor. Workers must meet education, training, and experience requirements to qualify for each level. The boards establish less extensive requirements for workers attempting to qualify for a limited license. DCP's duties to the boards include receiving complaints; carrying out investigations; and performing administrative tasks, such as physically issuing licenses and renewals.

PA 02-115—SB 397

Public Safety Committee

Planning and Development Committee

AN ACT CONCERNING THE QUALIFICATIONS OF LOCAL BUILDING OFFICIALS

SUMMARY: This act allows the public safety commissioner to determine and substitute equivalent experience for the statutorily specified experience required to become a local or assistant building official. The statutorily specified experience for local building officials is at least five years in construction, design, or supervision. For assistant building officials, it is at least three years.

By law, these officials must be informed on a wide range of building and construction issues. They must also be licensed (or certified, where applicable), unless they are provisionally appointed for no more than 90 days to complete training and licensure requirements. To obtain the credential, an applicant must pass a written examination and complete an educational training program.

EFFECTIVE DATE: October 1, 2002

PA 02-70—sSB 20

Transportation Committee

Judiciary Committee

Finance, Revenue and Bonding Committee

AN ACT REVISING CERTAIN MOTOR VEHICLE LAWS

SUMMARY: This act:

1. eliminates the requirement that a police officer issue a 30-day temporary driver's license to someone subject to an administrative license suspension for driving with an illegal blood-alcohol level under the implied consent law and forward the confiscated license to the Department of Motor Vehicles (DMV);
2. requires the DMV commissioner, upon receipt of the court's report of someone's conviction for driving under the influence of alcohol, to base the applicable license suspension period on the number of convictions in the person's DMV driving history record and not on the sentence the court imposed;
3. replaces previous laws enabling DMV to participate in the interstate Driver License Compact (DLC) with more extensive requirements enabling DMV's participation in a successor interstate compact known as the Driver License Agreement (DLA);
4. substantially revises, and in some cases, eliminates, the additional penalties for repeat convictions for operating a truck at more than 15% above its applicable maximum gross weight and revises the process for assessing the additional sanctions for repeat offenses;
5. allows the commissioner to impose civil penalties on intrastate motor carriers for second or subsequent violations of state motor carrier safety laws or regulations when the violations, if they had occurred in interstate, rather than intrastate, commerce would have subjected the carrier to civil penalties under federal law;
6. specifies that anyone, other than a Department of Transportation-certified household goods carrier, who holds himself out as such a carrier with the intent to benefit himself or to injure or defraud another commits a Class B misdemeanor (See Table on Penalties);
7. expands the 3% state surcharge on rental fees for passenger vehicles rented for less than 31 days to include rental trucks (defined as vehicles of up to 26,000 pounds gross vehicle weight rating used for transporting personal property but not for business purposes, or trailers of up to 6,000 pounds gross weight rating);
8. tightens restrictions on availability of certain personal information from DMV records to reflect recent changes in federal law;
9. makes numerous changes in laws governing licensure and regulation of motor vehicle dealers, repairers, manufacturers, and car rental or leasing companies;
10. extends the commissioner's authority to impose disciplinary licensing actions or civil penalties against dealer and repairer licensees to situations where a licensee has failed to comply with a final decision and order of any state department or federal agency concerning a law or regulation that pertains to its licensed business;
11. makes buying, selling, or offering for sale or brokerage of any motor vehicle without a DMV license a Class B misdemeanor and requires the commissioner to transmit a summary of any complaint he receives alleging this to the revenue services and environmental protection commissioners (both requirements already apply to unlicensed vehicle repair);
12. disqualifies someone who must by law hold a commercial driver's license (CDL) from driving a commercial motor vehicle for a specified period if convicted of failing to stop at a railroad crossing;
13. allows the commissioner to issue up to a five-year registration and charge an appropriately prorated registration fee for any vehicle owned by a licensed motor vehicle leasing company and subject to a lease agreement, in order to coincide with the period of the lease;
14. modifies the vehicle title laws to, among other things, provide for agreements with lienholders for electronic lien filing and recording, authorize the commissioner to participate in the National Motor Vehicle Title Information System, and require him to place legends or "brands" on titles to convey certain information on its history;
15. expands the definition of an all-terrain vehicle (ATV) to include two as well as three-wheeled vehicles and makes related changes;
16. requires the officer or law enforcement agency that arrests someone who holds a driver's license with a "school" endorsement for a felony or for the Class A misdemeanor of fourth-degree sexual assault to report the arrest to the commissioner within 48 hours;
17. conforms the law on issuance of transporter plates to existing DMV policy;

18. makes several changes to the motor vehicle emissions inspections laws;
19. requires a tow truck operator called to remove a vehicle left on private property without the property owner's permission to notify the local police department within two, rather than 24, hours of removing the vehicle;
20. revises the basis for issuing a "combination" registration from the vehicle's gross weight to its gross vehicle weight rating;
21. when a vehicle manufacturer proposes to establish or relocate a motor vehicle franchise, places the burden of proof at the DMV hearing on the manufacturer to show that good cause exists to permit it;
22. eliminates the requirement that DMV certify that the location of a dealer or repairer business does not imperil public safety, thus leaving location approval during the licensing process entirely with local officials;
23. applies the mandatory seat belt use law to vehicles based on their gross weight rating (10,000 pounds or less) instead of to the specific types of vehicles conforming to the definition of a private passenger motor vehicle under the no-fault motor vehicle insurance laws;
24. increases the minimum membership of the Motor Vehicle Operator's License Medical Advisory Board from seven to eight (maximum allowed is 15), requires the Connecticut Association of Optometrists to submit to the commissioner a list of nominees representing optometry and requires the board to make its required recommendations within 60 days of the commissioner's referral of a case;
25. requires DMV regulations for commercial driving schools to include requirements for a classroom-only instructor's license and for issuing such a license to those with public safety or teaching experience sufficient to meet the requirements and allows the commissioner to determine reexamination requirements for renewal of driving instructor licenses by specifications in regulations instead of, as previously required, automatically prior to renewal or at other times during the license period when he deems it in the interest of public welfare and safety;
26. increases, from \$25 to \$40, the maximum fee that may be charged for the mandatory five-hour safe driving practices instruction course all 16- and 17-year olds must complete before they can receive a driver's license;
27. eliminates the requirement that someone renewing a motorcycle registration submit an insurance identification card, thus making the process the same for motorcycles and other types of motor vehicles;
28. for purposes of vehicle registration requirements, defines a "resident" as someone with a place of residence in Connecticut that he occupies for more than six months in a year instead of someone with a "legal" residence in Connecticut; and
29. repeals obsolete statutes relating to the driver license classification system and the vehicle title laws and makes numerous technical changes and conforming changes.

EFFECTIVE DATE: July 1, 2002 except (1) the provisions making substantive changes to the allowable uses of transporter plates (but not the change in the fee), authorizing the commissioner to permit dealers to file permanent registration and title applications electronically, requiring window etching service price disclosure, further restricting the availability of certain personal information from DMV records, decreasing the time limit for reporting tows from private property, making changes to the emissions inspection program laws, requiring reports to DMV of felony and other arrests for specified driver licensees, and expanding the ATV definition are effective upon passage; (2) the provisions affecting the motor vehicle leasing agencies, manufacturers, dealers and repairers, commercial driving school instructors, combination registration, DMV Medical Advisory Board, seat belt law, civil penalties for repeated violations of motor carrier safety requirements, and penalty for uncertified operation as a household goods carrier are effective October 1, 2002; and (3) the provisions relating to the DLA and repeal of the enabling laws for the DLC are effective on January 1, 2003.

ELIMINATION OF TEMPORARY DRIVER'S LICENSE FOLLOWING ENFORCEMENT ACTION UNDER IMPLIED CONSENT LAW

By law, a police officer can ask a driver to submit to a chemical test of his blood-alcohol content (BAC) after arresting him for driving a motor vehicle while under the influence of alcohol or drugs, informing him of his constitutional rights and the license suspension consequences if he refuses to take the test or the test results show an illegal BAC, and following certain other procedures. If the person refuses to be tested or the test results show an illegal BAC, the police officer, on behalf of the commissioner, must immediately revoke and take possession of the person's license for a 24-hour period.

Previously, the police officer also had to issue him a temporary, 30-day license valid 24 hours later during which time the person could request a hearing on the suspension. The officer then had to mail to the commissioner within three days the arrest report, a copy of the temporary license, the actual confiscated license, and the results of the BAC test, if there are any. The act eliminates the requirement for the officer to issue the temporary license and forward the confiscated license to the DMV. It does not specify what must be done with the license. By law, it is an infraction for anyone to drive a motor vehicle without carrying his driver's license (CGS § 14-213).

DRIVER'S LICENSE AGREEMENT

The act replaces prior laws allowing the DMV commissioner to participate in the DLC with new ones allowing him to participate in its successor, the DLA. Both the DLC and the DLA are administered by the American Association of Motor Vehicle Administrators.

Under the DLA, all participating states must have one driver's license that is recognized by all other member states and maintain one driver control record (a driver history). A conviction for any motor vehicle or traffic violation in any jurisdiction must be treated as if it occurred in the violator's home state for purposes of maintaining a driver history and imposing administrative sanctions. A driver must be allowed to proceed on his way and cannot be required to appear in a court or other tribunal after receiving a citation for the violation.

Requirements for Licensure

Under the DLA, when someone applies for a driver's license, the commissioner must determine if he has ever held or presently holds a license issued by another jurisdiction. The commissioner cannot issue a license to any applicant whose license has been withdrawn (i.e., has been subject to an "administrative action") by another member jurisdiction for a violation required to be reported under the DLA or who is subject to a notice of failure to comply under the compact. The commissioner must take an applicant's unexpired out-of-state license before issuing a Connecticut license.

The commissioner may issue certain classes of Connecticut license (Class 1 or 2 driver's or a motorcycle) to an applicant who is subject to withdrawal of a CDL in another jurisdiction if the conduct would not have disqualified him from operating a motor vehicle other than a commercial motor vehicle.

The commissioner may, at his discretion, issue a license to an applicant (1) who is the subject of a license withdrawal occurring five or more years before the

application date or (2) whose license has been withdrawn for the time period required by the jurisdiction of record but has not been restored due to a failure or alleged failure to fulfill reinstatement requirements, such as a financial responsibility filing or personal attendance requirement (for example, completion of an education or treatment program). In exercising this discretion, the commissioner must review and consider the applicant's entire driver control record and can require additional information and references from the applicant that attest to his fitness to drive a vehicle safely.

Driver Control Record

The commissioner must maintain a driver control record for each person issued a license until another member jurisdiction notifies him that the person has surrendered his Connecticut license and has been re-licensed in the other jurisdiction. When so notified, the commissioner must transfer the person's driver control record to the new licensing jurisdiction. The record must contain the information the DLA requires, which must be set out in DMV regulations.

The commissioner must maintain a record of all convictions and administrative actions for motor vehicle and traffic violations committed in Connecticut, as well as for any relevant offenses the court notes in the record and reports to DMV involving a person who has not been issued a license or whose license has expired or been cancelled.

Incident Reporting

The Centralized Infractions Bureau and any court with jurisdiction over a motor-vehicle-related violation must continue to report to the commissioner the name, license number, license jurisdiction, and other available information about a nonresident vehicle owner or operator convicted of a motor vehicle law violation or who fails to appear in court, submit a not-guilty plea by the court answer date, or pay the full amount due for the violation. When he receives this report, the commissioner must notify the jurisdiction of record, according to DLA procedures, within 30 days of receiving the notice and no later than six months after the court disposes of the matter.

When he receives notice of a failure to comply with a citation issued by a member jurisdiction or an administrative action taken against a Connecticut licensee or vehicle owner, the commissioner must proceed with a license suspension. If state law requires or authorizes it, he also must proceed with a registration suspension until he is notified according to the requirements of the DLA that the person has complied

with the member jurisdiction's citation. These requirements apply only to citations identified in the DLA, which must be set forth in DMV regulations.

The commissioner may use any notice, report, or record from a state member of the driver license compact for the purposes authorized by the act to the same extent and in the same manner as any notification, report, or record received from a jurisdiction that is a DLA member.

Administrative Action

If the commissioner receives a report from another member jurisdiction of a Connecticut resident's conviction for an offense covered by the DLA, he must suspend the resident's license for the period Connecticut law requires for the same act. The offenses covered under this provision are manslaughter or assault with a motor vehicle; negligent homicide with a motor vehicle; operating under the influence of alcohol, drugs, or both; evading responsibility after an accident; and reckless driving. The prior DLC provisions covered manslaughter or negligent homicide with a vehicle, driving under the influence, using a motor vehicle in commission of a felony, and evading responsibility after an accident.

When notified of a DWI conviction in another member jurisdiction, the commissioner may consider it a second or subsequent violation under Connecticut law and impose the appropriate penalty for the repeat offense. The resident cannot use the fact that the out-of-state conviction was based on a BAC level that is less than Connecticut's level as a defense against the repeat offense sanction.

If the commissioner is notified that a Connecticut resident has been convicted of a felony in another member jurisdiction and a motor vehicle was used in the crime, he must, if the person's acts would constitute a felony under Connecticut law, suspend the resident's license for a period he determines.

Notices or copies of any records a member jurisdiction furnishes to the commissioner as required by the agreement or the act with respect to conviction, administrative action, license withdrawal and status, or vehicle registration may be certified, transmitted, and received electronically or by document. When certified, they are admissible in any hearing or court appeal of a final decision and must be accepted as proof of the facts they describe in the absence of contrary evidence.

The act revises prior law allowing someone suspended for certain motor vehicle offenses to apply to the commissioner for reversal of the suspension to (1) accommodate suspensions that occur in accordance with DLA and (2) eliminate consideration for suspensions resulting from speeding convictions. It also expands this

process to include petitions for reductions in suspension periods as well as complete reversal. It requires the commissioner to consider the person's driver control record when considering the petition. It eliminates his authority to require a petitioner to file a trial fee before a petition can be considered.

Anyone aggrieved by the commissioner's action under these provisions can request and must be given an administrative hearing conducted in accordance with the Uniform Administrative Procedure Act (UAPA).

HABITUALLY OVERWEIGHT TRUCKS

Previously, the court had to note on the record any conviction or bond forfeiture involving an overweight violation of more than 15% above a truck's applicable gross weight limit. In addition to the fine that might already have otherwise been paid for the violation, the commissioner had to demand that an out-of-state owner or lessee of such a truck post a \$2,000 bond with DMV subject to forfeiture for a second such violation. An in-state owner or operator was subject to an additional civil fine of \$2,000 for a second such overweight violation. The commissioner could revoke the vehicle's registration for 30 days.

The act revises this sanction process. It (1) eliminates the enhanced penalty for a second offense, (2) requires third or subsequent offenses that trigger the additional penalties to occur in the same calendar year and makes imposition of the additional penalty discretionary with the commissioner rather than mandatory, (3) eliminates an additional mandatory court-imposed fine for a fourth violation in a calendar year, and (4) lowers this fine from \$10,000 to \$5,000 for a fifth violation.

The act requires the court to note any such conviction, but not a bond forfeiture for nonappearance, and transmit the information to DMV. When he receives information about a third conviction within a calendar year, the commissioner may schedule a hearing to review the registrant's record and notify him of it. The commissioner may review information and evidence presented at the hearing that, among other things, may include the frequency of the registrant's commercial vehicle operations, fleet size, and any possible culpability the shipper has for the overweight. After the hearing, he may impose a civil penalty of an additional \$2,000 on the registrant or revoke his registration for 30 days and may refuse to issue a registration for the vehicle for any further period he deems reasonable.

CIVIL PENALTY FOR REPEATED VIOLATIONS OF MOTOR CARRIER SAFETY REGULATIONS

By law, most motor carriers in interstate commerce are subject to federal motor carrier safety regulations governing various aspects of vehicle equipment and condition, driver responsibilities and records, and other things. The state has adopted the federal regulations by reference as state requirements and thus applies them to intrastate carriers as well. Currently, violations of these requirements are infractions.

The act retains first violations as infractions but, for a second or subsequent violation of the law or related safety regulations, allows the commissioner to assess a civil penalty if the conviction is based on operation of the vehicle in intrastate commerce such that, had it been operating in interstate commerce, the carrier would have been subject to a civil penalty under the federal safety regulations.

The act authorizes the commissioner to adopt regulations specifying the amount of any such civil penalties, which cannot exceed the lesser of the amount specified in the federal regulations for a comparable violation or \$10,000. The act entitles anyone notified of assessment of the state-assessed civil penalty to an opportunity for a DMV administrative hearing. If someone fails to comply with the commissioner's final decision and order regarding the penalty, the commissioner may suspend any vehicle registration issued to the person or suspend his privilege to register any vehicle in Connecticut until he complies.

HIGHLY RESTRICTED PERSONAL INFORMATION FROM DMV RECORDS

The act reclassifies someone's photograph or computerized image, Social Security number, and medical or disability information as "highly restricted personal information" pursuant to recent changes to the federal Driver Privacy Protection Act (DPPA) thus moving it into a more restricted category under state law. Under the DPPA, highly restricted personal information may only be disclosed by a motor vehicle agency without the express consent of the person to whom it applies for use: (1) by a government agency, including any court or law enforcement agency, carrying out its official functions; (2) in connection with any civil, criminal, administrative, or arbitration proceeding in a court or self-regulatory body, including the service of process, pre-litigation investigation, and the execution and enforcement of judgments and orders, or pursuant to a court order; (3) by an employer or its agent to obtain or verify information relating to the holder of a CDL; or (4) by an insurer, insurance support organization, or a self-insured entity, its agents,

employees, or contractors in connection with claims investigation, antifraud, rating, or underwriting activities. Disclosure of highly restricted personal information may be made for another reason only with the subject's explicit and express consent to DMV.

Any state motor vehicle agency found to be in "substantial noncompliance" with the requirements of the DPPA is subject to a federally-imposed civil penalty of up to \$5,000 per day.

LEASING COMPANY, DEALER, MANUFACTURER, AND REPAIRER LICENSES

The act changes various aspects of the laws governing motor vehicle manufacturers, dealers, repairers, leasing companies, and activities associated with these businesses. It also establishes a procedure for the commissioner to notify dealers and repairers of complaints lodged against them and to mediate unresolved complaints.

Motor Vehicle Rental and Leasing Businesses

Any business in Connecticut that rents or leases motor vehicles without drivers must be licensed by DMV. The act makes the licensing process for motor vehicle leasing businesses similar to the process for dealers and repairers by (1) moving to a two-year rather than an annual licensing cycle and (2) adopting many of the same requirements that apply to these other licenses. Specifically, this includes a staggered license renewal schedule, written notice by DMV of license expiration at least 45 days in advance, a \$100 late fee for renewal applications filed after the expiration date, a prohibition on renewing licenses that have been expired for more than 45 days, and a requirement that a leasing business cease operations if it has not filed a renewal application and paid the renewal fee by its current license expiration date.

The act also allows the commissioner to suspend a rental or leasing company's license that he finds has failed to pay its municipal property taxes. The suspension can occur 30 days after the business was notified of the suspension and had opportunity for a hearing. It can run until the tax obligations are satisfied.

The act excludes a vehicle rental or leasing business that sells vehicles incidental to its primary business from being considered a used car dealer as long as (1) the business is properly licensed as a leasing business, (2) the vehicles it sells were formerly subject to at least one lease with the business, and (3) the vehicles are not offered or advertised for sale directly to the public.

Activities Allowed Without a Motor Vehicle Repairers License

The act allows someone to balance wheels, install batteries, change drive belts, and change oil or other fluids without a repairer's license. The law already allows someone to lubricate vehicles, change tires, and install light bulbs and windshield wiper blades without having a repairer's license. But the act no longer allows changing spark plugs and fan belts without a repairer's license.

Motor Vehicle Manufacturers

The act explicitly prohibits motor vehicle manufacturers from selling new vehicles directly to the public. And it clarifies several aspects of the law prohibiting a motor vehicle manufacturer from holding a dealer's license. It allows a manufacturer to operate as a dealer on a temporary basis (up to one year) when it is acting in accordance with the exception provisions of the motor vehicle franchise laws. It allows the commissioner to determine when any business is owned or controlled by a manufacturer and thus subject to the restrictions and entitles an applicant denied a license under these requirements to an administrative hearing. The act allows the commissioner to extend the temporary license issued to a manufacturer under these conditions for up to one additional year, to a maximum of two years, if he believes the manufacturer has made and continues to make bona fide efforts to sell or transfer the dealership to someone qualified to hold a dealer's license.

As an exception to these limitations, the act authorizes the commissioner to issue a used car dealer's license to a manufacturer-owned or -controlled entity engaged primarily in the business of renting vehicles and industrial and construction equipment if (1) the vehicles offered for sale are limited to those previously used exclusively and regularly to conduct the business or were traded in by their previous purchasers, (2) any warranty repairs the person performs are limited to vehicles previously owned or taken in trade, and (3) any retail financing provided or arranged for is limited to vehicles the person sells.

Motor Vehicle Dealers

The act allows the commissioner to authorize dealers he has qualified to issue temporary new and transfer registrations also to file permanent registration applications and certificates of title with the DMV through electronic means. Dealers must adhere to DMV procedures for ensuring timely payment of applicable fees and taxes in order to remain eligible for electronic

filing.

The act eliminates a municipality's authority to waive the requirement for conducting a site location hearing for a new or used car dealer approval certificate for an application made subsequent to a previously approved one or when a previously approved business location is being enlarged to include adjacent property.

Financial and Other Information for Repairer and Used Car Dealer Applicants

The act allows the commissioner to request from an applicant for a repairer or used car dealer's license information about his financial status and ability to comply with statutory and regulatory requirements for the licensed business. The commissioner must review the information to determine if the applicant has sufficient financial resources to conduct the business in a manner consistent with the duties and responsibilities the laws and regulations require the licensee to assume for the reasonable security and protection of its customers.

The act authorizes the commissioner to refuse to issue a license if the applicant fails to provide the requested information or if he is not satisfied with the applicant's financial status. It allows him to grant a conditional license when he finds it appropriate, provided the applicant posts a surety bond in an amount he determines that is greater than the minimum amount already prescribed (\$5,000 for a repairer and \$20,000 for a used car dealer). An applicant aggrieved by a commissioner's decision must be given an opportunity for a hearing under UAPA. The commissioner may adopt implementing regulations.

Dealer and Repairer Licensing and Regulation

By law, the commissioner may suspend or revoke a dealer or repairer license, or impose a civil penalty of up to \$1,000 per violation, when, after notice and hearing, he determines that the licensee violated any provision of a law or regulation of any state or the federal government pertaining to his licensed business. The act, in addition, authorizes imposition of these sanctions against a licensee who fails to comply with the terms of a final decision and order of any state department or federal agency concerning any pertinent provision of statute or regulation.

The act allows the commissioner to refuse to grant or renew a dealer or repairer license if the applicant, an officer, or a major stockholder of the business has been convicted of any federal or state law violation involving fraud, larceny, or deprivation or misappropriation of property. It also allows him to deny a repairer license on the grounds that the applicant's licensed activities are

conducted on property that also includes another business or activity owned or operated by someone else or that the licensee uses a common area or facilities with another business or activity.

When a dealer or repairer adds buildings or adjacent land to his licensed business place, the act allows the commissioner to require submission of satisfactory evidence of compliance with applicable statutory requirements regarding certification of location approval by the municipality where the business is located and other applicable local building or zoning laws. It eliminates the requirement that the licensee apply to DMV for inclusion of the additions in his existing licensed business location, which must be considered as the same business location, and for which the commissioner cannot charge an additional license fee.

It eliminates the requirement that a dealer or repairer licensee submit a performance bond of up to \$1,000 as a condition of continued licensure or reinstatement following a license suspension or revocation for committing any of the prohibited acts and allows the commissioner to order the licensee to make restitution to an aggrieved customer in lieu of the other authorized penalties.

The act authorizes the commissioner to withdraw all or limit the number of dealer or repairer plates a licensee has been issued, or is by law eligible to receive, when he finds the licensee has committed any prohibited acts. It also makes misuse of dealer or repairer plates one of the prohibited acts that can result in suspension or revocation of the dealer or repairer license, imposition of a civil penalty of up to \$1,000, or both.

Dealer and Repairer Complaint Procedure

The act requires the commissioner to notify a dealer or repairer licensee of a complaint made against him. It allows the commissioner to attempt to mediate voluntary settlements of unresolved complaints. DMV regulations must provide for the notice and a description of the particular matters alleged in the complaint and the mediation process. The commissioner must attempt to mediate a mutually acceptable voluntary resolution, but, if this is not achievable, he must complete his factual investigation. If he determines the licensee has violated applicable laws or regulations, he may take further action against the licensee. If he elects not to take such action, he must notify both the licensee and complainant and briefly explain why in writing.

The commissioner must also inform the parties that an unresolved complaint exists and, unless he determines that, even if true, the allegations fail to establish a violation of applicable statutes or

regulations, that DMV will maintain the status of the matter in the licensee's records until the licensee submits satisfactory evidence either (1) signed by the complainant or his attorney that the claim has been resolved by agreement or (2) showing that the matter has been finally adjudicated in favor of the licensee.

A resolution agreement does not preclude the commissioner from taking further action if he believes the licensee has violated the laws and regulations applicable to his business. The commissioner's decision not to take action must not prejudice the customer's claim. His decision not to proceed and the required notice to both parties are inadmissible in a civil action.

Window Etching Price Disclosure

By law, new and used car dealers and rental or leasing companies must offer someone buying or leasing a vehicle the optional service of etching the vehicle identification number on its windshield and windows. They may charge reasonable fees for the service, which they must file with the commissioner.

The act allows these businesses to specify their charges for the etching services, as the law requires, on the sale order and invoice instead of on the price disclosure sticker federal law requires to be fixed to the vehicle's window. This sticker discloses certain information about the vehicle, including its cost, standard and optional equipment, transportation and other fees added to the base vehicle cost, and the cost of options and additional services.

It is not clear how this requirement applies when the transaction involves a lease rather than a purchase.

CDL HOLDER DISQUALIFICATION

Under both state and federal law, someone required to hold a CDL to drive certain types of commercial motor vehicles must be disqualified from driving for specific periods for violating certain laws. These include driving under the influence of alcohol or drugs, evading responsibility after an accident, and using a commercial motor vehicle in the commission of a felony. The act requires a CDL holder to be disqualified from driving a commercial motor vehicle for 60 days when first convicted of failing to completely stop his vehicle at a railroad crossing, for 120 days for a second violation, and for one year for a third or subsequent violation during a three-year period. (This conforms state law to a mandatory provision of the federal Motor Carrier Safety Improvement Act.)

MOTOR VEHICLE TITLES

The act authorizes the commissioner to participate in the National Motor Vehicle Title Information System (authorized under 49 USC §§ 30501-03) and to rely on the information in the system as prima facie evidence of the facts for granting or denying a title certificate application. The act also adopts a formal statutory definition of a vehicle identification number (VIN) as it is specified under federal law.

It requires the commissioner to put a legend on any new or duplicate title certificate regarding the vehicle's mileage in accordance with the Federal Odometer Act (49 USC §§ 32701-11). He may adopt regulations to provide for additional legends on titles that concern its past or present condition or the status of its title. This can include legends that it has been rebuilt or flood damaged, or that bond has been posted to obtain the title (an option under state law when the commissioner is not satisfied about the vehicle's ownership or if there are no undisclosed security interests in it). The regulations must provide a hearing opportunity for anyone aggrieved by the commissioner's act, omission, or decision.

By law, as noted above, if the commissioner is not satisfied as to a vehicle's ownership or if there are no undisclosed security interests in it, he can either withhold issuing the title until the applicant produces additional documents that satisfy him or require the applicant to post a bond as a condition of issuing the title. The bond indemnifies those with a former or future interest in the vehicle from any loss, damages, or expenses that might arise from the title being issued. Previously, any required bond had to be for 150% of the vehicle's value as determined by the commissioner. The act increases this to 200% of the vehicle's value and requires a \$25 filing fee. It also requires the commissioner to hold the bond for five rather than three years.

The act allows the commissioner to make an agreement with any first lienholder on a vehicle to provide for electronic recording and storage of the evidence of the lienholder's security interest. An agreement may provide (1) that the commissioner not issue a title unless the lienholder requests it and (2) when the security interest is satisfied and released, the commissioner must present or mail the title to the owner, unless the commissioner has recorded another security interest on the vehicle. The act revises several other laws governing titles to accommodate this electronic recording and storage option and applies the existing fees for various title documents and filings to similar electronically based transactions.

When a lienholder has an agreement with the commissioner for electronic lien filing and recording, it

must, upon satisfying its security interest, notify the commissioner within 10 days. This must be done in the form and manner, and with the information necessary to release the lien and identify the vehicle and the title record that the commissioner requires.

The act specifically identifies acceptable personal identification as information the commissioner may require when issuing a duplicate or replacement title.

ATV DEFINITION

Under prior law, an ATV was defined as a motorized vehicle not suitable for highway operation that (1) is not more than 50 inches wide, (2) has a dry weight of no more than 600 pounds, (3) travels on three or more low pressure tires, and (4) has a seat or saddle designed for the operator to straddle. The act expands the definition to include two-wheeled vehicles such as dirt bikes, (1) that meet the other characteristics specified in the law and (2) have a piston displacement of more than 50 cubic centimeters. Also, it changes the tire requirement from "low pressure" tires to any tires specifically designed for unimproved terrain.

REPORTING ARRESTS FOR CERTAIN CRIMES TO THE DMV

The act requires a police officer to report the arrest of someone charged with any felony or with sexual assault in the fourth degree (a Class A misdemeanor) to the DMV commissioner within 48 hours, if the arrest involves someone who holds an operator's license bearing a "school" endorsement. The "S" endorsement is required for anyone who drives a school bus or a student transportation vehicle (any vehicle other than a school bus used to transport students, including children requiring special education). The report must be made on a DMV-approved form and contain information it prescribes.

TRANSPORTER PLATES

The act conforms the law to DMV's current practice for issuing transporter plates. It explicitly authorizes their use for the towing or movement of a storage or office trailer, house trailer, modular building, or other similar non-powered trailing unit with unitized construction and a removable axle assembly attached. (This use is already permitted in a more general form under the DMV transporter plate regulations.) It also establishes a single \$114 fee for all transporter plates by eliminating the \$58 fee previously required for plates used for passenger vehicles and house trailers, thus making it the same as for other vehicles and creating a single class rather than two classes of transporter plates.

CHANGES TO MOTOR VEHICLE EMISSIONS INSPECTION LAWS

The act (1) eliminates specific references to “exhaust” testing to reflect a broader range of testing types for newer vehicles now under consideration; (2) makes it clear that an official emissions inspection station may be located on the premises of a licensed dealer or repairer; (3) allows inspections to be conducted at approved dealer or repairer facilities, at the commissioner’s discretion, at predetermined or appointed times, in addition to during normal and posted hours of operation; (4) specifies that if the 30th day following a failed emissions test falls on a Sunday, legal holiday, or day that the commissioner establishes is impractical for inspections, the vehicle may be presented for its free reinspection on the next day without being subject to the late inspection fee; and (5) makes the lesser of either 20,000 vehicles or one-half of one percent of all vehicles subject to testing requirements the minimum number to be included in an on-road testing program the commissioner may establish. Previously, any such program had to test one-half of one percent of all subject vehicles.

COMBINATION REGISTRATION

Previously, a vehicle could get a “combination” registration if it was used for both passenger and commercial purposes and its gross weight (its empty weight plus the weight of any load for which it was registered and the appropriate fee paid) did not exceed 10,000 pounds. The act changes the basis for the registration to a gross weight rating that does not exceed 10,000 pounds. By law, a vehicle’s gross weight rating is the larger of its manufacturer-specified maximum loaded weight or the registered gross weight.

APPLICATION OF MANDATORY SEAT BELT USE LAW

Previously, the mandatory seat belt use law applied to front seat passengers in any motor vehicle defined as a “private passenger motor vehicle” under the no-fault insurance laws and equipped with safety belts that met federal standards. Children under age four are covered by a separate requirement for child restraint systems.

Under the insurance laws, a private passenger motor vehicle includes (1) private passenger and station wagon type automobiles; (2) camper-type motor vehicles; (3) “high-mileage” vehicles meeting the statutory definition; (4) truck-type motor vehicles with a load capacity of 1,500 pounds or less registered as a passenger or combination passenger and commercial motor vehicle, or used for farming purposes; and (5) a

vehicle with a commercial registration (a vehicle designed or used to transport merchandise, freight, or people that falls below the threshold for registration as a commercial motor vehicle requiring a driver with a CDL). The act, instead, applies the seat belt law to any vehicle with a gross vehicle weight rating of 10,000 pounds or less originally equipped with safety belts meeting federal standards.

BACKGROUND

Federal Requirements for Civil Penalties for Interstate Motor Carrier Safety Violations

Federal law (49 U.S.C. § 521(b)) sets criminal and civil penalties for violations of various safety-related requirements applicable to motor carriers engaged in interstate commerce. Civil penalties can range from \$500 for violation of a recordkeeping requirement to as much as \$10,000 when the transportation secretary determines that a substantial health or safety violation exists or has occurred which could reasonably lead to, or has resulted in, serious personal injury or death.

Certain federal safety regulations, such as those relating to drivers violating “out-of-service” orders designate other specific civil penalties in addition to the general penalties.

Related Acts

PA 02-1, May 9 Special Session, “An Act Concerning Adjustments to the State Budget for the Biennium Ending June 30, 2003, State Revenues and Operating a Motor Vehicle While Under the Influence of Intoxicating Liquor”, lowers the BAC threshold for determining the per se offense of driving while under the influence of alcohol from .10% to .08%, eliminates the infraction offense of operating while impaired by alcohol (.07% to .099%), and makes several other significant changes to the scope and application of the pretrial alcohol education program.

SA 02-12, “An Act Repealing Obsolete Statutes,” repeals numerous laws, including CGS §§ 14-36c and 14-201 through 209, which are also repealed by this act.

PA 02-78—sHB 5007

Transportation Committee

Commerce Committee

Government Administration and Elections Committee

AN ACT REQUIRING THE CONNECTICUT TRANSPORTATION STRATEGY BOARD TO SUBMIT FINDINGS AND RECOMMENDATIONS

FOR EACH NEW ECONOMIC DEVELOPMENT PROJECT

SUMMARY: Previously, the commissioner of the Department of Economic and Community Development (DECD) and the executive directors of the Connecticut Development Authority (CDA) and Connecticut Innovations, Incorporated (CII) had to submit an impact statement to the Connecticut Transportation Strategy Board (CTSB) for any project new to the state or for new construction that sought funding from any of them. This act (1) limits this requirement to projects that meet the threshold requirements for a major traffic generator requiring a certificate of operation from the State Traffic Commission (STC); (2) requires submission of the impact statement before the project's approval by DECD, CDA, or CII, as the case may be; and (3) applies the requirement beginning January 15, 2003.

By law, an impact statement must indicate to the CTSB whether the project conforms to the strategy the CTSB must, by law, develop and submit for General Assembly approval. The act requires, in addition, that each impact statement (1) describe how the project addresses the goals established by the CTSB for developing its transportation strategy and (2) include any other information the CTSB may require to discharge its responsibility, including, at least (a) the size of any facility proposed in connection with the project, (b) the facility's hours of operation, (c) a projection of whether or not an increase in daily vehicle trips, including truck traffic, is likely to occur as a result of the project, and (d) the availability of public transportation to and from the project.

The act requires the CTSB to evaluate each impact statement it receives to determine if it conforms to the strategy and give the commissioner and executive directors any findings or recommendations with respect to the project. The act specifies that its requirements should not be construed to require any delay in implementing a project subject to the impact statement requirements.

The act requires the CTSB, subject to the requirements of the state Freedom of Information Act, to protect any confidential information and trade secrets it receives in connection with its review of any impact statement.

EFFECTIVE DATE: October 1, 2002

PROJECTS SUBJECT TO IMPACT STATEMENT REQUIREMENTS

The act requires impact statements for projects subject to STC certificate requirements as "major traffic generators." For purposes of applying certificate requirements, STC regulations define a "development

generating large volumes of traffic" as any open air theater, shopping center, or other development providing 200 or more parking spaces or with a gross floor area of 100,000 square feet or more. This appears to be the definition that would apply to projects subject to the act's requirements.

BACKGROUND

CTSB Transportation Strategy

PA 01-5, June Special Session, requires the CTSB to submit an initial transportation strategy by January 15, 2002 for approval by the General Assembly and to update or revise the strategy as necessary by December 1, 2002 and every two years thereafter. These revisions or updates are also subject to legislative approval.

PA 02-123—sHB 5527

Transportation Committee

Planning and Development Committee

Labor and Public Employees Committee

Appropriations Committee

Finance, Revenue and Bonding Committee

AN ACT REVISING VARIOUS TRANSPORTATION LAWS

SUMMARY: This act:

1. requires the Department of Transportation (DOT) to use the same eminent domain process it follows for taking land for highway purposes to take property for other transportation purposes;
2. authorizes the state comptroller to offer qualified state employees, including members of the General Assembly, the option to exclude from their taxable wages and compensation the transportation fringe benefits allowed under the Internal Revenue Code (known by the popular name of Commuter Choice or, in Connecticut, as "Deduct-a-Ride");
3. provides the General Assembly's approval of the Connecticut Transportation Strategy Board's initial transportation strategy as required under PA 01-5 of the June Special Session;
4. expands the number of state roads on which 53-foot semitrailers may travel without having to get a special DOT permit;
5. by July 1, 2003, requires the transportation commissioner to establish by regulation a procedure for resolving claims disputes

- between customers and household goods carriers and motor contract carriers operating in intrastate commerce;
6. eliminates certain responsibilities of the transportation commissioner with regard to special transportation services for the elderly, handicapped, and others and makes a related change to requirements for funding applicants;
 7. authorizes certain large motor vehicles in livery service to have a "jump seat" located even with or forward of the driver's seat provided certain requirements are met;
 8. overrides contrary DOT taxi regulations to the extent necessary to permit a sedan or station wagon type vehicle powered by a clean alternative fuel to provide taxi service if it has a wheelbase of at least 102 inches;
 9. limits the transportation commissioner's authority and responsibility to review and concur with expenditure of funds and use of state property in transportation programs for the elderly and handicapped only to services available to the general public;
 10. designates commemorative and memorial names for eight state highway segments and seven highway bridges;
 11. changes the state highway segment previously designated for one recipient and renames another previously designated segment for a different recipient;
 12. requires DOT to place signs on I-95 northbound and southbound and I-91 southbound in the vicinity of the New Haven town line stating "Welcome to New Haven, Connecticut, Birthplace of George W. Bush the 43rd President of the United States."; and
 13. requires DOT to place a sign in both directions on Route 2 at Exit 8 designating the location of the "Irish American Home Society, est. 1945."

EFFECTIVE DATE: Upon passage, except for the livery vehicle jump seat and 53-foot trailer provisions, which are effective October 1, 2002 and the household goods mover claims dispute resolution procedure requirement which is effective July 1, 2002.

DOT PROPERTY ACQUISITION THROUGH CONDEMNATION

By law, DOT can acquire property it requires for any transportation purpose through a condemnation process (eminent domain). If the property is acquired for highway purposes, DOT is authorized to use a more streamlined "quick take" process. If the property is acquired for the operation or improvement of

transportation services, DOT previously had to follow the condemnation procedure specified by law for taking land for state institutions. The act requires DOT to use the process it follows for highway projects for these other purposes as well.

Under the condemnation process for highway projects, DOT files a certificate with the Superior Court identifying the property it is acquiring and specifying the damages it will pay to the owner for the taking. Once the certificate is filed, title to the property immediately passes to the state. The property owner can appeal to the court with respect to the amount of the damages awarded, but not with respect to the taking itself. A judge trial referee is assigned to view the property, take relevant testimony, and reassess the damage award, and can award the property owner additional damages if warranted.

"DEDUCT-A-RIDE" BENEFITS

The act allows the comptroller to offer the "deduct-a-ride" program provided for under the Internal Revenue Code (§ 132(f)) to qualified state employees, including members of the legislature. Under this program, employees may deduct from their taxable wages and compensation their commuting costs for (1) transportation in a commuter highway vehicle between a residence and place of employment, (2) transit passes, and (3) qualified parking up to the maximum amounts allowed under the Internal Revenue Code.

The act permits the comptroller to contract with an administrator to manage the program.

AUTHORIZATION FOR USE OF 53-FOOT SEMITRAILERS

By law, semitrailers longer than 48-feet are prohibited on Connecticut roads with one exception. Semitrailers up to 53 feet long are permitted on a designated network that includes all highways on the Interstate Highway System (I-84, I-91, I-95, I-291, I-384, I-395, and I-691) and certain non-Interstate limited-access highways. The non-Interstate expressways on the designated highway network include Route 2 (Hartford to I-395 Norwich), Route 8 (Bridgeport to Route 44 in Winsted), Route 9 (Old Saybrook to Cromwell), Route 20 (I-91 to Route 401 at Bradley International Airport), and Route 401 (Route 20 in Windsor Locks to the Bradley Airport access road in Windsor Locks). The 53-foot trailers can also operate on state and local roads for up to one mile from the system for access to terminals and to facilities for food, fuel, repair, and rest services.

To operate on this network, the 53-foot trailer cannot be longer than 43 feet from its kingpin (the

articulation point between the tractor and the trailer) to the center of its rearmost axle. No 53-foot trailer may be operated outside of this designated system unless the transportation commissioner has issued a permit for this purpose.

The act expands the size of the designated network for 53-foot trailer operation. Unless the commissioner posts a highway otherwise, it allows 53-foot trailers meeting the kingpin-to-rear axle restriction to operate on all of the roads on the state highway system numbered from 1 through 399, 450, 476, 508, 693, and 695 and for up to one mile off these roads for access to terminals and the specified services.

ELIMINATION OF CERTAIN RESPONSIBILITIES CONCERNING SPECIALIZED TRANSPORTATION SERVICES

The act eliminates several requirements and responsibilities of the transportation commissioner with respect to special transportation services. These services are defined for these purposes as services for the elderly or persons with disabilities, transit services for people receiving assistance under Title XIX, and transportation services provided under the Americans with Disabilities Act of 1990.

Specifically, the act eliminates the following requirements for the commissioner: (1) to conduct a survey of each state agency that provides special transportation services to determine the operating and capital expenditures, service levels, ridership, utilization, and capacity of the services and report the results to the Transportation Committee by January 15, 1993 (the report was submitted as required); (2) to establish a pilot program by dividing the state into three or more transportation service areas to act as a regional framework for planning and coordinating special transportation services; (3) to establish statewide objectives for providing special transportation services; and (4) to issue progress reports to the Transportation Committee every two years with respect to the pilot programs.

In a change related to the elimination of designated service regions for special transportation services, the act requires municipalities or transit districts applying for funding allocations to carry out their statutory responsibilities with regard to the surrounding region instead of the designated transportation service region.

JUMP SEAT ON CERTAIN LARGE LIVERY VEHICLES

The act allows a motor vehicle in livery service that has a seating capacity of 35 or more adults to be equipped with a seat located even with or forward of the

driver's seat. This seat must comply with applicable federal motorbus manufacturing and safety standards and may only be used by an employee of the vehicle operator or of a tour company that retains the livery operator's services.

DOT CERTIFICATION OF ELDERLY AND HANDICAPPED TRANSPORTATION PROGRAMS

Previously, no state agency except DOT could spend money in support of, or make state property available for use in, any transportation program for the elderly or handicapped unless the transportation commissioner certified in writing that (1) he has reviewed and concurs with the expenditure or property use, (2) it is consistent with the state's transportation policies, and (3) it will not result in unnecessary service duplication. The act excludes from these requirements any transportation service that is not available to the general public.

COMMEMORATIVE AND MEMORIAL NAMES

The act changes the highway segment designated as "The American Ex-Prisoner of War Memorial Highway" from the segment of Route 624 in Waterford and New London running east from I-95 eastbound to Route 1 eastbound to the segment of I-395 from Route 695 in Killingly to the Massachusetts state border.

The act names eight state highway segments and seven bridges as follows:

1. Route 502 in East Hartford from Route 5 to Forbes Street as the "Anthony Fornabi Memorial Highway";
2. Route 176 in Newington from the intersection of Routes 5 and 15 to Route 175 as the "Newington Volunteer Fire Department Memorial Highway";
3. Route 11 from the junctions of Route 82 in Salem and Route 2 in Colchester as the "Connecticut Department of Transportation Employees Memorial Highway";
4. Route 12 in Groton from U.S. Route 1 to the south junction of Route 2A in Preston as the "United States Submarine Veterans Memorial Highway";
5. Route 103 in North Haven from Sackett Point Road to the junction of Route 22 in North Haven as the "American Legion, Murray-Reynolds Post #76 Memorial Highway";
6. Route 505 in Newington from Route 175 to the intersection of Holly Drive and Ella Grasso Road as the "John Abbate Memorial Highway";
7. Route 372 in Plainville from Route 10 to the

- Plainville-New Britain town line as the "Joseph E. Tinty Memorial Highway";
8. Route 44 in both directions from Route 272 in Norfolk to Route 7 in North Canaan as the "Trooper Charles F. Hill Memorial Highway;"
 9. Bridge No. 3126 on I-91 northbound in Wallingford passing over Town Route 807 as the "United States Marine Corps 3rd Recon Battalion Bridge";
 10. Bridge No. 642 on Route 15 in Wethersfield passing over Route 99 as the "Clinton Hughes Memorial Bridge";
 11. Bridge No. 590 on Route 8 in Naugatuck as the "Officer Nancy Nichols Memorial Bridge";
 12. Bridge No. 154 on Marsh Hill Road in Orange passing over I-95 as the "Salemme Memorial Bridge";
 13. Bridge No. 867 on Route 17 in Glastonbury passing over Roaring Brook as the "Alexander L. Bocciairelli Memorial Bridge";
 14. Bridge No. 3400A on I-84 eastbound in Hartford passing over Park Street as the "CMSgt. Anthony E. Mazotas Memorial Bridge"; and
 15. Bridge No. 3191A on I-84 eastbound in Waterbury passing over Route 8 and the Naugatuck River as the "William W. Dedy Memorial Bridge".

The designation of Route 176 in Newington as the "Newington Volunteer Fire Department Memorial Highway" replaces its previous designation as the "Patricia M. Genova Memorial Highway" by PA 01-105.

BACKGROUND

Nontaxable Transportation Fringe Benefits

The Internal Revenue Code allows certain transportation fringe benefits an employer provides that would otherwise be taxable to the employee as income to be excluded from the taxpayer's gross income for income tax purposes. The types of commuting costs covered include (1) transportation in a "commuter highway vehicle" between home and work, (2) a transit pass, or (3) "qualified parking."

A qualifying commuter highway vehicle must seat at least six adults besides the driver and have at least 80% of its annual mileage reasonably expected to be used to transport employees to and from work on trips with at least half the passenger seats filled, not counting the driver. A transit pass includes any pass, token, farecard, voucher, or similar item allowing a ride on mass transit or a commuter highway vehicle. Qualified

parking is employer-provided parking at or near work or at a location from which employees commute by transit pass, commuter highway vehicle, or vanpool. The employer provides parking if it pays for it, reimburses the employee, or the parking is on property it owns or leases.

The current maximum amount that can be excluded under these provisions is \$100 per month for commuter highway vehicle or transit pass costs and \$180 per month for qualified parking costs.

Employers have several options for providing these benefits. They can (1) provide it as a tax-free benefit in addition to the employee's current salary; (2) permit the employee to deduct some of his gross income on a pre-tax basis to pay for transit, vanpools, or qualified parking; or (3) provide a portion of an employee's commuting expense in addition to his compensation and allow the employee to deduct part of his gross income to pay the remaining amount. There is also a "parking cash out" option under which employers can allow employees to "cash out" their parking spaces and receive taxable cash or tax-free transit or vanpool benefits.

PA 02-126—sSB 102

Transportation Committee

Finance, Revenue and Bonding Committee

Appropriations Committee

AN ACT REQUIRING THE ISSUANCE OF UNITED WE STAND COMMEMORATIVE NUMBER PLATES, AND CONCERNING TUITION WAIVERS AND AN INCOME TAX EXEMPTION FOR CHILDREN AND SPOUSES OF TERRORIST VICTIMS AND DESIGNATING A REMEMBRANCE DAY

SUMMARY: This act:

1. requires the Department of Motor Vehicles (DMV), beginning January 1, 2003, to issue a commemorative license plate with a design that enhances public solidarity following the September 11, 2001 terrorist attacks;
2. waives tuition at the University of Connecticut, the Connecticut State University System, and the community-technical colleges for resident surviving spouses and dependent children of Connecticut residents killed in the September 11, 2001 terrorist attacks or anthrax attacks occurring between September 11 and December 31, 2001;
3. exempts terrorist and anthrax attack victims and their estates from the state income tax for the 2001 tax year; and

4. requires the governor annually to proclaim September 11 as "Remembrance Day" instead of "911 Day" for the purpose of memorializing those killed and injured in the September 11, 2001 terrorist attacks and honoring the service, sacrifice, and contributions of police, fire fighters, and others who responded to the attacks.

For purposes of the tuition fee waiver and income tax exemption, the act excludes from consideration as an attack victim anyone the U.S. attorney general has identified as a participant or conspirator in an attack or a representative of either one.

EFFECTIVE DATE: Upon passage, except the license plate and "Remembrance Day" provisions are effective on July 1, 2002.

"UNITED WE STAND" LICENSE PLATES

The special license plates the DMV commissioner must begin issuing on January 1, 2003 must bear the words "United We Stand" and the image of an American flag. The commissioner may coordinate a contest for determining the actual design.

The act requires a \$50 fee for the commemorative plates in addition to any normally required registration fees. It creates a special non-lapsing General Fund account for fees collected from the plates. It authorizes DMV to retain \$15 of the fee for administrative costs associated with the plate program and requires the other \$35 to be deposited in the special account. It prohibits DMV from collecting a transfer fee to transfer an existing registration to or from a registration with "United We Stand" plates, but, as the law already provides in other cases, DMV may charge additional fees for number plates that contain alphanumeric characters from previously issued plates, low-number plates (1-10,000 for passenger vehicles), and vanity plates.

The act requires 50% of the fees transferred to the special account to be distributed quarterly to the U.S. Department of State's "Rewards for Justice" program and used solely to apprehend and bring terrorists to justice. The other 50% must be spent by the Office of Policy and Management (OPM) to (1) reimburse boards of trustees for the required tuition fee waivers and (2) establish a nonlapsing General Fund account for providing financial support for civil preparedness and related training activities and for purchasing supplies and equipment to support emergency personnel.

The act also authorizes OPM to receive private donations for the "United We Stand" account.

INCOME TAX EXEMPTION

Under the act, neither a terrorist victim nor his estate is required to file a tax return for 2001, and no 2001 taxes owed nor any additions, interest, and penalties can be assessed on them. If they have already been assessed, they must be abated and if already collected, refunded to the estate's legal representative.

The tax exemption does not apply to taxes attributable only to (1) deferred compensation that would have been payable after death if the person had not died in the terrorist attacks or (2) amounts paid in 2001 that would not have been payable in that year except for an action taken after September 11, 2001.

For joint filers, the act limits the exemption to the victim's share of the couple's total tax liability. It also extends the same limitation to an existing income tax exemption for active duty U.S. Armed Forces members who die while serving in a combat zone. By law, if such a person dies from an injury or illness incurred in a combat zone during combat, his income tax liability is waived for the tax year of his death and for any prior tax year ending on or after his first day of service in the combat zone.

Under the act, tax relief for joint filers must be determined by (1) figuring the separate tax liabilities of the victim or Armed Forces member and his spouse, (2) adding them together, (3) determining the percentage of the total that is attributable to the victim or Armed Forces member, and (4) applying that percentage to the couple's joint liability.

"REMEMBRANCE DAY" DESIGNATION

The act replaces a prior requirement for the governor to proclaim September 11 as "911 Day" with the Remembrance Day commemoration. Previously, 911 Day had to be proclaimed to increase public awareness of the emergency telephone number and observed in schools and in other ways indicated in the proclamation. Instead, the act requires the day to be proclaimed in memory of the September 11 attack victims and in honor of the firefighters, police, and others who responded to the attacks. It requires suitable exercises to be held in the State Capitol and elsewhere the governor designates.

BACKGROUND

Rewards for Justice Program

The Rewards for Justice Program was established by federal law in 1984. It is administered by the U.S. Department of State's Bureau of Diplomatic Security. The U.S. secretary of state is authorized to offer rewards

of up to \$5 million for information that prevents or favorably resolves acts of international terrorism against U.S. citizens or property. The “USA Patriot Act of 2001” authorizes the secretary to offer awards of more than \$5 million if he determines them necessary to combat terrorism or defend the United States against terrorist acts.

Related Federal Law

The act’s provisions relating to covered September 11 and anthrax attack victims, excluded income, and tax relief for joint filers mirror similar provisions regarding federal tax exemptions in “The Victims of Terrorism Tax Relief Act of 2001.”

PA 02-1, May 9 Special Session—HB 6002
Emergency Certification

AN ACT CONCERNING ADJUSTMENTS TO THE STATE BUDGET AND FOR THE BIENNIUM ENDING JUNE 30, 2003, STATE REVENUES AND OPERATING A MOTOR VEHICLE WHILE UNDER THE INFLUENCE OF INTOXICATING LIQUOR

SUMMARY: This act adjusts state appropriations for FY 2002-03, allows specified funds appropriated in prior years to be carried forward rather than lapsing on July 1, 2002, transfers money between special funds and accounts and the General Fund, suspends contributions to various special funds, makes many other funding adjustments for FY 2002-03, and allocates funds to cover deficiencies in appropriations for FY 2001-02. It gives the governor authority to reduce most FY 2002-03 budget appropriations by an additional 5% or a total of \$35 million, if he determines there is a need for immediate action (“fiscal exigency”) or that the state will not have enough resources to fully fund all appropriations and his statutory rescission authority is not sufficient to deal with the situation. The act’s extra rescission authority does not allow the governor to reduce Education Cost Sharing (ECS), town road aid, and payment in lieu of taxes (PILOT) grants to municipalities.

The act makes many changes in state taxes and revenues. Among other things, it establishes a new tax on business entities; limits corporation tax credits and deductions; delays scheduled tax reductions; and increases the tax on diesel, propane, and natural gas fuel. It establishes a tax amnesty program and increases hunting, trapping, and fishing fees and certain court filing fees.

The act makes several changes in state-funded prescription drug programs. Among other things, it (1) allows the Department of Social Services (DSS) to establish a maximum allowable cost for generic drugs and a mail order option for maintenance drugs; (2) reduces pharmacies’ dispensing fees; and (3) creates an 11-member committee to, among other activities, recommend a preferred drug list to DSS for the Medicaid program. The act requires prior authorization for most drugs not on the preferred drug list.

Finally, the act makes several changes in the drunk driving law, including lowering the .10% blood-alcohol content (BAC) standard for defining the per se offense of drunk driving (DWI) to .08% BAC.

EFFECTIVE DATE: July 1, 2002 unless otherwise noted.

APPROPRIATIONS FOR FY 2002-03

The act revises total FY 2002-03 appropriations from various funds for state agencies and functions as shown in Table 1.

Table 1: Total FY 2002-03 Appropriations by Fund

\$	Fund	Total Appropriation		Difference
		Prior Law	The Act	
19	General	\$12,431,380,964	\$12,091,803,703	(\$339,577,261)
20	Special Transportation	877,308,778	903,162,164	25,853,386
21	Mashantucket Pequot and Mohegan	120,000,000	134,220,000	14,220,000
22	Soldiers', Sailors', and Marines'	3,463,637	3,634,714	171,077
23	Regional Market Operation	901,312	930,584	29,272
24	Banking	15,774,759	15,933,944	189,185
25	Insurance	21,665,676	21,301,122	(364,554)
26	Consumer Counsel and Public Utility Control	21,243,192	21,001,963	(241,229)
27	Workers' Compensation	24,736,793	24,279,354	(457,439)

FUNDS CARRIED FORWARD TO FY 2002-03

Rather than lapsing on July 1, 2002, the act allows funds appropriated in prior years to be carried forward and spent in FY 2002-03, as shown in Table 2.

Table 2: Funds Carried Forward to FY 2002-03

\$	Agency	Amount	For
29 (b)	Office of Policy and Management	Up to \$2,037,051	Payments to Local Governments, Drug Enforcement Program
29 (c)	Office of Policy and Management	Unexpended balance	Payments in Lieu of Taxes – New Manufacturing Machinery and Equipment
30(a)	Office of Workforce Competitiveness	Unexpended balance over \$700,000 (PA 02-7, May 9 Special Session (MSS) changes this to transfer the entire unexpended balance.)	Jobs Funnel
30(b)	Office of Workforce Competitiveness	Up to \$2,000,000	Connecticut Employment and Training Commission - Workforce
31(a)	Labor Department	Unexpended balance	Workforce Investment Act
31(b)	Labor Department	Unexpended balance	Welfare-to-Work Grant Program
34	Department of Correction	Unexpended balance	Inmate medical services
49(a)	Legislative Management	Unexpended balance	Capitol § rity improvement projects
49(b)	Legislative Management	Unexpended balance	Flag restoration
49 (c)	Legislative Management, Other expenses	Up to \$1,236, 000	\$783,000 for other expenses; \$453,000 for personal services
49(d)	Legislative Management	Unexpended balance	Minor capital improvements

49(e)	Legislative Management	\$50,000	Capitol Child Development Center playground improvements
53	Department of Correction	FY 02 appropriation for workers' compensation claims	Workers' compensation claims
54(a)	Department of Transportation	FY 02 appropriation for bus operations	Bus operations
54 (b)	Department of Transportation	FY 02 appropriation for rail operations	Rail operations

FY 2002-03 BUDGET ADJUSTMENTS AND SPENDING DIRECTIVES

Teachers' Retirement Fund (§ 38 (a))

The act makes an exception to a law requiring the state to contribute 100% of the actuarially recommended annual contribution to the Teachers' Retirement Fund to allow it to reduce its FY 2002-03 contribution by \$34.9 million.

Interlocal Agreements (§ 29(a))

The act requires the Office of Policy and Management (OPM) secretary to use an appropriation carried over to FY 2002-03 for interlocal agreements to fund only such agreements signed before June 20, 2001.

Hospital Finance Restructuring Funding (§ 33)

The act reduces for FY 2001-02 and eliminates for FY 2002-03, the amounts DSS must pay in hospital finance restructuring funding to Hartford, Saint Francis, and Stamford hospitals. Table 3 shows the FY 2001-02 reductions.

Table 3: FY 2001-02 Hospital Finance Restructuring Fund Payment Reductions

Hospital	Prior Law	The Act	Reduction
Hartford	\$3,412,244	\$2,412,048	(\$1,000,196)
Saint Francis	2,709,583	1,710,048	(999,535)
Stamford	2,485,860	1,486,049	(999,811)

Health Insurance Portability And Accountability Act Implementation (§§ 3 and 32)

For FYs 2002, 2003, and 2004, the act requires DSS to deposit in the General Fund any reimbursements it receives for data processing system changes or hardware to implement the federal Health Insurance Portability and Accountability Act. The money must be credited to a special nonlapsing account in the Department of Information Technology (DOIT) and used for its costs for implementing the federal act. DOIT may also transfer money from the account to other state agencies that need funds to implement the federal act. DOIT must submit a quarterly report

through the Office of Fiscal Analysis (OFA) to the Appropriations Committee specifying how much money it receives and spends to implement the federal act.

For FYs 2003 and 2004, the act allows DSS to establish an account for the reimbursement it expects to receive for developing a data warehouse in compliance with an advance planning document approved by the federal Department of Health and Human Services.

The act transfers \$1.9 million of an FY 2000-01 appropriation to OPM for the Private Provider Infrastructure/Debt Fund and previously carried forward to FY 2001-02, to DOIT to implement the federal act. It allows DOIT to carry the money forward to FY 2002-03 and to transfer it to other state agencies that need implementation money.

Department of Motor Vehicles (§ 35)

The act carries forward the unspent balance of a 1999 appropriation to the Department of Motor Vehicles for converting to fully reflective license plates and allows the department to use the money in FY 2002-03 also to upgrade its registration and driver license data processing systems.

Chief Medical Examiner (§ 38(b))

The act carries forward and transfers up to \$50,000 of unspent funds appropriated to the Office of the Chief Medical Examiner for medicolegal investigations and requires the office to use the money to buy death investigation software.

Job Training (§ 43)

Of the Labor Department's FY 2002-03 appropriation of \$400,000 for vocational and manpower training, the act earmarks \$300,000 for displaced homemakers and \$100,000 for nontraditional occupational training.

Transportation Strategy Board (§ 44)

The act earmarks \$1,564,264 of the amount it carries forward for the Transportation Strategy Board (TSB) for FY 2002-03 as shown in Table 4.

Table 4: TSB Appropriation Earmarks

Program	Amount
Jobs access programs to Southeast Connecticut and Dial-A-Ride	\$1,000,000
TSB consultant services	464,264
Urban downtown traffic plan	100,000

(PA 02-7, MSS, reduces the TSB's FY 2001-03 appropriation by \$364,000 and changes two of the above earmarks for the \$1.2 million of TSB's remaining

funding. It eliminates the appropriation for TSB consultant services and substitutes \$100,000 for a study of an “L” bus route. It allows the \$100,000 for the urban downtown traffic plan to be spent either on the plan or on downtown distributor transportation services for rail passengers.)

Despite a statute limiting the TSB’s FY 2001-02 and 2002-03 funding for administrative and consulting services to \$500,000 per year, the act allows the TSB to spend up to \$700,000 for such services in FY 2000-03.

Institute for Municipal and Regional Policy (§ 45)

The act transfers \$100,000 from a Department of Mental Health and Addiction Services (DMHAS) appropriation for the Community Mental Health Strategic Investment Fund to Connecticut State University for the Institute for Municipal and Regional Policy at Central Connecticut State University’s Center for Public Policy and Practical Politics.

University of Connecticut Veterinary Diagnostic Lab (§ 46)

The act requires UConn to use \$50,000 of its FY 2002-03 Operating Expenses appropriation for the Veterinary Diagnostic Laboratory.

Senior Citizen Website (§ 47)

The act requires OPM to use existing budgetary resources to fund development of a Senior Citizen website during FY 2002-03. (PA 02-7, MSS, eliminates this requirement and instead requires OPM, within existing budgetary resources, to develop a single, consumer-oriented Internet website that provides comprehensive information on long-term care options in Connecticut.)

Judicial Department Interpreters (§ 50)

The act requires the Judicial Department to use \$60,000 of its FY 2002-03 appropriation for interpreter services.

Blue Hills Hospital (§ 51)

The act requires DMHAS to use \$250,000 of its FY 2002-03 appropriation for Other Expenses to maintain services at Blue Hills Hospital for Hartford’s Blue Hills neighborhood.

GENERAL AND SPECIAL FUNDS AND ACCOUNTS

Transfers to the General Fund

The act transfers money from various authorities, funds, and accounts to the General Fund and credits the amounts for FY 2002-03, as shown in Table 5.

Table 5: FY 2002-03 Transfers to the General Fund

\$	Program or Fund	Amount
40	Private Occupational School Student Benefit Account	\$1,000,000
41(a)	Connecticut Housing Finance Authority	85,000,000
41(b)	Connecticut Innovations, Inc.	7,500,000
41 (c)	Connecticut Development Authority	7,500,000
42	Probate Court Administration Fund	5,000,000
48	New Home Construction Guaranty Fund	1,200,000
48	Commercial Recording Account	1,000,000

Transfer to Mashantucket Pequot and Mohegan Fund (§ 124)

The act transfers \$121.22 million from the General Fund to the Mashantucket Pequot and Mohegan Fund for FY 2002-03, an increase of \$14.22 million in the transfer amount specified in the original 2001-03 biennial budget.

EFFECTIVE DATE: Upon passage

New Home Construction Guaranty Fund (§ 126)

State-registered new home and home improvement contractors must pay \$480 every two years to the New Home Construction Guaranty Fund. Under prior law, once the fund balance reached \$750,000, the first \$200,000 of the annual excess went to the Consumer Protection Enforcement Account and any remaining excess had to be used to reduce contractor fees for the following fiscal year.

This act increases the maximum excess funds allocated to the enforcement account each year from \$200,000 to \$300,000 and eliminates the requirement that any excess above that amount be used to reduce contractor fees.

From August 1, 2002 to May 31, 2003, and for each fiscal year starting on or after July 1, 2003, the act requires a maximum of \$300,000 of any amount over \$750,000 in the guaranty fund to go to the enforcement fund. On July 31, 2002 and on June 1 every year starting with June 1, 2003, any balance over \$750,000 in the guaranty fund must be deposited in the General Fund.

The guaranty fund reimburses consumers for losses and damages sustained when a contractor violates the registration laws. The Department of Consumer Protection uses the enforcement fund for expenses

related to enforcing state occupational and business licensing and registration laws.

Private Occupational School Student Protection Account (§§ 127-129)

By law, each private occupational school must pay 0.5% of its quarterly tuition, excluding refunds, to the private occupational school student protection account. The act caps the balance in the account at \$2.5 million rather than 6% of annual net private occupational school tuition.

Once the account balance reaches the cap, three-quarters of the annual interest on the balance must be transferred to the private occupational school student benefit account to pay for financial aid for private occupational school students. The act requires the interest transfers once the protection account balance reaches \$2.5 million rather than 6% of school tuition. It eliminates a requirement that the interest transfers not reduce the account balance below 6% of tuition.

The act makes conforming changes to discontinue assessments on schools once the protection account balance reaches \$2.5 million rather than 6% of net tuition. But it contains contradictory provisions concerning assessments on schools once the account balance reaches the maximum. It bars additional assessments on schools if the balance is greater than \$2.5 million after required disbursements. But it does not eliminate a provision specifying that only schools that began paying into the protection account before October 1, 1987 can stop paying into it when the fund balance exceeds the maximum, while schools that started to pay into the account after that date must continue to make payments. The latter must keep paying for the same number of calendar quarters as elapsed between October 1, 1987 and the date when the account balance first reached the 6% level. (It is not clear how this requirement relates to the new \$2.5 million maximum balance.)

In addition, though the act eliminates assessments on schools once the account balance reaches \$2.5 million, it does not eliminate a requirement that schools resume paying when the protection account balance falls below 5% of the annual net tuition income. It is not clear how the new \$2.5 million maximum relates to the 5% level.

Conservation Fund/Fisheries Account Revenue (§ 72)

For FY 2002-03, the act reduces by \$1 million, from \$3 million to \$2 million, the amount of tax revenue generated from the sale of motor fuel by distributors to boatyards, marinas, and other such facilities the Department of Revenue Services (DRS)

commissioner must transfer to the Conservation Fund. It reduces the allocation to the fisheries account within the fund by \$1.05 million, from \$2.05 million to \$1 million. For FY 2003-04 and thereafter, the act restores the annual \$3 million revenue transfer to the fund and increases the required allocation to the fisheries account to \$2 million.

The act eliminates a \$75,000 fisheries account allocation to the Department of Economic and Community Development for an economic study of the lobster industry in Long Island Sound and a minimum \$850,000 fisheries account allocation to the Department of Environmental Protection to enhance recreational fishing.

EFFECTIVE DATE: Upon passage

Special Transportation Fund Revenue Transfer (§ 73)

The act reduces the petroleum products gross earnings tax revenue attributable to motor fuel sales that the DRS commissioner must transfer to the Special Transportation Fund. The reduction is from \$11.5 million per quarter to \$5 million per quarter between the one ending September 30, 2002 and the one ending September 30, 2003, and to \$5.25 million per quarter thereafter.

EFFECTIVE DATE: Upon passage

Special Transportation Fund Revenue Estimate (§ 125)

The act increases the total estimated FY 2002-03 Special Transportation Fund revenue to \$904 million, an increase of \$26.3 million over the revenue estimated in the original 2001-03 biennial budget.

EFFECTIVE DATE: Upon passage

Transfers To The Underground Storage Tank Fund Clean-Up Account (§ 75)

The act prohibits any transfer of petroleum products gross earnings tax payments to the Underground Storage Tank Clean-Up Account for FY 2002-03. Under prior law, the fund received one-third of the quarterly tax revenue but PA 02-80, effective July 1, 2002, changed the transfer amount to a flat \$3 million per quarter.

The account (1) reimburses responsible parties for expenses greater than \$10,000 but less than \$1 million related to cleaning up leaking nonresidential underground storage tanks and (2) pays administrative costs for the program.

EFFECTIVE DATE: Upon passage

Tobacco Settlement Fund (§ 36)

The act credits the Tobacco Settlement Fund’s balance to the General Fund and suspends required disbursements, as shown in Table 6, for FY 2002-03.

Table 6: Tobacco Settlement Fund Disbursements Suspended

To	Amount
Tobacco and Health Trust Fund	\$12,000,000
Biomedical Research Fund	4,000,000
General Fund	Amount specified as “Transfer from Tobacco Settlement Fund” in General Fund revenue schedule adopted by the General Assembly
Tobacco and Health Trust Fund	Any remainder

Tobacco and Health Trust Fund and Biomedical Research Fund (§ 37)

The act suspends fund transfers to the Tobacco and Health Trust Fund and the Biomedical Research Fund for FY 2002-03. It transfers to the General Fund the entire balance in the Biomedical Research Fund and any Tobacco and Health Trust Fund balance over \$3,757,139.

Anthem Demutualization Fund Stock Sales (§ 39)

The act (1) authorizes the state treasurer, before June 30, 2003, to sell stock held in the Anthem Demutualization Fund for its fair market value and (2) credits \$127.2 million of the stock sale proceeds to the General Fund.

EFFECTIVE DATE: Upon passage

Secretary of the State (§ 28)

Despite the law requiring the commercial recording account to be used only to pay the expenses of the Commercial Recording Division of the Secretary of the State’s Office, the act allows the secretary to use up to \$1,956,995 from the account in FY 2002-03 for Other Expenses.

FUNDING PROVISIONS ELIMINATED (§ 130)

Fisheries Account Allocation

The act eliminates an additional \$1 million allocation of petroleum products gross earnings tax revenue to the Conservation Fund’s fisheries account for FY 2002-03. The allocation was to be used for recreational fishing purposes.

EFFECTIVE DATE: Upon passage

Community Mental Health Strategic Investment Fund

The act eliminates provisions (1) transferring \$25 million from the DMHAS’ FY 2000-01 appropriation for the Community Mental Health Strategic Investment Fund to the fund’s community services restoration subaccount and \$15 million from the department’s FY 2000-01 appropriation for supportive housing to the fund’s supportive housing enhancement subaccount and (2) allowing the funds to be carried forward to FYs 2001-02 and 2002-03 and used during those years for new or expanded mental health facilities and services and supportive housing, respectively.

EFFECTIVE DATE: Upon passage

Centralized Voter Registration System

The act eliminates the secretary of the state’s authority to use up to \$700,000 from the commercial recording account in FYs 2001-02 and 2002-03 to implement the statewide centralized voter registration system.

EFFECTIVE DATE: Upon passage

Disproportionate Share Payments To Hospitals

The act eliminates a requirement that any federal financial participation funds the state receives for disproportionate share (DSH) payments to hospitals for the final quarter’s DSH settlement for hospital fiscal year 1999 under PA 01-3, June Special Session, be credited to the Hospital Assistance Program account. (This account is used to reconcile DSH over- and underpayments.) It also eliminates requirements that (1) federal funds deposited in that account during FY 2001-02 not lapse and continue to be available to be spent in FY 2002-03 and (2) DSS distribute whatever remains in the account to Yale-New Haven Hospital during FY 2002-03.

EFFECTIVE DATE: Upon passage

GOVERNOR’S TEMPORARY RESCISSION AUTHORITY (§ 52)

The act authorizes the governor to make deeper-than-normal rescissions in FY 2002-03 budget appropriations after October 1, 2002. By law, the governor can already rescind up to 3% of the total appropriations from any fund or 5% of any appropriation when he determines that (1) circumstances have changed since the budget was adopted or (2) there are not enough estimated resources to fund all appropriations. The act allows him to reduce

total FY 2002-03 budget appropriations from any fund by up to an additional 5% or a maximum of 8% and to reduce any FY 2002-03 appropriation by up to an additional 5% or a maximum of 10%, but no more than \$35 million. The limits in the law and the act do not apply during wars, invasions, or natural disasters.

The governor's statutory rescission authority does not apply to municipal aid. The act extends the temporary authority to municipal aid but bars the governor from reducing the following municipal grants: (1) Education Cost Sharing, (2) Town Road Aid, (3) Payment in Lieu of Taxes (PILOT) – Colleges and Hospitals, and (4) PILOT – State-Owned Property. (PA 02-7, MSS, adds a requirement that, if the governor reduces allotments for municipal aid, the aid be reduced proportionately.)

Under the act, the governor can exercise his additional authority if he determines (1) there is either a fiscal exigency related to the budget or there are not enough estimated resources to fund all appropriations and (2) his statutory rescission authority will not be enough to deal with the exigency or shortfall.

The governor must follow similar procedures for making the additional reductions under the act as he does for making rescissions under the statute. As under existing law, he must, before making the additional reductions, file a report with the Appropriations and Finance, Revenue and Bonding committees that describes, as applicable, the fiscal exigency or the basis for his determination that resources will be insufficient to fund full appropriations. The OPM secretary must submit copies of the reductions and the reasons for them to state agency heads, the comptroller, and the Appropriations Committee, through the Office of Fiscal Analysis. As under the statute, the comptroller must use the reduced allotments in her control of state agency spending.

By law, if the comptroller's cumulative monthly financial statement includes a projected General Fund deficit that exceeds 1% of total General Fund appropriations, the governor must, within 30 days, file a report with the Appropriations and Finance, Revenue and Bonding committees of his plan for reducing budget allotments to prevent a deficit. If the governor's plan requires a reduction of more than 3% in total appropriations from any fund or more than 5% in any appropriation, the governor can ask the Finance Advisory Committee to approve the reduction. The full General Assembly must approve any reduction in total appropriations greater than 5%.

For FY 2002-03, the act suspends the requirement that the governor get the Finance Advisory Committee's approval for budget reductions carried out under his expanded rescission authority.

FY 2001-02 DEFICIENCIES

Funding Transfers

The act transfers various sums between agencies and programs as shown in Table 7.

Table 7: Funding Transfers for FY 2001-02

§	FROM		TO		AMOUNT
	AGENCY OR FUND	PROGRAM OR PURPOSE	AGENCY OR FUND	PROGRAM OR PURPOSE	
2	Office of Policy and Management	Private Provider Infrastructure/ Debt Fund	Department of Information Technology	Other expenses	\$650,000
4	Education Department	School construction	Military Department	Personal services	200,000
5	Education Department	School construction	Military Department	Other expenses	20,000
6	Education Department	School construction	Department of Environmental Protection	Personal services	500,000
7	Education Department	School construction	Department of Environmental Protection	Other expenses	300,000
8(a)	Education Department	School construction	Department of Social Services	Medicaid	48,300,000
8(b)	Office of Policy and Management	Energy contingency	Department of Social Services	Medicaid	10,000,000
8(c)	Department of Transportation	Transportation Strategy Board	Department of Social Services	Medicaid	11,600,000
9	Department of Higher Education	Higher Education Matching Grant Fund	Department of Education	Excess Cost – Student Based (special education)	6,500,000
10	Department of Environmental Protection	Residential Underground Storage Tank Clean-up	General Fund	Reserve for salary adjustments	4,000,000
11	Department of Higher Education	Higher Education Matching Grant Fund	Department of Administrative Services	Workers' compensation claims	2,014,000
12	Department of Social Services	Hospital finance restructuring funding	General Fund, State employees health service cost	Other expenses	10,000,000

(PA 02-7, May 9 Special Session, specifies that the money transferred for state employee health service cost, other expenses, (see Table 7, §12) does not lapse at the end of FY 2001-02 and can be spent for the purpose in FY 2002-03.)

EFFECTIVE DATE: Upon passage

Transfers to the General Fund (§§ 13-17)

The act transfers amounts from various accounts and appropriations to the General Fund for FY 2001-02, as shown in Table 8.

Table 8: Transfers to the General Fund for FY 2001-02

§	Program or Fund	Amount
13	Department of Higher Education, Minority Advancement Program	\$142,164
14	Tobacco Settlement Fund Tobacco Grant Account	400,000
15	Department of Mental Health and Addiction Services, TBI Community Services	1,400,000
16	Various agency appropriations	55,648,963

From these amounts, it transfers a total of \$29,051,513 to various state agencies for specific purposes and allows the agencies to carry forward the amounts to FY 2002-03 for the same purposes. (Without changing the total, PA 02-7, MSS, changes many of the appropriation amounts and purposes specified in this section. From the amount appropriated to OPM for local aid adjustment, PA 02-7, MSS, allocates specific amounts to nine specified towns in FY 2002-03 and allows OPM, with the Finance Advisory Committee's approval, to transfer the balance to state employee health services cost, other expenses.)

EFFECTIVE DATE: Upon passage

Special Transportation Fund Reserve for Salary Adjustments (§ 1)

The act appropriates \$4.6 million for FY 2001-02 to the Special Transportation Fund's reserve for salary adjustments.

EFFECTIVE DATE: Upon passage

FY 2001-02 Expenditure Recording (§ 18)

The act allows the comptroller to record as FY 2001-02 expenses expenditures under the act's deficiency provisions that occur between July 1 and July 31, 2002.

EFFECTIVE DATE: Upon passage

BUSINESS ENTITY TAX (§ 55)

Tax Rate

This act imposes a \$250 annual state tax on foreign and domestic limited liability companies (LLCs) that are treated as partnerships for federal tax purposes, limited liability partnerships (LLPs), limited partnerships (LPs), and S corporations required by law to file annual reports with the secretary of the state. (PA 02-4, MSS, extends the tax to single-member LLCs that, for federal tax purposes, are not considered separately from their owners.) "S corporations" are domestic corporations that have (1) no more than 75 shareholders, (2) only one class of stock, and (3) only those types of shareholders allowed by federal law.

The tax is due every year on or before the 15th day of the fourth month after the close of the taxable year the business uses for federal income tax purposes. If a business does not pay the tax within 30 days after it is due, it must pay interest of 1% per month or fraction of a month, starting from the due date, and a \$50 penalty.

Tax Collection

The DRS commissioner can collect the tax by taking any action that he can take to collect money owed to the state. He or another authorized agent can sign a warrant to take control of the business or the taxpayer's other property, and may operate the business to secure its income for the state or force an end to its operations. The attorney general can also sue to collect the tax.

Starting December 31 after the tax due date, unpaid tax, interest, and penalties act as a lien against any real estate the taxpayer owns in the state. A lien certificate, signed by the commissioner, may be filed on the land record in the town where the property is located. However, the lien is not effective against a bona fide purchaser or the interest of any qualified encumbrancer. If any interested party asks, the commissioner must file a certificate discharging the lien on the same land record. Although the act does not define "bona fide purchaser" or "qualified encumbrancer," these terms are likely to have the same meanings as they do under existing state tax law. The former is a person who takes title to real estate from the legal title holder without notice of any tax delinquency and the latter is a person who places a lien, mortgage, or other encumbrance on real estate in good faith without notice of any tax delinquency.

Under the act, the attorney general can foreclose the lien by suing in the superior court of the judicial district where the property is located or, if located in two or more districts, in any of them. At the conclusion of any such action, the court can impose a deadline for redeeming the lien, order the property sold, or issue any other equitable decree.

Penalty Waiver

The act permits the commissioner to waive all or a part of the penalty if the taxpayer's failure to pay was not intentional or negligent, but based on reasonable cause. He may also abate or remit any penalty if he is satisfied beyond a reasonable doubt that there was reasonable cause for the failure to pay the tax. The penalty review committee must review and approve waivers over \$500 in the same way it already approves waivers the commissioner can make.

Applicable Admissions and Dues Tax Laws

The act applies certain provisions of the admissions and dues tax laws to the new tax. These provisions allow the DRS commissioner to (1) assess tax deficiencies where necessary; (2) require the businesses to keep certain records and examine all of their records; and (3) administer oaths, subpoena witnesses, and receive testimony. Businesses can file for refunds of tax overpayments, request hearings on the amount of taxes they are required to pay, and appeal the hearing decision if aggrieved. Lastly, an additional penalty may be imposed on businesses for willful violations or filing fraudulent returns.

EFFECTIVE DATE: Upon passage and applicable to income years starting on or after January 1, 2002.

BUSINESS DEPRECIATION RULES (§§ 56 & 77)

The act bars corporations from using a recently enacted federal bonus depreciation rule to determine net income for purposes of the corporation tax. It also requires individuals receiving income from businesses that are not required to pay the state corporation tax, such as LLPs, LLCs, and S corporations, to add back the bonus depreciation allowance when figuring their Connecticut adjusted gross income for the state personal income tax.

A new federal law (P.L. 107-147, § 101, codified as 26 USC 168(k)) gives corporations a special first-year bonus depreciation of 30% on certain property they buy or start building on or after September 11, 2001 and before September 11, 2004. They must place the property in service before January 1, 2005. The bonus depreciation applies to property subject to the “modified accelerated cost recovery system” (i.e., property placed in service after 1986). It covers such property that is (1) depreciable over 20 years or less, (2) water utility property, (3) computer software not subject to separate intangible property amortization rules, or (4) qualified leasehold improvement property.

The act also eliminates obsolete corporation tax provisions (1) limiting the depreciation deduction available under the federal “accelerated cost recovery system” for the first five years after it was instituted (i.e., income years 1981-1985); (2) allowing companies to recover the amounts not allowed under the limited deduction over the succeeding five years (i.e., income years 1986-1991); (3) allowing companies to choose to continue using pre-1981 depreciation rules; and (4) allowing the DRS commissioner to disallow use of pre-1981 rules under certain conditions.

EFFECTIVE DATE: The corporation tax provisions are effective upon passage and applicable to property placed in service after September 10, 2001 in income

years ending after that date. The personal income tax change takes effect July 1, 2002 and applies to tax years beginning on or after January 1, 2002.

CORPORATION TAX

Minimum Tax (§§ 57 & 58)

The act bars companies from using tax credits to reduce their annual corporation tax liability below the \$250 minimum tax. It also makes conforming changes to require financial services companies and each corporation included in a combined return, including those whose tax is computed and paid on a combined basis, to pay at least the \$250 minimum.

EFFECTIVE DATE: July 1, 2002 and applicable to income years beginning on or after January 1, 2002.

Overall Tax Credit Limits (§ 59)

The act limits the total value of corporation tax credits allowed to any company for any income year to 70% of its tax liability without the credits for that year.

EFFECTIVE DATE: July 1, 2002 and applicable to income years beginning on or after January 1, 2002.

R&D Tax Credit Refund Limits (§ 60)

By law, companies with annual gross incomes of \$70 million or less and no corporation tax liability qualify for refunds of unused corporate tax credits for research and development (R&D) expenses. (PA 02-4, MSS, allows corporations with less than \$70 million in annual income to qualify for the refunds if they pay the \$250 minimum corporation tax rather than only if they have no tax liability.) The refund equals 65% of the value of unused credits. The act limits the annual amount of refunds. The limit varies depending on the year.

For credit refund applications for income years starting in 2000 and 2001 where the credit refund was not paid as of July 1, 2002, the limit is \$1 million during the state fiscal year in which the initial refund is paid, with any balance paid in two equal installments during the two following fiscal years. For applications for income years starting in 2002 or thereafter, the refund limit is \$1.5 million per income year.

Under the act, to receive a refund, a company must not only apply when it files its corporation tax return, but the return must be filed by the original or any extended due date. The act bars companies from filing credit refund applications with late returns.

EFFECTIVE DATE: July 1, 2002

Carpenter Technology Decision (§§ 61 & 62)

By law, the DRS commissioner can adjust a corporation's reported Connecticut income, deductions, capital, and assets under the corporation tax if he determines the company has an agreement, understanding, or arrangement with another company that gives an inaccurate or improper reflection of its Connecticut business, income, or capital. This act specifies that (1) the facts, circumstances, and transactions of the *Carpenter Technology* case meet the legal standard for making such an adjustment and (2) the commissioner was justified in making adjustments in that case. It thus bars other companies from using transactions like the one *Carpenter Technology Corporation* used to reduce or avoid state corporation tax liability.

Carpenter set up a Delaware subsidiary; capitalized it with \$300,005,000; and, a few days later, borrowed all but \$5,000 back. The company deducted interest on the loan, saving \$196,102 in Connecticut corporation taxes for 1990 and 1991. The DRS commissioner determined the loan had no valid business purpose and disallowed the interest deduction. But a superior court ruling, endorsed by the Connecticut Supreme Court, held the disallowance was unreasonable because *Carpenter's* arrangement did not result in an improper or inaccurate reflection of income (*Carpenter Technology Corp. v. Commissioner of Revenue Services*, 47 Conn. Sup. 122 (2000); *Carpenter Technology Corp. v. Commissioner of Revenue Services*, 256 Conn. 455 (2001)).

The act also prohibits the commissioner from exercising his authority to make adjustments in an arbitrary, capricious, or unreasonable way. EFFECTIVE DATE: Upon passage and applicable to income years starting on or after January 1, 2002.

Interest On Overpayments (§§ 63 & 64)

The act bars DRS from paying interest on corporation or air carrier tax overpayments for the first 90 days after (1) the last filing date for the tax return, excluding extensions, or (2) the date it is filed, whichever is later. For amended returns, the prohibition applies to the first 90 days after the amended return is filed, or if it is filed early, from the return's last filing date, excluding extensions.

Under prior law, DRS had to pay 0.66% interest for each month or part of a month that elapsed between the tax due date or the overpayment date, whichever was later, and the date it gave notice of the refund. No interest was payable on refunds stemming from estimated payments made with tentative returns or quarterly estimated tax payments. The act extends the

new interest payment requirements to overpayments of estimated tax and specifies that interest accrues from the date of the overpayment to a date the DRS commissioner specifies, which can be no earlier than 30 days before the date of the refund check.

Under the act, returns and amended returns are considered filed only when they are filed on authorized forms and contain the taxpayer's name; address; identifying number; required signatures; and enough information, either on the return itself or in required attachments, to mathematically verify the tax liability shown on it.

For overpayments reported on late-filed or amended tax returns, the act declares that existing law does not permit DRS to pay interest for any period before the return is filed.

EFFECTIVE DATE: Upon passage and applicable to returns and amended returns filed on or after July 1, 2001 and not allowed and paid before passage.

SALES AND USE TAX

Exemption For Certain Aircraft-Related Services (§§ 65 & 67)

The act exempts business analysis, management, consulting, and public relations services furnished in connection with certain aircraft from sales and use taxes, retroactive to January 1, 1994. To be covered by the exemption, services must relate to an aircraft that (1) is leased or owned by a commercial air carrier operating under a Federal Aviation Administration certificate or (2) has a maximum certificated take-off weight of at least 6,000 pounds.

EFFECTIVE DATE: July 1, 2002 and applicable to sales occurring on or after January 1, 1994.

Tax on Storage Space (§§ 66 & 68)

The act applies the 6% sales and use taxes to businesses that rent space, other than living space, for storing personal property. (PA 02-4, MSS, clarifies the types of businesses and transactions to which the tax applies.)

EFFECTIVE DATE: July 1, 2002, and applicable to sales occurring on or after that date. (PA 02-4, MSS, suspends the tax until October 1, 2002 and applies it to sales on and after that date.)

Computer And Data Processing Services (§§ 69 & 70)

The act defers the final step of a scheduled phase-out of the sales and use taxes on computer and data processing services for two years. Under prior law, the remaining 1% tax on such services was to expire on July

1, 2002. This act delays the expiration date and maintains the tax at 1% until July 1, 2004.
 EFFECTIVE DATE: July 1, 2002 and applicable to sales occurring on and after that date.

DIESEL FUEL TAX INCREASE (§§ 71 & 74)

The act increases the tax on diesel, propane, and natural gas fuel sold in the state from 18 to 26 cents per gallon as of August 1, 2002. It imposes an eight-cent excise tax on each gallon of diesel fuel that licensed gasoline dealers have in inventory as of either the close of business or 11:59 p.m. on July 31, 2002, whichever is later. It requires dealers, by September 1, 2002, to (1) report to the DRS commissioner the number of gallons of diesel fuel they had in inventory at that time and (2) pay the excise tax.

Amounts not paid by the due date accrue 1% interest per month or part of a month until paid. Failure to file the inventory report or filing an incorrect report must be treated as if the dealer failed to file other required motor vehicle tax reports, or filed them incorrectly, subjecting the dealer to, among other things, a penalty of 10% of the tax due or \$50, whichever is greater. In addition, failure to file inventory reports and pay the excise tax are grounds for revoking any state licenses or permits the dealer holds.

The motor vehicles commissioner must cooperate with the DRS commissioner to enforce the tax.
 EFFECTIVE DATE: Upon passage and applicable to fuels sold or used in Connecticut on or after August 1, 2002.

GIFT TAX (§ 76)

The act delays a scheduled phase-out of the tax on gifts of \$1 million or less. The tax on gifts of \$25,000 or less was eliminated as of January 1, 2001. This act delays the effective date of each scheduled rate reduction on gifts between \$25,000 and \$1 million by two years, thus delaying the end of the phase-out from January 1, 2006 to January 1, 2008. It freezes the gift tax at 2001 rates for the 2002 and 2003 calendar years and defers each subsequent reduction by two years as shown in Table 9.

Table 9: Gift Tax Phase-Out Schedule

TAX RATES IN EFFECT			
Prior Law	The Act	Gift	Tax
2001	2001	\$25,000 or less	None
	2002	\$25,001 –\$50,000	\$250 plus 2% of the amount over \$25,000
	2003	\$50,001-\$75,000	\$750 plus 3% of the amount over \$50,000
		\$75,001-\$100,000	\$1,500 plus 4% of the amount over \$75,000
		\$100,001-\$675,000	\$2,500 plus 5% of the amount over \$100,000

TAX RATES IN EFFECT			
Prior Law	The Act	Gift	Tax
		Over \$675,000	\$31,250 plus 6% of the amount over \$675,000
2002	2004	\$50,000 or less	None
		\$50,001-\$75,000	\$750 plus 3% of the amount over \$50,000
		\$75,001-\$100,000	\$1,500 plus 4% of the amount over \$75,000
		\$100,001-\$700,000	\$2,500 plus 5% of the amount over \$100,000
		Over \$700,000	\$32,500 plus 6% of the amount over \$700,000
2003	2005	\$75,000 or less	None
		\$75,001-\$100,000	\$1,500 plus 4% of the amount over \$75,000
		\$100,001-\$700,000	\$2,500 plus 5% of the amount over \$100,000
		Over \$700,000	\$32,500 plus 6% of the amount over \$700,000
2004	2006	\$100,000 or less	None
		\$100,001-\$850,000	\$2,500 plus 5% of the amount over \$100,000
		Over \$850,000	\$40,000 plus 6% of the amount over \$850,000
2005	2007	\$950,000 or less	None
		Over \$950,000	\$45,000 plus 6% of the amount over \$950,000
2006 and after	2008 and after	\$1 million or less	None
		Over \$1 million	\$47,500 plus 6% of the amount over \$1 million

EFFECTIVE DATE: Upon passage and applicable to income years starting on or after January 1, 2002.

INCOME TAX

Income Tax For Single Filers (§§ 78–80)

For single people, the act freezes through 2003 the personal exemption from the state income tax and the income threshold for a reduced exemption. It also delays increases in the exemption and exemption reduction thresholds previously scheduled for taxable years 2002 through 2007 by two years each so they take effect for 2004 through 2009 (see Table 10).

Table 10: Singles Exemption Schedule

Taxable Year(s)		Exemption	Exemption Reduction Threshold
Prior Law	The Act		
2001	2001-2003	\$12,500	\$25,000
2002	2004	12,750	25,500
2003	2005	13,000	26,000
2004	2006	13,500	27,000
2005	2007	14,000	28,000
2006	2008	14,500	29,000
2007 and after	2009 and after	15,000	30,000

The act delays increases in adjusted gross income levels at which singles qualify for income tax credits. It does so by freezing until 2004 the 2001 income tables used to figure credits and correspondingly delaying

scheduled implementation dates for each new income table by two years. Credits range from 75% for people with the lowest qualifying incomes to 1% for those with the highest. Table 11 shows the credits for the lowest and highest income ranges under prior law and the act.

Table 11: Singles Tax Credit Schedule

Taxable Year(s)		Income Ranges	
Prior Law	The Act	Lowest (75% credit)	Highest (1% credit)
2001	2001-2003	\$12,500-\$15,600	\$54,000-\$54,500
2002	2004	12,750-15,900	55,000-55,500
2003	2005	13,000-16,300	56,000-56,500
2004	2006	13,500-16,900	58,000-58,500
2005	2007	14,000-17,500	60,000-60,500
2006	2008	14,500-18,100	62,000-62,500
2007 and after	2009 and after	15,000-18,800	64,000-64,500

Income tax credits over \$100 are reduced by 10% for each \$10,000 of annual income above a specified threshold. The act delays by two years scheduled increases in these thresholds for single filers as shown in Table 12.

Table 12: Singles Credit Reduction Threshold

Credit Phase-Out Threshold	Taxable Year(s)	
	Prior Law	The Act
\$54,500	2001	2001-2003
55,500	2002	2004
56,500	2003	2005
58,500	2004	2006
60,500	2005	2007
62,500	2006	2008
64,500	2007 and after	2009 and after

EFFECTIVE DATE: Upon passage and applicable to tax years starting on and after January 1, 2002.

Nonresidents' Gambling Winnings (§ 81)

Prior law subjected nonresidents' Connecticut lottery winnings over \$5,000 to Connecticut income tax. The act extends the tax to nonresidents' winnings from all gambling activities that take place within Connecticut's borders, including at casinos on Indian reservations within the state. (PA 02-4, MSS, repeals this change.)

The act applies the tax on both lottery and other gambling winnings to any amounts that federal tax law or regulations require a payer to report to the Internal Revenue Service (currently, any winnings over \$5,000) and eliminates the specific reference to taxation of lottery winnings over \$5,000.

EFFECTIVE DATE: July 1, 2002 and applicable to tax

years beginning on or after January 1, 2002.

TAX AMNESTY (§§ 82 & 83)

Taxes and Period Covered

The act requires the DRS commissioner to establish a tax amnesty program for anyone who owes state tax (other than motor carrier road tax), interest, or penalties for any taxable period ending on or before March 31, 2002. The amnesty runs from September 1 to November 30, 2002 and covers any taxable period before March 31, 2002 for which:

1. the taxpayer did not file a return and the DRS commissioner did not file one on his behalf ("nonfilers"),
2. the taxpayer did not report his full tax and DRS did not examine the return ("under-reporters"),
3. DRS imposed interest or penalties for late payment or underreporting, or
4. DRS imposed interest or additional tax because the taxpayer failed to file and the DRS filed a return for him.

Amnesty Conditions

The DRS commissioner must prepare an amnesty application requiring applicants to specify the tax and taxable period for which they seek amnesty. If a person files the application during the amnesty period and pays all the taxes he owes for the applicable tax periods, plus interest, the commissioner must waive applicable civil penalties and refrain from seeking criminal prosecution for those periods.

If the commissioner grants amnesty, the affected taxpayer relinquishes all unexpired administrative and judicial appeal rights as of the payment date. The act bars taxpayers from receiving any refund or credit of amnesty tax payments.

Failure to pay all amounts due invalidates the amnesty. A taxpayer is not entitled, by virtue of penalty waivers and interest reductions under the amnesty, to any refund or credit of previously paid amounts.

Interest

Nonfilers and under-reporters must pay 0.75% interest for each month or part of a month from the original tax due date to November 30, 2002 and 1% per month or part of a month thereafter. A taxpayer who already owes interest or penalties for late or underreported taxes or because he failed to file and the commissioner filed a return for him, must pay interest of 1% per month or part of a month from the original due date to the payment date. But in the latter case, if the

taxpayer pays the taxes and the 1% interest in full by November 30, 2002, he must pay only 75% of the interest shown in DRS' records as payable for the affected tax periods on the date he filed for amnesty.

Exclusions

The act bars amnesty for those who (1) have received notice from DRS that they are being audited for the period for which they are seeking amnesty or (2) are parties to any criminal investigation or civil or criminal litigation pending on June 1, 2002 in any federal or state court for failure to file or pay or for state tax fraud. (PA 02-4, MSS, also bars anyone who (1) is a party to a losing or managed audit agreement with DRS or (2) has offered a compromise that DRS has accepted.)

DRS Authority and Administrative Costs

The act gives the DRS commissioner authority to do what is necessary to implement the amnesty program and allows DRS to use up to \$2 million in revenues from the program to administer the act's amnesty provisions.

EFFECTIVE DATE: Upon passage

FEES

Hunting, Trapping, and Fishing Fees (§§ 84–101)

The act increases a wide range of fish and wildlife license and permit fees, including those for sport hunting and fishing and various types of commercial fishing as shown in Table 13.

Table 13: License and Permit Fee Increases

§	License or Permit	Old Fee	New Fee
84	Resident firearms hunting	\$10	\$14
84	Resident fishing	15	20
84	Resident combination firearms hunting and fishing	21	28
84	Resident trapping	20	25
84	Nonresident firearms hunting	42	67
84	Nonresident fishing	25	40
84	Nonresident fishing for three consecutive days	8	16
84	Nonresident combination firearms hunting and fishing	55	88
85	Duplicate license to hunt, hunt and trap, or fish	5	7
86	Hunt fox or rabbits with organized pack of 10 or more hounds	25	35
87	Game breeder's license	15	21
88	Raw fur buyer - resident or nonresident	30	42
88	Resident raw fur buyer's authorized agent	20	28

§	License or Permit	Old Fee	New Fee
89	Bait dealer	20	50
90	Nuisance wildlife controller	100	200
91	Regulated private shooting preserve	35	50
92	Turkey permit, tag, or stamp	10	14
92	Migratory game bird permit, tag, or stamp	2	3
92	Pheasant permit, tag, or stamp	10	14
92	Salmon permit, tag, or stamp	20	28
92	Wild turkey hunting permit	10	14
93	Hunting dog training permit	10	14
94	Field dog trial permit	5	7
95	Field dog trial where game will be shot:		
	-On state-owned land	20	28
	-On private land	10	14
96	Taxidermy	60	84
97	Collect shellfish, crustaceans, and wildlife for scientific and educational purposes	10	20
98	Deer hunting with firearm:		
	-Resident	10	14
	-Nonresident	30	50
99	Deer or small game hunting with bow and arrow:		
	-Resident	22	30
	-Nonresident	44	100
100	Register private waters to remove fish	50	70
101	Commercial blue crab	50	75
101	Take lobsters for personal use	50	60
101	Take lobsters, crabs (other than blue crabs), squid, sea scallops, and finfish by use of more than 10 lobster pots; by otter, balloon, or beam trawl; by sea scallop dredge; or similar device:		
	-Resident	150	225
	-Nonresident	225	1,250
101	Register each pound net to take finfish	100	225
101	Resident (1) taking finfish other than shad or bait species by various devices for commercial purposes; (2) in any waters seaward of the inland demarcation line, taking such fish by hook or line for commercial purposes; or (3) taking horseshoe crabs by hand	50	150
101	Resident taking any fish for commercial purposes by hook and line in excess of creel limit	100	300
101	Take bait species by various means in the inland or marine district for commercial purposes	20	50
101	Buy finfish, lobsters, crabs, sea scallops, squid, or bait species from commercial fishermen for resale	25	200
101	Fishing party boat, head boat, charter boat registration	25	250
101	Land finfish, lobsters, crabs, sea scallops, squid, or bait species	225	400

EFFECTIVE DATE: January 1, 2003

Hunting And Fishing Guide Licenses (§§ 102 & 131)

The act eliminates licenses for hunting and fishing guides and their authorized assistants. The fees are \$100 for a guide’s license and \$50 for an assistant’s license.

EFFECTIVE DATE: January 1, 2003

Court Fee Increases (§§ 103-107)

The act increases various court fees as shown in Table 14.

Table 14: Court Fee Increases

§	Fee	Old	New
103	Jury fee in civil actions	\$300	\$350
104	Small claims entry fee	30	35
105(a)	Motion to open, set aside, modify, or extend superior court civil judgment	60	70
105(b)	Motion to open or reargue civil appeal decided in the appellate or Supreme Court	60	70
106	Application for personal property execution	10	20
107	Application for wage execution	10	20

EFFECTIVE DATE: July 1, 2002

STATE PRESCRIPTION DRUG PROGRAMS

Cost Ceilings For Generic Drugs (§ 118)

The act allows the Department of Social Services (DSS) commissioner to establish payment ceilings, known as maximum allowable costs (MAC), for generic prescription drugs under the following programs: Medicaid, Connecticut Pharmaceutical Assistance Contract to the Elderly (ConnPACE), State-Administered General Assistance (SAGA), town general assistance (GA, which applies only to Norwich), and Connecticut AIDS drug assistance. It allows the commissioner to base the MAC on actual acquisition costs, but does not limit her to this method. (PA 02-7, MSS, requires DSS to (1) review and update the MAC list annually and (2) report annually to the Appropriations Committee on its MAC activities.)

Previously, the only basis for reimbursing pharmacies was the lower of:

1. the federal acquisition cost, if available;
2. the estimated acquisition cost (average wholesale price minus 12%); or
3. the amount billed.

Penalties For Violating Nursing Home Drug Return Program (§ 119)

By law, long-term care facilities (nursing homes) must return certain unused prescriptions (individually packaged unit dose medications for about 50 of the most

commonly used drugs) for their Medicaid residents to the pharmacies that dispense them. The pharmacies may return the drugs to stock (in new packages) and re-sell them before they expire. DSS must reimburse pharmacies for processing each returned medication (currently \$5).

The act subjects facilities that violate this requirement to a \$30,000 fine for each incident of noncompliance and allows the DSS commissioner to deduct the fine from a facility’s Medicaid reimbursement. Before imposing the fine, the commissioner must notify the facility of the alleged violation and potential fine. The facility has 15 days after receiving the notice to ask DSS to review its findings. DSS may not impose the penalty until it completes its review.

The act allows DSS to impose a penalty regardless of whether the facility has changed owners since the “time of the violation,” as long as DSS gave notice of the violation and penalty before the ownership change took effect. DSS must maintain records of all notices in a central registry.

Fines collected under the act must be deposited in the General Fund and credited to the Medicaid account.

Voluntary Mail-Order Prescription Drug Option (§ 120)

The act allows the DSS commissioner to establish a voluntary mail-order option for maintenance prescription drugs covered under the Medicaid, ConnPACE, SAGA, town GA, and the Connecticut AIDS drug assistance programs. Maintenance drugs are those a patient must take for a long time.

Preferred Drug List and Medicaid Pharmaceutical and Therapeutics Committee (§ 121)

The act requires DSS to adopt a preferred drug list in the Medicaid program when the Medicaid Pharmaceutical and Therapeutics Committee the act establishes recommends one. The committee must consider a drug’s clinical efficacy, safety, and cost effectiveness when developing the list and DSS must publish and disseminate the list to all state Medicaid providers.

The 11-member committee must be constituted in accordance with the federal law governing Medicaid drug formularies (lists of drugs). The act requires the committee to consist of five physicians, five pharmacists, and one consumer representative. The governor appoints all members and must include Medicaid-participating physicians and pharmacists experienced in serving all segments of the Medicaid population. The act requires at least one committee

member to represent pharmaceutical manufacturers. Members serve two-year terms and may be reappointed.

Federal law (42 USC § 1396r-8(d)(4)) allows states to establish drug formularies by which they can limit drugs dispensed under their Medicaid programs. States must meet certain requirements before adopting formularies. One is that the formulary be developed by a committee consisting of physicians, pharmacists, and other appropriate individuals that the governor (or at the state's option, its drug use review board) appoints.

Under the act, the committee must review all drugs included in the preferred drug list at least every 12 months, to the extent possible. It can recommend adding or deleting drugs to ensure that listed drugs provide for medically appropriate drug therapies for Medicaid patients. Medicaid recipients can appeal DSS preferred drug list determinations through a DSS fair hearing.

The act makes Medicaid reimbursement for any unlisted drug subject to prior authorization. (It is not clear whether the act's preferred list supersedes DSS's prior authorization plan approved by the legislature. PA 02-7, MSS, requires the plan to be implemented but (1) requires prior authorization in more instances and (2) appears to make other revisions as well.) But the act exempts mental health-related and antiretroviral (HIV and AIDS) drugs from its prior authorization requirement. It permits the committee to make recommendations to DSS regarding prior authorization of any Medicaid-covered drugs.

The act requires the committee to ensure that drug manufacturers that agree to provide supplemental rebates to the state are given the opportunity to present evidence supporting inclusion of a product on the preferred drug list. (PA 02-7, MSS, voids this requirement if a final court decision says the federal government has no authority to allow the rebates.)

DSS must ensure that the committee reviews at its next regularly scheduled meeting any drug that has been approved, or had any of its uses approved, by the federal Food and Drug Administration under a priority review classification. To the extent possible, DSS must also schedule at these meetings a product review for any new product once it receives notice of it from a drug manufacturer.

The act requires committee members to select a chairman and vice-chairman from its members each year. The committee must meet at least quarterly and at other times at the chairman's or committee's discretion. The committee must comply with all DSS regulations, including notices of meetings, as required by law. The act requires DSS administrative staff to serve as staff for the committee and assist with ministerial duties.

Decrease In Pharmacies' Dispensing Fee (§ 122)

Starting September 1, 2002, the act requires the DSS commissioner to reduce the dispensing fee paid to pharmacies from \$4.10 to \$3.85 per prescription under the Medicaid program. It makes the same reduction in dispensing fees for the ConnPACE, SAGA, town GA, and the Connecticut AIDS drug assistance programs as of the same date.

Pharmaceutical Purchasing Initiative (§ 123)

The act allows the DSS commissioner to implement a pharmaceutical purchasing initiative by contracting with an established entity for the lowest pricing available for the Medicaid, ConnPACE, SAGA, town GA, and the Connecticut AIDS drug assistance programs. It requires any such entity to have an established pharmaceutical network and to demonstrate its ability to process the anticipated prescription volume. The act allows such a contract regardless of an existing statute that requires the commissioner to set payments at the federal acquisition cost or, if there is no such rate for a drug, to establish and revise the estimated acquisition cost according to federal regulations. (PA 02-7, MSS, requires DSS to file an annual report on the initiative with the Appropriations Committee.)

DRUNK DRIVING (DWI) (§§ 108 –117)

BAC Threshold for DWI

It is against the law to drive a motor vehicle (1) while under the influence of alcohol, drugs, or both or (2) with an "elevated blood alcohol content." The former offense may be prosecuted with or without any direct evidence of a person's BAC. For the latter, under prior law, someone over age 21 was considered to be driving with an elevated BAC if he was found to have a .10% BAC for a first offense or a .07% BAC if he had a previous conviction for drunk driving. The act lowers the standard from .10% to .08% BAC and eliminates the .07% standard for someone with a prior conviction, thus making the standard uniform for all offenses.

The act also eliminates the infraction offense of operating while impaired by alcohol. This offense occurred when someone was found to have a BAC between .07% and .099%.

Pretrial Alcohol Education Program

By law, someone charged with DWI for the first time can apply to the court to participate in the Pretrial Alcohol Education Program. But drivers under age 21 charged under another law when found with BACs of

.02% or more could not apply. The act eliminates this distinction so drivers under age 21 may qualify for the program if charged with a first offense under either law.

Pretrial Alcohol Education Program Procedural Changes

Under prior law, when someone applied for the program, he paid a \$50 application fee. If the court granted the application, the person was referred to the Bail Commission for assessment and confirmation of eligibility. Once eligibility was confirmed, the applicant was referred to DMHAS for evaluation and placement in an appropriate alcohol program for one year. If the person's BAC was less than .16% he had to participate in at least 10 counseling sessions and pay a nonrefundable \$425 program fee. If his BAC was .16% or more, he had to participate in at least 15 counseling sessions and pay a \$600 program fee.

The act makes several changes in these procedures.

It:

1. requires an applicant to pay a nonrefundable \$100 evaluation fee in addition to the \$50 application fee when he applies for the program;
2. requires him to be referred to DMHAS for evaluation at the same time he is referred to the Bail Commission for assessment and confirmation of eligibility, rather than afterward;
3. requires the Bail Commission to receive the evaluation report before it refers him to DMHAS for placement in a program and specifies that the program must be an alcohol intervention program;
4. eliminates the minimum 15-session program for someone whose BAC is .16% or more while allowing such a program to be required based on the evaluation report and court order; and
5. reduces the program fees to \$325 for a 10-session, and \$500 for a 15-session, program, apparently reflecting the new up-front \$100 evaluation fee.

BACKGROUND

Related Acts

In addition to the changes described above, PA 02-4, MSS, exempts taxpayers affected by the corporation tax changes in this act from interest and penalty assessments if this act creates or increases an underpayment in an estimated tax payment due on or before July 15, 2002. PA 02-4 also specifies that no

penalties or interest apply to corporation tax underpayments reported on supplemental, amended, or corrected returns if (1) the underpayment is created by this act and (2) the original payment was due on or before August 1, 2002.

PA 02-7, MSS, makes many adjustment in appropriations, funding, and other provisions of this act. In addition to those noted in the summary above, PA 02-7, MSS, requires the DSS commissioner, by September 30, 2002, to submit an amendment to the Medicaid state plan to implement the provisions of this act concerning Medicaid optional services. And, from the General Fund appropriations in Section 19 of this act, PA 02-7, MSS, (1) transfers \$200,000 from OPM's appropriation for Other Expenses for FYs 2001-03 to DSS for Elderly Services, (2) appropriates \$300,000 to DSS for the State Food stamp Supplement, and (3) appropriates \$64,000 to OPM for Library Improvements.

PA 02-2, May 9 Special Session—HB 6001
Emergency Certification

AN ACT CONCERNING AUTHORIZATION OF STATE GRANT COMMITMENTS FOR SCHOOL BUILDING PROJECTS

SUMMARY:

This act:

1. authorizes state grant commitments for 152 school building projects,
2. allows Waterbury to carry over money from two prior school improvement grants to spend in FY 2002-03,
3. establishes a three-year pilot program to allow up to six new schools to be built under "design-build" contracts and allows the projects to be eligible for state school construction grants under certain conditions,
4. establishes special provisions for certain Waterbury school construction and renovation projects, and
5. waives statutory and regulatory requirements to make specified projects in many districts eligible for school construction grants.

EFFECTIVE DATE: Upon passage, except for the following provisions, which take effect July 1, 2002:

1. allowing Waterbury to carry forward unspent school improvement grants (§ 33),
2. waiving the school construction priority list application deadline for FY 2001-02 for towns operating under state governance (Waterbury) (§ 34),

3. allowing certain distressed municipalities to file consolidated school construction grant applications (§ 35), and
4. establishing a pilot project for districts to use design-build contracts for school construction (§ 12).

PROJECT AUTHORIZATIONS (§ 1)

The act authorizes state grant commitments for 108 new school building projects and reauthorizes commitments for 44 previously authorized projects that have increased substantially (more than 10%) in scope or cost. By law, the state reimburses school districts for from 20% to 80% of eligible school construction costs, depending on wealth. Certain types of projects are eligible for a 5% or 10% bonus. In addition, the state pays 100% of the costs for vocational agricultural centers, vocational-technical schools, regional special education facilities, and interdistrict magnet schools.

WATERBURY SCHOOL IMPROVEMENT GRANTS (§ 33)

The act allows Waterbury to carry over up to \$1.7 million in unspent school improvement grant funds from FYs 2000-01 (up to \$600,000) and 2001-02 (up to \$1.1 million) for an additional two years and one year, respectively. The law ordinarily requires improvement projects to be completed in the same year as the grant award. Grants help priority districts and districts with priority schools pay for alterations, repairs, and improvements to buildings and grounds that are not eligible for school construction grants.

CONSOLIDATED SCHOOL CONSTRUCTION GRANT APPLICATIONS FOR CERTAIN DISTRESSED MUNICIPALITIES (§ 35)

The act allows distressed municipalities with more than 90,000 people (currently Bridgeport, Hartford, New Haven, and Waterbury) to submit a consolidated grant application for several school construction projects and be eligible for a single grant for the state share of all the projects. If the Office of Policy and Management finds that such a city cannot reasonably issue debt to cover its share of the project costs, the act allows discretionary federal block grant funds to be considered the local share despite restrictions limiting use of those funds to specific schools.

The act also classifies these projects as renovations for purposes of school construction grants. By law, to be eligible for a school construction grant, a renovation project must (1) produce a school with a useful life comparable to that of a new school and (2) cost less

than building a new school.

PILOT PROJECT FOR DESIGN-BUILD CONTRACTS (§ 12)

The act permits the State Board of Education (SBE) to allow up to two new schools per year over the next three years to be built using, and be eligible for state grants and progress payments for, design-build contracts, if appropriate local authorities review and approve each design phase for code compliance. The act does not define “design-build project,” but such projects are generally designed as they are built rather than built from pre-set plans.

The act exempts such projects from regular bidding requirements for project contracts and orders. It requires (1) any district that chooses a design-build contract to attend a meeting with the State Department of Education (SDE) staff beforehand and (2) SDE to give the district its code checklists and review material to use as the basis for required plan approval by local code officials or other qualified code reviewers. The act gives the district sole responsibility for assuring the project complies with applicable codes.

SBE must report to the Education and Finance, Revenue and Bonding committees by January 15, 2006 on how the design-build approach works for school construction projects.

STATUTE AND REGULATION WAIVERS

The act waives various school construction statutes and regulations to make specified schools districts eligible for school construction grants for particular projects.

Order of Bid and Plan Approval

For 29 projects in 12 districts shown in Table 1, the act waives the requirement that projects obtain SDE project plan and specification approval before they are put out for bid. The waiver allows these districts to begin the projects and later be eligible for state school construction grants, if SDE approves their plans and specifications.

Table 1: Bid/Plan Order Waivers

Section	District	School	Project
2	Bolton	Bolton High	Relocatable classrooms
16	Darien	Tokenke	Roof replacement
24	Granby	Granby High	Phase 3 of 3
27	Hartford	Annie Fisher	Underground oil storage tank replacement
27	Hartford	Martin Luther King	Underground oil storage tank replacement
27	Hartford	Weaver High	Underground oil

			storage tank replacement
27	Hartford	Clark	Underground oil storage tank replacement
27	Hartford	Fred D. Wish	Underground oil storage tank replacement
4	New London	Jennings Elementary	Oil tank replacement
5	New London	Jennings Elementary	Renovation
6	New London	Edgerton Elementary	Install modular classrooms
22	New London	Central Administration Office	Alteration and technology
8	Stamford	Cloonan	Asbestos removal
9	Stamford	Stamford High	Code improvements
13	Stamford	Rippowam	Alterations and code remedies
17	Thomaston	Center	Asbestos removal
15	Waterbury	Tinker	Roof replacement
15	Waterbury	Walsh	Roof replacement
15	Waterbury	Wilson	Roof replacement
19	Waterbury	H.S. Chase	Asbestos removal
28	West Haven	Clarence E. Thompson	Roof replacement
28	West Haven	Clarence E. Thompson	Site acquisition
28	West Haven	Edith F. Mackrille	Asbestos abatement
28	West Haven	May V. Carrigan Middle	Asbestos abatement
28	West Haven	West Haven High	Asbestos abatement
28	West Haven	Seth G. Haley	Asbestos abatement
26	Weston	Biscleglie Scribner Park	Septic and athletic fields
7	Winchester	Batcheller Elementary	Code violation
3	Winsted	Gilbert	Roof replacement

Eligibility Restriction Waivers

The act waives statutory restrictions that would ordinarily render specific projects ineligible for a school construction grant, thus allowing the projects shown in Table 2 to qualify.

Table 2: Eligibility Waivers

Section	District	School	Project	Restriction Waived
20	Region 8	RHAM High	Off-site water system extension	Costs associated with off-site construction are ineligible.
23	Madison	Madison Town Campus Kindergarten Center	Portable classrooms	Costs for portable classrooms that create a new facility or comprise a substantial percentage of the total area of an existing facility are ineligible.
25	Westbrook	Westbrook Junior/Senior High	Boiler and HVAC system replacement	Costs for boiler and HVAC work are ineligible.
31	New Haven	Wilbur Cross High and James Hillhouse High	Phase I HVAC and casework to be eligible as part of Phase II renovation	See above.

Plan Approval Requirement – Kent (§ 11)

The act waives statutory state agency plan approval requirements to make Kent eligible for a school construction grant for renovations and new construction associated with improvements to Kent Center School.

Project Scope Changes – New Britain and Torrington

New Britain (§ 10). The act waives the requirement that a project’s scope be set when a district files its grant application and allows New Britain to change projects at three schools from extension and alteration to renovation projects. The schools are Lincoln Elementary, Northend Elementary, and Vance Elementary.

Torrington (§ 18). The act also allows Torrington to change the Torrington School alteration project to a renovation/alteration/addition project, if the new project meets all other statutory school construction project requirements.

2002 Application Deadline - Waterbury (§§ 14 & 34)

The act allows school construction projects in towns operating under state governance (i.e., Waterbury) a waiver of the normal FY 2001-02 application deadline to allow them to be added to the school construction priority list after the SDE submits it to the legislature. The law generally prohibits adding projects to the list after SDE submits it (§ 34).

The act waives the usual project application deadline to add a project for work at “multiple” Waterbury school facilities totaling \$8,475,000 to the act’s project authorization list. To be eligible, Waterbury must file a project application with SDE before September 30, 2002 and meet all state requirements (§ 14).

Competitive Bidding Requirements – Wallingford and Willington

Wallingford (§ 21). The act makes Wallingford eligible for a school construction grant for the hazardous material abatement phase of the Moses Beach School extension and alteration project without going out to bid. Usually, all school construction contracts and orders receiving state assistance must be awarded to the lowest responsible qualified bidder after a public bid invitation.

Willington (§ 30). The act also waives the requirement that school construction projects be publicly bid and advertised in a local newspaper to allow Willington to begin a project to install room air conditioners at Hall Memorial School and be eligible for

a grant, if SDE approves the project plans and specifications.

Square Footage Limits - Colchester (§ 29)

The act waives the square footage limits applicable to school construction grants to allow Colchester to be eligible for a grant to increase the square footage at the Jack Jackter Elementary School.

Approval of Plans and Specifications – New London (§ 32)

The act allows New London to bid and start alteration and technology projects at the Winthrop and Edgerton elementary schools and to be eligible for a grant, even though SDE did not approve the project plans and specifications.

Enrollment Calculation Period - Stratford (§ 36)

The act allows Stratford to expand the period for calculating its projected enrollment for an extension and alteration project at Chapel Street Elementary School. The law normally requires a school district to calculate the project’s highest projected enrollment for an eight-year period starting on the date it files notice of the proposed project with SDE.

PA 02-3, May 9 Special Session– HB 6003
Emergency Certification

AN ACT CONCERNING 21ST CENTURY UCONN

SUMMARY: This act adds a third phase to UConn 2000, a program of capital improvements for the University of Connecticut (UConn). Phase III allows UConn 2000, which previously had two phases and was scheduled to be completed in 2005, to run for an additional 10 years, from July 1, 2005 through June 30, 2015.

The act allows the UConn board of trustees to borrow \$1.25 billion for Phase III and increases the trustees’ borrowing authority to finance Phase I and II projects from \$980 million to \$1.03 billion. It authorizes 51 specific projects for Phase III, increases authorizations for two projects from earlier phases, and eliminates certain projects from the first two phases.

The act also makes several changes in UConn 2000 borrowing authority. It:

1. doubles the cap on the annual amount of securities the UConn board can issue in fiscal year 2005 and establishes annual limits for fiscal years 2006 through 2015,

2. requires the State Bond Commission to approve the master resolution or indenture for state-backed securities for Phase III and requires UConn to submit to the commission a list of Phase III projects to be financed with state-backed securities,
3. eliminates UConn’s authority to issue securities to finance temporary deficits, and
4. gives UConn additional flexibility in using security proceeds.

With regard to project bidding, construction, and approval, the act:

1. gives UConn construction authority over all projects on its campuses from July 1, 2001 to June 30, 2015, rather than just those started by June 7, 1995;
2. eliminates some expedited procedures for state agency approval of UConn 2000 projects;
3. requires UConn to consider past compliance with state wage and hour laws in awarding contracts; and
4. requires Phase III projects to be consistent with the State Plan of Conservation and Development.

The act requires UConn to file:

1. semi-annual reports on labor law compliance with the Finance, Revenue and Bonding Committee and
2. five-year performance reviews by January 15, 2006 and January 15, 2011.

Finally, the act expressly authorizes the Finance, Revenue and Bonding Committee’s bonding subcommittee to recommend modifications in UConn 2000 to the full committee, if warranted by a significant change in the state’s economic circumstances.

EFFECTIVE DATE: July 1, 2002

LIST OF PROJECTS AND COSTS

The act authorizes 51 projects costing an estimated \$1,348,400,000 for Phase III of UConn 2000 (see Table 1). Of these, 41 projects costing \$1.043 billion are for the Storrs and regional campuses and 10 projects costing \$305.4 million are for the UConn Health Center.

Table 1: UConn 2000 Phase III Projects and Costs

PROJECT	COST (in millions)
<i>Storrs and Regional Campuses</i>	
Arjona and Monteith (new classroom buildings)	\$66.1
Avery Point Campus – Undergraduate and Library Building	35.0
Beach Hall renovations	10.0
Benton State Art Museum addition	3.0
Biobehavioral complex replacement	4.0
Bishop renovation	8.0
Commissary warehouse	1.0
Deferred maintenance/code/ADA renovation lump sum	215.0

Engineering building (with Environmental Research Institute)	42.7
Equipment, library collections, and telecommunications	200.0
Family Studies (DRM) Renovation	6.5
Farm buildings repairs/replacement	6.0
Fine Arts Phase II	20.0
Floriculture greenhouse	3.0
Gant Building renovations	40.0
Gentry completion	10.0
Incubator facilities	10.0
Intramural, recreational, and intercollegiate facilities	31.0
Jorgenson renovation	7.2
Koons Hall renovation/addition	7.0
Lakeside renovation	3.8
Law school renovations/improvements	15.0
Library storage facility	5.0
Manchester Hall renovation	6.0
Mansfield Training School improvements	29.0
Natural History Museum completion	4.9
North Hillside Road completion	11.5
Observatory	1.0
Parking garage #3	15.0
Psychology building renovation/addition	20.0
Residential life facilities	90.0
Stamford Campus improvements	3.0
Storrs Hall addition	4.3
Student health services	12.0
Support facility (Architectural and Engineering Services)	2.0
Torrey renovation – completion and biology expansion	48.0
Torrington Campus improvements	1.0
UConn products store	1.0
Waterbury Downtown Campus	3.0
West Hartford Campus renovations/improvements	25.0
Young Building renovation/addition	17.0
<i>Health Center</i>	
CLAC Renovations Biosafety Level 3 Lab	14.0
Deferred maintenance/code/ADA renovation	50.0
Dental School renovation	5.0
Equipment, library collections, and telecommunications	75.0
Library/Student Computer Center renovation	5.0
Main building renovation	75.0
Medical School Academic Building renovation	9.0
Parking garage	8.4
Research tower	60.0
Support building addition/renovation	4.0

The act increases costs for certain Phase I and II projects as shown in Table 2:

Table 2: Phase I and II Project Cost Increases

PROJECT	PHASE	PRIOR COST (in millions)	NEW COST (in millions)
School of Pharmacy/Biology	II	\$37.594	\$61.058
Stamford downtown relocation – Phase I	I	41.0	45.659

Finally, the act eliminates the Phase I and II projects shown in Table 3, some of which are revised and reauthorized in Phase III as shown in Table 1:

Table 3: Phase I and II Projects Eliminated

PROJECT	PHASE	COST (in millions)
Beach Hall renovations	I	\$0.994
Beach Hall renovation completion	II	7.785
Benton State Art Museum addition	I	3.665
Manchester and DRM Hall renovation	II	7.472
Monteith renovation	II	8.234

BONDING PROVISIONS

Annual Limits On Securities Issued

The act doubles the limit on the amount of securities the UConn board may issue in FY 2004-05 from \$50 million to \$100 million and imposes annual limits for FYs 2005-06 through 2014-15 as shown in Table 4. As under prior law, any difference between the amount actually issued and the cap can be carried forward to any succeeding fiscal year and financing transaction costs can be added to the caps.

Table 4: Annual Limits on Securities

FY	LIMIT (in millions)
2006	\$79.0
2007	89.0
2008	120.0
2009	155.0
2010	160.5
2011	161.5
2012	138.1
2013	129.5
2014	126.5
2015	90.9

State Bond Commission Approval

Unless otherwise specified, UConn 2000 bonds are backed by the state. As was the case with the earlier phases of UConn 2000, the act requires the State Bond Commission to approve the form of the master resolution or indenture for securities to be backed by a state debt service commitment. The commission must also approve any substantive amendment to the master resolution or indenture. Finally, as was the case with Phase II, the act requires UConn to file a list of Phase III projects to be financed with state-backed securities when it submits the Phase III master resolution or indenture for Bond Commission approval.

Authority to Finance Deficits

The act eliminates the authority of UConn’s board of trustees to issue securities to finance temporary cash flow or operating deficits. The board previously had this authority when it anticipated the deficit would be paid off with assured revenue or securities dedicated to the purpose.

Use of Security Proceeds

The act gives UConn additional flexibility by allowing security proceeds to be used for any purpose stated in the master indenture rather than limiting use of the proceeds of each security issue solely to the purpose for which it was specifically authorized.

PROJECT CONSTRUCTION, BIDDING, AND APPROVALS

UConn Authority Over Projects

The act removes a limitation on UConn's authority to plan, design, acquire, remodel, alter, or demolish real assets or projects. Under prior law, UConn's authority applied only to projects authorized and underway as of June 7, 1995. The act gives the university, rather than the Department of Public Works, authority, through June 30, 2015, over any project on its campuses regardless of its start date. In addition, it eliminates the requirement that UConn file a request to assume responsibility for projects with the public works commissioner.

Fast-Track Project Approval

The act eliminates certain expedited procedures for state agency approval of UConn 2000 projects. These procedures required (1) commissioners with jurisdiction over UConn's licenses, permits, approvals, or administrative actions to adopt a master process to address multiple applications and (2) each such commissioner to act on any application or take any administrative action within 10 business days after the submission date. The act maintains the requirement that the State Properties Review Board approve or disapprove UConn 2000 contracts within 15, rather than its usual 30, days.

Labor Law Compliance

The law allows UConn to use a prequalification process to identify and develop a list of potentially responsible qualified bidders for a particular contract based on the bidder's experience with similar contracts and objective written criteria. The act requires the university also to consider the bidder's compliance over the preceding five years, and the compliance of any of his subcontractors on those projects, with state prevailing wage, minimum wage, wage payment, and overtime wage laws.

STATE PLAN OF CONSTRUCTION AND DEVELOPMENT

The act limits to Phases I and II the UConn 2000 projects that automatically constitute part of the State Plan of Conservation and Development. This means that the Office of Policy and Management (OPM) must evaluate Phase III projects to determine their consistency with the plan. The act requires UConn to ask the OPM secretary for an advisory statement on the extent to which Phase III projects conform to the plan and allows it to request, and requires the secretary to provide, other advisory reports as UConn deems advisable. The Bond Commission must consider these advisory statements before approving the master resolution or indenture for securities for the third phase. This procedure differs from prior law, which required the Bond Commission to consider OPM's advisory statements before allocating bonds.

REPORTING

Contractor Compliance

The act requires UConn to report the following information to the Finance, Revenue and Bonding Committee twice a year, by June 30 and December 31:

1. the names and addresses of contractors who worked on UConn campus projects in the preceding six months,
2. the contractors' compliance with state wage laws, and
3. UConn's cooperation with the state Labor Department to enforce those laws.

Performance Reviews

The act requires UConn to submit five-year performance review reports on January 15, 2006 and January 15, 2011. Prior law required UConn to submit a four-year report on January 15, 1999. As was the case for the 1999 report, the next two reports must be provided to the governor and Education and Finance, Revenue and Bonding committees, and must (1) identify, for each UConn 2000 project, its progress and actual expenditures compared to original estimates and (2) provide a summary of any cooperative activities with other colleges in the state. As with the 1999 report, the committees have 60 days to consider the reports and determine whether there has been insufficient progress or significant cost increases. If so, the committees can make recommendations to UConn and the legislature for appropriate action.

PA 02-4, May 9 Special Session—SB 700
Emergency Certification

AN ACT CONCERNING STATE REVENUES

SUMMARY: This act:

1. excludes additional people from participating in the tax amnesty program established under PA 02-1, May 9 Special Session;
2. exempts taxpayers from interest and penalties arising from retroactive changes to the tax laws made by PA 02-01, May 9 Special Session;
3. suspends, until October 1, 2002, the sales and use tax on storage unit rentals and then re-imposes and modifies these taxes;
4. exempts certain services bought by a cable TV network from the sales and use tax;
5. subjects certain limited liability companies to the business entity tax;
6. extends the expiration date for tax incentives for compressed natural gas and other alternative fuels;
7. expands the ability of municipalities to provide property tax benefits for certain new electric power plants;
8. modifies the eligibility requirements for research and development (R&D) tax credit refunds to reflect a corporation tax change made by PA 02-01, May 9 Special Session;
9. eliminates a provision of PA 02-1, May 9 Special Session, that extended the state income tax to nonresidents' winnings from non-lottery gambling activities that take place in Connecticut, including at casinos on Indian reservations; and
10. extends the period of time for which the economic and community development (DECD) commissioner can determine that a town is dependent on the defense industry, which entitles local manufacturers to tax benefits and the host town to partial reimbursement of the lost tax revenue.

EFFECTIVE DATE: Upon passage for the tax amnesty, interest and penalty exemptions, business entity tax, power plant, property tax, R&D tax credit, cable TV network and DECD determination provisions; July 1, 2002 for the suspension of the sales and use tax on self-storage units and the provisions on alternative fuel and gambling winnings; and October 1, 2002 for the re-imposition and modification of the taxes on self-storage units. Several of the provisions apply to specific tax or income years, as described in the text.

TAX AMNESTY EXCLUSIONS

The act excludes additional people from participating in the tax amnesty program established under PA 02-1, May 9 Special Session. It bars the Department of Revenue Services (DRS) commissioner from granting amnesty to anyone who (1) is a party to a closing agreement with the commissioner or a managed audit agreement or (2) has offered a compromise that the commissioner has accepted. PA 02-1, May 9 Special Session already bars the commissioner from granting amnesty to anyone who (1) has received notice from DRS that he is being audited for the period for which he is seeking amnesty or (2) is a party to any criminal investigation or civil or criminal litigation pending on June 1, 2002 in any federal or state court for failure to file or pay or for state tax fraud.

This act also corrects a reference in PA 02-1, May 9 Special Session.

PENALTIES AND INTEREST ARISING FROM RETROACTIVE TAX LAW CHANGES

PA 02-1, May 9 Special Session made several tax changes, including limiting total corporation tax credits, disallowing use of a special federal bonus depreciation rule for certain property under the corporation and income taxes, and prohibiting companies from using tax credits to reduce their corporation tax liability below a \$250 annual minimum. Although PA 02-1, May 9 Special Session took effect July 1, 2002, its tax changes apply to income and taxable years beginning before January 1, 2002.

This act exempts affected taxpayers from interest and penalty assessments if PA 02-1, May 9 Special Session creates or increases an underpayment in an estimated tax payment that was due on or before July 15, 2002. It also specifies that no penalties or interest accruals apply to corporation tax underpayments reported on supplemental, amended, or corrected returns if (1) the underpayment is created or increased by PA 02-1, May 9 Special Session and (2) the original payment was due on or before August 1, 2002.

SALES AND USE TAXES

Storage Units

PA 02-1, May 9 Special Session, imposed the 6% sales and use tax on businesses that rent space, other than residential space, for storing personal property tax effective July 1, 2002, and applicable to sale occurring on or after that date. This act suspends the tax from July 1, 2002 to October 1, 2002.

The act specifies that after October 1, 2002 the tax applies only to businesses that rent storage space (1) for tangible, rather than any, personal property; (2) consisting of secure areas, such as rooms or containers, designated for customer use; (3) where the customer can store and retrieve his property; and (4) to which the customer has either unlimited free access or free access within business hours or with reasonable notice.

Under the act, the tax does not apply to (1) rental of an entire building or warehouse; (2) general warehousing and storage where warehouse employees typically retrieve customer property and do not allow customers free access to the storage space; or (3) accepting specific property items for storage, such as clothing at a dry cleaning establishment or golf bags at a golf club.

Cable TV Networks

The act exempts noncable communications services bought by a cable network from the 6% sales and use tax on cable TV service. By law, “noncable communications services” are two-way communications services, such as telephone service, that a cable TV system could provide.

BUSINESS ENTITY TAX

PA 02-1, May 9 Special Session imposed a \$250 annual state tax on any limited liability company (LLC), that is treated as a partnership for federal income tax purposes. This act exempts single-member LLCs from the tax if they are disregarded under federal law as entities separate from their owners. This provision is applicable to tax years beginning on or after January 1, 2002.

PROPERTY TAXES ON POWER PLANTS

By law, any municipality may treat a power plant that completed construction after July 1, 1998, as though it were located in an enterprise zone and used for commercial or retail purposes. This means that, with the approval of its legislative body, a town can fix the full amount of either the property tax or assessment on the plant’s real and personal property both during and after construction, despite the enterprise zone law’s requirement that towns fix property taxes or assessments only after the property improvement occurs.

This act allows municipalities to treat certain power plants on which construction is completed after July 1, 2002 in the same way, except that it allows them to fix the plant’s taxes or assessment at less than the full amount. The act applies only to plants for which the

operator submitted a permanent electric generating facility application to the Connecticut Siting Council between January 1, 2002 and March 31, 2002.

By law, the taxes or assessments set by the municipality must approximate the covered plant’s projected tax liability based on a reasonable estimate of its fair market value that the municipality determined using its best efforts. Under this act, up to the full amount of taxes or assessments the municipality fixes for a covered plant must approximate a “commensurate portion” of that projected liability.

TAX INCENTIVES FOR ALTERNATIVE FUELS

Petroleum Products Gross Earnings Tax

The act exempts earnings from wholesale sales of petroleum products to be used as fuel cell fuel that occur between July 1, 2002 and June 30, 2004 from the petroleum products gross earnings tax. By law, a “fuel cell” is a device that produces electricity directly or indirectly from hydrogen or hydrocarbon fuel through an electro-chemical process, rather than by burning.

The act also extends, from July 1, 2002 to July 1, 2004, the expiration date of the tax exemption for wholesale sales of propane for motor vehicle fuel and extends the exemption back to such sales that occurred between January 1, 2000 and July 1, 2001.

Utility Tax

The act extends, from June 30, 2002 to June 30, 2004, the expiration date of an exemption from the utility gross earnings tax for gas company income earned from selling natural gas or propane for motor vehicle fuel.

Sales and Use Taxes

The act extends for two years, from July 1, 2002 to July 1, 2004, the expiration dates of sales and use tax exemptions for:

1. new vehicles that run exclusively on natural gas or electricity;
2. new vehicles that run exclusively on propane, if they meet federal or state emission standards under the Clean Air Act;
3. equipment used to convert vehicles to run exclusively on natural gas, electricity, or propane or to run on one of those fuels and any other fuel; and
4. equipment used in, or as part of, a compressed natural gas filling or electric recharging station for alternative fuel vehicles.

It also extends these exemptions to cover vehicles

powered exclusively by hydrogen and their associated fueling equipment.

Business Tax Credits

The act extends, from January 1, 2002 to January 1, 2004, the termination date of the credits against various business taxes for investments in alternative fuel vehicles and related fueling equipment. The credit is 10% of the added costs of buying a vehicle powered exclusively by alternative fuels (compressed natural gas (CNG), liquefied petroleum gas (LPG), liquefied natural gas (LNG), or electricity). The credit applies to income year starting on or after January 1, 2002.

Motor Fuels Tax

The act extends, from July 1, 2002 to July 1, 2004, the expiration date of an exemption from the motor fuels tax for CNG, LPG, and LNG.

ELIGIBILITY FOR RESEARCH AND DEVELOPMENT CREDIT REFUNDS

By law, qualifying companies that have no corporation tax liability are entitled to payment of refunds for 65% of the value of unused corporation tax credits for R&D expenses, up to certain limits. This act extends this provision to companies that pay the \$250 minimum corporation tax to qualify for the R&D credit refunds. PA 02-1, May 9 Special Session barred companies from using tax credits to reduce their corporation tax liability below the minimum, so it is no longer possible for a company to have no tax liability. This provision applies to income years starting on or after January 1, 2002

INCOME TAX ON NONRESIDENTS' GAMBLING WINNINGS

The act eliminates a provision of PA 02-1, May 9 Special Session, that extended the state income tax to nonresidents' winnings from non-lottery gambling activities that take place within Connecticut's borders, including at casinos on land of federally recognized Indian tribes with the state. The tax was to apply to gambling winnings in any amounts that federal tax law or regulations require a payer to report to the Internal Revenue Service (currently, any winnings over \$5,000). Nonresidents' Connecticut lottery winnings over \$5,000 remain subject to Connecticut income tax. This provision applies to tax years beginning on or after January 1, 2002.

DEFENSE/DEPENDENT MUNICIPALITY DETERMINATION

The act allows the Department of Economic and Community Development commissioner to renew, for two, rather than one, two-year period, his specific findings that a municipality is severely impacted by a prime defense contract cutback. The determination entitles certain manufacturing facilities located in the municipality to property tax exemptions and business tax credits for non-defense economic development projects and entitles the municipality to a grant equal to one-half the foregone property tax revenues.

PA 02-5, May 9 Special Session—SB 701
Emergency Certification

AN ACT INCREASING CERTAIN BOND AUTHORIZATIONS FOR CAPITAL IMPROVEMENTS

SUMMARY: This act changes total bond authorizations for various programs as shown in Table 1:

Table 1: Total Authorizations

Program	Total Authorization (in millions)		
	Prior Law	The Act	Change
Urban Action Bonds – economic and community development projects component	\$81.3	\$74.6	(\$6.7)
Urban Action Bonds – urban development projects component	825.3	785.3	(40.0)
Capital Equipment Purchase Fund	227.5	230.0	2.5
School construction grants	3,158.4	3,108.4	(50.0)
School construction interest subsidy grants	121.0	171.0	50.0
Clean Water Fund	797.8	801.0	3.2
Connecticut Development Authority- Connecticut Works Fund	128.0	95.0	(33.0)
Manufacturing Assistance Act	525.3	505.3	(20.0)
Capital Region Education Council for New Britain early childhood magnet school expenses	1.8	0.5	(1.3)

The act delays the availability of money authorized for certain bonds and earmarks \$5 million of the urban action bonds authorized for urban development projects for grants for small business gap financing. It exempts any notes or other authorized debt issued to fund state budget deficits for fiscal years ending on or before June 30, 2002 from the overall limit on state debt (“bond cap”).

The act also:

1. requires school districts to secure funding for the local share of a school construction project before applying for a school construction grant;
2. temporarily limits to \$1 billion the total commitments the education commissioner can seek for such grants;
3. reduces, from 100% to 95%, the state reimbursement for the costs of interdistrict magnet schools, regional special education facilities, and regional vocational agriculture centers;
4. makes sewer projects eligible for loans only, rather than a mix of loans and grants, and restricts the eligibility of certain sewer projects;
5. requires the Department of Economic and Community Development (DECD) to arrange the transfer of all or part of its housing loan portfolio to the Connecticut Housing Finance Authority, in consultation with it, the Office of Policy and Management (OPM) secretary, and the state treasurer;
6. allows the DECD commissioner to establish a three-year program to provide matching grants to repair and replace wooden windows in two-to-six-family buildings built before 1950;
7. establishes a revolving fund to provide low-interest loans to renovate and repair apartment buildings in distressed municipalities to meet state or municipal codes or to otherwise make buildings suitable for tenants;
8. allows the OPM secretary to select another state agency to administer the Small Town Economic Assistance Program (STEAP), which provides grants for a wide range of physical development projects;
9. expands the scope of the convention center component of the Adriaen's Landing project and the range of associated Hartford housing projects that may qualify for property tax benefits;
10. requires the OPM secretary to submit annual reports to legislative leaders and the Finance, Revenue and Bonding Committee on the status of the Adriaen's Landing and UConn football stadium projects;
11. allows municipalities to obtain lines of credit and similar financing from a broader range of entities in connection with issuing or refunding bonds;
12. expands the conditions under which municipalities can execute agreements for obtaining credit when issuing or refunding bonds;
13. establishes a hold-harmless provision for funding under the Local Capital Improvement Program (LoCIP) and broadens the allowable uses of LoCIP funds;
14. authorizes the Department of Transportation (DOT) commissioner to acquire or exchange land or buildings for use as a highway maintenance storage area or garage;
15. rescinds a requirement that DOT transfer a 25.71-acre parcel in New Haven to the DECD commissioner;
16. repeals provisions authorizing up to \$200 million in state and city funding for the Steel Point project in Bridgeport; and
17. allows Capital City Economic Development Authority (CCEDA) to use its bond funds in connection with loans it has made.

EFFECTIVE DATE: Upon passage for the municipal financing, Adriaen's Landing housing, STEAP administration, DOT, and bond cap provisions; July 1, 2002 for the remaining provisions.

DELAYS IN AVAILABILITY OF BOND FUNDS

The act increases, from \$17 million to \$19.5 million, the amount of the bonding authorization for the Capital Equipment Purchase Fund that is available after July 1, 2002.

Under prior law, \$17 million of the authorization for school construction interest subsidy grants program was unavailable until July 1, 2000. The act instead makes \$50 million available after July 1, 2002.

The act makes part of the bonds authorized for three CCEDA funded projects unavailable until July 1, 2003. On that date, \$3 million of the \$25 million authorized for riverfront infrastructure development and improvements, \$4 million of the \$35 million authorized for housing rehabilitation and new construction, and \$3 million of the \$25 million authorized for demolition and redevelopment become available.

The act also delays when several bond authorizations become available and, in some cases, increases the amount withheld. It makes \$107 million of the total authorization for urban action (UA) bonds, and \$100 million of this authorization earmarked for urban development projects, available on July 1, 2003, rather than July 1, 2002. Under prior law, \$2 million of the UA bond authorization earmarked for economic and community development projects became available on July 1, 2002. The act increases the withheld amount to \$7 million, and makes this money available on July 1, 2003.

The act also makes \$20 million of the authorization for school construction grants and \$10 million of the authorization under the Manufacturing Assistance Act

available on July 1, 2003, rather than July 1, 2002. Under prior law, \$30 million of the authorization for LoCIP projects was not available until July 1, 2002. The act increases the withheld amount to \$65 million, and makes this money unavailable until July 1, 2003. Under prior law, \$40 million of the authorization from the Clean Water Fund became available on July 1, 2002. The act increases the withheld amount to \$60 million, and makes it available on July 1, 2003.

SCHOOL CONSTRUCTION GRANTS

Local Funding

Starting July 1, 2002, the act requires school districts to secure funding for the local share of a school construction project before applying for a state grant. (School construction grant applications are due by June 30 annually.) For projects filed before July 1, 2002 for submission to the General Assembly for the 2003 priority list, the act requires a school district to secure local authorization before December 1, 2002. (This provision was repealed by PA 02-6, May 9 Special Session.) The state reimbursement percentages for projects requiring prior authorization are those in effect in the fiscal year during which the district secures local funding authorization for the project.

The state reimburses school districts for between 20% and 80% of eligible school construction costs, depending on their wealth, with some projects eligible for a 5% or 10% bonus. The remaining portion is the local share.

Temporary School Construction Grant Commitment Limit

The law requires the education commissioner to submit a school construction project priority list to the General Assembly by December 15 annually. For each priority list, the commissioner submits in December 2003 and 2004, the act limits to \$1 billion the total amount he may request for school construction reimbursement grant commitments. In each list, the commissioner must list the categories of eligible projects by priority and assign a priority to each project within these categories. Eligible projects left off a list because of the limit must be listed first for the following year.

Regional Special Education Facilities, Vocational Agriculture Centers, and Interdistrict Magnet Schools

The act reduces, from 100% to 95% of the eligible costs, the state reimbursement for (1) regional special education facilities, (2) regional vocational agriculture

centers, and (3) interdistrict magnet schools. It also requires grants for special education and vocational agriculture projects to be paid in progress payments like regular school construction grants, rather than in a lump sum. This provision is retroactive to July 1, 2002.

SEWER PROJECT FUNDING

Starting July 1, 2002, the act funds eligible water quality projects that address only sewer collection and conveyance systems entirely through loans rather than with 20% grants and 80% loans. The law already requires all eligible water quality projects to be 100% funded through loans, starting in FY 2006-07.

The act also requires the Department of Environmental Protection to rate, rank, and fund sewer collection and conveyance system projects separately from other eligible water pollution control projects. It allows such projects to be considered only if they are either (1) highly consistent with the state conservation and development plan or (2) primarily needed as the most cost-effective solution for an existing area-wide pollution problem and incorporate minimal growth capacity.

HOUSING REVOLVING LOAN FUND

The act establishes a revolving fund to provide low-interest loans to renovate and repair apartment buildings located in distressed municipalities to meet the State Building Code or other state or municipal health codes or to otherwise make buildings suitable for tenants. The fund consists of money (1) the DECD commissioner may allocate from an affordable housing assistance program established in 2001 and (2) available to the commissioner or the revolving loan fund from other sources. The act also requires the following to be deposited in the fund: (1) investment earnings on the fund balance, (2) fund balances carried forward from prior years, and (3) loan repayments.

Loans must go to building owners. To be eligible, a building must have no more than 20 residential units, which may include a unit occupied by the owner. The act allows the commissioner to:

1. require an owner applying for a loan to submit (a) a copy of the building inspector's report listing the building's code violations and (b) a cost estimate for the repairs to correct the violations;
2. prioritize loans by such factors as types of repairs to be financed, building location, the owner's ability to repay, and the extent to which the repairs will extend the building's useful life;

3. contract with nonprofit organizations to administer the fund while retaining sole authority to approve loans; and
4. adopt regulations to establish application procedures and set loan priorities.

WINDOW REPLACEMENT PROGRAM

The act allows the DECD commissioner to establish a three-year matching grant demonstration program to promote environmentally safe housing and energy conservation by repairing and replacing wooden windows in two-to-six-family buildings built before 1950. The commissioner may run the program in one or more municipalities. Of the first three, at least two must have populations of 100,000 or over and one must have a population under 100,000. The maximum grant is \$100 per window. The act allows the commissioner to fund the program from an affordable housing assistance program established in 2001 or from any other money he has available.

The act allows the commissioner to contract out program operation to one or more entities and requires him to adopt implementing regulations. The program ends on June 30, 2005. The commissioner must report to the Housing Committee by February 1, 2005 on (1) the number of eligible buildings that received assistance, (2) costs, (3) program effectiveness, and (4) his recommendation whether to expand the program and make it permanent.

ADRIAEN'S LANDING CONVENTION CENTER AND HOUSING PROJECTS

The act expands the scope of the convention center component of the Adriaen's Landing project to include a central heating and cooling plant. The plant can serve the convention center, related parking facilities, private developments, and to the extent that it has surplus capacity, other users. By law, the project is subject to expedited permitting requirements and is exempt from several environmental and public works laws.

The act expands the range of Adriaen's Landing housing projects that may qualify for property tax benefits. Prior law allows the City of Hartford to negotiate and fix the tax assessment for various types of projects, if the project received at least \$5 million in CCEDA financing. The act lowers this threshold to \$3 million for mixed use projects creating downtown housing units and ancillary commercial and parking facilities if CCEDA commits the financing before June 30, 2003.

REPORT ON ADRIAEN'S LANDING AND UCONN FOOTBALL STADIUM

Starting by February 1, 2003, the act requires the OPM secretary to submit annual reports to the six legislative leaders and the Finance, Revenue and Bonding Committee on the status of the Adriaen's Landing and UConn football stadium projects. The secretary must present the report to the Finance Committee at a committee meeting held during the regular session in the year the report is due.

The report must have separate sections on each project and must include:

1. a detailed budget estimate for the overall project;
2. a current project timeline from beginning to end, with significant milestones;
3. for each part of the project, (a) a description, (b) a detailed current budget with a comparison to the budget presented to the General Assembly before May 2, 2000, (c) a projected completion date, (d) changes in planning or execution from the prior year and reasons for the changes, and (e) end-of-year status;
4. problems arising during the past year and potential future problems;
5. compliance with statutory requirements regarding auditing and reporting, small and minority business set-asides, and efforts to hire qualified minorities and Hartford and East Hartford residents for construction jobs;
6. other compliance information, including (a) a description of each contract entered into in the prior year, (b) whether any contractors are women-owned, minority, or small-business enterprises as defined in the minority set-aside law, (c) the value of any such contract, (d) the subcontractors under each contract, (e) the value of the subcontracts, (f) whether any subcontractors meet set-aside law criteria, (g) the number of jobs associated with the contract, including the number held by Hartford and East Hartford residents, women, and minorities, and (h) affirmative action steps and measures to correct deficiencies;
7. detailed annual projected operating budgets for each facility, including how much state and municipal funding will be required; and
8. a timeline showing when operating expenses may be incurred before completion, including the share the state and the host municipality will provide each year.

MUNICIPAL FINANCING

The act allows municipalities to obtain lines of credit and similar financing from qualified public depositories in connection with issuing or refunding bonds. By law, qualified public depositories include credit unions as well as Connecticut and out-of-state banks with Connecticut branches that receive or hold public deposits and collateral for such deposits. Municipalities can already get such credit from commercial banks, insurance companies, and their subsidiaries.

The act also expands the conditions under which municipalities can execute agreements for obtaining credit when issuing or refunding bonds. Prior law limited the agreements to parties whose unsecured long-term debt is rated at least in the AA category by one nationally recognized rating agency. The act allows agreements with parties whose unsecured long-term obligations are rated in the lower A category if they (1) can provide collateral to enhance their credit and (2) are a qualified public depository.

DEPARTMENT OF TRANSPORTATION LAND TRANSACTIONS

The act authorizes the transportation commissioner, when he determines it is in the state's best interests, to purchase, lease, or otherwise arrange for acquiring or exchanging land or buildings for use as a highway maintenance storage area or garage. By law, the commissioner may already purchase land needed in connection with the layout, construction, repair, reconstruction, or maintenance of any state highway or bridge and, any land or building he feels is needed to efficiently accomplish this purpose. As already required for currently authorized purchases, any purchase of land or buildings for the additional purposes the act authorizes must be approved by a state referee if it exceeds \$100,000.

The act rescinds a requirement that DOT transfer a 25.71-acre parcel in New Haven to the DECD commissioner. The parcel is bounded by North and South Frontage Roads, Ella Grasso Boulevard, and the west side of the air rights parking garage. Prior law required the DECD commissioner to lease the parcel to the Thirty-Four Development Corporation, or its successor by change of name only, for \$1 per year, and required the lessee to use the land for biomedical, advanced technology and other economic base projects, and associated infrastructure such as parking and support services.

LOCAL CAPITAL IMPROVEMENT PROGRAM (LoCIP)

The act requires the OPM secretary to credit each municipality in FY 2002-03 for the full amount of LoCIP funds to which it would have been entitled if \$30 million had been made available in that fiscal year. LoCIP reimburses towns for infrastructure and capital improvement projects, such as road construction, sewage treatment plant repairs, and public building renovations. The amount each town gets is based on a formula that compares highway miles, population, population density, and per capita property wealth to the total for all towns.

The act allows municipalities to use LoCIP funds to buy automatic external defibrillators.

STEEL POINT

The act repeals provisions authorizing up to \$200 million in state and city funding for the Steel Point project in Bridgeport. Under prior law, the Connecticut Development Authority (CDA) had until January 1, 2003 to issue bonds for the project up to a limit of \$120 million or 20% of the project's cost, whichever was less. The act also eliminates authority for the state's other economic development agencies, Connecticut Innovations, Inc. and DECD, to provide funds for the project.

The act eliminates state and local tax incremental financing (TIF) mechanisms for the project. These provisions allow (1) CDA to issue bonds and back them with incremental sales and admission tax revenue generated throughout the project area and (2) Bridgeport to issue bonds and back them with incremental taxes on properties in the project area and the income they produce, financial assistance from public and private sources, or any combination of these assets. In eliminating the TIF financing for the project, the act also eliminates requirements for CDA to conduct an economic analysis of the project, for the city to apply to CDA for the bond issue, and certain reporting requirements.

Under prior law, CDA could use the bond proceeds to provide financial assistance to government agencies and people and organizations operating businesses in the Steel Point project area. The recipients could use the funds for various kinds of development activities and projects. They could acquire and improve land; demolish, remove, or rehabilitate structures; and construct, reconstruct, or rehabilitate buildings and infrastructure. They could also use the funds to relocate people and organizations the project displaces.

PA 02-6, May 9 Special Session—SB 704
Emergency Certification

**AN ACT CONCERNING TECHNICAL
CORRECTIONS TO CERTAIN BOND
AUTHORIZATIONS FOR CAPITAL
IMPROVEMENTS, AND INTERDISTRICT
MAGNET SCHOOLS**

SUMMARY: This act eliminates a requirement, established by PA 02-5, May 9 Special Session, that applications for school construction grants filed before July 1, 2002 be excluded from the project list submitted to the governor and legislature in December 2002 unless the applicant has secured local funding authorization before December 1, 2002. Thus, such school construction project applications can go forward without securing local funding in advance. Under PA 02-5, May 9 Special Session, and unaffected by this act, the education commissioner cannot accept grant applications after June 30, 2002 unless the local share of funding has been secured.

PA 02-5, May 9 Special Session also makes school districts eligible for 95%, rather than 100%, reimbursement for capital expenditures related to the purchase, construction, extension, replacement, leasing, or major alteration of interdistrict magnet schools starting in FY 2002-03. This act delays that reduction until FY 2003-04.

EFFECTIVE DATE: Upon passage, for the local funding provision; July 1, 2002, for the magnet school provision.

PA 02-7, May 9 Special Session—HB 6004
Emergency Certification

SUMMARY: This act makes a number of changes affecting human services and senior programs. Among these, the act:

1. increases ConnPACE per-prescription copayments from \$12 to \$15 and potentially \$20 for higher-income seniors who apply for the program after September 1, 2002 (those in the program before that date continue to pay \$12 and so do lower-income new applicants) (§§ 15, 16);
2. requires implementation of a previously approved prior authorization plan for prescription drugs covered by Medicaid, ConnPACE, and other state medical assistance programs, with some changes and limited exceptions (§ 50); eliminates the generic incentive dispensing fee paid to pharmacies (§§ 50, 88); and makes a number of other changes

- in these programs related to the preferred drug list, supplemental drug rebates, maximum allowable payments for generic drugs, and the pharmaceutical purchasing initiative authorized in PA 02-1, May 9 Special Session (§§ 52, 53, 56);
3. potentially eliminates Medicaid payments to providers of certain optional services (§ 104);
4. allows the Department of Social Services (DSS) to restructure Medicaid nonemergency medical transportation to reduce state expenditures and requires DSS alone to set both emergency and nonemergency transportation fees under any of its medical assistance programs (§§ 60, 61);
5. eliminates coverage for eye care, optical hardware, optometry care, podiatry, chiropractic, naturopathy, and home health care under the State-Administered General Assistance and town General Assistance programs (§§ 19, 20), but permits DSS to contract with a federally qualified community health center consortium to provide medical assistance to these recipients (§ 62);
6. increases Medicaid rates for physicians who serve Medicare-Medicaid “dually-eligible” clients starting April 1, 2003 (§ 54);
7. keeps state-funded cash, food stamp, home care, and medical assistance programs open through June 30, 2003, for new applicants who are legal immigrants barred from federal programs (§§ 22-25);
8. increases State Supplement recipients’ personal needs allowances (§ 55);
9. authorizes two pilot programs to help seniors in private assisted living facilities stay out of nursing homes (§§ 27, 28);
10. allows the DSS commissioner to create a clinical management and administrative “carve-out” for behavioral health services offered under Medicaid and HUSKY and give the Department of Children and Families (DCF) clinical management responsibility for children (§ 59);
11. delays previously scheduled rate increases for nursing homes and intermediate care facilities for the mentally retarded (§§ 17, 18) and freestanding chronic disease and psychiatric hospitals (§ 57);
12. requires all nursing homes and similar facilities that participate in Medicaid to participate equally in Medicare (§ 46);
13. requires the social services commissioner, within available federal resources, to buy insurance policies that cover HIV treatments

- and primary care for people with AIDS or HIV who qualify financially (§ 49);
14. requires child support enforcement agencies to use the federally mandated uniform National Medical Support Notice when asking employers to withhold insurance premiums from noncustodial parents' wages for health care coverage for their children and makes related changes (§§ 38, 40-44);
 15. makes several changes to improve the efficiency of processing home health service claims for people dually eligible for Medicare and Medicaid (§ 98);
 16. makes other changes, such as allowing the DSS commissioner to authorize Medicaid payments for used durable medical equipment (§ 48); specifying how the state must use the \$13.3 million it has received in federal welfare-to-work bonus payments (§ 86), eliminating a small personal care assistance program for people with disabilities (§ 110), and extending to 2006 a hospice program to establish residences for terminally ill people (§ 96); and
 17. instructs the Office of Policy and Management (OPM) to develop a consumer-oriented long-term care website and undertake a comprehensive assessment of unmet long-term care needs and future demand (§ 51).

The act makes numerous other changes that are described below, including adjusting funding in several areas. Among other things, the act also:

1. limits the registered sex offenders (or people required to register) who must register in another state and notify the public safety commissioner of regular travel or temporary residence outside the state to those employed or enrolled as students outside the state (It also narrows the circumstances under which these offenders must complete the additional registration and provide the notice) (§§ 78-84);
2. transfers the cost of serving restraining order applications and orders from the applicant to the Judicial Department in compliance with the federal Violence Against Women Act (§ 77)
3. in conformity with federal law, requires the courts to determine whether the DCF made reasonable efforts to prevent or eliminate the need for removing a child from his home before placing him in foster care (§§ 29-37);
4. requires the public health commissioner to set rates for advanced and other additional types of ambulance services (§ 47);
5. allows anyone 16 or older who has disabilities that limit or impair his ability to walk, and who has been issued a handicapped parking placard

by the motor vehicle commissioner to operate an "electric personal assistive mobility device" (Segway) on sidewalks and to cross certain highways without an operator's license or a vehicle registration (§§ 67, 68);

6. implements provisions of the federal No Child Left Behind Act of 2001 (§§ 4, 6); and
7. increases the amount of impact grants towns get from the Mashantucket Pequot and Mogehean Fund.

EFFECTIVE DATE: Upon passage except the (1) provision on Office of Workforce Competitiveness program lapse is effective July 1, 2002 (§ 66); (2) provisions on ConnPACE and eliminating the DSS commissioner's duty to verify generic incentive dispensing fees are effective September 1, 2002 (§§ 15, 16, 88); and (3) provisions on National Medical Support Notice and enforcement of the regulation of certain cigarette manufacturers are effective October 1, 2002 (§§ 38, 40-44, 101-103).

DELAY IN REDUCTION OF SCHOOL DISTRICTS' MAXIMUM SHARE OF SPECIAL EDUCATION COSTS—§ 1

The act delays from July 1, 2002 to July 1, 2003 the date on which a local school district's maximum share of the funding for high cost special education payments will be reduced from five to four-and-a-half times its average per-pupil expenditure for the preceding fiscal year. The state is responsible for all costs exceeding that amount.

EDUCATION COST SHARING (ECS) HOLD HARMLESS—§ 2

The act holds all towns harmless from decreases in their state education aid for FY 2002-03, ensuring that no town receives less ECS aid than it did in FY 2001-02.

REGIONAL EDUCATION SERVICE CENTER (RESC) GRANT REDUCTION—§ 3

The act reduces all RESC grants for FY 2002-03 by giving each RESC a proportional share of the appropriated grant based on what it would have received if the total RESC grant had been \$3,132,515.

MILITARY RECRUITERS AT VOCATIONAL-TECHNICAL (V-T) SCHOOLS—§ 4

To comply with the federal "No Child Left Behind Act of 2001," the act requires V-T schools to give military recruiters from the U. S. and state armed forces

any on-campus recruiting opportunities and access to student directory information necessary to prevent loss of federal funds to the schools or the state. V-T schools were not previously authorized to allow this access because the state Supreme Court interpreted the prior state law to bar state agencies from being used “in furtherance” of discrimination (*Gay and Lesbian Law Students Assn. v. Board of Trustees*, 236 Conn. 453 (1996)).

MASTERY TEST EXEMPTIONS FOR STUDENTS WITH LIMITED ENGLISH—§ 5

The act expands the mastery test exemption for limited English proficient students. It considers a student to have limited English proficiency if he (1) was not born in the United States or comes from a country where English is not the dominant language and (2) has sufficient difficulty reading, writing, speaking, and understanding English that he may not be able to learn successfully in an English-language classroom or participate fully in American society.

Under prior law, only students enrolled in an English as a Second Language or bilingual program for 10 months or less were exempt. The act exempts (1) any student with limited English proficiency who has been enrolled in school for 10 months or less and (2) any such student enrolled in school for between 10 and 20 months who did not meet the State Board of Education’s (SBE) English language mastery standard on an assessment given the month before the statewide mastery test.

NEW SCHOOL ACCOUNTABILITY REQUIREMENTS—§§ 6 & 7

The act replaces the prior state school accountability law with an accountability plan aligned with the new federal law and prepared by the education commissioner. The act provides a transition to the new program for the 28 schools the education commissioner already identified as needing improvement under the state law.

Under the act, the education commissioner must prepare a statewide education accountability plan that, consistent with the federal law and its regulations, (1) identifies schools and school districts needing improvement, (2) requires them to develop and implement improvement plans, and (3) uses a system of rewards and consequences. The act requires the 28 schools already identified as needing improvement under prior state law to continue in that status and continue implementing the improvement plans they developed under state law through June 30, 2004.

Under the act, the 28 schools’ local boards of education must evaluate their progress by February 1, 2003. If they find the schools are making insufficient progress, the local boards must develop new remediation and organization plans for them. Beginning in February 2003, the State Department of Education (SDE) must monitor the schools for adequate yearly progress, as defined in the state’s federal accountability plan, and subject them to the plan’s rewards and consequences system. The 28 schools remain eligible for state and federal aid.

Prior law required the commissioner to issue a new list of elementary and middle schools needing improvement based on mastery test data by February 1, 2003 and superintendents of school districts with schools on the list had to meet with the commissioner by April 1, 2003 to discuss how to improve school performance.

The act also makes a conforming technical change.

CONNECTICUT AID TO PUBLIC COLLEGE STUDENTS GRANTS—§ 8

The act requires the Board of Governors of Higher Education (BOG) to request an appropriation for the Department of Higher Education (DHE) for each year of the biennium equal to the amount Charter Oak State College set aside in the previous fiscal year for fee waivers. This appropriation may be up to 15% of the total amount of tuition and fees paid to Charter Oak in the previous fiscal year. The act requires DHE to give this appropriation to Charter Oak to use as grants for the educational expenses of needy Connecticut residents enrolled in Charter Oak degree programs. It limits individual awards to the amount of a student’s calculated financial need based on a federally approved needs analysis system.

The law requires BOG to request an annual appropriation for DHE equal to the amount the Connecticut State University system, the University of Connecticut, and the community-technical colleges set aside in the preceding two years for tuition waivers, tuition remissions, educational expense grants, and student employment. DHE must allocate the appropriation to these institutions based on a BOG formula. Prior law required these amounts to be used for educational expense grants and student employment for needy Connecticut residents attending public institutions of higher education, including Charter Oak State College. The act excludes Charter Oak from receiving funds based on the other public institutions’ finances and creates a separate formula for that school.

GRANT REDUCTIONS—§ 9

The act requires, for FY 2002-2003, certain grant payments to be reduced proportionately if the total of these grants exceeds their FY 2002-03 appropriations. This provision affects grants for (1) public libraries; (2) transportation to local, regional, and vocational-technical schools; (3) SBE feeding programs; (4) RESC lease grants; and (5) bilingual education.

After determining any adjustments to the prior year, the act requires FY 2002-03 grants for the following to be reduced proportionally to remain within available appropriations: (1) adult education programs, (2) transportation reimbursement formulas, (3) transportation to private and certain public junior and senior high schools, and (4) health services for students in private nonprofit schools.

The act limits special education grants to local and regional school districts to their proportional share of the total grants times the total available appropriated amount for (1) special education costs in excess of five times the district's average per-pupil expenditure, (2) expenses for special education students placed by state agencies or residing on state property, (3) costs for non-nexus special education students placed by a state agency in a private residential facility or a facility run by DCF, and (4) payments for students who need educational services other than special education services whom the DCF commissioner or another agency places in a private residential facility.

SCHOOL READINESS GRANTS—§ 10

The act appropriates \$2,576,580 for school readiness competitive grants in FY 2002-03 and limits the maximum that may be used for administrative purposes to \$198,199.

CONNECTICUT MUSEUMS—§ 11

PA 01-6, June Special Session, requires the Department of Revenue Services to direct \$688,202 in hotel tax revenue to the Department of Transportation for the Rocky Hill, Chester, and Hadlyme ferries during FY 2002-03. The act diverts \$350,000 of this sum to the Connecticut Historical Commission for the continued operation of state museums.

CONNECTICUT HISTORICAL COMMISSION—§ 12

For administrative purposes only, the act transfers the Connecticut Historical Commission from SDE to the State Library.

MANUFACTURING TECHNOLOGY CENTERS—§ 13

The act allows the Community-Technical Colleges' trustees to develop, within available appropriations, manufacturing technology centers on three campuses in geographically diverse locations.

PRIVATE OCCUPATIONAL SCHOOL ATTENDANCE REQUIREMENT—§ 14

The act requires DHE's commissioner to accept a federally recognized accrediting agency's institutional accreditation for a private occupational school's attendance requirement in addition to the evaluation requirement. (It is unclear what statutory attendance requirement private occupational schools must meet.)

CONNECTICUT PHARMACEUTICAL ASSISTANCE CONTRACT TO THE ELDERLY AND THE DISABLED PROGRAM (CONNPACE)—§§ 15 & 16

The Connecticut Pharmaceutical Assistance Contract to the Elderly and the Disabled (ConnPACE) program helps low-income seniors and people with disabilities who do not qualify for Medicaid pay for prescription drugs.

The act increases the \$12 per-prescription copayment for some people who enter the ConnPACE program on or after September 1, 2002, based on their annual incomes, marital status, and the date they first become eligible. Generally, it retains the \$12 copayment for existing and future participants with low incomes. But someone who is in the program before September 1, 2002 and then reapplies after a period of ineligibility must pay the same copayments as those who first join the program on or after September 1, 2002. The act specifies that a redetermination (which happens annually) is not considered to be a reapplication.

Table 1 shows the new copayments for all participants.

TABLE 1: NEW CONNPACE COPAYMENTS

Eligibility Start Date:	Annual Income		Copayment
	Single	Married	
Before 9/1/02	Under \$20,000	Under \$27,100	\$12
On or after 9/1/02	Under \$15,900	Under \$21,500	\$12
	\$15,900 to \$20,000	\$21,500 to \$27,100	\$15
Upon federal waiver approval	Over \$20,000	Over \$27,100	\$20

The act requires the DSS commissioner to annually increase the income limits used to set the copayment level by the Social Security inflation adjustment, rounded off to the nearest \$100.

Under existing law, the DSS commissioner must already adjust ConnPACE income limits every year by the annual Social Security inflation adjustment. This act removes the requirement that she make the adjustment by regulation.

On April 1, 2002, the ConnPACE income limits increased to \$20,000 and \$27,100 for single and married people, respectively, as a result of PA 01-2, June Special Session. But that act also requires that, if DSS receives federal approval for a Medicaid waiver, these income caps will rise to \$25,800 and \$34,800. The federal agency, the Centers for Medicare and Medicaid Services, has not yet approved the waiver.

NURSING HOME RATES—§ 17

The act delays by six months, from July 1, 2002 to January 1, 2003, the statutorily scheduled 2% Medicaid nursing home rate increase. But any facility whose rate would have dropped on July 1, 2002 due to an interim rate status or agreement with DSS will be paid the lower rate, which will then be increased by 2% on January 1, 2003. (Under special circumstances, a nursing home can ask for and DSS can approve a higher than normal “interim” rate for a limited period of time.)

ICF/MR RATES—§ 18

The act delays the statutorily scheduled 1.5% rate increase for intermediate care facilities for the mentally retarded from July 1, 2002 to November 1, 2002. But any facility whose rate would have dropped on July 1, 2002 due to an interim rate status or agreement with DSS will be paid the lower rate, which will then be updated on November 1, 2002.

STATE AND TOWN MEDICAL ASSISTANCE—§§ 19 & 20

The act eliminates coverage under the State-Administered General Assistance (SAGA) medical program and the town general assistance (GA) program for eye care, optical hardware, optometry care, podiatry, chiropractic, naturopathy, and home health care.

Norwich is the only town that still administers its own GA program. The others are part of SAGA, which is administered by the state and provides short- and long-term cash and medical assistance to poor people who do not qualify for Medicaid.

ALTERNATE LICENSURE—§§ 21, 26, 36, 39, 45

Chiropractor. The act authorizes the Department of Public Health (DPH) to license as a chiropractor, within 30 days of the act’s effective date, a person who has (1) graduated from an accredited chiropractic school approved by the state chiropractic board, (2) current chiropractic licensure in at least two other states, (3) practiced chiropractic for at least 20 years, and (4) served as dean of an approved chiropractic school in a Connecticut college or university for at least five consecutive years and as a clinical sciences professor during the same period.

Professional Counselors. The act provides four alternatives to professional counselor licensure. It authorizes DPH to license as a professional counselor, within 30 days of the act’s passage, a person who has:

1. (a) earned a master’s degree in education from an accredited college or university, (b) completed at least 70 credit hours toward a clinical psychology degree at an accredited college or university, (c) practiced professional counseling for at least 10 of the 15 years immediately before applying for licensure, and (d) passed a DPH-prescribed test;
2. (a) earned a master’s degree in counseling before 1986 from an accredited college or university and (b) practiced professional counseling for at least 15 years immediately before applying for licensure;
3. (a) earned a master’s degree in education or community leadership, (b) passed the National Board of Certified Counselors national counselor exam before December 31, 2001, and (c) practiced professional counseling for at least 10 of the 12 years immediately before applying for licensure; and
4. (a) earned a master’s degree in education before 1975 with a major in psychological counseling from an accredited college or university, (b) passed the National Association of Mental Health Counselors exam, (c) been certificated by the association, and (d) practiced professional counseling for at least 10 of the 20 years immediately before applying for licensure.

LEGAL IMMIGRANTS—§§ 22 – 25

The act delays, from June 30, 2002 to June 30, 2003, the cutoff date for legal immigrants to apply for the following state-funded programs: cash assistance under Temporary Family Assistance (TFA) and SAGA, medical assistance equivalent to Medicaid, SAGA

medical aid, HUSKY B, the Connecticut Home Care Program for Elders (CHCPE), and food stamps.

Last year's legislation (PA 01-2, June Special Session, and PA 01-9, June Special Session), which the act amends, kept the above-stated solely state-funded welfare programs open for legal immigrants who are barred from federally funded programs; but, with several exceptions, prohibited new applications after June 30, 2002. (But the law, unchanged by the act, exempts domestic violence victims and people with mental retardation from the bars on new applications.) The law and this act apply to legal immigrants and those whom the Immigration and Naturalization Service formerly classified as "permanently residing under color of law" (PRUCOL).

Last year's legislation also covered Norwich town general assistance (GA), which this act does not address.

ASSISTED LIVING PILOTS—§§ 27-28

The act authorizes the DSS commissioner, on or after January 1, 2003, and within available appropriations, to start two new pilot programs to help seniors in private assisted living facilities remain there and avoid nursing home placement. The new programs consist of a Medicaid waiver pilot for up to 50 people and a purely state-funded pilot for another 25 people. The pilots will pay for assisted living services for these seniors if their assets and income otherwise qualify them for the Connecticut Home Care Program for Elders (CHCPE). (CHCPE also consists of a Medicaid waiver portion and a state-funded portion for people with somewhat higher assets.) The act requires the commissioner to use Medicaid asset transfer rules, as from time to time amended, in determining eligibility for both pilots.

Applicants for either pilot must reside in a managed residential community (MRC) where the assisted living services are provided by a licensed assisted living services agency. They must also be ineligible to receive these services under any other assisted living services pilot program established by the General Assembly.

The act requires the commissioner to report on the pilot programs by January 1, 2005 to the Public Health, Human Services, and Appropriations committees.

Assisted living is an emerging care model that provides health care and other assistance primarily to elderly people who may not need or want nursing home care, yet need some help with things like dressing, walking, eating, bathing, errands, and chores. Typically, privately funded assisted living services are provided in MRCs where the elderly person has his own apartment, receives three meals a day in a common dining room, and shares some services with other tenants.

DCF REASONABLE EFFORTS—§§ 29-35

Federal law requires states, in order to receive federal Title IV-E foster care funds, to make reasonable efforts to prevent or eliminate the need for removing a child from his home before placing him in foster care (42 USC 629b (a) (15)). The act requires the Superior Court or the probate court, depending on the circumstances, to determine whether DCF made such reasonable efforts. If a court finds DCF did not make reasonable efforts, it must determine whether such efforts were possible. In making this determination it must consider the child's best interests, including his health and safety.

This determination must be made when or within 60 days after:

1. a Superior Court temporarily removes a child from home or commits a child to DCF custody (§§ 29 & 30);
2. a Superior or probate court grants DCF temporary custody of a child pending removal of the child's parent as his guardian or terminating the parent's rights to the child (§§ 31 & 34);
3. a probate court appoints DCF guardian of a child when it removes the child's parent as guardian (§ 32);
4. a Superior Court gives DCF custody of a child whose parent has been arrested for cruelty or risk of injury to the child or for assaulting, committing a sexual offense against him, or kidnapping him (§ 33); or
5. a Superior Court assigns DCF custody of a child in a divorce or separation (§ 35).

The act requires the Superior Court to consider the child's best interests in deciding whether to give DCF custody when it considers removing a parent as guardian or terminating parental rights. It requires the court, before it gives DCF custody of a child whose parent has been arrested (see # 4, above), to find that keeping the child in the home is not good for his welfare. The law already required the court to find that the child's condition and circumstances warrant removal.

Finally, the act requires DCF to notify the guardian of any child committed to the department before it places the child in an out-of-state facility (§ 30). The law already required DCF to notify parents in this situation.

DCF VOLUNTARY SERVICES PROGRAM HEARINGS—§ 37

The act changes the timing and nature of the probate court hearing required for children who have been in DCF's voluntary services program, which provides services to children with emotional, behavioral, or substance abuse problems who still maintain a reasonably healthy relationship with their parents. The changes bring the state into compliance with federal regulations governing Title IV-E funds for children voluntarily placed in state care (42 CFR 1356.22).

The act reduces, from 12 to 10 months after the child is admitted to the program, the time within which the court must hold a hearing on the child's status. Prior law called this a dispositional hearing on the child's status; the act makes it a review of DCF's permanency plan for the child. At the prior dispositional hearing, the court considered (1) the appropriateness of DCF's service plan for the child, (2) the services and treatment that the child and his family received to strengthen and reunite the family, (3) efforts made to evaluate and plan for the child's care if his return home was unlikely, and (4) any other efforts that had or would be made to further the child's best interests. After these considerations, the court could (1) order continuation of the existing placement and efforts to reunify the family or (2) modify the child's service plan. The court was guided by the child's best interests.

Under the act, the court approves a permanency plan for the child that is in his best interest. In doing so, it must review the child's status and the progress being made to implement the permanency plan and determine a timetable for achieving the plan's ends and whether DCF has made reasonable efforts to attain these ends. The plan can include the child's return home, long-term foster care with a licensed or certified relative, transfer of guardianship, termination of parental rights or adoption, or another kind of planned permanent living arrangement like independent living. The court may order the latter only if DCF documents a compelling reason why the other alternatives are not in the child's best interest. The child or youth's health and safety must be the paramount concern in formulating the plan.

NATIONAL MEDICAL SUPPORT NOTICE—§§ 38 & 40 – 44

The act requires child support enforcement agencies to use the federally required uniform National Medical Support Notice (NMSN) when asking employers to withhold insurance premiums from noncustodial parents' wages for health care coverage for their children. It also prescribes procedures and the duties

and obligations of the agencies, employers, and group health plan administrators in regard to the NMSN.

The act makes the NMSN legally part of a court order requiring employment-based health coverage and gives it the same force and effect as a court order. It allows a court or family support magistrate to enforce the NMSN in the same manner as any order. It makes the requirements that the act and the NMSN impose on employers and group health plan administrators additional to any other state law requirements.

The act also makes other conforming changes.

Issuance and Characteristics of the NMSN

Under the act, whenever a court or family support magistrate issues a support order in a Title IV-D support case that also requires the noncustodial parent to provide employment-based health care coverage for a child and the parent's employer is known, the issuing agency (i.e., the support enforcement agency) must enforce the order's health care provisions through an NMSN sent to the employer. Federal law requires use of this form. Under existing law, employee-targets of the notice have the right to contest it.

("IV-D" cases are those where the family has received public assistance or asked the state for help in enforcing the support order. IV-D "issuing agencies" are DSS's Bureau of Child Support Enforcement and Support Enforcement Services in Judicial Branch Court Operations.)

The act states that the NMSN serves as notice to the employer that:

1. the employee is obligated to provide health coverage to the child,
2. the employer may have to withhold employee contributions required by the group health plan or plans for which the child is eligible, and
3. the employer must forward the NMSN to the administrator of each group health plan providing such coverage for enrollment determination purposes.

Under the act, the NMSN must inform the employer of (1) the withholding requirement's duration, (2) any limits on withholding prescribed by federal or state law, and (3) any withholding priorities that apply when the employee's available income is not enough to satisfy all cash and medical support obligations.

The act also specifies that the NMSN serves as notice to the group health administrator that:

1. receipt of the NMSN constitutes receipt of a medical support order and
2. an appropriately completed NMSN constitutes a qualified medical child support order for health coverage purposes.

Issuing Agency Responsibilities

When an employee is entered into the state directory of new hires, the act requires the issuing agency to transfer the NMSN to the employer within two business days, along with any necessary income withholding notice.

The act also requires the agency to notify the employer promptly when there is no longer a current medical support order.

Employer's Responsibilities

The act gives the employer 20 business days after the NMSN's date to either (1) return the notice to the agency indicating why health coverage is not available or (2) transfer the notice to the administrator of each appropriate group health plan for which the child may qualify. The act further requires the employer (1) upon receiving notice from a group health plan that the child is eligible for enrollment, to withhold required contributions under the plan from the employee's income and send the payments directly to the plan (unless withholding priorities prevent the employer from withholding the required amount) and (2) to notify the agency whenever the employee's employment ends.

The act applies existing penalties related to employer processing of child support income withholding if an employer (1) discharges, refuses to employ, or disciplines an employee because of medical child support withholding or (2) fails to withhold or transmit the amount to the health plan as required.

The employer must notify the agency when the NMSN's listed withholding limits or priorities prevent withholding the required amount for the child's insurance coverage.

Group Health Plan Administrator's Responsibilities

The act requires the group health plan administrator who receives an NMSN from an employer to consider the NMSN as a qualified medical child support order and an application for the child's enrollment. Under the act, the administrator cannot deny enrollment because the child was born out of wedlock, is not claimed as a dependent on the participant's federal income tax return, does not live with the participant or in the plan's service area, or is receiving state Medicaid benefits. (All but the last of these prohibitions are already in state insurance statute.) The plan administrator must enroll the child without regard to open season enrollment restrictions and must enroll both the child and the employed parent if the child's enrollment depends on the parent's participation. (These two requirements are also already in the state insurance statute.)

The act gives the administrator 40 business days after the NMSN's date to notify the agency whether coverage is available or, if necessary, the steps required to begin coverage. It also requires the administrator to give the custodial parent a description of the available coverage and the forms or documents needed to begin coverage. The agency, in consultation with the custodial parent, must promptly choose from available plan options, when necessary. When the child's enrollment is complete, the administrator must return the NMSN to the employer to determine whether required employee contributions are available.

Conforming Changes

The act makes several conforming changes in the insurance statutes and other laws. It (1) prohibits an insurer from denying coverage to a child under the parent's group health plan because the child is receiving or eligible for state Medicaid coverage; (2) requires that when a child's enrollment depends on whether the parent is enrolled, the insurer must enroll both of them when it receives an NMSN; and (3) specifies that one situation in which the insurer can disenroll the child is when the employer eliminates family health coverage for all its employees.

Federal Law

Federal law requires states to pass legislation mandating use of the federally developed NMSN (42 U.S.C.A § 666(a)(19), 45 CFR § 303.32). The laws must take effect by the first day of the first calendar quarter following the first legislative session held after October 1, 2001. That makes the deadline July 1, 2002 for Connecticut. The laws must also include basically the procedures, timeframes, and guarantees contained in this act. States that do not meet the deadline are subject to loss of their federal child support enforcement money and part of their Temporary Assistance for Needy Families (TANF) funding until they have such legislation in effect.

MEDICARE DISTINCT PART CERTIFICATION— § 46

The act requires all nursing homes (except those solely for AIDS patients), chronic disease hospitals associated with nursing homes, and rest homes with nursing supervision that participate in Medicaid to participate equally in Medicare. It does this by eliminating these facilities' ability to ask the DSS commissioner to certify a smaller number of beds for Medicare as long as it has enough Medicare-certified beds to assure access for all Medicare beneficiaries who

might reasonably be expected to apply for admission or return to the facility.

EMERGENCY MEDICAL SERVICE RATES—§ 47

The act requires the DPH commissioner to establish ambulance rates for (1) “advanced life support (ALS) assessment,” (2) “specialty care transport (SCT),” and (3) “intra-municipality mileage.” An ALS assessment is performed by an ALS crew (EMT-Intermediate or paramedics) as part of an emergency response because the patient’s reported condition when the ambulance was dispatched was such that only the crew was qualified to perform the assessment. The ALS assessment does not necessarily lead to a determination that the patient needs ALS service. Specialty care transport moves a critically injured or ill patient between facilities by ambulance while providing him with medically necessary supplies and services beyond the scope of an EMT-Paramedic. It is required when the patient’s condition requires care that must be provided by specialized health professionals (e.g., nurses or individuals with respiratory or cardiovascular training). Intra-municipality mileage covers ambulance rides whose pickup and final destination points are both within the same town.

These rates must equal:

1. for an ALS assessment, the ambulance service’s base rate plus its established ALS/Paramedic surcharge;
2. for SCT, 225% of the ambulance service’s base rate for SCT; and
3. for intra-municipality mileage, the number of miles a Medicare recipient is transported times the ambulance service’s intra-municipality mileage rate.

These rates remain in effect until the commissioner establishes a new rate schedule.

The act also changes the inflation index against which the commissioner must measure emergency medical service rate increase requests. It requires him to use the Medical Care Services Consumer Price Index rather than the National Health Care Inflation Rate Index. By law, requested rate increases below the inflation index are deemed approved; entities submitting requests above the inflation index must submit detailed financial information.

USED DURABLE MEDICAL EQUIPMENT—§ 48

The act allows the DSS commissioner to authorize payment for used durable medical equipment to a vendor or supplier of such equipment who is enrolled as a medical equipment, devices, and supplies provider under the Medicaid program. It eliminates the

requirement under existing law (PA 01-2, June Special Session) for the commissioner to seek a federal waiver for the purpose. This equipment includes items such as wheelchairs, hospital beds, walkers, crutches, or canes.

DSS ASSISTANCE FOR HEALTH INSURANCE FOR AIDS AND HIV POSITIVE CLIENTS—§ 49

Prior law allowed the DSS commissioner, within available appropriations, to purchase and maintain insurance policies that provide a full range of HIV treatments and access to comprehensive primary care for eligible clients (people with AIDS or HIV infection whose annual incomes are below 400% of the federal poverty level). The act requires, rather than allows the commissioner to do this, but only within available federal resources.

PHARMACIST GENERIC INCENTIVE DISPENSING FEE AND PRIOR AUTHORIZATION—§§ 50 & 88

The act eliminates a requirement that the DSS commissioner pay pharmacies a dispensing fee of 50 cents for substituting a generic product for a brand name drug prescribed under the Medicaid program. Consistent with this change, § 88 of the act eliminates the commissioner’s duty to verify the propriety and reasonableness of generic incentive dispensing fees, effective September 1, 2002.

By law, DSS must establish a prior authorization plan for prescription drugs dispensed under its pharmacy programs, including Medicaid, ConnPACE, SAGA, and town GA. Prior authorization is required for initial prescriptions for (1) brand-name drugs for which a chemically equivalent generic is available, (2) drugs costing more than \$500 per month, and (3) early refills. As required by law, DSS submitted its plan to the three legislative committees of cognizance. Although one committee rejected the plan, it was already considered approved and is scheduled to go into effect later this year or early next year.

The act specifically requires the DSS commissioner to implement the recently approved “prior authorization” plan for brand name prescriptions for which a chemically equivalent generic is available. But it prohibits a pharmacist from dispensing less than a 15-day supply of any initial brand name maintenance drug for which there is a chemically equivalent generic substitute without DSS’s prior authorization (even though the plan as approved exempts these smaller quantities). The act appears to exempt from prior authorization atypical antipsychotic drugs that the patient is already taking when the pharmacist receives the prescription. (PA 02-1, May 9 Special Session,

appears to exempt from prior authorization mental health-related and anti-retroviral (HIV and AIDS) drugs that are not on a to-be-developed preferred drug list.)

LONG-TERM CARE WEBSITE—§ 51

The act requires OPM, within existing budgetary resources, to develop a single, consumer-oriented Internet website that provides comprehensive information on long-term care options in Connecticut. The website must also include direct links and referral information on long-term care resources, including private and nonprofit organizations offering advice, counseling, and legal services. OPM must consult with the Select Committee on Aging, the Commission on Aging, and the Long-Term Care Advisory Council when developing the site.

PREFERRED DRUG LIST AND SUPPLEMENTAL REBATES—§ 52

PA 02-1, May 9 Special Session, established an 11-member Medicaid Pharmaceutical and Therapeutics Committee in DSS and requires DSS to adopt a preferred drug list in the Medicaid program if the committee recommends one.

It requires the committee to ensure that drug manufacturers that agree to provide supplemental rebates to the state are given the opportunity to present evidence supporting inclusion of one of their products on the preferred drug list. (These rebates would be on top of those already required of drug manufacturers as a condition of participating in the Medicaid program.) But under this act, this provision is void if a court of competent jurisdiction determines that the secretary of the U.S. Department of Health and Human Services cannot authorize supplemental rebates. (In a recent U.S. appeals court case (*Pharmaceutical Research and Manufacturers of America v. Meadows*, 11th Circuit, No. 02-10151, 9/6/02), the judges upheld Florida's preferred drug list law, which includes a supplemental rebate.) The act specifies that even if the supplemental rebates cannot be used, the committee can still maintain a preferred drug list.

COST CEILINGS FOR GENERIC DRUGS—§ 53

PA 02-1, May 9 Special Session, allows the DSS commissioner to establish maximum allowable costs (MAC) for generic prescription drugs under the following programs: Medicaid, ConnPACE, SAGA, town GA, and Connecticut AIDS drug assistance.

This act requires DSS to (1) implement and maintain a procedure to review and update the MAC list

at least annually and (2) annually report its activities under this provision to the Appropriations Committee.

PHYSICIAN REIMBURSEMENT FOR MEDICARE-MEDICAID DUALY ELIGIBLE PATIENTS—§ 54

The act requires the DSS commissioner, starting April 1, 2003 and within available Medicaid appropriations, to grant a rate increase to physicians who provide services to clients who are eligible for both Medicare and Medicaid ("dually-eligible" clients).

STATE SUPPLEMENT INCREASE—§ 55

The act requires DSS to permanently increase the personal needs allowance component of the State Supplement Program (SSP) payment standard by one half of the percentage increase in the January 2003 annual cost of living increase, if any, in the federal Supplemental Security Income program. It must do this even though existing law requires the SSP standard to be frozen through June 30, 2003.

The SSP's payment standard varies, depending on the person's living arrangement. It consists of a housing allowance and a personal needs allowance. For people living in the community, the personal needs allowance is \$164.10 per month. For people in institutional settings (residential care homes or other licensed boarding homes), the allowance is \$28.90. DSS adds this figure to a housing allowance. If the sum is more than the applicant's or recipient's monthly applied income, he is eligible for assistance and the benefit equals the difference.

PHARMACEUTICAL PURCHASING INITIATIVE—§ 56

The act requires DSS to report annually to the Appropriations Committee on the status of a pharmaceutical purchasing initiative permitted under PA 02-1, May 9 Special Session. That act allows the DSS commissioner to implement a pharmaceutical purchasing initiative by contracting with an established entity for the lowest pricing available for the Medicaid, ConnPACE, SAGA, town GA, and Connecticut AIDS drug assistance programs. The chosen entity must have an established pharmaceutical network and demonstrate its ability to process the anticipated prescription volume.

FREESTANDING CHRONIC DISEASE AND PSYCHIATRIC HOSPITAL RATES —§ 57

The act delays until January 1, 2003, the 2% rate increase for freestanding chronic disease and psychiatric

hospitals previously scheduled to take effect July 1, 2002.

BEHAVIORAL HEALTH CARVE-OUT FOR CHILDREN—§ 58

The act allows the DSS commissioner, in providing behavioral health services under the Medicaid or HUSKY programs, to (1) contract with an administrative services organization to provide clinical management and other administrative services and (2) delegate responsibility for the clinical management portion of the contract to DCF for children through age 17 or who receive behavioral health services from DCF.

The act defines clinical management services as the process of (1) evaluating and determining the appropriateness of using behavioral health services and (2) helping clients and providers to ensure the appropriate use of resources. These services can include service authorization; concurrent, retrospective, and discharge review; quality management; provider certification; and provider performance enhancement (the latter term is not defined). The act requires the DSS and DCF commissioners jointly to develop clinical management policies and procedures.

It allows the DSS commissioner to implement policies and procedures to govern her contracting for administrative services and delegating clinical management responsibilities while she proceeds to adopt governing regulations. These policies and procedures can include necessary changes to existing behavioral health utilization management policies and procedures. The commissioner must publish notice in the *Connecticut Law Journal* within 20 days of implementing the policies and procedures. These are valid until December 1, 2003 or the regulations' effective date, whichever is earlier.

CASE SPECIFIC DATA DISSEMINATION—§ 59

The act requires the Judicial Branch and each state agency, community-based program, organization, or individual that provides a behavioral health or substance abuse prevention and treatment program operated, licensed, or funded by DCF to provide case-specific information to DCF for purposes directly related to KidCare (the joint DCF/DSS children's mental health program). The information is subject to applicable federal confidentiality laws and must be provided in the form DCF requests. The act applies to information on clients receiving services at child guidance clinics, child caring and placing agencies such as residential treatment facilities, extended day treatment programs, and permanent family residences, among others, and

DCF facilities like Riverview Hospital and High Meadows.

The act requires DCF to disclose case-specific information to authorized DSS representatives for purposes directly related to KidCare. But it prohibits these people from further disclosing it, except as the act allows. The act bars anyone from soliciting, receiving, disclosing, or using the names of, or information about, people applying for or receiving KidCare services that is derived directly or indirectly from state or municipal records, papers, files, or communications or that is acquired while performing official duties. It also bars anyone from authorizing, knowingly permitting, or participating or acquiescing in anyone else doing these things.

MEDICAID TRANSPORTATION—§§ 60 & 61

The act allows the DSS commissioner, by June 30, 2003 and in consultation with the OPM secretary, to submit an amendment to the Medicaid state plan or implement =changes needed to reduce Medicaid nonemergency medical transportation expenditures. It allows her to do this notwithstanding any existing statutes, but prohibits the commissioner, in implementing such efficiencies or reduction of services, from eliminating any category of eligible need other than reimbursement for personal vehicle use.

It also allows a competitively bid contract for nonemergency medical transportation that the state enters into to include services provided by another state agency and to supersede any conflicting provisions in state regulations that affect medical transportation services.

The act makes DSS the sole state agency that sets both emergency and nonemergency medical transportation fees or fee schedules for any transportation services the department reimburses under Medicaid, SAGA, and other medical assistance programs.

FEDERALLY QUALIFIED HEALTH CENTERS—§ 62

The act permits DSS to contract with a consortium of federally qualified community health centers to provide medical assistance to SAGA and GA (offered only in Norwich) recipients. It repeals DSS' authorization to provide medical care to this population through a primary care case management model. This model has not been implemented.

LAW REVISION COMMISSION—§ 63

The act permits (1) the Law Revision Commission to ask the Legislative Commissioners' Office (LCO) for

help in performing its responsibilities and (2) LCO to assign attorneys for this purpose. The Law Revision Commission reviews and recommends revisions to antiquated, unconstitutional, and inequitable state laws. The commission also assists the Judiciary Committee and other legislative and executive bodies study the law.

WATERBURY FINANCIAL PLANNING BOARD—§ 64

SA 01-1 established a Waterbury Financial Planning and Assistance Board and gave it broad powers over the city's finances and operations, including the power to approve the terms and conditions of all city debt and override any decisions that affect the city's economic viability.

The act prohibits the board, in the performance of its duty, from disclosing any confidential information that it receives from the city or its legal counsel or agents. The prohibition applies to information (1) regarding allegations of the city's liability for damages, including documents, oral statements, and financial or similar information and (2) protected by the attorney-client privilege, including the common defense doctrine, the work product doctrine, or any similar privilege or doctrine recognized under federal or state law.

TAX ON DOG TRACKS—§ 65

By law, dog tracks and other pari-mutuel betting establishments are subject to a state tax, part of which goes to the host municipality. For FY 2002-03, the act provides dog tracks with a rebate equal to the amount paid to the host municipality in that year for local aid adjustment. The amount of the rebate must be deducted from the payment made to the host municipality.

OFFICE OF WORKFORCE COMPETITIVENESS PROGRAM LAPSE—§ 66

The act allows all unspent funds, instead of just funds over \$700,000, appropriated in FY 2001-02 for the Office of Workforce Competitiveness Jobs Funnel program to be carried over.

ELECTRIC PERSONAL ASSISTIVE MOBILITY DEVICE—§§ 67 & 68

The act allows certain people to use an "electric personal assistive mobility device" (Segway) on sidewalks and to cross certain highways without an operator's license or a vehicle registration. The act defines it as a self-balancing device unsuitable for operation on public highways (1) having two nontandem wheels, (2) designed to transport one person with an electric propulsion system, and (3) equipped

with a device that limits its maximum speed to 15 miles per hour.

The act allows anyone 16 or older who has disabilities that limit or impair his ability to walk, and who has been issued a handicapped parking placard by the motor vehicle commissioner to operate such a device on any sidewalk. It also allows him to cross a highway at a crosswalk, when practicable, or at an angle of approximately 90 degrees to the direction of the highway at a location at which there are no obstructions that may prevent a quick and safe crossing. The operator must completely stop it before entering the traveled portion of the highway and yield the right-of-way to any motor vehicle using the highway. The act also requires that the operator yield to any pedestrian on a sidewalk or highway. The act prohibits people from operating it on any limited access state highway, or at speeds faster than 15 miles per hour.

The act (by reference to a federal regulation) defines people who have disabilities that limit their ability to walk as those who, as determined by a licensed physician:

1. cannot walk 200 hundred feet without stopping to rest;
2. cannot walk without the use of, or assistance from, a brace, cane, crutch, another person, prosthetic device, wheelchair, or other assistive device;
3. are restricted by lung disease to such an extent that their forced (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter, or the arterial oxygen tension is less than 60 mm/hg on room air at rest;
4. use portable oxygen;
5. have a cardiac condition to the extent that the person's functional limitations are classified in severity as Class III or Class IV according to standards set by the American Heart Association; or
6. are severely limited in their ability to walk due to an arthritic, neurological, or orthopedic condition.

The act requires that each Segway be equipped with front, rear, and side reflectors and a system that allows the operator to bring it to a controlled stop. If the device is operated between one-half hour after sunset and one-half hour before sunrise, it must be equipped with a white-light lamp that illuminates the area in front of the operator and is visible from a distance of 300 hundred feet in front of and from the sides of such device.

The act makes a violation of any of its requirements an infraction.

The act exempts Segways from the current law's prohibition against people operating any motor vehicle

upon a sidewalk or from leaving it parked, standing, or stopped on, or across, any public sidewalk except to cross it, to enter, or leave adjacent areas, or to perform necessary sidewalk construction, maintenance, or snow removal.

UNEMPLOYMENT COMPENSATION- ALTERNATIVE BASE PERIOD FOR COMPUTING BENEFITS—§ 69

The act temporarily establishes an alternative base period for determining the eligibility of unemployment compensation claimants who do not qualify for benefits under the “regular” base period. (The regular base period is usually the first four of the five most recently completed quarters prior to the quarter in which the claimant files a claim.) When determining eligibility under the alternative period, the act requires the Department of Labor (DOL) to look at the four most recently completed quarters prior to the quarter in which he filed his claim. But, if the claimant was (1) receiving or eligible for workers’ compensation or (2) properly absent from work under his employer’s sick or disability leave policy before becoming unemployed, the alternative base period is the four most recent quarters in which he worked, as long as they were not previously used to claim unemployment compensation. DOL must promptly contact the claimant’s most recent employer for wage information that is unavailable from regular quarterly reports. Under the act, as under the regular base period if the claimant was on workers’ compensation or sick or disability leave, the most recently worked quarter must be within 12 quarters of the date the claimant makes his claim. These provisions run from January 1, 2003 until December 31, 2005 or until three years after they are implemented, whichever is later.

It also requires the labor commissioner to adopt, by July 1, 2003, regulations establishing the form and manner in which he will (1) notify eligible claimants in writing of the alternative base period and (2) promptly obtain information from employers in order to calculate the alternative base period. The commissioner can implement the act’s provisions before adopting the regulations.

FEDERAL UNEMPLOYMENT COMPENSATION FUNDING—§ 70

The act appropriates \$9 million of federal funding credited to the state’s Unemployment Trust Fund under the Social Security Act for federal FY 2002 to the Labor Department for administering the unemployment compensation laws and public employment offices, to the extent that this is allowed under federal law.

CHARGE ON ELECTRIC UTILITY BILLS FOR CERTAIN MANUFACTURERS—§ 71

By law, nearly all electric utility company customers must pay a charge called the competitive transition assessment on their electric bills. The assessment is used to recover utility investments, approved by the Department of Public Utility Control (DPUC), that were previously recovered through electric rates but whose continued recovery was threatened with the introduction of competition in the electric industry. Under current law, a manufacturer can ask DPUC to waive part of the assessment if it builds a new plant or expands an existing one and meets certain other conditions. PA 02-141 sought to expand this provision to existing plants that were not going to be expanded but that are located in certain distressed municipalities and employ at least 200 workers. The act specifically authorizes the latter type of manufacturers to seek an exemption and (2) allows such manufacturers to seek an exemption from all, rather than part, of the assessment.

RESIDENTIAL ENERGY CONSERVATION PROGRAM—§ 72

The act delays the sunset date for the residential energy conservation service program from July 1, 2002 to July 1, 2005. Large electric and gas companies and fuel oil dealers must provide low cost energy audits under the program; municipal electric utilities can choose to participate in the program.

HEALTH PROFESSIONALS IN THE ARMED FORCES—§ 73

The act requires DPH to renew licenses, certificates, permits, and registrations that become void while their holders are serving on active duty in the armed forces. The individual must submit an application form and other documents DPH requires. DPH must renew the license, certificate, permit, or registration within six months of the person’s discharge, if he completes any continuing education or refresher courses that may be required of other renewal applicants. (The act seems to presume that individuals must submit applications within six months of discharge.) DPH cannot renew the license of anyone facing disciplinary action or an unresolved complaint. (The act does not address DPH treatment of a certificate, permit, or registration in this situation.) And the act does not apply to National Guard members or reservists who are on active duty for regularly scheduled annual training that is not part of a mobilization.

The act applies to (1) various health care professionals including physicians, dentists, homeopaths, naturopaths, physician assistants, chiropractors, podiatrists, physical and occupational therapists, emergency medical personnel, radiographers and radiographic technologists, nurses and nurses' aides, midwives, dental hygienists, opticians and optometrists, professional and drug and alcohol therapists, veterinarians, embalmers and funeral directors, and dieticians and nutritionists; (2) other DPH-regulated occupations including barbers, hairdressers and cosmeticians, subsurface sewage disposal system installers, sanitarians, hearing instrument specialists, speech pathologists, asbestos contractors and consultants, and lead abatement contractors, consultants, and workers; and (3) hospitals and various health care institutions.

CONVEYANCE TO YANTIC FIRE DEPARTMENT—§ 74

The act changes, from .58 to .81, the combined total acreage of the conveyance authorized by SA 01-6 from the Department of Environmental Protection to the Yantic Volunteer Fire Department. The property must continue to be used for open space and fire training. It reverts to the state if the recipient uses it for any other purpose. The conveyance continues to be subject to the State Properties Review Board's approval and made at a cost equal to the administrative cost of the conveyance.

MASHANTUCKET PEQUOT AND MOHEGAN FUND GRANTS—§ 75

By law, the Mashantucket Pequot and Mohegan Fund provides annual (1) basic and supplemental grants to municipalities and (2) impact grants to those municipalities located closest to the Foxwoods and Mohegan Sun casinos. By law, the supplemental funding is used to increase the basic and impact grants proportionately. Beginning in FY 2002-03, the act reduces the supplemental grant from \$49,750,000 to \$47,500,000. Under prior law and the act, the amount of supplemental grants must be reduced proportionately if the total grants payable to each municipality exceed the amount appropriated for such grants in any year.

The act gives Norwich a \$500,000 impact grant and increases the amount of impact grants that other towns got under prior law from the fund as follows:

	<i>Prior Law</i>	<i>The Act</i>
Ledyard	\$175,000 + \$250,000 = \$425,000	\$500,000
Montville	\$150,000	\$500,000
North Stonington	\$175,000	\$500,000
Preston	\$175,000	\$500,000

NEW ENGLAND BOARD OF HIGHER EDUCATION—§ 76

During FY 2002-03, the act requires the Department of Higher Education to evaluate the benefits of Connecticut's continued participation in the New England Board of Higher Education (NEBHE). NEBHE is a compact among the New England states that allows students from any member state to attend a public college in any other member state for less than the normal out-of-state tuition if a desired course of study is not available in the student's home state.

COST OF SERVING RESTRAINING ORDERS—§ 77

By law, family violence victims may apply to the court for restraining orders against their abusers. If the allegations in the application warrant, the court can issue an *ex parte* order (i.e., order issued outside the respondent abuser's presence) granting the applicant appropriate relief. The alleged abuser must receive a copy of both documents. The act transfers, from the victim to the Judicial Branch, the cost (currently \$30 plus transportation costs) of serving the respondent with a copy of the application and order.

Violence Against Women Act of 2000

The federal government set aside over \$3 billion in the Violence Against Women Act of 2000 to be used over the following five years to fund state, local, and tribal programs and services first funded under the original 1994 law. Among other things, the funds can be used for more police, prosecutors, and battered women's shelters and the National Domestic Violence Hotline. The state currently receives \$1.6 million in formula and \$811,736 in discretionary funds under the act. Municipalities and other local entities like UConn, also receive funding under the act.

The 2000 act modified the certification requirements that state and local governments must comply with to receive these funds. They must now certify that their laws, policies, and practices do not require domestic violence victims to bear the costs of filing criminal charges against offenders, or the costs associated with the filing, issuance, registration, or service of a warrant, protection order, petition for a protection order, or witness subpoena, whether issued inside or outside the jurisdiction (PL 106-386) and universities.

SEXUAL OFFENDER REGISTRATION—§§ 78 - 84

The act limits the registered sex offenders (or people required to register) who must register in another state and notify the public safety commissioner of regular travel or temporary residence outside of the state to those employed or enrolled as students outside of the

state. It also narrows the circumstances under which these offenders must complete the additional registration and provide the notice. It gives out-of-state registrants who are attending school or working in this state additional time to register and broadens their reporting requirements.

In addition to other registration requirements, all registered offenders, including those convicted out-of-state, in a military court, or foreign jurisdiction, must notify the commissioner of their status as full- or part-time students or employees at an institution of higher learning in this state for 15 days or more (or more than 30 days in a calendar year). The commissioner must, in turn, provide this information to the law enforcement agency with jurisdiction over the institution.

The act requires all state registrants, regardless of place of conviction, to verify their address every 90 days after their initial registration. Under prior law, some registrants verified their address annually on their anniversary while others verified theirs every 90 days.

It extends, from three to five days after starting work or attendance at any school in this state, the time out-of-state registered offenders have to register with the commissioner; thus, making the registration time period the same as that for notifying the commissioner of status changes.

Out-of-state registered offenders traveling in this state on a recurring basis for less than five days at a time must give the commissioner their temporary residence and telephone number while in the state.

In-State Offenders Working or Attending School Out-of-State

The act requires in-state offenders to notify the commissioner if they work or attend any school, including a secondary school, for 15 days or more (or more than 30 days in a calendar year) in another state. They must register with the appropriate authority in the other state if required to do so. Under prior law, offenders had to provide this notice and complete the additional registration if they regularly traveled to or temporarily resided in another state for employment, school, or some other purpose.

JUICE BARS—§ 85

The act allows a cafe permit holder to operate a juice bar or similar facility at a permit premises if the juice bar is limited to a room or rooms or separate area where alcohol is not sold. The act defines a “juice bar or similar facility” as an area where nonalcoholic beverages are served to minors. Current regulations continue to allow cafe and other permit holders to operate juice bars if the juice bar is the entire permit premises and the sale, consumption, dispensing, and

presence of liquor is prohibited. The act requires cafe permit holders to notify local police in advance of specific dates and hours of any scheduled event at which all or a portion of their premises will be used as a juice bar.

The act specifies that it does not exempt the cafe permit holder from complying with any other statutes or regulations concerning minors, including the prohibition against the sale of alcohol to minors.

The act prohibits the presence or sale of alcoholic liquor or its dispensing to or consumption by a minor at a juice bar.

WELFARE TO WORK BONUS PAYMENTS—§ 86

The act requires that the state use its \$13,339,405 federal bonus payments for welfare to work during FYs 2002-2003 and 2003-04 for the Temporary Assistance for Needy Families (TANF) Program as follows:

Welfare to Work Reverse Commuting	\$ 2,000,000
Reopening of the Child Care Certificate Program	4,000,000
Enhanced Provision of Grant Funds to address Barrired TANF Clients	1,800,000
Enhanced Assessment and Case Management	1,900,000
Fatherhood/Research and Demonstration Projects	600,000
Rental Assistance Vouchers and T-Rap	2,000,000
Connecticut Charts-A-Course	539,405
Jobs Funnel	500,000

The act requires that (1) up to \$250,000 of the Rental Assistance Vouchers and T-Rap money be used each year for people no longer eligible for temporary assistance because they have reached the maximum number of months of eligibility or used up their extensions and (2) \$400,000 of the Enhanced Assessment and Case Management money be allocated to community action agencies for enhanced assessment and job training programs for Temporary Family Assistance clients.

The act delays, from June 30, 2003 to June 30, 2004, the date the funds lapse.

OFFICE OF POLICY AND MANAGEMENT—§ 87 & 100

The act requires the Office of Policy and Management (OPM) to distribute from its FY 2002-03 budget Local Aid Adjustments as follows:

Bethany	\$ 604
Bridgeport	100,000
Cheshire	3,622
Greenwich	450
Ledyard	234,233
New London	724,265
Plainfield	100,000
Somers	2,843
Suffield	2,447

After all payments are made from the Local Aid Adjustment Account for FY 2002-03, the act allows the OPM secretary to transfer the balance of funds the office receives under § 17 of the budget act and carried forward by that section to State Employees Health Service Cost, for Other Expenses (see also § 92 below). The secretary may do this only with the Finance Committee's approval.

APPROPRIATIONS TO MUNICIPALITIES—§ 89

The act reduces proportionately the grants payable to municipalities under the following programs to remain within available appropriations:

1. additional veterans' property tax reimbursement (CGS§ 12-81g(c));
2. state reimbursement for loss of property tax under the circuit breaker program (CGS§ 12-170aa (g));
3. state reimbursement in lieu of tax revenue from totally disabled persons (CGS§ 12-94a);
4. state reimbursement in lieu of tax revenue from newly acquired machinery and equipment in manufacturing facilities and commercial vehicles (CGS§ 12-94b);
5. state reimbursement in lieu of tax revenue (CGS§ 12-129d);
6. payments to municipalities for municipal health departments (CGS§ 19a-202);
7. payments to municipalities with part-time health departments (CGS§ 19-202a);
8. payments to health districts (CGS§ 19a-245); and
9. grants in lieu of taxes on exempt property of manufacturing facilities in distressed municipalities, targeted investment communities or enterprise zones and exempt property of service facilities (CGS§ 32-9s).

REDUCTION IN ALLOTMENTS—§ 90

The budget act (PA 02-1, May 9 Special Session) expanded the governor's authority to reduce allotments. This act requires any reduction of allotments for municipal aid to be proportionately reduced to remain within the revised allotments.

SWAPPING WORKDAYS OR SHIFTS—§ 91

The law requires that all wages be paid (1) fully within eight days of the end of the preceding pay period; (2) weekly on a regular basis; and (3) by cash, check, or bank deposit. The act specifies that this requirement does not apply to employees swapping workdays or

shifts as permitted under a collective bargaining agreement.

FUNDING FOR STATE EMPLOYEES HEALTH INSURANCE COSTS—§ 92

The act carries over the unexpended Other Expenses portion of the state employees health service cost appropriation for FY 2001-02 to FY 2002-03 (see also §§ 87 and 100 above).

COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES—§§ 93 & 94

The act eliminates the requirement that the Commission on Human Rights and Opportunities' (CHRO) chief human rights referee and each full-time referee receive the same salary as family support magistrates, and the fringe benefits available to other state employees. (Currently, the chief receives \$108,821. Each referee receives \$103,569.)

The act eliminates the requirement that (1) the budget for human rights referees be a separate line item within CHRO's budget, (2) the cost of stenographic and clerical assistance, equipment, and supplies be paid by the state upon the commissioner of administrative services' approval, and (3) CHRO commissioners receive \$125 per day for each day spent conducting hearings.

The act expands the duties of the five human rights referees by authorizing them to negotiate settlements. Currently, the law authorizes them to preside over and decide adversary hearings relating to discrimination complaints on employment, housing, public accommodations, credit, and other related matters.

Under current law, the chief human rights referee supervises and assigns the human rights referees to conduct hearings on a rotating basis. The act requires that he consult with CHRO's executive director in doing so. Also, it requires him to assign referees to negotiate settlements, in consultation with CHRO's executive director.

The act requires the commission counsel to report to the agency's executive director on a daily basis and requires her to evaluate the counsel's performance.

The act specifies that the governor appoint human rights referees with the advice and consent of the House and Senate.

The act makes technical changes by eliminating references to part-time hearing officers, that CHRO no longer employs.

CREDITING DPH FEES FOR NEWBORN SCREENING—§ 95

The act requires crediting \$345,000 of the fees DPH collects from hospitals for its newborn screening program to its Other Expenses account for the purpose of implementing the expanded screening program established in PA 02-113.

HOSPICE EXTENSION—§ 96

The act extends until October 1, 2006 the pilot program that allows hospices to establish residences for offering home care and supplemental services to terminally ill people. Authority to operate the pilot program lapsed on October 1, 2001.

INFORMATION AND TELECOMMUNICATION CONSULTANTS—§ 97

The act eliminates a requirement for state agencies that hire consultant services for information and telecommunications systems with the approval of the Department of Information and Technology (DOIT) chief information officer to also (1) execute a personal service agreement and (2) get OPM approval (depending on the value of the contract). Consultants continue to be selected on a competitive basis.

HOME HEALTH SERVICE CLAIMS—§ 98

Certain people qualify for both Medicare and Medicaid (that is, they are considered dually-eligible). Medicaid is always the payer of last resort. This means that Medicare should be billed whenever a beneficiary receives a service that Medicare would normally cover, even though Medicaid payment is also available for that service.

The act establishes a process that allows for more efficient processing of home health service claims made on behalf of people who are dually-eligible. It allows DSS, during a federally authorized demonstration project, to (1) impose a sanction of up to \$50,000 on a home health provider for each failure to appropriately file Medicare claims or medical records under the demonstration project and (2) recoup the sanction amount from ongoing Medicaid payments to the provider. For the duration of the project, no eligible recipient can be held liable for reimbursement to the state for the cost of these services if Medicaid paid when Medicare should have.

The act allows DSS, under an agreement with the federal Centers for Medicare and Medicaid Services, to waive liability for reimbursement for home health services provided to “otherwise liable eligible

recipients” who received the services between October 1, 1997 and September 30, 2000. This means that people who received home health services during this period, and Medicaid paid when Medicare should have, will not be liable for repaying the state as they would normally be under state and federal estate recovery laws. The home health agencies will likewise not be subject to recovery for improperly billing Medicaid for services provided during this period.

ED-NET FUNDING—§ 99

The act establishes a separate, non-lapsing Ed-Net account within the General Fund. It requires DOIT to deposit any reimbursements it receives for costs associated with the Connecticut Education Network in this account, which it must use to support the network’s costs. It allows DOIT to transfer funds in the account to other agencies for this purpose.

ENFORCEMENT OF THE REGULATION OF CERTAIN CIGARETTE MANUFACTURERS—§§ 101 – 103

By law, cigarette manufacturers that are not participating in the master tobacco settlement agreement must make payments into qualified escrow accounts for each cigarette they sell in the state. The act prohibits cigarette dealers and distributors from stamping, and thereby from selling, cigarettes made by a nonparticipating manufacturer that has not complied with the escrow requirements.

The prohibition applies only if the Department of Revenue Services commissioner notifies dealers and distributors of the violation. The act allows the commissioner to make violators’ names public. Current law generally bars the commissioner from disclosing tax information.

The law already allows (1) the attorney general to sue manufacturers that fail to make the escrow payments and (2) the court to assess civil penalties against them. The act requires the court to assess such manufacturers for all the costs, fees, and expenses of the lawsuit, plus reasonable attorney’s fees.

OPTIONAL SERVICES UNDER MEDICAID—§ 104

The act requires DSS, by September 30, 2002, to submit an amendment to the Medicaid state plan to implement the provisions concerning Medicaid optional services in PA 02-1, May 9 Special Session (the act does not specify any particular sections, but the provision appears to apply to certain budget reductions for “other practitioners” under Medicaid). It specifies that the state plan amendment will supersede any

existing regulations concerning these services. With this change, Medicaid may potentially no longer pay for the services of naturopaths, chiropractors, psychologists, physical therapists, occupational therapists, speech therapists, and podiatrists.

OMBUDSMAN FOR THE DEPARTMENT OF CORRECTION—§ 105

The act imposes an unqualified requirement on the commissioner of correction to contract for ombudsmen services and annually report the name of the person or people it has contracted with to the Judiciary Committee. Prior law required this only if the commissioner had available appropriations to do so.

INTERDISTRICT MAGNET SCHOOLS—§ 106

Enrollment Restrictions

For interdistrict magnet schools that start operating on or after July 1, 2005, the act limits the maximum enrollment from any one participating district to 75% of the school's total enrollment. Magnet schools already operating as of July 1, 2005 will continue to be bound by the existing 80% restriction on enrollment from any one district. The act also limits the enrollment of a magnet school beginning operations on or after July 1, 2005 to between 75% and 25% minority students, as defined in the state's racial imbalance law. That law defines racial minorities as people whose racial ancestry the federal Census Bureau considers to be other than white. The act prohibits schools failing to meet these standards from receiving state magnet school operating grants, but it allows the commissioner to award an otherwise eligible school a one-year grant for good cause. He may not award such a grant for a second consecutive year.

State Operating Budget Review and Oversight

The act requires interdistrict magnet schools to include proposed operating budgets and funding sources with their annual applications for state operating grants. It requires them to meet with the commissioner or his designee at his request to discuss these submissions.

Supplemental Grants

For FYs 2002-03 and 2003-04, the act allows the education commissioner to give supplemental grants, within available appropriations, to enhance educational programs at magnet schools. He must first review and approve the interdistrict magnet schools' total operating

budgets, including all their revenue and spending estimates.

DEPARTMENT OF TRANSPORTATION APPROPRIATION FOR TRANSPORTATION STRATEGY BOARD—§ 107

The act (1) reduces the Department of Transportation's \$32,044,264 appropriation for the Transportation Strategy Board for FYs 2001-03 by \$364,000 and (2) revises a prior designation for expenditure of a portion of the appropriation to require that \$1.2 million of the appropriation be spent as follows: (a) \$1 million for jobs access programs to Southeast Connecticut and Dial-a-Ride, (b) \$100,000 for a study of an "L" Bus Route, and (c) \$100,000 for an urban downtown traffic plan or downtown distributor transportation services for rail passengers. The revision reduces the earmarked amount from \$1,564,264 to \$1.2 million, eliminates a requirement that \$464,264 be spent on strategy board consultants, adds the requirement for the "L" Bus Route study, and allows the \$100,000 that was earmarked for expenditure for an urban downtown traffic plan to be spent on either such a plan or on downtown distributor transportation services for rail passengers (see § 110).

ADJUSTMENTS TO ALLOCATIONS OF FUNDS TRANSFERRED BY PA 02-1, MAY 9 SPECIAL SESSION—§ 108

The act makes several adjustments to the allocations credited to the resources of the General Fund for FY 2001-02 and transferred by PA 02-1, May 9 Special Session. The total amount of \$29,051,513 transferred by that act remains unchanged but certain allocations from it are adjusted as follows.

The act:

1. increases the allocation to OPM from \$3,985,000 to \$4,421,000 by adding a \$200,000 allocation for Waterbury Youth Net, adding a \$36,000 allocation for library improvements, and increasing the arts grants allocation from \$900,000 to \$1,100,000;
2. reduces the allocation to DPH from \$1,892,208 to \$1,006,208 by reducing the allocation for tobacco education from \$1,247,208 to \$361,208;
3. increases the allocation to the Department of Mental Health and Addiction Services from \$475,000 to \$1,125,000 by adding a \$450,000 allocation for the Connecticut Mental Health Center and adding a \$200,000 allocation for Regional Action Councils; and

4. reduces the allocation to the DHE by reducing allocation to the Minority Advancement Program from \$657,029 to \$207,029. It also adds a \$250,000 allocation for the New England Board of Higher Education.

who are employed or about to be employed, and related provisions.

Finally, it repeals a requirement that OPM fund, within existing resources, development of a Senior Citizen Website in FY 2002-03.

TRANSFERRED AND ADDITIONAL APPROPRIATIONS FOR DSS AND OPM—§ 109

The act (1) transfers \$200,000 from OPM's appropriation for Other Expenses for FYs 2001-03 to DSS for Elderly Services, (2) appropriates \$300,000 to DSS for the State Food Stamp Supplement, and (3) appropriates \$64,000 to OPM for library improvements.

REPEALERS—§ 110

The act repeals provisions that:

1. require the State Board of Education to use mastery test scores and performance trends to compile a list in every other odd-numbered year of elementary and middle schools that need improvement, by school district;
2. require the education commissioner or his designee, every other even-numbered year, to meet and discuss improvement plans for the listed schools with their districts' superintendents;
3. require listed schools to develop and implement school improvement plans; and
4. if a listed school fails to make progress after two years, require its local board to adopt, submit for the commissioner's approval, and implement, a plan to restructure or close and reconstitute the school, provide site-based management, allow students to attend other public schools in the district, and, in conjunction with these steps, transfer employees.

It also repeals obsolete provisions regarding a grant program for schools in need of improvement and a requirement that the Department of Education identify methods and programs that have been successful in improving student performance.

The act repeals a section of the FY 2002-03 budget that directs \$1,564,264 appropriated to the Transportation Department to the Transportation Strategy Board for: jobs access programs to Southeast Connecticut and Dial-A-Ride (\$1,000,000); strategy board consultants (\$464,264); and an urban downtown traffic plan (\$100,000) (see § 107 for revised reenactment).

It repeals a requirement that DSS implement, within available appropriations, a program to subsidize personal care assistance for severely disabled people

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