

SUMMARY OF 2009 PUBLIC ACTS Part I of II

Connecticut General Assembly

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TABLE OF CONTENTS

Notice to Users	i
Vetoed Public Acts	ii
Table on Penalties.....	iii
June 11, 2008 Special Session	1
August 2008 Special Session.....	7
November 24, 2008 Special Session.....	13
2008 Special Session Index	21
Aging, Select Committee on.....	25
Appropriations Committee	29
Banks Committee.....	47
Children, Select Committee on.....	77
Commerce Committee	83
Education Committee	95
Energy and Technology Committee	99
Environment Committee.....	103
Finance, Revenue and Bonding Committee.....	123
General Law Committee.....	127
Government Administration and Elections Committee	139
Higher Education and Employment Advancement Committee	147
Housing Committee	153
Human Services Committee	155
Insurance and Real Estate Committee	165
Judiciary Committee	213
Labor and Public Employees Committee.....	269
Planning and Development Committee	277
Program Review and Investigations Committee.....	291
Public Health Committee.....	293
Public Safety and Security Committee	331
Transportation Committee	345

TABLE OF CONTENTS

Veterans' Affairs, Select Committee on 373

Index by Subject 377

Index by Public Act Number..... 411

NOTICE TO USERS

This publication, *Summary of 2009 Public Acts, Part I*, summarizes all public acts passed during the General Assembly's June, August, and November 2008 Special Sessions and the 2009 Regular Session. Special acts are not summarized.

The acts from the ongoing June 2009 Special Session, June 19th Special Session, and September Special Session are summarized in a separate publication, Part II.

It is important to note that special session acts may have changed provisions of the acts passed in the regular session. See the summaries of the special session acts in Part II for a description of those changes.

Use of this Book

The Office of Legislative Research encourages dissemination of this material by photocopying, reprinting in newspapers (either verbatim or edited), or other means. Please credit the Office of Legislative Research when republishing the summaries.

The office strongly discourages using the summaries as a substitute for the public acts. The summaries are meant to be handy reference tools, not substitutes for the text. The public acts are available in public libraries and can be purchased from the secretary of the state. They are also available online from The Connecticut General Assembly's website (<http://www.cga.ct.gov>).

Organization of the Book

The summaries are organized in chapters based on the committee that sponsored the bill. Bills sent directly to the floor without committee action (emergency certification) are placed in chapters according to subject matter. The acts from the 2008 and 2009 Special Sessions each appear in separate chapters according to the Special Session. Within each chapter, summaries are arranged in order by public act number.

On the next page you will find a list of the vetoed acts. A table on penalties, appearing on the page after the veto list, 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.

VETOED PUBLIC ACTS

1. PA 09-87, An Act Concerning Affirmative Action and Contracting Procedures for the Metropolitan District of Hartford County (*Planning and Development Committee*) (OVERRIDDEN)
2. PA 09-107, An Act Concerning the Penalty for a Capital Felony (*Judiciary Committee*)
3. PA 09-112, An Act Prohibiting the Acquisition or Use of Certain Parcels of Land as Ash Residue Disposal Areas and Concerning the Operation of a Food-Waste-to-Energy Plant (*Environment Committee*)
4. PA 09-135, An Act Clarifying Postclaims Underwriting (*Insurance and Real Estate Committee*)
5. PA 09-139, An Act Concerning the Appointment of Family Support Magistrates (*Judiciary Committee*)
6. PA 09-147, An Act Establishing the Connecticut Healthcare Partnership (*Insurance and Real Estate Committee*)
7. PA 09-148, An Act Concerning the Establishment of the SustiNet Plan (*Public Health Committee*) (OVERRIDDEN)
8. PA 09-151, An Act Establishing a Bi-State Long Island Sound Commission (*Environment Committee*) (OVERRIDDEN)
9. PA 09-157, An Act Concerning Access to Health and Nutritional Information in Restaurants (*Public Health Committee*)
10. PA 09-183, An Act Concerning the Standard Wage for Certain Connecticut Workers (*Labor and Public Employees Committee*) (OVERRIDDEN)
11. PA 09-186, An Act Concerning the Programs and Activities of the Department of Transportation (*Transportation Committee*) (OVERRIDDEN)
12. PA 09-188, An Act Concerning Wellness Programs and Expansion of Health Insurance Coverage (*Insurance and Real Estate Committee*)
13. PA 09-202, An Act Concerning a Tax Credit for Green Buildings (*Planning and Development Committee*)
14. PA 09-203, An Act Concerning the Conveyance of Certain Parcels of State Land (*Government Administration and Elections Committee*)
15. PA 09-214, An Act Requiring Consensus Revenue Estimates (*Appropriations Committee*) (OVERRIDDEN)
16. PA 09-223, An Act Establishing a Correctional Staff Health and Safety Subcommittee of the Criminal Justice Policy Advisory Commission (*Judiciary Committee*) (OVERRIDDEN)
17. PA 09-238, An Act Concerning A Collinsville Hydroelectric Facility (*Energy and Technology Committee*)
18. PA 09-1, June Special Session, An Act Concerning the State Budget for the Biennium Ending June 30, 2011, and Making Appropriations Therefore (*Emergency Certification*)

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 limits listed below. Some crimes have a mandatory minimum sentence or a minimum sentence higher than the minimum term specified in the table. Repeated or persistent 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 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 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. 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 a \$20 or \$35 surcharge and an additional fee based on the amount of the fine. There may be other added charges depending upon the type of infraction. For example, certain motor vehicle infractions trigger a Transportation Fund surcharge of 50% of the fine. With the various additional charges the total amount due can be over \$300 but often is less than \$100.

An infraction is not a crime; and violators 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 \$20,000	Class B felony
Second Degree	Over 10,000	Class C felony
Third Degree	Over 2,000	Class D felony
Fourth Degree	Over 1,000	Class A misdemeanor
Fifth Degree	Over 500	Class B misdemeanor
Sixth Degree	\$500 or less	Class C misdemeanor

PA 08-1, June 11, 2008 Special Session—SB 1001
Emergency Certification

AN ACT CONCERNING THE MUNICIPAL SHARE OF THE REAL ESTATE CONVEYANCE TAX

SUMMARY: This act extends the expiration date of the basic 0.25% municipal real estate conveyance tax rate for two years, until July 1, 2010. In doing so, it also maintains the optional rate of up to 0.5% allowable in 18 eligible municipalities for the same two years.

Under prior law, the basic municipal rate was scheduled to drop from 0.25% to 0.11% on July 1, 2008. Because 18 towns are eligible to impose an additional tax of up to 0.25% on top of the basic rate, the maximum rate allowable in the 18 towns under prior law would have also dropped from 0.5% to 0.36% on that date.

EFFECTIVE DATE: Upon passage

BACKGROUND

Real Estate Conveyance Tax

With some exceptions, Connecticut law requires a person who sells real property for \$2,000 or more to pay a real estate conveyance tax when he or she conveys the property to the buyer. The tax has two parts: a state tax and a municipal tax. The applicable state and municipal rates are added together to get the total tax rate for a particular transaction.

In addition to the basic municipal tax rate of 0.25% until July 1, 2010 and 0.11% thereafter that applies in all towns, 18 specific towns have the option of levying an additional tax of up to 0.25%. The 18 towns are: Bloomfield, Bridgeport, Bristol, East Hartford, Groton, Hamden, Hartford, Meriden, Middletown, New Britain, New Haven, New London, Norwalk, Norwich, Southington, Stamford, Waterbury, and Windham.

PA 08-2, June 11, 2008 Special Session—SB 1000
Emergency Certification

AN ACT CONCERNING ADJUSTMENTS TO CERTAIN PETROLEUM PRODUCTS TAXES, PETROLEUM FRANCHISE AGREEMENTS, GASOLINE DISCOUNTS FOR CONSUMERS, HOME HEATING OIL AND PROPANE GAS CONTRACT DEPOSITS AND THE FUEL OIL CONSERVATION ACCOUNT

SUMMARY: This act eliminates a scheduled July 1, 2008 increase in the petroleum products gross earnings tax rate from 7% to 7.5%, thus maintaining the 7% rate

until the next scheduled increase to 8.1% on July 1, 2013.

The act declares that competitive pricing is essential to the functioning of a fair and efficient free market economy in the petroleum industry and bans gasoline franchise contracts from prohibiting gasoline dealers and distributors from offering discounts for using any method of payment.

The act modifies (1) the receivership and post-judgment remedy laws by increasing the amount that must be paid for certain consumer deposits and (2) the receivership laws by increasing the amount that a receiver must pay for wages owed. It specifies that “consumer deposits” include deposits made to a home heating oil or propane gas dealer under a prepaid or capped price per gallon contract.

By law, part of the growth in revenues from the petroleum products gross receipts tax above 2006 levels goes into a special account to be used to fund fuel oil conservation programs. The act modifies when funds are transferred into this account for FY 08 and makes minor changes to the board that administers it.

EFFECTIVE DATE: Upon passage

§§ 1 & 2 — PETROLEUM PRODUCTS GROSS EARNINGS TAX

The act eliminates an increase in the petroleum products gross earnings tax rate from 7% to 7.5% previously scheduled to take effect on July 1, 2008. It freezes the tax at 7% until July 1, 2013, when under prior law and this act, the rate is scheduled to increase to 8.1%.

The petroleum products gross earnings tax applies to the gross earnings from the first sale of petroleum products in Connecticut by petroleum products distributors. Taxed products include gasoline, aviation fuel, kerosene, benzol, distillate fuels, residual fuels, and crude oil. The tax also applies to products made from petroleum or petroleum derivatives, such as paint, detergents, antiseptics, fertilizers, nylon, asphalt, and plastics. Many petroleum products and uses are exempt, including most diesel fuel, home heating oil, and propane gas used for heating.

§§ 3 & 4 — CASH DISCOUNTS

The act declares that competitive pricing is essential to the functioning of a fair and efficient free market economy in the petroleum industry. It finds and declares that (1) certain petroleum product franchise agreements prohibit gasoline retailers and distributors from offering discounts based on a buyer’s payment method and (2) these provisions constitute unreasonable restraints on competitive pricing and inhibit the fair and efficient functioning of a free market economy within

the petroleum industry. The act declares such provisions in franchise agreements void and without effect because they are contrary to public policy. It specifically prohibits future agreements from including such provisions and voids them in existing ones.

The law states that it does not prohibit sellers of anything, not just gasoline, from offering a discount to induce a buyer to pay by cash, check, or similar means. The act specifies this also includes debit cards. The law also prohibits sellers from imposing a surcharge on a buyer who chooses to use any payment method, including cash, check, credit card, or electronic means.

§§ 5 & 6 — RECEIVERSHIP PROCEEDINGS AND POST-JUDGMENT REMEDIES

Whenever a court appoints a receiver for a business or organization, or when there are proceedings involving (1) the termination of an entity, (2) the insolvency of a person or entity, or (3) the inability of a person or entity to pay all creditors in full, the law requires payment of certain debts up to a statutory limit. The requirement applies to any debt due an individual for a deposit made in connection with the purchase, lease, or rental of goods or services purchased for personal, family, or household purposes that were not received. The act raises the cap on such payments from \$900 to the amount that federal bankruptcy law sets for paying the unsecured claims of individuals arising from deposits made for the same reasons, currently \$2,425. It also specifies that the covered deposits include payments made by a consumer to a home heating oil or propane gas dealer under a prepaid or capped price per gallon contract.

Prior law capped at \$600 required payments by a receiver for debts due for wages for work performed within the three months before an application was made to appoint a receiver. The act raises this cap to the cap in federal bankruptcy law, which is currently \$10,950. The law requires wages to be paid in full in court proceedings involving (1) the termination of an entity, (2) the insolvency of a person or entity, or (3) the inability of a person or entity to pay all creditors in full.

Federal law requires the caps in the bankruptcy law to be adjusted every three years in accordance with changes in the Consumer Price Index for All Urban Consumers; they were last adjusted in 2007.

§ 7—FUEL OIL CONSERVATION BOARD AND PROGRAMS

The law establishes a 13-member board to administer fuel oil conservation programs, which are funded from growth in revenue from the petroleum products gross earnings tax above its 2006 revenue. The law requires that a portion of this revenue be deposited

into a special account. The act: (1) requires one of the governor's appointees to the board to be a representative of an in-state biodiesel distributor rather than in-state generators, (2) places the board within the state comptroller's office for administrative purposes only, and (3) requires the fuel oil conservation account to be within the Restricted Grant Fund rather than the General Fund.

By law, the amount of money to be transferred to the account is capped at \$10 million in FY 08 and \$5 million for each fiscal year thereafter. The act eliminates a provision that requires the comptroller to deposit the money in the account before the accounts for the General Fund are closed each fiscal year. Instead, it allows the comptroller to deposit up to \$2.5 million into the account upon the act's passage June 17, 2008 and requires any remaining amount due the account for FY 08 to be deposited as determined by the comptroller at the close of the fiscal year, but no later than October 1, 2008.

PA 08-3, June 11, 2008 Special Session—HB 6502 *Emergency Certification*

AN ACT CONCERNING COMPREHENSIVE ETHICS REFORMS

SUMMARY: This act:

1. generally permits state courts to revoke or reduce any retirement or other benefit due to state or municipal officials or employees who commit certain crimes related to their employment;
2. makes it a class A misdemeanor for public servants to fail to report a bribe;
3. expands illegal campaign finance practices to cover certain solicitations by chiefs of staff;
4. makes several changes to state codes of ethics such as limiting gift exceptions, prohibiting state contractors from hiring certain former public officials and state employees, restricting the Office of State Ethics' (OSE) authority to issue subpoenas, prohibiting *ex parte* communications during OSE hearings on ethics complaints, limiting Citizens' Advisory Board members who can act on ethics complaints, and subjecting the governor's spouse to the code;
5. requires OSE to provide mandatory training to legislators on the Code of Ethics for Public Officials; and
6. requires public agencies to post, on available web sites, the meeting dates, times, and minutes that the law requires be publicly disclosed.

EFFECTIVE DATE: October 1, 2008

§§ 1-5 — CORRUPT OFFICIALS AND EMPLOYEES

The act generally permits state courts to revoke or reduce any retirement or other benefit due to state or municipal public officials or employees or quasi-public agency members and directors who commit certain crimes related to their employment.

It requires the courts to order payment of any benefit or payment that is not revoked or reduced. It prohibits a circumstance under which its entire pension revocation or reduction provisions would be invalid. Under the act, if a court determines that any of these provisions, clauses, or phrases or any order or action by the attorney general pursuant to them are invalid, any remaining provisions, orders, or actions are unaffected and remain valid.

Exceptions to Reduction or Revocation

Under the act:

1. no revocation or reduction may prohibit or limit benefits that are the subject of a qualified domestic relations order (e.g., child support);
2. no pension may be reduced or revoked if the IRS determines that the action will negatively affect or invalidate the status of the state's or a municipality's government retirement plans under § 401 (a) of the Internal Revenue Code; and
3. the pension benefits of a public official or employee who was convicted of or pled guilty or *nolo contendere* to a crime related to state or municipal office and cooperated with the state as a whistleblower before learning of the criminal investigation may not be revoked or reduced if the court determines or the attorney general certifies that he or she voluntarily provided information about the crime to the attorney general, state auditors, or a law enforcement agency about a person more blameworthy than the official or employee.

Additionally, no pension may be revoked if the court determines that to do so would constitute a unilateral breach of a collective bargaining agreement. Instead, the court may issue an order to reduce the pension by an amount necessary to (1) satisfy any fine, restitution, or other monetary order issued by the criminal court and (2) pay the cost of the official's or employee's incarceration.

Crimes Related to Office or Employment

The act requires the attorney general to apply to the Superior Court for an order to revoke or reduce the benefits of a public official or employee who, on and

after October 1, 2008, is convicted of or pleads guilty or *nolo contendere* (no contest) in federal or state court to:

1. committing or aiding or abetting the embezzlement of public funds from the state, a municipality, or a quasi-public agency;
2. committing or aiding or abetting any felonious theft from the state, a municipality, or a quasi-public agency;
3. bribery connected to his or her role as a public official or employee; or
4. felonies committed willfully and with intent to defraud to obtain or attempt to obtain an advantage for himself or herself or others through the use or attempted use of his or her office.

The attorney general must notify the prosecutor in these criminal cases of the pension revocation statute and that the pension may be used to pay any fine, restitution, or other monetary order the court issues.

"Public officials" are (1) statewide elected officers, (2) legislators and legislators-elect, (3) judges, (4) gubernatorial appointees, (5) municipal elected and appointed officials, (6) public members and union representatives on the Investment Advisory Council, (7) quasi-public agency members and directors, and (8) people appointed or elected by the General Assembly or either chamber. Advisory board members and members of Congress are not public officials.

"State employees" include employees of quasi-public agencies.

Court Considerations

When determining whether to revoke or reduce a public official's or employee's benefits or payments, the Superior Court must consider:

1. the severity of the crime;
2. the amount of money the state, municipality, quasi-public agency, or anyone else lost as a result of the crime;
3. the degree of public trust reposed in the person by virtue of his or her position;
4. if the crime was part of a fraudulent scheme against the state or a municipality, the defendant's role in it; and
5. any other factors the court determines that justice requires.

After determining to reduce pension benefits, the court must consider the needs of an innocent spouse or beneficiary and may order that all or part of the reduced benefits be paid to the spouse or beneficiary.

Pension Contributions

If an official's or employee's pension is revoked, the act entitles the person to the return of any

contributions he or she made to the pension, without interest. But, the repayment cannot be made until the court determines that the individual has fully satisfied any judgment or court-ordered restitution related to the crime against the office. If the court determines that he or she has not, it may deduct the unpaid amount from the individual's pension contributions.

Collective Bargaining Agreements

Beginning October 1, 2008, the act prohibits collective bargaining agreements from containing any provision that bars the revocation or reduction of a corrupt state or municipal employee's pension.

§§ 6 & 7 — BRIBERY

The act makes it a class A misdemeanor for public servants to fail to report a bribe (see Table on Penalties). Public servants commit this crime when they do not report to a law enforcement agency as soon as reasonably practicable that (1) they know that another person has attempted to bribe them by promising, offering, transferring, or agreeing to transfer to them any benefit as consideration for their decision, opinion, recommendation, or vote or (2) they knowingly witnessed someone attempting to bribe another public servant or another public servant committing bribe receiving. Under existing law, a person is guilty of bribe receiving if he or she solicits, accepts, or agrees to accept any benefit for, because of, or in consideration for his or her decision, opinion, recommendation, or vote.

The act expands the definition of "public servant" that applies to existing bribery and bribe receiving crimes, as well as this new crime, to include quasi-public agency officers and employees. Elected and appointed government officers and employees and people performing a government function, including advisors and consultants, are already covered.

§ 12 — CAMPAIGN FINANCE

The act makes it an illegal campaign practice for certain chiefs of staff to solicit contributions from certain people on behalf of, or for the benefit of, any state, district, or municipal office candidate. Under the act, the chief of staff (1) for a legislative caucus cannot solicit an employee of the caucus, (2) for a statewide elected official cannot solicit a member of the official's office, and (3) for the governor or lieutenant governor cannot solicit from any member of the official's office or from any state commissioner or deputy commissioner.

Under existing law, it is an illegal campaign finance practice for, among other things, state department heads and their deputies to solicit political contributions at any

time, and for anyone to knowingly and willfully violate a campaign finance law. Campaign finance violators are subject to criminal penalties of up to five years in prison, a \$5,000 fine, or both for knowing and willful violations. They are also subject to civil penalties of up to \$2,000 per offense.

STATE ETHICS CODE

§§ 16 & 17 — Ethics Complaint Enforcement

Existing law requires OSE to conduct probable cause investigations, including hearings, when complaints of alleged ethics violations are filed. If OSE finds probable cause, it's Citizens' Advisory Board initiates a hearing to determine whether there has been a violation. A judge trial referee conducts the hearing. Both OSE and its advisory board can subpoena witnesses and records during their respective proceedings.

Subpoenas. The act restricts OSE's authority to issue subpoenas by requiring it to get (1) approval from a majority of the advisory board members or (2) the chairperson of the board to sign the subpoena. It authorizes the vice chairperson to sign the subpoena if the chairperson is unavailable.

Ex Parte Communications. During the hearing on whether a violation has occurred, the act prohibits *ex parte* communications about the complaint or respondent between the board or any of its members and the judge trial referee conducting the hearing or a member of OSE's staff.

Voting on Existence of Violation. By law, the Citizens' Advisory Board, at the conclusion of the hearing, determines whether a violation occurred and, if so, imposes penalties. The act restricts the board members who can vote on whether a violation occurred to those who were physically present during the entire violation hearing.

The act makes a minor change by specifying the number of board members, rather than the fraction of the board, necessary to find a violation of the State Code for Lobbyists. The act requires six of the nine board members present and voting to find a violation, rather than two-thirds of them.

§§ 13 & 14 — Gifts

With several exceptions, existing law prohibits public officials, candidates for public office, and state employees from accepting gifts (generally anything valued at over \$10) from lobbyists. It prohibits public officials and state employees from accepting gifts from people doing, or seeking to do, business with their agency; people engaged in activities regulated by their agency; or prequalified state contractors. Existing law also prohibits these people from giving gifts to public

officials and employees.

The act caps at \$1,000 the exception for gifts provided at celebrations of major life events by people unrelated to the recipient. Major life events include a ceremony commemorating an individual's induction into religious adulthood such as a confirmation or bar or bat mitzvah, a wedding, a funeral, and the birth or adoption of a child. It does not include any event that occurs on an annual basis such as an anniversary (Conn. State Agency Regulations § 1-92-53).

§ 15 — Employment Restrictions

The act prohibits a party to a state contract or agreement from employing a former public official or state employee who substantially helped negotiate or award a contract valued at \$50,000 or more or an agreement for the approval of a payroll deduction. The prohibition applies to employees or officials who resign within one year after the contract or agreement is signed and ends one year after the resignation. Existing law already prohibits former officials and employees from accepting the job. The penalty for violations is a fine of up to \$10,000. First-time intentional violations are punishable by up to one year in prison, a \$2,000 fine, or both. Subsequent intentional violations are punishable by up to five years in prison, a \$5,000 fine, or both.

§§ 9 & 10 — Governor's Spouse

The act subjects the governor's spouse to the State Ethics Code by extending the definition of "public official" to include him or her. The term "public officials" already covered are statewide elected officers, legislators and legislators-elect, gubernatorial appointees, public members and union representatives on the Investment Advisory Council, quasi-public agency members and directors, and people appointed or elected by the General Assembly or either of its chambers. The term does not include judges, advisory board members, or members of Congress.

§ 8 — TRAINING

By December 31, 2010, the act requires OSE to establish and administer a program for providing mandatory training to legislators on the Code of Ethics for Public Officials. The program must provide for mandatory training of (1) newly elected legislators and (2) all legislators every four years beginning in 2011. However, the Legislative Management Committee must request OSE to train all legislators before the next regularly scheduled training if it determines that there has been a significant revision to the Code of Ethics for Public Officials.

PA 08-1, August Special Session—SB 1101
Emergency Certification

AN ACT CONCERNING ENERGY ASSISTANCE

SUMMARY: This act credits the unappropriated FY 08 General Fund surplus to FY 09 General Fund revenue. It appropriates the credited funds during FY 09 for the act's purposes. Specifically, the act appropriates:

1. \$13.5 million to the Office of Policy and Management (OPM) to expand Operation Fuel, Incorporated to provide emergency home heating assistance between November 1, 2008 and April 30, 2009;
2. \$6.5 million to OPM for grants to local and regional school districts for school heating assistance;
3. \$4 million to OPM to provide home heating assistance to seniors age 65 and older who have incomes at or below 100% of the state median household income and are unable to pay their energy bills; and
4. \$3.5 million to OPM to provide heating assistance grants to human service and public health nonprofit organizations.

The act (1) requires the OPM secretary to develop allocation plans for the grant programs for school districts, seniors, and non-profit organizations; (2) requires the legislature to review and approve these plans; and (3) establishes a procedure for modifying the plan if the legislature does not approve the plan proposed by OPM.

The act modifies an OPM program that provides rebates for people who replace their residential furnaces or boilers with energy efficient ones.

The law prohibits retail dealers of fuel oil or propane from requiring their regular customers to accept deliveries of a minimum amount of fuel or propane. Under prior law, the minimum was the lesser of 150 gallons or 75% of the size of the primary tank. The act decreases the minimum delivery amount from 150 gallons to 100 gallons. It modifies the circumstances under which home heating oil and propane dealers can enter into prepaid or capped price-per-gallon contracts with customers.

EFFECTIVE DATE: Upon passage, except that the provisions on minimum fuel deliveries and prepaid and capped contracts are effective September 1, 2008.

**APPROPRIATIONS FOR OPERATION FUEL,
 INCORPORATED**

The act appropriates \$13.5 million from the funds credited to the General Fund for FY 09 to OPM to expand Operation Fuel, Incorporated to provide emergency home heating assistance for specified

income groups between November 1, 2008 and April 30, 2009. (Operation Fuel, Incorporated is a nonprofit organization that serves people who are not eligible for publicly funded energy assistance.) It appropriates \$8.5 million to Connecticut households with income levels of between 150% to 200% of the applicable federal poverty level (FPL). The act appropriates another \$5 million for FY 09 from the credited funds to expand Operation Fuel, Incorporated to provide emergency home heating assistance in the same period to Connecticut households with income levels of 200% or more of the applicable FPL so long as this is no more than 100% of the applicable state median household income, as determined by the most recently published Department of Social Services (DSS) figures.

For both appropriations, the funding must serve households that cannot make timely payments on deliverable fuel, electricity, or natural gas bills. Operation Fuel, Incorporated must pay the assistance directly to the fuel vendor, electric or gas company, or municipal electric or gas utility.

The act also appropriates \$500,000 of the credited funds for FY 09 to OPM to provide a grant to Operation Fuel, Incorporated for its operating expenses in administering these programs.

HEATING ASSISTANCE GRANTS FOR SCHOOLS

The act appropriates \$6.5 million for FY 09 to OPM for grants to local and regional school districts for school heating assistance. Grants must be calculated on a per-pupil basis.

The act requires prior legislative review and approval of a grant allocation plan. Under the act, the OPM secretary must submit recommended grant allocations to the House speaker and the Senate president pro tempore between October 15 and November 30, 2008. The plan can allocate part of the appropriation for administrative expenses.

No later than five days after receiving the plan, the leaders must refer it to the Appropriations Committee and to whichever subject matter committees they determine are appropriate. If they vote to approve or modify the plan, the Appropriations Committee, in concurrence with the subject matter committees, must advise the secretary and the governor of their action. The committees must act within 30 days of receiving the plan; if they do not, the plan is considered approved.

If the committees disagree with each other, their chairpersons must form a conference committee consisting of three members, including at least one minority party member, from each committee. The conference committee must report to each committee, which must vote to accept or reject, but cannot amend, the report. If any committee rejects the conference report, the grant allocation plan is considered approved.

If the committees approve the report, the Appropriations Committee must advise the governor and the secretary of their approval.

If the committees modify the plan, the governor must accept or reject the modified plan within five days of receiving notice of the modification. If she rejects the modified plan, she must notify the secretary who must, within five days of receiving this notice, submit a revised plan to the speaker and president pro tempore. In turn, they must submit the revised plan within five days to the committees which then have 15 days to approve or further revise the plan and advise the secretary and governor of their action. If they disagree with each other, they must form a conference committee and operate under the conference procedure described above. The committees must act within 15 days of receiving the revised plan; if they do not, the plan is considered approved.

If the committees modify the revised plan, the governor must accept or reject the modified revised plan with five days of receiving notice. If she rejects it, she must immediately submit the modified revised plan to the House and Senate clerks, and the General Assembly then has 30 days to approve, reject, or modify the plan. Approval or modification must be by a majority vote of both chambers. If both chambers do not act within the 30-day period, the plan is rejected.

If the legislature rejects the modified version of the revised plan, the revised plan is deemed approved. If it approves or modifies and approves the modified revised plan, it must send the final plan to the governor. The governor has five day to accept or reject this final plan. If she rejects it, the legislature can reconsider it as a vetoed act, that is, approve it by a two-thirds vote of both chambers.

ENERGY ASSISTANCE FOR THE ELDERLY

The act appropriates \$4 million for FY 09 to OPM to provide home heating assistance to seniors age 65 and older who have incomes at or below 100% of the state median household income and are unable to make timely payments on deliverable fuel, electricity, or natural gas bills. The state median household income must be determined by using the most recent state median income figures published by DSS.

The act requires OPM to determine eligibility criteria and allows the agency to spend up to \$500,000 of the \$4 million to identify eligible residents and notify them that the energy assistance is available. It requires OPM to pay fuel vendors, municipal utilities providing electricity or natural gas, and electric or natural gas companies directly for the home heating assistance provided.

The act also requires prior legislative review and approval of the allocation plan for the grant, according to the procedure described above.

HEATING ASSISTANCE GRANTS FOR HUMAN SERVICE AND PUBLIC HEALTH NONPROFIT ORGANIZATIONS

The act appropriates \$3.5 million in FY 09 to OPM to provide heating assistance grants to human service and public health nonprofit organizations, including those that contract with the state to provide services. Grant recipients may include providers of adult day care, residential services to the homeless, and services to domestic violence victims.

It requires the OPM secretary to determine eligibility requirements, criteria for determining grant amounts, and application procedures. It also allows the secretary to consult with the following officials to coordinate grant payments:

1. DSS commissioner,
2. Department of Developmental Services commissioner,
3. Department of Mental Health and Addiction Services commissioner,
4. Department of Public Health commissioner,
5. Department of Correction commissioner,
6. Department of Children and Families commissioner,
7. chief court administrator, and
8. Children's Trust Fund executive director.

The OPM secretary may also transfer funds to these departments and entities for grant payments. It prohibits any grant award from affecting (1) the calculation of rates or fees paid to the organization receiving the grant or (2) any state contract the organization has to provide services.

The act also requires prior legislative review and approval of the allocation plan for the grant, according to the procedure described above.

FURNACE REBATE PROGRAMS

By law, OPM must provide a rebate of up to \$500 for people who replace their residential furnaces or boilers with energy efficient ones. The act (1) eliminates a \$5 million annual cap on the rebates; (2) moves the end date of the program from July 1, 2017 to June 30, 2017; and (3) explicitly requires that the furnace or boiler be purchased and installed between July 1, 2007 and June 30, 2017 to be eligible for the rebate.

Under prior law, the amount of the rebate decreased with the purchaser's Connecticut adjusted gross income in the same way as the property tax credit against the income tax. The act specifies that the purchaser's eligibility for the program is based on his or her

Connecticut personal income tax return for the tax year before the tax year when he or she bought the furnace or boiler. As a result, it appears that a person who did not file a Connecticut return in that year would be ineligible for the rebate.

The act prohibits a person from receiving a rebate under this program if he or she has received a grant for furnace or boiler replacement under any program administered by the Fuel Oil Conservation Board or any other state or federal grant program that pays the full cost of furnace or boiler replacement. But, a person using a state or federal low-interest loan program to pay for a furnace or boiler replacement may be eligible for a rebate. In any case, the rebate cannot exceed the total expenditures for the furnace or boiler replacement.

The act entitles a person to the maximum rebate if he or she is not required to file a federal income tax return because his or her income does not meet the filing requirements and otherwise qualifies for the rebate, subject to verification of income in a manner prescribed by the secretary.

Under the act, rebates (1) do not count as taxable income for purposes of income tax and (2) must be excluded from any calculation of income for purposes of determining the eligibility for, or the benefit level of, any individual under any state or local program financed in whole or in part with state funds.

GUARANTEEING PREPAID AND CAPPED FUEL OIL CONTRACTS

Prior law prohibited home heating oil and propane gas dealers from entering into prepaid or capped price-per-gallon contracts with consumers unless the dealers secure the contracts with either (1) futures contracts or similar commitments that allow them to purchase at a fixed price at least 75% of the oil or gas they commit to providing under all of their prepaid contracts or (2) a surety bond for at least 50% of the total amount they received from consumers under prepaid contracts. The act allows the contracts to be secured with any kind of forwards contract and increases the percentage of fuel or gas purchased at a fixed price from 75% to 80%. A "forwards contract" is any contract in which the seller guarantees to deliver a commodity at some point in the future. A "futures contract" is a type of forwards contract that contains standardized terms, is traded on a formal exchange, and is subject to regulation. In addition, the act makes the contract requirements apply to contracts renewed or extended after September 1, 2008, as well as to those entered into after that date.

The law requires (1) the futures contracts or bonds to be maintained for as long as the prepaid contracts are in force, but allows their amount to be reduced to reflect deliveries and (2) retail home heating oil and propane gas contracts to be written and to state in plain language

(a) the amount the consumer must pay, (b) the maximum number of gallons the dealer is committed to deliver, and (c) that the dealer's ability to fulfill the contract is secured by either futures contracts or a surety bond. The act applies the provisions on futures contracts to forwards contracts.

The act requires a dealer who enters into, renews, or extends prepaid or capped price contracts to inform the consumer protection commissioner in writing of the fact and to identify the entities from which the dealer has obtained a futures or forwards contract or a similar commitment. A dealer must notify the commissioner at any time the total secured amount is less than 80% of (1) the maximum number of gallons or (2) the amount of fuel the dealer is committed to deliver under the prepaid or capped price contracts or that he estimates he is committed to deliver. The commissioner must prescribe the form on which the information must be reported.

The act requires a person from whom a dealer has obtained a futures or forwards contract or a similar commitment to notify the commissioner in writing if a contract is cancelled within three business days.

By law, the consumer protection commissioner may suspend or revoke the registration of a retail dealer that violates the securitization requirements and any implementing regulations after notice and providing an opportunity for a hearing in accordance with the Uniform Administrative Procedure Act. Further, a violation is an unfair or deceptive practice under the Connecticut Unfair Trade Practices Act (CUTPA). Finally, a dealer who knowingly violates the securitization requirements commits a class A misdemeanor (see Table on Penalties).

BACKGROUND

Connecticut Unfair Trade Practices Act

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 sue. 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.

PA 08-2, August Special Session —SB 1102
Emergency Certification

**AN ACT CONCERNING HOME HEATING
RELIEF**

SUMMARY: This act credits the unappropriated FY 08 General Fund surplus to FY 09 General Fund revenue. It appropriates the funds during FY 09 to expand several energy-related programs and to fund new programs. Specifically, it:

1. expands an existing program that provides rebates to people who replace their residential furnaces or boilers with more efficient ones,
2. expands and modifies an existing energy conservation loan program,
3. appropriates up to \$35 million to an energy contingency account that the Office of Policy and Management (OPM) secretary can use to (a) provide emergency home heating assistance for Connecticut residents and (b) supplement federal funding for the Connecticut Energy Assistance Program (CEAP),
4. requires OPM to establish a program to subsidize energy audits for people who heat their homes with fuels other than natural gas or electricity, and
5. appropriates \$2 million of the credited funds to the Department of Social Services (DSS) to develop a plan for funding weatherization projects for low-income households who participate in CEAP.

Prior law prohibited retail dealers of fuel oil or propane from imposing delivery surcharges on deliveries of more than 125 gallons. The act decreases the threshold to 100 gallons. The law, unchanged by the act, prohibits these dealers from imposing delivery surcharges on any residential delivery the dealer initiates.

EFFECTIVE DATE: Upon passage, except for the provision on delivery surcharges, which is effective September 1, 2008.

FURNACE REBATE PROGRAMS

By law, OPM must provide a rebate of up to \$500 for people who replace their residential furnaces or boilers with more efficient ones. The act appropriates \$3 million from the surplus funds to OPM for FY 09 to increase funding for the rebate program. It also makes any unexpended funds appropriated for this purposes available for expenditure during FY 10 instead of requiring them to lapse on June 30, 2009.

The act additionally requires the OPM secretary to provide a rebate to eligible state residents to repair or upgrade their existing boilers and furnaces to improve

their efficiency on or after August 1, 2008. Eligibility for these rebates must be determined using the eligibility criteria established for the existing program for replacements. People may apply to the secretary, on a form he prescribes, to receive the rebate. The new rebate is available only for residential structures containing up to four dwelling units. Rebates are capped at the lesser of \$500 or 50% of the cost of the repair or upgrade. The act appropriates \$2 million from the surplus funds to OPM for FY 09 for the additional rebate program. It makes any unexpended funds appropriated for this purpose available for expenditure during FY 10 instead of requiring them to lapse on June 30, 2009.

ENERGY CONSERVATION LOAN PROGRAM

The act increases the maximum household income for participating in this program from 150% to 200% of the median area income for the household's size. The program, administered by the Department of Economic and Community Development (DECD), provides loans for energy efficiency improvements and replacement furnaces and boilers in residential structures. In the case of structures built before January 1, 1980, the loans can also be used to convert electrically heated homes to other heating systems or to buy a secondary, nonelectric heating system.

The act sets a zero percent interest rate for loans for natural gas furnaces or boilers that meet or exceed federal Energy Star standards and propane and oil furnaces and boilers that are at least 84% efficient, including those eligible for an existing rebate of up to \$500. As under prior law, the State Bond Commission sets the interest rates on loans for other purposes.

The act appropriates \$2 million from the surplus funds in FY 09 to DECD to provide additional loans for this program for the efficiency improvements, alternative energy devices, and replacement furnaces and boilers. It allows DECD to spend up to \$250,000 of the appropriation for administrative expenses and promotion of the program. The act also makes minor related changes.

ENERGY CONTINGENCY ACCOUNT

Account Funding

The act appropriates to OPM any excess FY 08 surplus funds, up to \$35 million credited to FY 09 that remain after appropriations for this act and PA 08-1, August Special Session have been made. OPM must deposit the funds in an energy contingency account that the OPM secretary can use to (1) provide emergency home heating assistance for Connecticut residents, giving consideration to households with preexisting all-electric systems and (2) supplement federal funding for

the CEAP. Under this act, any funds remaining in the account at the end of FY 09 must be carried forward to FY 10.

Expenditure Plans

During FY 09, whenever the OPM secretary finds it necessary to spend funds from the account, the act requires him to submit a spending plan for prior legislative review and approval according to the following procedure. The secretary can submit one or more such plans, but cannot submit the first one until after November 1, 2008.

Under the act, the OPM secretary must submit recommended grant allocations to the House speaker and the Senate president pro tempore between October 15 and November 30, 2008. The plan can allocate part of the appropriation for administrative expenses.

Plan Approval

No later than five days after receiving the plan, the leaders must refer it to the Appropriations Committee and to whichever subject matter committees they determine are appropriate. If they vote to approve or modify the plan, the Appropriations Committee, in concurrence with the subject matter committees, must advise the secretary and the governor of their action. The committees must act within 30 days of receiving the plan; if they do not, the plan is considered approved.

If the committees disagree with each other, their chairpersons must form a conference committee consisting of three members from each committee, including at least one minority party member from each committee. The conference committee must report to each committee, which must vote to accept or reject, but cannot amend, the report. If any committee rejects the conference report, the grant allocation plan is considered approved. If the committees approve the report, the Appropriations Committee must advise the governor and the secretary of their approval.

If the committees modify the plan, the governor must accept or reject the modified plan within five days of receiving notice of the modification. If she rejects the modified plan, she must notify the secretary who must, within five days of receiving this notice, submit a revised plan to the speaker and president pro tempore. In turn, they must submit the revised plan within five days to the committees, which then have 15 days to approve or further revise the plan and advise the secretary and governor of their action. If they disagree with each other, the committees must form a conference committee and operate under the procedure described above. The committees must act within 15 days of receiving the revised plan; if they do not, the plan is considered approved.

If the committees modify the revised plan, the governor must accept or reject the modified revised plan with five days of receiving notice. If she rejects it, she must immediately submit the modified revised plan to the House and Senate clerks, and the General Assembly then has 30 days to approve, reject, or modify the plan. Approval or modification must be by a majority vote of both chambers; a majority vote in either chamber means rejection. If either chamber does not act within the 30-day period, the plan is rejected.

If the legislature rejects the modified version of the revised plan, the revised plan is deemed approved. If it approves or modifies and approves the modified revised plan, it must send the final plan to the governor. The governor has five days to accept or reject this final plan. If she rejects it, the legislature can reconsider it as if it were a vetoed act, that is, approve it by a two-thirds vote of both chambers.

SUBSIDIES FOR OIL CUSTOMER ENERGY AUDITS

The act requires OPM to establish a program to subsidize energy audits conducted by qualified oil dealers or other entities for people who heat their homes with fuels other than natural gas or electricity. The program must cover the balance of the cost of such audits conducted from September 1, 2008 through June 30, 2009 for qualified oil companies or other entities that show they (1) provided an energy audit to a residential customer and (2) collected a \$75 fee from the customer for the audit.

The act appropriates \$7 million of the funds credited to the General Fund in FY 09 to OPM for the program. Unexpended funds do not lapse at the end of the FY 09 and are available for expenditure during FY 10.

WEATHERIZATION FOR LOW-INCOME HOUSEHOLDS

The act appropriates \$2 million of the credited funds to DSS in FY 09 to develop a plan for (1) funding weatherization projects for low-income households who participate in the CEAP, (2) giving priority to helping households with incomes below 200% of the federal poverty level, and (3) coordinating this assistance to maximize effectiveness of its funds with the weatherization assistance provided to low-income households administered by the municipal electric utilities and utility companies under programs overseen by the Energy Conservation Management Board (ECMB) and the Fuel Oil Conservation Board (FOCB). By November 1, 2008, and at least 45 five days before implementing the plan, DSS must submit the plan to the Connecticut Energy Advisory Board, FOCB, and the

ECMB for input and advice. ECMB may order that the plan be modified to ensure effective prioritization and coordination of weatherization assistance.

PA 08-1, November 24 Special Session—HB 7601
Emergency Certification

AN ACT CONCERNING DEFICIT MITIGATION

SUMMARY: This act:

1. establishes a state tax amnesty program to run from May 1 to June 25, 2009;
2. eliminates the Office of the Business Advocate and transfers its duties to the Department of Economic and Community Development (DECD) commissioner;
3. requires that those who collect deposits on returnable bottles under the state's bottle law place the deposits in separate, interest-bearing accounts and report on the accounts to the Department of Environmental Protection (DEP) commissioner;
4. requires the Department of Social Services (DSS) commissioner to expedite the establishment of a federal Money Follows the Person demonstration program by June 30, 2009;
5. requires the DSS commissioner to expedite an amendment to the state Medicaid plan to make interpreters for people with limited English a Medicaid-covered service by June 30, 2009; and
6. reduces the unused funds from the Connecticut Independent College Student grant program that must be redistributed to participating colleges each year.

The act also reduces, eliminates, and redirects various General Fund appropriations for FY 09 and transfers money from special funds and accounts to General Fund revenue for FY 09.

EFFECTIVE DATE: Upon passage, except for (1) elimination of the Office of the Business Advocate, which is effective January 1, 2009 and (2) penalties for violating accounting and reporting requirements for bottle deposit accounts, which take effect February 1, 2009.

§§ 8 & 9 – STATE TAX AMNESTY

Taxes and Period Covered

The act requires the Department of Revenue Services (DRS) commissioner to establish a tax amnesty program for individuals, businesses, or other taxpayers owing Connecticut state taxes other than motor carrier road taxes. The amnesty runs from May 1 to June 25, 2009 and covers any taxable period ending on or before November 30, 2008 for which a taxpayer (1) did not file a required tax return and the DRS commissioner did not file one on his or her behalf or (2) filed a return that did

not report his or her full tax and DRS did not examine the return.

Amnesty Conditions

The DRS commissioner must prepare an amnesty application that requires applicants to specify the taxes and taxable periods for which they seek amnesty. If a taxpayer files the application during the amnesty period and pays all the taxes owed for the applicable tax periods, plus interest, the commissioner must waive civil penalties and refrain from seeking criminal prosecution for those periods. The act allows the commissioner to require that taxpayers file certain amnesty applications, and make payments, electronically, either by computer or by another technology the commissioner specifies.

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 Reduction

If a taxpayer pays the taxes due by June 25, 2009, the act reduces the interest rate on those taxes to 0.75% for each month or part of a month from the original tax due date to the payment date or June 25, 2009, whichever is earlier. The interest rate on overdue taxes is generally 1% per month.

Amnesty Exclusions

The act bars any 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 the date the act passed in any federal or Connecticut court for failure to file or pay Connecticut taxes or for Connecticut state tax fraud.

A taxpayer who deliberately submits any false or fraudulent application, document, return, or other statement to DRS is ineligible for amnesty. In addition to any other penalty, such a taxpayer is subject to a fine of up to \$5,000, a prison term of one to five years, or both.

Implementation

The act allows DRS to use up to \$1 million in revenue from the amnesty to administer the program. It authorizes the DRS commissioner to do anything necessary to implement the program in a timely fashion.

§§ 3 & 15-17 – OFFICE OF THE BUSINESS ADVOCATE

The act eliminates the Office of the Business Advocate and transfers its duties to the economic and community development commissioner as of January 1, 2009. It reduces the FY 09 appropriation to the Office of Policy and Management (OPM) for the business advocate by \$225,000 and transfers \$80,000 from OPM to DECD to carry out the advocate's duties.

Under prior law, the Business Advocate Office was in OPM for administrative purposes only. The advocate was authorized to hire staff and had to report annually to the governor and the Commerce and Finance, Revenue and Bonding committees.

§§ 10-14 – BOTTLE DEPOSITS

Special Accounts

The act requires the first distributor to collect the deposits on beverage containers sold to a person in the state (i.e., "deposit initiators") under the state's bottle deposit law to place the deposits in a separate, interest-bearing account at a Connecticut branch of a financial institution. Deposit initiators must do this no later than three days after the sale. (PA 09-1 extends this three-day deposit deadline to one month.) Deposits made between December 1 and 31, 2008 must be deposited by January 5, 2009. Deposit initiators must keep all deposit funds separate from others and pay any interest and dividends earned on the deposits into the special account. When a consumer returns a container, deposit initiators must refund the deposit from the special account. (PA 09-1 requires deposit initiators to pay any unclaimed deposits to the state.)

By law, consumers pay a 5¢ deposit fee on bottles and cans of beer and other malt beverages, soda water, and carbonated soft drinks (CGS § 22a-244). (PA 09-2 expands the beverage container redemption law to include types of water, which it terms "noncarbonated beverages." It requires, starting April 1, 2009, that noncarbonated beverage containers indicate a 5¢ refund value.)

Quarterly Reports

The act requires deposit initiators to file reports on their special accounts with DEP within one month after

the end of each calendar quarter. The first report is due March 15, 2009 and must cover the period from December 1, 2008 to February 28, 2009. The second is due July 31, 2009, covering March 1, 2009 to June 30, 2009, after which reporting continues at normal quarterly intervals. Once DEP adopts accounting procedures and other specified requirements in implementing regulations the act requires (see below), distributors must follow them or face penalties.

Deposit initiators' quarterly reports must be on forms prescribed by the DEP commissioner and contain the information the commissioner considers necessary, including:

1. the account balance at the beginning and end of the quarter;
2. a list of deposits, including refunds, and interest and dividends or return payments; and
3. a list of withdrawals and service and overdraft charges.

Audits

The act allows the state treasurer, on her own or at the DEP commissioner's request, to examine a deposit initiator's records relating to the deposit account, including receipts, disbursements, and whatever other items she considers appropriate.

Regulations

The commissioner must adopt written policies and procedures to implement the provisions creating the accounting system at the same time she is in the process of adopting the policies and procedures in regulation form (i.e., temporary regulations). Once the commissioner adopts written accounting policies and procedures, deposit initiators must comply with them until the regulations are adopted, at which time accounting must be done according to the regulations. The commissioner must print a notice of intention to adopt the regulations in the *Connecticut Law Journal* no later than 20 days before implementing the policies and procedures. The commissioner must submit final regulations to implement these policies and procedures to the Legislative Regulation Review Committee by May 1, 2009, unless the committee approves a later date by a majority vote. The temporary policies and procedures are valid until:

1. May 1, 2009, or, if applicable, the later date the committee approves or
2. the time the committee adopts or disapproves the proposed final regulations, whichever is earlier.

Penalties

The act subjects those who violate any of its requirements for establishing accounts and filing reports to existing penalties for violators of beverage container redemption law: \$50 to \$100 for a first offense, \$100 to \$200 for a second offense, and \$250 to \$500 for a third offense. The act extends the third offense penalty to any subsequent violation of the act and existing law concerning beverage container redemption. It also subjects violators of the act's account opening and reporting requirements to an existing penalty for failing to file required information with DEP or to obey DEP regulations, orders, or permits. The maximum penalty is \$1,000 plus up to \$100 per day for each day the violation continues. The attorney general, on his own or at the DEP commissioner's complaint, may institute actions to enforce the act or its regulations.

§ 7(A) – “MONEY FOLLOWS THE PERSON” DEMONSTRATION

The act requires the DSS commissioner to expedite the establishment of a federal Money Follows the Person (MFP) demonstration program required under existing law. DSS must facilitate the placement of 140 eligible individuals in the program by June 30, 2009. MFP is a five-year program that permits states to move individuals out of nursing homes or other institutional settings into less-restrictive, community-based settings and not jeopardize federal funding (see BACKGROUND).

§ 7(B) – MEDICAID COVERAGE FOR LIMITED ENGLISH PROFICIENCY INTERPRETERS

By law, the DSS commissioner must amend the Medicaid state plan to include foreign language interpreter services provided to any beneficiary with limited English proficiency as a “covered service” under the Medicaid program. This requirement was effective July 1, 2007, but the commissioner has not amended the state plan. The act requires the commissioner to expedite amending the state plan to include these interpreters as a Medicaid-covered service by June 30, 2009.

Federal Medicaid law allows states to get federal matching funds for limited English proficiency interpreters either by designating them as (1) a covered state plan service or (2) an administrative cost. In Connecticut, the federal matching rate is 50% of the state's cost for providing the interpreters.

As a covered service, providing an interpreter is reimbursed as part of another service provided. For example, if a physician bills for a service and provides interpreter services, the state reimburses him or her

more than if just the medical service had been provided. And the federal government reimburses the state for half of these costs.

Previously, DSS did not pay for medical interpreter services for Medicaid fee-for-service clients. Managed care plans serving HUSKY clients have a contractual obligation (based on federal requirements) to provide interpreters and their capitation payments include the costs of doing so. DSS receives a 50% federal match for the capitation payments, but the interpreter services are not separated.

Making interpreters a state plan service entitles any Medicaid recipient to an interpreter if it is deemed necessary.

§ 6 – CONNECTICUT INDEPENDENT COLLEGE STUDENT GRANT PROGRAM

By law, colleges and universities participating in the Connecticut Independent College Student (CICS) grant program must return unused grant funds to the Department of Higher Education (DHE) by January 15th of each fiscal year. For FY 09, the act eliminates a requirement that DHE redistribute all unused funds to other participating colleges, using a statutory formula and the most recent enrollment data available.

For FY 09 only, if the aggregate amount of unused funds is \$500,000 or less, the act bars the department from redistributing any funds. If unused funds total more than \$500,000, the act requires DHE to redistribute only the amount exceeding \$500,000.

The CICS program funds annual grants based on merit and financial need to Connecticut undergraduate students attending the state's independent colleges.

§§ 1-4 – CHANGES IN FY 09 BUDGET

§ 1 - FY 07 Surplus Funds Carried Forward

The act reduces the total amount of appropriations from the FY 07 General Fund surplus for various purposes by \$14.52 million, from \$613.71 million to \$599.19 million as shown in Table 1. The 2007 budget act carried these funds forward and made them available to be spent in FY 08 and FY 09.

Table 1: Reduced Amounts Carried Forward From The Fy 07 Surplus

<i>Agency</i>	<i>For</i>	<i>Prior Law</i>	<i>The Act</i>	<i>Reduction</i>
Administrative Services	Other expenses	\$40,000	\$0	\$40,000
Public Works	Rents and moving	350,000	0	350,000
Public Utility Control	Statewide energy efficiency	5,000,000	2,000,000	3,000,000

Agency	For	Prior Law	The Act	Reduction
	and outreach			
Environmental Protection	Clean diesel buses	5,000,000	3,000,000	2,000,000
Education	Longitudinal data systems	2,750,000	1,250,000	1,500,000
	School safety grants	5,000,000	3,000,000	2,000,000
State Library	Arts inventory	75,000	0	75,000
Higher Education	Other expenses	100,000	0	100,000
Transportation	Bus operations	7,294,500	2,294,500	5,000,000

§ 2 – Biofuels Appropriation

The 2007 budget appropriated \$5.1 million from the FY 07 surplus to DECD for biofuels and made the money available for FY 08. The act reduces the total appropriation by \$450,000 to \$4.65 million. It carries the reduced amount forward to FY 09 and allocates \$3.65 million of the amount for production grants and \$1 million for the fuel diversification research grant program. It eliminates a \$100,000 allocation to Eastern Connecticut State University for the Institute for Sustainable Energy.

It allows DECD to conclude personal service agreements with other entities to distribute the production grants or operate the diversification research grant program.

§ 3 – Reduced FY 09 General Fund Appropriations

The act reduces FY 09 General Fund appropriations for specified agencies and purposes by a total of \$9,071,137 as shown in Table 2.

Table 2: Reductions In FY 09 General Fund Appropriations

Agency/Account	For	Reduction
Legislative Management	Other expenses	\$400,000
	Equipment	69,044
	Interstate Conference Fund	25,714
Governor's Office	Personal services	300,000
	Equipment	95
Secretary of the State	Equipment	95
Lt. Governor's Office	Equipment	95
Office of State Ethics	Information technology initiatives	233,879
Judicial Selection Commission	Personal services	1,090
State Properties Review Board	Other expenses	8,000
State Treasurer	Equipment	95
State Comptroller	Equipment	95
Revenue Services	Collection and litigation contingency	200,000

Agency/Account	For	Reduction
	fund	
Special Revenue	Equipment	95
State Insurance & Risk Management Board	Equipment	95
Policy & Management	Other expenses	165,700
	Equipment	95
	Cash Management Improvement Act	95
	Office of the Business Advocate	225,000
	Water Planning Council	30,000
	Property tax exemption for hybrid vehicles	900,000
Veterans' Affairs	Equipment	950
Workforce Competitiveness	Equipment	950
Accountancy Board	Other expenses	10,000
Administrative Services	Other expenses	50,000
	Equipment	95
	Employees' Review Board	20,000
	Hospital billing system	20,000
Information Technology	Internet and e-mail services	1,180,000
Public Works	Equipment	95
Attorney General	Equipment	95
Claims Commissioner	Equipment	95
Criminal Justice	Equipment	95
State Marshal Commission	Equipment	23,845
Public Safety	Equipment	95
	Stress Reduction	27,000
Police Officer Standards & Training Council	Equipment	14,345
Board of Firearms Permit Examiners	Other expenses	5,000
	Equipment	95
Military	Equipment	950
	Equipment	95
Fire Prevention & Control	Equipment	95
	Firefighter Training 1	200,000
Consumer Protection	Equipment	95
Labor	Equipment	950
	Workforce Investment Act	136,948
Victim Advocate	Equipment	95
Human Rights & Opportunities	Equipment	950
Protection & Advocacy for Persons with Disabilities	Other expenses	5,000
	Equipment	950
Child Advocate	Equipment	950
Emergency Management & Homeland Security	Equipment	95
Agriculture	Equipment	95
Environmental Protection	Equipment	95
	Storm drain filters	225,000

<i>Agency/Account</i>	<i>For</i>	<i>Reduction</i>
Council on Environmental Quality	Equipment	95
Culture & Tourism	Equipment	950
	State-wide marketing	339,936
Economic & Community Development	Equipment	950
	Small Business Incubator Program	100,000
	CCAT-CT Manufacturing Supply Chain	200,000
	Southeast CT Marketing Plan	50,000
Agricultural Experiment Station	Equipment	95
Public Health	Personal services	447,100
	Other expenses	576,650
	Equipment	9,020
Office of Health Care Access	Equipment	95
Developmental Services	Equipment	950
Mental Health & Addiction Services	Equipment	950
Psychiatric Security Review Board	Other expenses	8,000
Social Services	Personal services	1,250,000
	Medicaid	487,000
Education	Other expenses	400,000
	Equipment	54,601
	Early Childhood Advisory Cabinet	280,000
	Amer-i-can	237,500
Education & Services for the Blind	Equipment	950
Deaf & Hearing Impaired	Equipment	950
State Library	Equipment	950
Higher Education	Washington Center	23,750
	Early Childhood Education – Collaboration with higher education	100,000
Children & Families	Equipment	950
Council to Administer the Children's Trust Fund	Equipment	950
Public Defender Services Commission	Equipment	95
Miscellaneous appropriation to the Governor	Governor's Contingency Account	14,250
Judicial Review Council	Equipment	95

§ 4 – Increased FY 09 Lapse

The act requires the governor to direct Executive Branch agencies to lapse up to an aggregate of \$1.5

million for FY 09 from Other Expense accounts in addition to the FY 09 lapse specified in the 2007 budget act.

§ 5 – TRANSFERS TO FY 09 GENERAL FUND REVENUE

The act transfers \$5 million from the Citizens' Election Fund (CEF) to General Fund revenue for FY 09. The CEF was established by PA 05-5, October 25 Special Session, as the source of payments to participating candidates in the state's public campaign financing program. The state treasurer administers the fund, which is a separate, nonlapsing General Fund account.

The act also transfers to General Fund revenue for FY 09, \$559,426 originally appropriated from the FY 01 General Fund surplus to Department of Transportation for the Transportation Strategy Board. The funds have been carried forward each year since 2001.

BACKGROUND

Money Follows the Person (MFP)

In 2005, Congress, as part of the Deficit Reduction Act, enacted the MFP provisions as a way to encourage states to rebalance their long-term care spending by moving individuals from nursing homes or other institutions into less-restrictive, community-based settings. The law requires that program participants (1) reside in a nursing home for at least six months and (2) need a nursing home level of care once they leave.

States that run demonstration projects are eligible for an enhanced federal match (75% instead of 50%) of state expenditures for the first year of Medicaid-eligible services. States must commit to provide some of these services once the year is up through some other authority (e.g., a federal home- and community-based services waiver). Federal matching funds of 50% are also available to support services not allowed by Medicaid that the state will provide during the demonstration, such as housing coordinators.

In 2006, the legislature authorized DSS to apply to the federal government to establish an MFP demonstration program for 100 participants (PA 06-188). In 2007, the legislature required, rather than allowed, DSS to run the program and increased the number of program slots from 100 to 700.

The legislature amended the program again in 2008, requiring, rather than allowing, DSS to apply for federal approval of its MFP protocol. (DSS subsequently applied for and received federal approval.) And it increased the number of program slots from 700 to 5,000 (PA 08-180).

PA 08-180 also required the DSS commissioner to develop a plan to establish and administer a similar home- and community-based services project for adults who may not meet the MFP six-month institutionalization requirement. And it established a separate, nonlapsing General Fund account to hold the enhanced federal matching funds the state receives for MFP. It specified the uses of account funds and required a report on expenditures from it.

Bottle Deposits - Related Act

PA 09-1 requires each bottle deposit initiator to pay the outstanding balance in its separate, interest-bearing account to the DEP commissioner at the end of each quarter. It requires deposit initiators to make the initial payment by April 30, 2009 (for the period from December 1, 2008 to March 3, 2009) and subsequent payments within one month after the end of each quarter.

PA 08-2, November 24 Special Session—SB 1200 *Emergency Certification*

AN ACT CONCERNING VARIOUS MEASURES TO PROVIDE RELIEF FOR MUNICIPALITIES

SUMMARY: This act:

1. allows the administrative services commissioner to act as contracting agent for three or more municipalities seeking to make group purchases;
2. extends the maximum time for which a town or regional school district can issue or renew temporary, short-term notes;
3. allows municipalities to establish a one-time tax amnesty program;
4. establishes protections for tenants residing in foreclosed properties;
5. expands the maximum allowable length of the foreclosure mediation program and delays the start of the first mediation session; and
6. validates an ordinance adopted in Bolton and school construction referenda approved by the member towns of Regional School District 13 and Regional School District 12.

EFFECTIVE DATE: Upon passage

§§ 1 & 2 – MUNICIPAL CONTRACTS

Upon the request of at least three municipalities seeking to purchase supplies, materials, or equipment as a group, the act authorizes the administrative services commissioner to serve as their contracting agent. The commissioner may only exercise this authority if she

determines that the municipalities will save more than the administrative costs of her service. As the contracting agent, the commissioner follows state procurement laws and regulations to perform administrative functions, including issuing requests for bids or proposals, awarding contracts based on competitive bidding or negotiations, and administering the contracts. The act specifies that the law authorizing municipalities to adopt ordinances establishing requirements for competitive bidding and any ordinances adopted pursuant to them should not be construed to limit their ability to enter contracts awarded by the administrative services commissioner in her capacity as contracting agent. It also specifies that the act should not be construed to require that the state be a party to the contract.

§§ 3 & 4 – TOWN AND REGIONAL SCHOOL DISTRICT BOND ANTICIPATION NOTES

By law, when a town or regional school district issues general obligation (GO) bonds to fund a project, it may issue temporary, short-term notes to provide immediate project funding. The notes are issued in anticipation of receiving the proceeds of the GO bonds, which are then used to replace the notes. The act extends the maximum time for which a town or regional school district can issue or renew such temporary notes from eight to 10 years after the date it originally issued them. The act correspondingly delays the date when the town or district must start repaying the GO bond principal from nine to 11 years after it issued the original bond anticipation notes.

The act retains existing requirements that towns or regional school districts begin paying off anticipation notes in the third and fifth years, respectively, after their original issuance. They must do so by budgeting at least 1/20th of the project's net cost annually (1/30th for sewer or school building projects) for that purpose as long as the notes are outstanding. They must also (1) subtract the amount paid off from the total principal of the GO bonds issued to replace the notes and (2) reduce the maximum authorized GO bond term by at least the number of months by which the GO bond issue date exceeds two years from the date the original anticipation notes were issued.

§ 5 – MUNICIPAL TAX AMNESTY AUTHORIZATION

The act allows municipalities to establish a one-time amnesty program for people owing taxes, assessments, fees, fines, or other payments to the municipality. The municipality must do this by December 31, 2009, by ordinance adopted by its legislative body. (Special districts have boards of

directors rather than legislative bodies.) Each municipality must apply the program's terms in the same way to each person owing any of the specified payments. Under the act, people have a maximum of 90 days to apply for the program. "Municipalities" include towns, boroughs, special districts, consolidated and unconsolidated towns and cities, and consolidated towns and boroughs.

The amnesty may apply to any unpaid or partially paid taxes, fees, assessments, fines (including those for alleged violations of municipal ordinances), or other payments required to be paid to the municipality. The program may also apply to unpaid or partially paid taxes, fees, and assessments due to special districts. The amnesty program may (1) provide for full or partial forgiveness of interest, penalties, fines, costs, or other fees due on the taxes, fees, assessments, fines, or other payments; (2) be limited to a period before the program was instituted during which the municipality levied the taxes, fees, assessments, fines, or other payments; (3) exclude people who do not meet eligibility criteria that the municipality sets; and (4) establish other terms that the municipality considers necessary to conduct the program effectively and efficiently.

§ 6 – PROTECTIONS FOR TENANTS IN FORECLOSURE ACTIONS

By law, foreclosing parties may demand possession of the property subject to foreclosure. If the court enters a judgment in their favor, it may issue an execution of ejectment ordering the removal of the people named in the action and in possession of the property, including tenants. The ejectment may occur as soon as 24 hours after judgment is entered. Tenants not listed as parties to the foreclosure action may be evicted on the ground that the right or privilege they had to reside on the premises was terminated by the foreclosure.

The act increases the length of time certain tenants may continue residing in foreclosed property. To receive the additional time, the tenant must (1) be someone other than the mortgagor or property owner and (2) have leased the property from the mortgagor or owner in an arms-length transaction.

Specifically, the act (1) stays a tenant's ejectment after a foreclosure judgment is entered and (2) prohibits the commencement of any eviction action against him or her on the grounds that he or she no longer has the right or privilege to occupy the dwelling because of the foreclosure judgment. The length of the stay and eviction prohibition depends on when the tenant entered the lease and whether it was written. If the tenant entered a written lease agreement more than 60 days before the start of the foreclosure action, the stay is in effect and evictions are prohibited until the lease expires or 60 days after the foreclosing party or successor in

interest obtains absolute title, whichever occurs first. If the tenant entered an oral lease agreement or a written agreement less than 60 days before the start of the foreclosure action, the stay is in effect and evictions are prohibited for 30 days after the foreclosing party or successor in interest obtains absolute title.

Under the act, tenants living in foreclosed property may be evicted before these deadlines for (1) nonpayment of rent, (2) breach of the lease or rental agreement, (3) nuisance or serious nuisance, (4) breach of statutory duties, (5) occupying the dwelling when they never had a right or privilege to do so, or (6) using the premises for an illegal activity for which the tenant was convicted.

§ 7 – INCENTIVES FOR TENANTS TO MOVE

The act establishes a minimum threshold for incentives offered by mortgagees, lien holders, or successors in interest for tenants to move from foreclosed residential property. The amount of the incentive is based on whether there is evidence of the amount or value of the security deposit the tenant paid. If evidence exists, any money or other valuable consideration offered as an incentive to move must be (1) in addition to the security deposit and interest owed to the tenant upon the termination of the tenancy and (2) at least equal in amount or value to the deposit plus interest. If this evidence is lacking, the incentive must be equal to two months' rent or \$2,000, whichever is greater.

The act prohibits mortgagees, lien holders, or successors in interest from requiring tenants of foreclosed properties to waive any right or remedy, other than the right to bring an action to reclaim the security deposit plus interest, as a condition of receiving the incentives.

By law, landlords must return their tenants' security deposits plus interest within 30 days after their lease terminates. If a tenant is under age 62, the maximum security deposit cannot exceed two months' rent. If the tenant is over age 62, the maximum security deposit cannot exceed one month's rent. The current interest rate on security deposits is 1.5%.

§ 8 – CHANGES TO THE FORECLOSURE MEDIATION PROGRAM

PA 08-176 created a foreclosure mediation program and set a 60-day mediation period that could be extended for up to 10 days by motion of the court or any party. This act allows the mediation period to instead be extended for 30 days and allows the court also to grant an extension at the written request of the mediator. In addition, the act requires the first mediation session to be held within 15, rather than 10, days after notice of

the mediation request is sent.

§§ 9-11 – VALIDATIONS

Bolton Lakes Regional Water Pollution Authority

The act validates an April 1, 2003 vote by the Bolton board of selectmen to adopt an ordinance creating the Bolton Lakes Regional Water Pollution Authority, which was otherwise valid except for the town's failure to publish notice of the March 19, 2003 public hearing on the proposed ordinance more than five days before the hearing. The act also validates, as of the date taken, all otherwise valid acts, votes, and proceedings of the authority and the towns of Bolton and Vernon taken under the ordinance.

Regional School District 13

The act validates a referendum held by the district's member towns, Middlefield and Durham, on May 6, 2008 to approve funds and a bond authorization for design and construction of athletic facilities, water systems, and roof replacements. The referendum was otherwise valid but for Durham's failure to publish notice of the referendum in a newspaper having general circulation in the town. The act also validates, as of the date taken, all otherwise valid acts, votes, and proceedings of Region 13's officials and officers taken in reliance on the referendum.

Regional School District 12

The act validates a referendum held by district member towns, Bridgewater and Roxbury, on December 18, 2007 to approve a \$1,550,000 appropriation, authorize bonds, and approve acceptance of grants to pay for design, construction, and installation of improvements to Shepaug Valley Middle School and Shepaug Valley High School. The referendum was otherwise valid but for failure to publish proper notice of it with respect to Bridgewater and Roxbury. The act also validates, as of the date taken, all otherwise valid acts, votes, and proceedings of Region 12's officials and officers taken in reliance on the referendum.

ADMINISTRATIVE SERVICES, DEPT. OF

Municipal group purchases, contracting agent authority
08-2 November 24 SS 18

ALCOHOLIC BEVERAGES

Container deposits, interest bearing account
08-1 November 24 SS 13

BANKRUPTCY

Receivership/post-judgment remedies, consumer deposit/wage payments increased
08-2 June 11 SS 1

BEVERAGE CONTAINERS

Deposits, interest-bearing account
08-1 November 24 SS 13

BOARDS AND COMMISSIONS

Citizens' Advisory, ethics complaint actions limitation
08-3 June 11 SS 2

BONDS

Short term notes, town/school district maximum term extended
08-2 November 24 SS 18

BUSINESS

Receivership/post-judgment remedies, consumer deposit/wage payments increased
08-2 June 11 SS 1

BUSINESS ADVOCATE, OFFICE OF

Eliminated/duties transferred to DECD
08-1 November 24 SS 13

CAMPAIGN CONTRIBUTIONS AND EXPENDITURES

Chief of staff solicitations, illegal practices expanded
08-3 June 11 SS 2

COLLEGES AND UNIVERSITIES

Connecticut Independent College Student grant program, unused funds redistribution
08-1 November 24 SS 13

CONTRACTS AND CONTRACTORS

Gasoline dealers/distributors franchises, cash discounts allowed
08-2 June 11 SS 1
Home heating/propane prepaid/capped contracts, restrictions
08-1 August SS 7

State, revolving door employment restrictions
08-3 June 11 SS2

COURTS

Public employee pension revocation authority
08-3 June 11 SS2
Receivership, wage payments increased
08-2 June 11 SS1

CRIMES AND OFFENSES

Public servant failure to report a bribe, misdemeanor
08-3 June 11 SS2

ECONOMIC AND COMMUNITY DEVELOPMENT

Business Advocate, office eliminated/duties transferred
08-1 November 24 SS13

ELDERLY

Home heating assistance
08-1 August SS7

ENERGY

Assistance, program funding/grants
08-1 August SS7
Audit subsidization program established
08-2 August SS10
Emergency home heating assistance, contingency account appropriation
08-2 August SS10
Energy Assistance Program, appropriation
08-2 August SS10
Furnace replacement rebates, program modification
08-1 August SS7
Furnace replacement rebates, program expanded
08-2 August SS10
Weatherization plan development, low-income households
08-2 August SS10

ENERGY CONSERVATION

Loan program expanded/modified
08-2 August SS10

ENVIRONMENTAL PROTECTION, DEPT. OF

Bottle deposits, accounting system regulations
08-1 November 24 SS13

ETHICS CODE

Changes
08-3 June 11 SS2
Governor's spouse, applicability
08-3 June 11 SS2

Revolving door employment restrictions expanded 08-3 June 11 SS	2	MEDICAID	Interpreter services coverage, expedited amendment 08-1 November 24 SS	13
FORECLOSURE		MUNICIPAL OFFICIALS AND EMPLOYEES	Pension revocation authorized, employment related crimes 08-3 June 11 SS	2
Mediation program period extended 08-2 November 24 SS	18	Revolving door employment restrictions expanded 08-3 June 11 SS	2	
Tenant protections established 08-2 November 24 SS	18			
FRANCHISES		MUNICIPALITIES	<i>See also Government Purchasing; Municipal Officers and Employees; Property Taxes</i>	
Gasoline dealers/distributors, cash discounts allowed 08-2 June 11 SS	1	Bolton, water pollution authority ordinance validated 08-2 November 24 SS	18	
GASOLINE STATIONS		Meeting dates/times, website postings required 08-3 June 11 SS	2	
Cash discounts allowed 08-2 June 11 SS	1	Real estate conveyance tax, extended 08-1 June 11 SS	1	
GENERAL ASSEMBLY		Regional school districts 12 and 13, construction referenda validated 08-2 November 24 SS	18	
Mandatory ethics code training 08-3 June 11 SS	2	Short-term notes, maximum term extended 08-2 November 24 SS	18	
GOVERNMENT PURCHASING		Tax-amnesty program, one-time authorization 08-2 November 24 SS	18	
Municipal groups, DAS contracting agent authority 08-2 November 24 SS	18			
GOVERNOR		OIL AND GAS	Dealers, delivery surcharge threshold lowered 08-2 August SS	10
Spouse, ethics code applicability 08-3 June 11 SS	2	Heating assistance grants 08-1 August SS	7	
HEATING OIL		Minimum delivery requirements 08-1 August SS	7	
<i>See Oil and Gas</i>		Petroleum product gross earnings tax, increase eliminated 08-2 June 11 SS	1	
HOME HEALTH CARE		Prepaid contracts, receivership "consumer deposits" definition inclusion 08-2 June 11 SS	1	
Money Follows the Person demonstration program, expedited 08-1 November 24 SS	13	Prepaid/capped price contracts, restrictions 08-1 August SS	7	
HOUSING		POLICY AND MANAGEMENT, OFFICE OF	Energy audit subsidization program established 08-2 August SS	10
Foreclosure mediation program period extended 08-2 November 24 SS	18	Energy contingency account, responsibilities 08-2 August SS	10	
INTERNET		Furnace replacement rebate program modified 08-1 August SS	7	
Public agency meeting dates/times, postings required 08-3 June 11 SS	2			
LANDLORD AND TENANT				
Foreclosures, tenant protections established 08-2 November 24 SS	18			

Heating assistance, grants/program allocation plans 08-1 August SS	7	STATE AID	Connecticut Independent College Student grant program, unused funds redistribution 08-1 November 24 SS	13
PROPERTY AND REAL ESTATE		Heating assistance grants 08-1 August SS	7	
Real estate conveyance tax, extended 08-1 June 11 SS	1	STATE BUDGET	Deficit mitigation, first FY09 plan 08-1 November 24 SS	13
PROPERTY TAXES		FY08 surplus, credited to FY09 revenue 08-1 August SS	7	
Municipal amnesty program, one-time authorization 08-2 November 24 SS	18	FY08 unappropriated surplus, appropriation to FY09 General Fund revenue 08-2 August SS	10	
REFERENDUM		STATE ETHICS, OFFICE OF	Ethics complaint hearings, ex parte communications prohibited 08-3 June 11 SS	2
Regional school districts 12 and 13, construction referenda validated 08-2 November 24 SS	18	Mandatory legislator training required 08-3 June 11 SS	2	
RETAIL TRADE		Subpoena powers restricted 08-3 June 11 SS	2	
Gasoline dealers, cash discounts allowed 08-2 June 11 SS	1	STATE FUNDS	Energy contingency account, appropriation 08-2 August SS	10
RETIREMENT AND PENSIONS		Fuel oil conservation account, transfer to Restricted Grant Fund 08-2 June 11 SS	1	
Revocation, public officers/employees employment related crimes 08-3 June 11 SS	2	FY08 unappropriated surplus, FY09 General Fund 08-2 August SS	10	
SCHOOL CONSTRUCTION		General, FY08 surplus transferred to FY09 revenue 08-1 August SS	7	
Regional districts 12 and 13, referenda validated 08-2 November 24 SS	18	STATE OFFICERS AND EMPLOYEES	Chiefs of staff, illegal solicitation practices expanded 08-3 June 11 SS	2
SCHOOLS AND SCHOOL DISTRICTS		Failure to report a bribe, misdemeanor 08-3 June 11 SS	2	
Heating assistance grants 08-1 August SS	7	Pension revocation authorized, employment related crimes 08-3 June 11 SS	2	
Short-term notes, maximum term extended 08-2 November 24 SS	18	Revolving door employment restrictions expanded 08-3 June 11 SS	2	
SOCIAL SERVICES, DEPT. OF				
Medicaid interpreter services coverage, expedited amendment 08-1 November 24 SS	13			
Money Follows the Person demonstration program, expedited 08-1 November 24 SS	13			
Weatherization funding, plan development 08-2 August SS	10			
STATE AGENCIES				
Business Advocate Office, eliminated 08-1 November 24 SS	13			
Meeting dates/times, website postings required 08-3 June 11 SS	2			

TAXATION

See also Property Taxes

Amnesty program established
08-1 November 24 SS 13

WATER POLLUTION

Bolton Lake Regional Authority, adopting
ordinance validated
08-2 November 24 SS 18

PA 09-17—sHB 5297

*Select Committee on Aging
Human Services Committee*

AN ACT CONCERNING THE STATUS OF THE MONEY FOLLOWS THE PERSON PROJECT

SUMMARY: The federal Money Follows the Person (MFP) Demonstration program is a five-year program that permits states to move individuals out of nursing homes or other institutional settings into less-restrictive, community-based settings. This act requires the Department of Social Services (DSS) commissioner to provide MFP status reports to the Human Services and Aging committees, semiannually, starting October 1, 2009.

To meet this requirement, the commissioner must provide the committees with a copy of any report he is required to submit to the federal Department of Health and Human Services pertaining to (1) the program's implementation status, (2) the anticipated date the first eligible participant will transition into the community, and (3) the department's plan to transition additional eligible participants into the community. Reports prepared before October 1, 2009 must be submitted to the committees by that date.

If the commissioner is not required to submit an MFP status report to the federal government during any six-month period, he must prepare and submit his own report addressing these issues to the committees.

EFFECTIVE DATE: July 1, 2009

PA 09-53—HB 5674

*Select Committee on Aging
General Law Committee
Judiciary Committee*

AN ACT CONCERNING DISCLOSURE OF ELIGIBILITY REQUIREMENTS FOR SENIOR CITIZEN DISCOUNT PROGRAMS

SUMMARY: This act requires an individual, firm, or corporation that sells goods and services to the public to disclose eligibility requirements for any senior citizen discounts it offers by conspicuously placing a sign at the point of display, cash register, or store entrance stating the qualifying age and discount percentage or dollar amount.

The act allows the consumer protection commissioner to assess a \$50 civil penalty against any person, firm, or corporation violating these provisions.

EFFECTIVE DATE: October 1, 2009

PA 09-64—sSB 814

*Select Committee on Aging
Human Services Committee*

AN ACT CONCERNING PERSONAL CARE ASSISTANCE SERVICES UNDER THE CONNECTICUT HOME CARE PROGRAM FOR THE ELDERLY

SUMMARY: This act requires the Department of Social Services (DSS) to provide personal care assistance (PCA) services under the Connecticut Homecare Program for Elders if these services are (1) not available under the Medicaid state plan, (2) more cost effective on an individual client basis than existing Medicaid state plan services, and (3) approved by the federal government.

By law, DSS also provides PCA services through (1) a state-funded PCA pilot program for certain qualifying seniors, (2) the PCA Medicaid waiver program for disabled adults, and (3) the acquired brain injury (ABI) Medicaid waiver program.

EFFECTIVE DATE: April 1, 2010

BACKGROUND

PCA Services

Personal care assistants provide non-medical care, such as assistance with bathing, dressing, eating, walking, toileting, or transferring from a bed to a chair. Consumer-directed PCA services provide an alternative to nursing homes or agency-provided home care. Under these programs, participants hire their own assistants to help with personal care and activities of daily living instead of going through a home health care agency. The participant hires and manages the assistant, but a financial intermediary handles the paperwork.

PA 09-108—sSB 243

*Select Committee on Aging
Public Health Committee*

AN ACT CONCERNING TRAINING IN PAIN MANAGEMENT

SUMMARY: This act requires all nursing home facilities, except residential care homes, to provide at least two hours of annual training in pain recognition and administration of pain management techniques to (1) all licensed and registered direct care staff and (2) nurse's aides who provide direct patient care. Prior law required this only for Alzheimer's special care units or programs.

The law defines a “nursing home facility” as a nursing home, residential care home, or rest home with 24-hour nursing supervision. Although residential care homes are included in the definition of nursing home facilities, they are not licensed as nursing homes. They provide some limited assistance with activities of daily living but do not provide nursing care.

EFFECTIVE DATE: July 1, 2009

PA 09-109—sSB 451

*Select Committee on Aging
Public Safety and Security Committee
Transportation Committee*

AN ACT ESTABLISHING A SILVER ALERT SYSTEM

SUMMARY: This act requires the Department of Public Safety’s (DPS) Missing Child Information Clearinghouse to collect, process, maintain, and disseminate information to assist in locating missing persons who are (1) seniors age 65 and older or (2) mentally impaired adults at least 18 years old. The missing person’s relative, legal or healthcare representative, or nursing home administrator must file a DPS missing person report and attest under penalty of perjury that the missing person meets the eligibility criteria. He or she must notify the clearinghouse or law enforcement agency if the missing person is found.

The act requires local police departments that receive a report of a missing senior or mentally impaired adult to immediately accept the report and notify all on-duty police officers and other appropriate law enforcement agencies. Prior law required this only for reports of missing children under age 15.

Finally, the act clarifies that, within existing resources, the clearinghouse may collect, process, maintain, and disseminate information to help locate missing persons other than children, seniors, or mentally impaired adults.

EFFECTIVE DATE: July 1, 2009

BACKGROUND

Connecticut’s Missing Child Information Clearinghouse

By law, local law enforcement agencies must submit reports of all missing children under age 18 to the clearinghouse. Parents may also notify the clearinghouse once they report to local police. The clearinghouse is the state’s central repository of information on missing children and others, and the information it collects is used to help locate missing children. By law, the clearinghouse also investigates reports it receives of missing children and cooperates

with other law enforcement agencies’ investigations, tries to assure that its information is accurate and complete, and participates in an intrastate system for communicating information on missing children (CGS § 29-1e).

Silver Alert Systems

“Silver Alert” or “Senior Alert” programs help identify and locate missing seniors with cognitive impairments. Modeled after the federal Amber Alert system for abducted children, Silver Alert programs create an emergency notification system in which law enforcement agencies broadcast local, regional, or statewide public alerts for missing seniors and other individuals with cognitive impairments, including Alzheimer’s disease. Broadcasts may be issued using radio, television, and electronic highway signs.

PA 09-136—sHB 6540

*Select Committee on Aging
Public Health Committee
Human Services Committee
Appropriations Committee*

AN ACT CONCERNING PRESCRIPTION EYE DROP REFILLS

SUMMARY: This act prohibits certain health insurance policies that provide prescription eye drop coverage from denying coverage for prescription renewals when (1) the refill is requested by the insured less than 30 days from either (a) the date the original prescription was given to the insured or (b) the last date the prescription refill was given to the insured, whichever is later, and (2) the prescribing physician indicates on the original prescription that additional quantities are needed and the refill request does not exceed this amount.

The act applies to individual and group health insurance policies delivered, issued, renewed, amended, or continued in Connecticut on or after January 1, 2010 that cover (1) basic hospital expenses; (2) basic medical-surgical expenses; (3) major medical expenses; and (4) hospital or medical services, including coverage under an HMO plan.

Due to federal law (ERISA), state insurance benefit mandates do not apply to self-insured benefit plans.

EFFECTIVE DATE: January 1, 2010

PA 09-168—sSB 455

Select Committee on Aging

Judiciary Committee

Public Health Committee

**AN ACT CONCERNING THE NURSING HOME
BILL OF RIGHTS**

SUMMARY: The state's nursing home patients' bill of rights gives patients entitled to receive Medicaid the specific right to have the nursing home or chronic disease hospital not charge, ask for, accept, or receive any gift, money, or donation in addition to Medicaid payment as a condition of admission, expedited admission, or continued stay at the facility. This act adds third-party payment guarantees to this prohibition and extends this right to all patients, not just those entitled to receive Medicaid.

The act also specifies that the rights and benefits conferred in the patients' bill of rights may not be reduced, rescinded, or abrogated by contract.

EFFECTIVE DATE: October 1, 2009

BACKGROUND

Third-Party Guarantee Under Federal Law

Federal law prohibits a nursing home participating in Medicaid or Medicare from requiring a third-party guarantee of payment as a condition of admission, expedited admission, or continued stay at the facility. (This applies to Medicare, Medicaid, and private-pay residents.) If a third party has legal access to the resident's income and assets (i.e., a conservator or legal guardian), the nursing home can require the third-party to sign a contract agreeing to pay the nursing home out of the resident's income or resources (42 CFR § 483.12 (d)(2)).

PA 09-1—HB 5095
Emergency Certification

AN ACT CONCERNING DEFICIT MITIGATION FOR THE FISCAL YEAR ENDING JUNE 30, 2009

SUMMARY: This act:

1. requires those that, by law, must collect deposits on returnable bottles to pay any unclaimed deposits to the state on a quarterly basis;
2. exempts payments received under the 2008 federal Economic Stimulus Act from being counted as income or resources for purposes of state or state-funded local benefit programs; and
3. provides funds to help cover health insurance benefits for employees of state contractors who provide custodial services to state agencies.

The act also makes various changes in the FY 09 state budget to address a projected FY 09 deficit in the General and Special Transportation funds. It:

1. reduces, eliminates, and redirects certain budgeted appropriations for FY 09;
2. transfers money from special funds and accounts to add to General Fund and Special Transportation Fund revenue for FY 09;
3. requires the Office of Policy and Management (OPM) secretary to reduce FY 09 expenses for Executive Branch consulting and personal services contracts;
4. requires a plan to reduce out-of-state placements for children and youth needing residential treatment;
5. gives the governor temporary authority to transfer funds between state agencies to achieve a previously established reduction in FY 09 spending for Other Expenses; and
6. eliminates maximum statutory grants for the School Bus Emission Reduction Program.

EFFECTIVE DATE: Upon passage, except for the bottle deposit provisions, which take effect April 1, 2009. The provision requiring quarterly payment of unclaimed deposits to the state applies to periods starting on or after December 1, 2008.

§§ 1 & 2 — LONG TERM CARE REINVESTMENT ACCOUNT

The act postpones until July 1, 2009 the establishment of a separate, nonlapsing Long Term Care Reinvestment account in the General Fund to hold the enhanced federal matching funds the state receives for the Money Follows the Person demonstration project. It also postpones, from January 1, 2009 to January 1, 2010, the date by which the Department of Social

Services (DSS) commissioner must report on expenditures from the account to the Human Services and Appropriations committees. Finally, the act specifies that the account is established to the extent federal law permits.

§§ 3 & 25 — FY 07 SURPLUS FUNDS CARRYFORWARDS

The act reduces, by a total of \$3,050,000, amounts carried forward from the FY 07 surplus and available for FY 09 as shown in Table 1.

Table 1: Reduced Carryforwards For FY 09

§§	Agency	For	Previous Appropriation	The Act	Reduction
3 (a)	Public Works	Upgrades to 61 Woodland Street	\$1,000,000	0	\$1,000,000
3 (a) & 25	Economic and Community Development	Biofuels production grants	3,650,000	\$2,600,000	1,050,000
3 (a) & (g)	Education	School safety	3,000,000	2,000,000	1,000,000

§ 4 — REDUCED FY 09 GENERAL FUND APPROPRIATIONS

The act reduces FY 09 General Fund appropriations for specified agencies and purposes by a total of \$4,455,446 as shown in Table 2.

Table 2: Reduced FY 09 Appropriations

Agency	For	Reduction
Legislative Management	Other expenses	\$225,000
	Minor capital improvements	225,000
Auditors of Public Accounts	Personal services	1,000,000
	Other expenses	39,050
	Equipment	5,000
Elections Enforcement Commission	Personal services	50,000
Office of State Ethics	Personal services	150,000
Freedom of Information Commission	Personal services	50,000
Judicial Selection Commission	Personal services	5,000
Office of Policy and Management	Personal services	100,000
	Other expenses	25,000
	Automated budget system and database link	20,000
	Justice assistance grants	100,000
	Distressed municipalities	491,000
State Marshal Commission	Other expenses	15,000
Emergency Management and	Personal services	75,000

<i>Agency</i>	<i>For</i>	<i>Reduction</i>
Homeland Security		
Aging	Personal services	\$314,212
	Other expenses	115,234
	Equipment	950
Judicial	Personal services	700,000
	Youthful offender services	750,000

§§ 5-14, 17-21, & 24 — TRANSFERS TO FY 09
GENERAL FUND REVENUE

For FY 09, the act transfers money from various special funds and accounts to the General Fund and bars certain General Fund transfers to special funds as shown in Table 3 below.

Table 3: Transfers From Special Funds And Accounts To The
General Fund

<i>§</i>	<i>Fund or Account</i>	<i>Amount</i>
5	Citizens' Election Fund	\$7,500,000
6	Tobacco and Health Trust Fund	6,000,000
7	Biomedical Research Trust Fund	3,000,000
8	Fuel Oil Conservation Account (see below)	Up to 10,000,000
9	Pretrial Alcohol and Drug Account	2,000,000
10	Underground Storage Tank Petroleum Clean-Up Account (see below)	3,000,000
11	Emergency Spill Response Account	3,000,000
12	Emissions Enterprise Fund	1,000,000
13	Mashantucket Pequot and Mohegan Fund	150,000
14	Energy Unit and Load Management Account	1,000,000
17	Banking Fund (excluding assessments)	15,000,000
18	Workers' Compensation Administration Fund	4,000,000
19	Public, Educational, and Governmental Programming and Education Technology Investment Account	2,000,000
20	Consumer Counsel and Public Utility Control Fund	2,000,000
21	Commercial Recording Account	1,000,000
24	General Services Revolving Fund	1,200,000

The act both transfers \$5 million of the fuel oil conservation account's existing balance to the General Fund and bars any FY 09 transfer of up to \$5 million from the General Fund to the account from petroleum products gross earnings tax payments due on June 30, 2009, for a total of up to \$10 million. It also eliminates a \$3 million transfer from the General Fund to the underground storage tank and petroleum clean-up account from petroleum products gross earnings tax payments due on January 31, 2009.

§ 15 — BOTTLE DEPOSIT ESCHEATS

The law requires a distributor or manufacturer that sells beverage containers and collects deposits on them ("deposit initiators") under the state's bottle deposit law to place the refund value of the containers in a separate, interest-bearing account. Prior law required deposit initiators to make these deposits within three days of the

beverages' sale. The act instead requires them to make the deposits within one month of a sale. By law, when a consumer returns the container, the deposit initiator must refund the deposit from this special account.

The act requires each deposit initiator to pay the outstanding balance in its account at the end of every quarter to the Department of Environmental Protection (DEP) commissioner. Deposit initiators must pay the initial payment by April 30, 2009 (for the period from December 1, 2008 to March 3, 2009). They must make subsequent payments within one month after the end of each quarter. The commissioner must deposit the money in the General Fund. If a deposit initiator does not have enough money in its account in any quarter to pay all refunds, it must subtract the deficiency from the next quarterly payment until the deficiency is completely subtracted.

If a deposit initiator fails to make the required payments within seven days of the due date, the act imposes a penalty of 10% of the amount due. An additional penalty of 1.5% of the amount due must also be applied every month or partial month until the deposit initiator pays. A deposit initiator may not pay these penalties from its special deposit account.

By law, initiators must file quarterly reports on the accounts with DEP. The act requires these reports to include the outstanding balance payment amount.

§ 16 — REVENUE ACCRUAL - BOTTLE
ESCHEATS

Starting with FY 09, the act authorizes the comptroller to count ("accrue") any unclaimed bottled deposit payments the state receives within five business days after July 31 each year as revenue for the preceding fiscal year.

§§ 22 & 23 — TRANSFERS TO THE SPECIAL
TRANSPORTATION FUND

The act transfers \$1,166,440 from the local emergency relief account and \$287,000 from the insurance recoveries account to Special Transportation Fund revenue for FY 09.

§ 26 — CONSULTING SERVICES REDUCTION

The act requires the OPM secretary to monitor expenses for personal services and consulting agreements for Executive Branch agencies in FY 09 and take action to reduce such expenses by \$2 million for FY 09. The act also required the secretary to report to the Appropriations and Government Administration and Elections committees by March 15, 2009, identifying at least \$8 million in additional reductions in FY 09 Executive Branch agency personal services and

consulting agreements. The report must identify (1) all affected personal services and consulting agreements for each executive branch agency, (2) the reduction for each affected agreement, and (3) any penalties that might result for any agreement included in the report.

§ 27 — RESIDENTIAL TREATMENT PLAN FOR CHILDREN AND YOUTH

The act requires the Department of Children and Families (DCF) commissioner, in consultation with the DSS commissioner, to create a plan to establish services for children and youth needing residential treatment who would normally be placed in out-of-state facilities. The DCF commissioner had to submit the plan to the Human Services and Appropriations committees by March 1, 2009. The plan had to address at least: (1) the use of existing state facilities when clinically appropriate and feasible; (2) available licensed residential treatment capacity; and (3) the cost, savings, and feasibility of implementing the plan by July 1, 2009, or as soon as practicable after that date.

§ 28 — 2008 ECONOMIC STIMULUS PAYMENTS

The act excludes payments anyone received under the 2008 federal Economic Stimulus Act (P.L. 110-185) from any calculation of available income or resources made to determine eligibility or benefits for a state or a wholly or partially state-funded local benefit, property tax exemption, property tax credit, or rental rebate program or for any optional municipal property tax relief program. It excludes such payments for the month the payment was received and the following two months. The act repeals a narrower law that excluded stimulus payments from calculations for DSS-operated programs (see § 35).

§§ 29 & 30 — HOUSING FUNDS TRANSFERS

The act transfers funds from an FY 09 appropriation to the Department of Economic and Community Development for housing deferred maintenance. It redirects \$1,704,890 to reimburse municipalities for tax abatements for low- and moderate-income housing and \$2,204,000 to payments in lieu of taxes to municipalities for such housing on property owned or leased by housing authorities or the Connecticut Housing Finance Authority.

§ 31 — CHARTER OAK HEALTH PLAN FUNDING TRANSFER

The act redirects to the General Fund \$3.7 million previously designated for the Charter Oak Health Plan. The funds were part of an \$11 million transfer the 2007

budget act made from the Tobacco and Health Trust Fund to DSS for the Charter Oak Health Plan for FY 09. DSS retains the \$7.3 million balance for the plan.

§ 32 — HEALTH COVERAGE FOR CUSTODIANS

The act appropriates \$274,000 to the Department of Administrative Services (DAS) for Other Expenses for FY 09. The department must distribute the funds to state agencies that contract for custodial services and whose contractors employ workers who (1) are covered by the state law setting standard wage rates for service workers and (2) receive health care benefits. Those agencies must use the money to help cover the cost of the benefits. The assistance is additional to other amounts the state must pay under the standard wage rate to cover health care benefits for the workers and their dependents.

§ 33 — GOVERNOR'S FUND TRANSFER AUTHORITY

In general, the law permits the governor to make transfers only within budgeted agencies. For FY 09 only, this act allows the governor, at an agency's request, to transfer money between budgeted agencies if the agency does not have enough money to achieve the lapse required under PA 08-1, November 24th Special Session. The November act required the governor to direct agencies to lapse no more than an aggregate of \$1.5 million in additional funds from Other Expense accounts in FY 09. This act allows the governor to transfer amounts needed to achieve the directed lapse. She must have Finance Advisory Committee approval for (1) transfers over \$50,000 or 10% of an appropriation, whichever is less or (2) \$1.5 million dollars in total.

As under existing law, the governor must notify the Appropriations Committee, through the Office of Fiscal Analysis, of any such transfer.

§ 34 — SCHOOL BUS EMISSION REDUCTION GRANTS

The law requires towns and school boards to retrofit certain full-size school buses with emissions-reducing equipment by September 1, 2010 if state grants cover the cost of the work. Under prior law, the retrofits were mandatory if DAS procurement contracts set the price for the work at a cost equal to or less than the following state grant amounts:

1. up to \$5,000 for each 2003-2006 model year bus equipped with a filtration system and a level 3 device;
2. up to \$2,500 for each bus equipped with a filtration system and level 2 device; and

3. up to \$1,250 for each bus equipped with a filtration system and level 1 device.

The act eliminates these maximum amounts and instead specifies that the DAS commissioner may use applicable existing contracts or provide a supplemental bid process for the grants. It also eliminates a provision that makes towns and school boards eligible for state grants if they choose to retrofit their school buses, even if the grant amounts are less than the amounts the procurement contracts specify for the devices.

§ 35 — REPEALERS

2008 Stimulus Payments

The act repeals a law that prohibited DSS, to the extent permitted by federal law, from counting a tax refund received under the federal Economic Stimulus Act of 2008 as income or resources when determining eligibility for, or amounts of services and benefits under, any DSS-operated need-based program. This prohibition applied to the month the tax refund was received and the following two months. The prior law is superseded by the provisions of § 28 above.

Energy Contingency Funds

The act eliminates an appropriation of up to \$35 million to OPM from excess FY 08 surplus funds for the energy contingency account as well as the account itself. Under prior law, the OPM secretary could use the account during FY 09 to (1) provide emergency home heating assistance for Connecticut residents, giving consideration to households with preexisting all-electric systems and (2) supplement federal funding for the Connecticut Energy Assistance Program. The act also eliminates a requirement that any funds remaining in the account at the end of FY 09 be carried forward to FY 10.

PA 09-2—HB 6602

Emergency Certification

AN ACT CONCERNING DEFICIT MITIGATION MEASURES FOR THE FISCAL YEAR ENDING JUNE 30, 2009

SUMMARY: This act makes various changes to reduce a projected General Fund deficit for FY 09. A section-by-section analysis appears below.
EFFECTIVE DATE: Various, see below.

§ 1 — REDUCED FY 09 GENERAL FUND APPROPRIATIONS

The act reduces FY 09 General Fund appropriations for specified agencies and purposes by a total of \$8,859,370 as shown in Table 1. It also increases the legislature's unallocated lapse for FY 09 by \$1,070,500, from \$2.7 million to \$3,770,500.

Table 1: Reduced FY 09 Appropriations

<i>Agency/Account</i>	<i>For</i>	<i>Reduction</i>
Elections Enforcement Commission	Personal services	\$25,000
	Other expenses	13,000
	Equipment	770
Office of State Ethics	Judge trial referees	23,969
	Reserve for attorney fees	41,260
Freedom of Information Commission	Other expenses	10,000
	Equipment	1,500
Contracting Standards Board	Contracting Standards Board	350,000
Policy & Management	Capital city economic development	375,000
Workforce Competitiveness	Personal services	34,600
	Film industry training program	300,000
Public Safety	Personal services	104,328
	Other expenses	32,833
	Fleet purchase	18,000
	State Narcotics Task Force local officer incentive program	59,700
Military	Personal services	27,037
	Other expenses	4,182
Fire Prevention & Control	Firefighter training I	200,000
Emergency Management & Homeland Security	American Red Cross	160,000
Agriculture	Other expenses	3,518
	Vibrio bacterium program	619
Environmental Protection	Other expenses	16,169
Culture & Tourism	Personal services	100,000
	Other expenses	7,500
Mental Health & Addiction Services	Personal services	126,385
	General Assistance managed care	50,000
	Grants for substance abuse services	50,000
	Governor's Partnership to Protect Connecticut's Workforce	80,000
	Regional action councils	50,000
Social Services	Personal services	90,000
	Medicaid	425,000
	Life Star helicopter	139,000
Education	High school technology initiative	850,000
Board of Education & Services for the Blind	Educational aid for blind and visually handicapped children	1,640,000
Higher Education	Early childhood education (ECE) - collaboration with higher education	175,000
Children & Families	Board and care for foster children	1,800,000
	Individualized family support	500,000
State Insurance & Risk Management Board	Other expenses	975,000

EFFECTIVE DATE: April 1, 2009

§ 2 — TRANSFERS FROM NON-APPROPRIATED FUNDS

The act transfers \$220 million from non-appropriated funds and accounts to General Fund revenue for FY 09. The amounts must be transferred before June 30, 2009, based on the recommendations of the Appropriations Committee.

The act requires the committee to review all non-appropriated funds and accounts and report its recommendations for transferring all or some of their balances totaling at least \$220 million. By March 11, 2009, each agency must report any information the Appropriations Committee requires and in the manner it requires. The committee chairpersons must report the committee's recommendations to the Senate president pro tempore, the House speaker, and the Senate and House minority leaders by March 25, 2009.

The General Assembly must vote on an act containing the committee's recommendations by June 30, 2009.

EFFECTIVE DATE: Upon passage

§ 3 — REDUCTION IN EXECUTIVE BRANCH CONTRACTS AND EQUIPMENT EXPENSES

The act requires the Office of Policy and Management (OPM) secretary to take necessary actions to reduce Executive Branch expenses in FY 09 for contracts by \$50 million. It also requires the secretary to defer purchases including equipment purchases, for the Executive Branch to save \$8 million in FY 09.

EFFECTIVE DATE: Upon passage

§ 4 — STATE POLICE MEAL ALLOWANCE

The act eliminates a requirement for the state to pay subsistence for state police personnel and reimburse them for expenses incurred in the performance of their official duties. Instead, beginning April 1, 2009, it allows a meal allowance only for Department of Public Safety employees covered by a collective bargaining agreement requiring the allowance.

EFFECTIVE DATE: April 1, 2009

§ 5 — STATEWIDE NARCOTICS TASKFORCE

The act eliminates OPM's authority to make grants from the drug enforcement grant program to the State-Wide Narcotics Task Force. By law, OPM can still make grants from this program to municipalities, the Department of Public Safety, and the Division of Criminal Justice.

EFFECTIVE DATE: April 1, 2009

§ 6 — DRUG ASSETS FORFEITURE REVOLVING ACCOUNT USE

The law allocates 20% of the drug assets forfeiture revolving account to the Department of Mental Health and Addiction Services (DMHAS) for substance abuse treatment and education programs. The act also allows DMHAS to use the allocation for tobacco prevention and enforcement staff working on compliance activities required as a condition of receiving federal Substance Abuse Prevention and Treatment Block Grants.

EFFECTIVE DATE: April 1, 2009

§ 7 — MERGING ADMINISTRATION OF DMHAS FACILITIES

The act requires the DMHAS commissioner to expedite the merger of the administrative functions of River Valley Services and the Middletown Campus of Connecticut Valley Hospital by July 1, 2009. River Valley Services is the lead mental health authority for Middlesex County, Lyme, and Old Lyme. It provides community mental health services for residents of those areas who have serious mental illness and lack the financial resources to obtain private care.

EFFECTIVE DATE: Upon passage

§ 8 — NO MEDICAID PAYMENTS TO HOSPITALS EXPERIENCING "NEVER HAPPEN" EVENTS

The act requires the Department of Social Services (DSS) commissioner to amend the Medicaid state plan to indicate that the approved inpatient hospital rates it pays for Medicaid-eligible patients are not applicable to hospital-acquired conditions that the Medicare program identifies as "nonpayable" (also called "never happen" events) in accordance with a 2005 federal law to ensure that hospitals are not paid for these conditions.

The federal Deficit Reduction Act of 2005 required the federal Medicare agency, beginning October 1, 2008, to limit payments to hospitals for preventable medical errors that result in serious consequences for patients. Since then the Medicare program identified selected costly or common conditions that it considered to be reasonably preventable by following evidence-based guidelines, for example, a foreign object left in a patient's body following surgery. When this occurs, Medicare will not pay a hospital for any increased costs it incurs as a result of one of these events. Medicare continues to pay for the physician and other covered items or services needed to treat the hospital-acquired condition.

EFFECTIVE DATE: April 1, 2009

§ 9 — COMMISSION ON ENHANCING AGENCY OUTCOMES

The act establishes a Commission on Enhancing Agency Outcomes to consider merging state agencies such as (1) DMHAS and DSS and (2) the Connecticut Commission on Culture and Tourism, portions of the Office of Workforce Competitiveness, and the Department of Economic and Community Development.

Membership

The commission consists of the following 17 members:

1. the chairpersons and ranking members of the Government Administration and Elections (GAE) and Appropriations committees;
2. the OPM secretary, or his designee;
3. two members each appointed by the Senate president pro tempore and the House speaker; and
4. one member each appointed by the Senate and House majority and minority leaders.

In addition, the chairpersons and ranking members of the legislative committee having cognizance of an agency under consideration are *ex-officio*, non-voting members of the commission during the review of that agency.

General Assembly members may be appointed and serve on the commission and all appointments must be made within seven days after passage of the act. The appointing authority must fill any vacancy. No commission members receive compensation.

Under the act, the GAE chairpersons serve as chairpersons of the commission and must schedule the first meeting within 14 days after the act's passage. The administrative staff of the GAE committee and nonpartisan staff serve as the commission's administrative staff.

Responsibilities

The commission must determine if there are agency duplications or functional overlaps and make other recommendations it considers appropriate. It must identify agency efficiencies that could (1) reduce costs to the state and (2) increase the quality, access to, and delivery of services.

The act requires the commissioners and heads of the departments and agencies under consideration to provide in a timely way the testimony, data, and other requested information or materials the commission requires.

The commissioner must report its findings and recommendations to the governor, House speaker, and

Senate president pro tempore by July 1, 2009. The commission is terminated when it submits its report or on July 1, 2009, whichever is later.

EFFECTIVE DATE: Upon passage

§ 10 — CORRECTION DEPARTMENT STUDIES AND REENTRY FURLOUGHS

The act requires the Department of Correction (DOC) commissioner to examine earned credit and risk reduction programs in other states that grant sentence reduction credits based on good behavior and participation in work, educational, vocational, therapeutic, or other programs while a person is incarcerated or being supervised in the community. It also requires her to report to the Judiciary Committee chairpersons by April 1, 2009 concerning the establishment of such a program in Connecticut. The report must:

1. identify different options for earning sentence reduction credits under such a program and indicate those that could be implemented by July 1, 2009;
2. recommend eligibility criteria;
3. specify current DOC programs that participants in the earned credit and risk reduction program could use and the current level of participation in these programs;
4. estimate the additional programs that would be required to accommodate participants in the program and the cost of providing it;
5. estimate recidivism rates for program participants for each option;
6. estimate savings in bed days, if any, that would be achieved for each option;
7. specify the level of program participation that would be required to ensure program success; and
8. estimate the number of inmates who would be eligible for release under each option if implementation was given retroactive effect.

By April 1, 2009, the act also requires the commissioner to submit a report to the Judiciary Committee chairpersons on the estimated number of inmates who would be released and the cost savings that would be achieved if the commissioner's authority to grant reentry furloughs was restored effective July 1, 2009.

By law, the commissioner can grant an inmate a furlough to (1) visit a dying relative, (2) attend a relative's funeral, (3) obtain medical services not otherwise available, or (4) contact prospective employers if the commissioner confirms that an employment opportunity exists or an interview is scheduled. Prior to January 25, 2008, the law also allowed the commissioner to grant a furlough for any

“compelling reason consistent with rehabilitation” which the commissioner relied on to grant “reentry furloughs.”

EFFECTIVE DATE: Upon passage

§ 11 — EARLY CHILDHOOD CABINET CARRY-FORWARD

The act carries forward \$165,000 appropriated to the Early Childhood Advisory Cabinet for FY 09 and makes the money available for research and evaluation during FY 10.

EFFECTIVE DATE: April 1, 2009

§ 12 — FUND TRANSFERS

The act transfers money from several special state funds and accounts to the General Fund as revenue for FY 09. The funds and amounts transferred are shown in Table 2. (PA 09-29 reversed the transfer from the Client Security Fund.)

Table 2: Transfers From Special Funds And Accounts To General Fund

<i>Special Fund or Account</i>	<i>Amount Transferred</i>
Local Bridge Revolving Fund - loan program	\$28,000,000
Citizen's Election Fund	1,000,000
Connecticut Health and Educational Facilities Authority	12,250,000
Transportation Strategy Board Fund projects account	4,000,000
Client Security Fund	2,000,000
Criminal Injuries Compensation Fund	1,000,000
Insurance Fund	1,000,000
Tobacco and Health Trust Fund	572,000
Consumer Counsel and Public Utility Fund	1,500,000
Workers' Compensation Fund	3,000,000

EFFECTIVE DATE: April 1, 2009

§ 13 — PRETRIAL ALCOHOL SUBSTANCE ABUSE PROGRAM FUNDS

The act requires DMHAS to make available from the Pretrial Alcohol Substance Abuse Program FY 09 appropriation: (1) up to \$50,000 for regional action councils and (2) up to \$80,000 for the Governor's Partnership to Protect Connecticut's Workforce. The amount must be available during FY 09.

EFFECTIVE DATE: April 1, 2009

§ 14 — ELECTRONIC VITAL RECORDS REGISTRY SYSTEM

The act reduces by \$1.3 million the amount carried forward to FY 09 for Other Expenses for the Department of Public Health's electronic vital records registry system.

EFFECTIVE DATE: April 1, 2009

§§ 15 & 16 — MEDICARE SAVINGS PROGRAM (MSP) AND MEDICARE PART D LOW-INCOME SUBSIDY (LIS)

Beginning with FY 09, the act requires DSS to increase the amount of income it disregards when determining an individual's eligibility for the MSP. The disregard amount must effectively move the MSP income limit up to the ConnPACE limits. By equalizing the income levels, the act enables more people to qualify for the MSP which automatically makes them eligible for the Medicare Part D LIS.

Previously, DSS disregarded \$278 from an MSP applicant's unearned income and compared the resulting net income to the MSP income limit. If net income was less, the applicant qualified. Under the act, DSS must disregard a much higher amount of income.

Federal law requires states to treat income and assets consistently in each of the MSP components. This means that any new income disregard used to raise eligibility to the ConnPACE limits must be the same for all three components. To accomplish this, DSS will apply an “all income” disregard equivalent to roughly 107% of the federal poverty level (FPL) for a single person, which would raise the MSP income eligibility limits as indicated in Table 2.

Table 3: Prior and New MSP Income Limits (Single Applicants)

<i>MSP Program</i>	<i>Prior Income Limit</i>	<i>Limit Under Act</i>
Qualified Medicare Beneficiary (QMB)	100% of FPL	207% of FPL
Specialized Low-Income Beneficiary (SLMB)	100%-120% of FPL	207% - 227% of FPL
Qualified Individual (QI)	120%-135% of FPL	227% - 242% of FPL

The act also authorizes the commissioner to facilitate enrollment of ConnPACE applicants and recipients choosing to enroll in the MSP.

The act authorizes the DSS commissioner to implement policies and procedures to administer these disregard provisions while in the process of adopting them in regulation form. He must print notice of intent to adopt the regulations in the *Connecticut Law Journal* within 20 days of implementing them. The policies and procedures are valid until final regulations are adopted.

EFFECTIVE DATE: April 1, 2009

§§ 17-21 — EXPANDING THE BOTTLE ACT TO INCLUDE NONCARBONATED BEVERAGES

The act expands the beverage container redemption law to types of water, which it terms “noncarbonated beverages.” It requires, starting April 1, 2009, that

noncarbonated beverage containers indicate a refund value of five cents. It requires distributors to pay dealers and redemption centers a two-cent handling fee for each redeemed noncarbonated beverage container, and makes conforming changes.

The act excludes from these requirements bottles, cans, jars, or cartons (1) containing three or more liters of a noncarbonated beverage or (2) made of high density polyethylene (HDPE).

It also excludes from this requirement noncarbonated beverages (1) sold or offered for sale or consumption on an interstate passenger carrier or (2) in a dealer's inventory as of March 31, 2009.

It allows manufacturers that bottle and sell up to 250,000, 20-ounce or smaller containers of noncarbonated beverages in a calendar year to seek an exemption from the act's requirements and authorizes the governor to delay implementation of the requirements for noncarbonated beverage containers until October 1, 2009.

The act defines noncarbonated beverages as water, flavored water, nutritionally enhanced water, and any beverage whose label identifies it as a type of water. But it excludes juice and mineral water. It defines beer, other malt beverages, and mineral water, soda, and similar carbonated soft drinks, already covered by the redemption law, as carbonated beverages.

As already required for carbonated beverage containers, noncarbonated beverage containers must clearly indicate, by embossing or by a stamp or label or other method securely attached to the container (1) either the container's refund value or the words "return for deposit," "return for refund," or other words approved by the Department of Environmental Protection (DEP), and (2) either the word Connecticut or the abbreviation, "Ct."

Under prior law, beverage containers required to carry these markings were individual, separate, sealed glass, metal, or plastic bottles, cans, jars, or cartons of any size containing a beverage. Under the act, bottles, cans, jars, or cartons (1) containing three or more liters of a noncarbonated beverage or (2) made of HDPE are not required to have these markings.

By law, a manufacturer is a person who bottles, cans, or otherwise fills beverage containers for sale to distributors or dealers. The act makes owners of private label trademarks used for private label beverage brands manufacturers. By law, a dealer's place of business is the location from which the dealer sells or offers beverage containers for sale to consumers. The act specifies that this place of business must be a fixed location.

Small Manufacturers

The act allows manufacturers who bottle and sell up to 250,000, 20-ounce or smaller containers of noncarbonated beverages in a calendar year to apply to DEP for an exemption from the bottle redemption law for these beverages. A manufacturer may apply for an exemption no later than November 1, 2009 and annually thereafter. It must do so on a DEP-approved form. An application filed on or before April 1, 2009 is automatically approved and valid until December 31, 2009. The exemption application must be accompanied by a sworn and signed affidavit certifying that the applicant annually sells 250,000 or fewer such bottles in a calendar year. The DEP commissioner must approve each application that meets the act's requirements within 30 days of receiving it.

Delay of Implementation

A manufacturer, dealer, or distributor of noncarbonated beverages may ask the governor or OPM secretary to delay implementing the act's requirements for noncarbonated beverage containers until October 1, 2009. They may apply on a form the governor or secretary prescribes. The governor or secretary may delay implementation on a showing that the noncarbonated beverage requirements will cause undue hardship to the affected industries.

EFFECTIVE DATE: April 1, 2009, except the provisions concerning small manufacturers and implementation delay are effective upon passage.

§ 22 — FEDERAL FUNDS NOTIFICATION

If the OPM secretary determines that implementing any of the act's provisions will adversely affect the state's eligibility for, or receipt of, funds under the 2009 federal economic stimulus act or any other federal program, the act requires him to notify the Appropriations Committee so the legislature can adjust the appropriate provision of the act. It requires the secretary to submit an initial report to the committee by March 15, 2009 on whether the act's implementation adversely affects federal funding.

EFFECTIVE DATE: Upon passage

§ 23 — LOTTERY AGENTS' COMMISSION REDUCTION

This act reduces the minimum average commission that the Connecticut Lottery Corporation may pay to lottery agents from 5% to 4% of an agent's lottery sales.

EFFECTIVE DATE: April 1, 2009

§ 24 — FY 07 SURPLUS FUNDS CARRY FORWARD

The act reduces amounts carried forward from the FY 07 surplus and available for FY 09 by a total of \$2.2 million as shown in Table 3.

Table 4: Reduced Carry Forwards From FY 07 Surplus

<i>Agency</i>	<i>For</i>	<i>Prior Law</i>	<i>The Act</i>	<i>Reduction</i>
Environmental Protection	Clean diesel buses	\$3,000,000	\$1,000,000	\$2,000,000
Education	School safety	2,000,000	1,800,000	200,000

EFFECTIVE DATE: April 1, 2009

§ 25 – SCHOOL SAFETY GRANTS

The act reduces the FY 09 appropriation for school safety grants (see BACKGROUND) to towns by \$200,000, from \$2 million to \$1.8 million. It also requires the State Department of Education to transfer the entire \$1.8 million to the Department of Emergency Management and Homeland Security (DEMHAS) by March 15, 2009. Finally, it overrides a requirement that grants be used only to reimburse towns for eligible expenses they have already paid and instead requires DEMHAS to pay all school safety grant awards to towns by April 1, 2009.

EFFECTIVE DATE: Upon passage

§ 26 – WACE TECHNICAL TRAINING CENTER

The act continues to exempt the Waterbury Adult Continuing Education (WACE) Technical Training Center in Waterbury from adult education grant requirements through FY 09 and allows it to spend up to \$300,000 of its grant for technical training. Prior law limited the spending to FYs 07 and 08. The center offers classroom and hands-on training in automatic screw machine and eyelet machine operations, as well as other advanced skill level training for careers in manufacturing.

EFFECTIVE DATE: Upon passage

§ 27 – REPEALERS

Technology Pilot Program

The act eliminates a pilot program for using technology in providing computer-assisted writing, instruction, and testing for public school students in grades six through 12.

Prior law allowed the education commissioner to provide grants to boards of education and regional vocational-technical schools for demonstration projects.

Grant funds could be used for computer hardware and software, professional development, technical consulting assistance, and other related activities. The commissioner had to select a diverse group of pilot program participants based on population, geographic location, and school or district economic characteristics.

Weatherization Program for Low-Income Households

The act repeals a \$2 million appropriation from the FY 08 surplus to fund a weatherization program for low-income households that participate in the Connecticut Energy Assistance Program. The program, administered by DSS, was required to give priority to helping households with incomes below 200% of the federal poverty level and to coordinate assistance with weatherization assistance programs for low-income households administered by municipal electric utilities and utility companies under programs overseen by the Energy Conservation Management Board and the Fuel Oil Conservation Board.

EFFECTIVE DATE: April 1, 2009

BACKGROUND

Related Acts

PA 09-29 repeals this act's transfer of \$2 million from the Client Security Fund to the General Fund for FY 09.

PA 09-206 prohibits hospitals and outpatient surgical facilities from seeking payments for costs associated with certain Medicare-identified nonpayable hospital-acquired conditions.

PA 09-1, June Special Session provision reversed this act's state police meal allowance, but it was subsequently vetoed.

School Safety Grant Program

This program provides competitive grants to towns to improve security infrastructure in schools, install security systems in schools' primary entrances purchase portable security devices, and train school personnel to use the devices and the infrastructure. To receive a grant, a town must show that it (1) has conducted a uniform security assessment of its school entrances and any security infrastructure, (2) has an emergency plan at its schools developed with applicable state and local first-responders, and (3) periodically practices the plan. The security assessment must be carried out under the supervision of the district's local law enforcement agency and use the Safe Schools Facilities Check List published by the National Clearinghouse for Educational Facilities.

Medicare Savings Program (MSP)

The federal MSP consists of three separate components: the Qualified Medicare Beneficiary (QMB), the Specified Low-Income Beneficiary (SLMB), and the Qualified Individual (QI). To qualify, individuals must be enrolled in Medicare Part A. Program participants get help from the state's Medicaid program with their Medicare cost sharing, including premiums and deductibles. The policy rationale for MSP is that if the state Medicaid program picks up these costs, the Medicare recipient will be less likely to require full Medicaid coverage for things that Medicare does not pay for.

Eligibility and Coverage

Table 1 lists each MSP component, its federally prescribed financial eligibility criteria, the coverage in Connecticut, and the value of that coverage.

Table 5: Medicare Savings Programs

Programs	Financial Eligibility in 2009 [1] (for single person)	Cost Sharing Paid by DSS	Value of Cost Sharing in 2009
QMB	Income: 100% of federal poverty level (FPL) (\$10,830 per year); Assets: less than \$4,000	Medicare Part A (hospital and limited skilled nursing facility) premiums, deductibles, and coinsurance) Part B (physician and other outpatient services) premiums and deductibles	Part A premium: \$443 per month Part A deductible: various, including \$1,068 for first 60 days of inpatient hospitalization Part B premium: various, depending on income; \$96.40 per month for income up to \$85,000 Part B deductible: \$135
SLMB	Income: 100-120% of FPL (\$10,830 to \$12,996 yearly) Assets: less than \$4,000	Medicare Part B premiums	See above
QI [2]	Income: 120-135% of FPL (\$12,996 to \$14,621 yearly) Assets: No test	Medicare Part B premium	See above

[1] The FPL rises each year.

[2] States receive a limited amount of federal money from which they pay on a first-come, first-served basis.

In addition to the unearned income it disregards, DSS disregards the Social Security cost-of-living adjustment for January through March. (This is to comply with a federal requirement since the federal poverty levels are not adjusted on January 1. It ensures that people whose income is at the limit do not lose their eligibility solely due to the COLA.)

Federal law allows states to recover benefits paid from the estates of QMB recipients, and Connecticut does this. States that do estate recovery may not require individuals who may be eligible for the QMB program to apply for it.

Medicare Part D, ConnPACE, and Low-Income Subsidy

Since 2004, Medicare Part D has helped beneficiaries pay for their prescriptions. The state-funded ConnPACE program historically provided this assistance to elderly and disabled individuals with relatively low incomes. Now, that program provides "wrap-around" coverage for things like the Part D plan's premiums and the deductible and coverage gap ("donut hole") periods, during which no federal assistance is available. ConnPACE pays the Part D deductible (\$295 in 2009) and for drugs not included on the Part D plan's formulary. ConnPACE beneficiaries pay a \$16.25 co-pay per prescription during the deductible period, and then no more than \$16.25 after that (many plans' co-pays are lower). They also pay a \$30 annual registration fee.

To qualify for ConnPACE in 2009, income is limited to \$25,100 for single individuals and \$33,800 for married couples. When calculating an applicant's available income, DSS deducts Medicare Part B premiums. There is no asset test.

Individuals with very low incomes can get even more help through the federally funded low-income subsidy program.

PA 09-3—HB 6715*Emergency Certification***AN ACT CONCERNING CERTAIN STATE PROGRAMS AND THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009**

SUMMARY: This act makes a number of unrelated changes concerning (1) Office of Policy and Management applications for federal Department of Energy grants under the American Recovery and Reinvestment Act of 2009 (ARRA) (P.L. 111-5), (2) continuation of health insurance coverage, (3) unemployment compensation, and (4) exclusion of ARRA payments from consideration for certain program eligibility and benefits.

EFFECTIVE DATE: Upon passage

§ 1 — STATE ENERGY PROGRAM

ARRA substantially expands federal funding for the Department of Energy's (DOE) State Energy Program. Federal law requires states to submit detailed comprehensive grant applications to DOE to access the funds. This act requires the Office of Policy and Management (OPM) to submit its application to the Appropriations and Energy and Technology committees at least 14 days before it submits the application to DOE. The act requires the committees to hold a public hearing on the application within seven days after receiving OPM's application. OPM must present testimony on the details of its application at the hearing.

§ 2 — CONTINUATION OF HEALTH INSURANCE COVERAGE

The act allows certain people who did not exercise their right to continue coverage under the group health insurance plan their employer provided after they were terminated from their jobs to (1) elect to be covered by it and (2) benefit from a federal subsidy that will reduce the premium. It applies to qualified beneficiaries (former employees and their dependents) of employers with fewer than 20 employees who were covered by Connecticut's "mini-COBRA" law.

The federal ARRA provides premium assistance for certain individuals receiving continuation coverage as permitted under the Consolidated Omnibus Budget Reconciliation Act of 1986 ("COBRA", see BACKGROUND). Eligible individuals pay only 35% of their COBRA premiums and the remaining 65% is reimbursed to the coverage provider through a tax credit. The premium assistance applies to periods of health coverage beginning on or after February 17, 2009, and lasts for up to nine months. Federal law permits eligible individuals to take advantage of the

special nine-month federal subsidy being offered if state law allows it.

Specifically, the act allows a person who (1) did not have continuation of group health insurance coverage under state law in effect on February 17, 2009, but (2) would be an "assistance eligible individual" under federal law if the continuation of coverage had been in effect, to continue the coverage by electing to do so within 60 days after receiving the special election notice the act requires.

An "assistance eligible individual" is any qualified beneficiary if:

1. at any time from September 1, 2008 to December 31, 2009, he or she is eligible for and elects COBRA continuation coverage and
2. the qualifying event for COBRA continuation coverage is the involuntary termination of the covered employee's employment that occurred between September 1, 2008 and December 31, 2009 (ARRA, § 3001(a)(3)).

Continuation of coverage elected under the act begins with the first period of coverage beginning on or after February 17, 2009, and does not extend beyond the period that continuation of coverage would have been allowed under state law if such coverage had been elected when the person became eligible to elect continuation of coverage (i.e., usually between 18 and 36 months).

The act requires each insurer and HMO that has issued a group health insurance policy, in conjunction with its group policyholders that are employers with fewer than 20 employees, to provide notice of the special election period to people who are eligible to choose coverage extension under the act by April 18, 2009.

If a person elects continuation of coverage under the act, the act requires insurers to disregard the time starting when the person first became eligible for such continuation of coverage to the date his or her continued coverage begins on or after February 17, 2009 when determining whether the person had maintained continuous coverage. (State law establishes rules regarding preexisting conditions that this provision addresses, see BACKGROUND.)

§ 3 — UNEMPLOYMENT COMPENSATION

Under unemployment compensation law, an employee loses eligibility for unemployment compensation (UC) if he or she quits a job without good reason. But the law provides certain conditions under which an employee who quits remains qualified for UC. One condition is an employee who quits to follow a spouse who must relocate because he or she is on active military duty.

The act expands this “trailing spouse” provision to cover an employee who quits a job to accompany a spouse to a new place because the spouse’s job relocated. The act requires it be impractical for the employee who quits to commute to his or her job from the new place. It also specifies that the employer’s account must not be charged with respect to the employee’s voluntary quitting. (This means the portion of the employer’s UC tax based on the employer’s UC experience will not increase due to this employee’s separation.)

The act also makes changes to two other existing conditions under which an employee may quit work and still qualify for UC.

The law provides that an employee may quit to protect himself or herself or the employee’s child, if the child lives with the employee, from becoming or remaining a victim of domestic violence. The act removes the requirement that the child be living with the employee and expands those who the employee may move to protect to include the employee’s spouse or parent. By law, the employee must make a reasonable effort to preserve the employment.

By law, an employee may quit to care for a seriously ill spouse, child, or parent who lives with the employee. The act removes the requirement that the person live with the employee. It removes the term “seriously ill” and replaces it with an “illness or disability” that necessitates care for the ill or disabled person for a period of time longer than the employer is willing to grant leave, paid or otherwise.

It broadens the group of health care providers who can document the illness or disability beyond a licensed physician to include the following:

1. a podiatrist, dentist, psychologist, optometrist, or chiropractor authorized to practice in Connecticut or another state who performs within the scope of the authorized practice;
2. an advanced practice registered nurse, nurse practitioner, nurse midwife, or clinical social worker authorized to practice in Connecticut or another state who performs within the scope of the authorized practice;
3. Christian Science practitioners listed with the First Church of Christ, Scientist in Boston, Massachusetts;
4. any medical practitioner from whom an employer or a group health plan’s benefits manager will accept certification of a serious health condition to substantiate a claim for benefits;
5. any of the above practitioners who practices in a country other than the United States, who is licensed in accordance with the laws and regulations of that country; or

6. any other health care provider the labor commissioner approves, performing within the scope of the authorized practice.

§ 4 — EXCLUSION OF ARRA PAYMENTS FOR PURPOSES OF PROGRAM ELIGIBILITY AND BENEFITS

The act excludes any payment made under ARRA from being counted as income for an individual applying for or receiving need-based benefits or services from any state or state-funded local program. Likewise, the payment cannot be counted as an asset for the month in which it is received and the following two months when determining eligibility or the amount of benefits or services.

The act also provides that ARRA payments may not be counted as income for determining eligibility for, or benefit levels of, individuals under any state-funded (1) property tax exemption or credit or rental rebate program financed either partially or entirely with state funds or (2) property tax relief program that a municipality, at its option, offers.

The ARRA contains several provisions that require its payments to be disregarded for purposes of eligibility and benefits for “federal and federally assisted” programs.

BACKGROUND

State Energy Program

Funding under this program goes to state energy offices (OPM in Connecticut), which must develop an annual plan for using the money. States can include a very wide range of energy programs in their plans, such as:

1. to increase transportation energy efficiency, including programs to accelerate the use of alternative fuel and hybrid vehicles in state fleets, mass transit, and privately owned vehicles;
2. to encourage the introduction of energy saving technologies in the industrial, buildings, transportation, and utility sectors and encourage state and industry partnerships to demonstrate advanced energy efficiency and clean energy technologies;
3. for financing energy efficiency and renewable energy investments, including programs that provide rebates, grants, or other incentives to install energy efficiency and renewable energy measures in buildings owned by state or local governments or nonprofit organizations;
4. for energy audits for buildings, industrial facilities, and industrial processes; and

5. to promote energy efficiency in housing, such as incentive programs for builders, utilities, and mortgage lenders to build, service, or finance energy efficient housing.

COBRA

COBRA gives certain former employees, retirees, spouses, former spouses, and dependent children the right to temporarily continue of health coverage under the employer's group health plan after their coverage would otherwise end, so long as the insured pays the required premiums. It applies to employers with 20 or more employees.

COBRA establishes the time period for which coverage must continue for a qualified person. A plan may, however, provide longer periods of coverage. COBRA requires coverage to extend for 18 months when a person would otherwise lose coverage because his or her employment ends or work hours are reduced. Other qualifying events, or a second qualifying event during the initial period of coverage, may extend coverage up to 36 months. Longer periods may be available for a disabled person.

In the absence of the temporary federal subsidy, a person may be required to pay the full premium and administrative costs for the coverage, up to 102% of the full premium at the group rate.

COBRA Qualifying Events

Continuation of coverage is only available when coverage is lost due to certain "qualifying events." Qualifying events for employees are (1) voluntary or involuntary termination of employment for reasons other than gross misconduct and (2) reduction in the number of hours worked.

For spouses and dependent children, the qualifying events are:

1. voluntary or involuntary termination of the covered employee's employment for any reason other than gross misconduct;
2. reduction in the covered employee's hours worked;
3. the covered employee's eligibility for Medicare;
4. the covered employee's divorce or legal separation;
5. the covered employee's death; and
6. if a dependent child, the loss of dependent child status under the plan.

Connecticut Mini-COBRA Law

Connecticut has a "mini COBRA" law that applies to employers regardless of size, including those with

fewer than 20 employees (CGS §§ 38a-538, 546, and 554).

ARRA and COBRA Continuation Coverage

Group health plans subject to COBRA are subject to ARRA's premium reduction provisions, notice requirements, and an additional election period. Although COBRA does not apply to group health plans sponsored by employers with fewer than 20 employees, many states (Connecticut included) require insurers who provide group health insurance coverage to plans not subject to COBRA to provide comparable continuation coverage. Such continuation coverage provided pursuant to state law is also subject to ARRA's premium reduction provisions and notice requirements, but not the additional election period (Federal Register, March 20, 2009 (Vol. 74, No. 53)).

Under ARRA, people who are eligible for COBRA coverage because of their own or a family member's involuntary termination from employment that occurred from September 1, 2008 through December 31, 2009 and who elect COBRA may be eligible to pay a reduced premium. Eligible individuals pay only 35% of the full COBRA premiums for their plans for up to nine months. The employer (or other responsible entity) may recover the remaining 65% of the premium by taking the subsidy amount as a credit on its quarterly employment tax return. This premium reduction is generally available for continuation coverage under the federal COBRA provisions, as well as for group health insurance coverage under state continuation coverage laws.

If the individual was offered federal COBRA continuation coverage as a result of an involuntary termination of employment that occurred at any time from September 1, 2008 through February 16, 2009, and that individual declined to take COBRA at that time, or elected COBRA and later discontinued it, ARRA gives the person another election opportunity.

Required Coverage for Preexisting Conditions

If a person's prior plan covered his preexisting condition, the succeeding plan must also cover the condition, provided (1) the prior coverage was continuous to a date not less than 120 days or, if the previous coverage was terminated due to an involuntary loss of employment, 150 days before the new plan's effective date and (2) the person applies for the new coverage within 30 days of his initial eligibility (CGS § 38a-476(c)).

By law, a "preexisting conditions provision" is a policy provision that limits or excludes benefits for a condition that was present and for which medical advice, diagnosis, care, or treatment was recommended

or received before the coverage effective date. A preexisting condition does not include (1) routine follow-up care to determine if breast cancer has reoccurred in a person who was previously determined to be breast cancer free, unless evidence of breast cancer is found during or as a result of the follow-up; (2) genetic information, unless there is a diagnosis related to the information; and (3) pregnancy.

PA 09-12—HB 6716

Emergency Certification

AN ACT CONCERNING CLEAN WATER PROJECTS, THE STATE FISCAL STABILIZATION FUND AND THE AMERICAN RECOVERY AND REINVESTMENT ACT OF 2009

SUMMARY: The American Recovery and Reinvestment Act of 2009 (ARRA) (P. L. 111-5) created the State Fiscal Stabilization Fund from which funds will be appropriated to governors to help stabilize state and local government budgets. Federal law requires states to submit detailed comprehensive grant applications to the U.S. Department of Education (U.S. DOE) to access the funds. This act requires the governor to submit her application to the Appropriations, Education, and Higher Education and Employment Advancement committees. She must do this at least 14 days before she submits the application to U.S. DOE. It requires the committees to hold a public hearing on the application within seven days after receiving it. The governor, or her designee, must present testimony on the details of the application at the hearing.

The law authorizes the Department of Environmental Protection (DEP) commissioner to use money in the Clean Water Fund's water pollution control federal revolving loan account to provide financial assistance to municipalities to build eligible water quality projects and for other purposes authorized under the federal Clean Water Act. By law, money in the account may only be used in specific ways. The act allows the treasurer to also transfer this money to the water pollution control state account to meet federal subsidization requirements.

The law similarly allows money in the Clean Water Fund's drinking water federal revolving loan account to be used in specific ways to provide financial assistance for the construction of eligible Department of Public Health (DPH)-approved drinking water projects and for other federally authorized purposes. The act allows the DEP and DPH commissioners to also provide additional forms of subsidization, including grants, principal forgiveness, negative interest loans, or combinations of these, if permitted by federal law and made according to

a legally authorized project funding agreement.
EFFECTIVE DATE: Upon passage

BACKGROUND

Clean Water Fund

The Clean Water Fund provides financial assistance to municipalities to plan, design, and build wastewater collection and treatment projects. The fund consists of five accounts:

1. the Water Pollution Control State account,
2. the Federal Revolving Loan account,
3. the Long Island Sound Clean-up account,
4. the River Restoration account, and
5. the Drinking Water Revolving Fund account.

The federal account is designated as the qualifying State Revolving Fund (SRF) under Title VI of the federal Clean Water Act amendments of 1987 and is subject to EPA regulation. Federal financial assistance is deposited in the SRF.

PA 09-111—SB 1167

Emergency Certification

AN ACT CONCERNING A STATE DEFICIT MITIGATION PLAN FOR THE FISCAL YEAR ENDING JUNE 30, 2009

SUMMARY: This act reduces the projected state General Fund deficit for FY 09 by:

1. reducing FY 09 General Fund appropriations for several agencies and programs by a total of \$22,903,120;
2. reducing FY 09 appropriations from the Special Transportation Fund by \$6,492,122;
3. transferring \$128,677,027 from special funds and non-appropriated accounts to the General Fund as revenue for FY 09; and
4. transferring \$2.2 million from the OPEB (other post-employment benefits) Teachers' Fund to the retirees health service cost account within the Teacher's Retirement Board in the General Fund for FY 09.

In addition, the act authorizes the state treasurer to transfer the unspent proceeds from transportation-related general obligation (GO) bonds to either the General Fund or the Special Transportation Fund, instead of just to the latter. As under prior law, the act allows such a transfer only if (1) the bond commission approves, (2) it will not harm the federal tax exemption for the bond interest, and (3) the debt service on the bonds is covered by the Special Transportation Fund. It also authorizes the treasurer, with the State Bond Commission's approval and prior to June 30, 2009, to

transfer \$4,964,477 from GO Bonds for Transportation Bond Fund 13004 to General Fund revenue for FY 09.

Finally, to allow the state to transfer \$7.5 million from the state treasurer’s Debt Service Retirement Fund SCRF (special capital reserve fund) account to the General Fund for FY 09, the act eliminates a law requiring the state to credit to a debt retirement reserve account all payments it receives to settle lawsuits related to financing backed by a SCRF and requiring the credited amounts to be available to the treasurer to prevent a draw on the SCRF.

EFFECTIVE DATE: Upon passage

REDUCED GENERAL AND SPECIAL TRANSPORTATION FUND APPROPRIATIONS FOR FY 09

The act reduces appropriations from the General and Special Transportation funds for FY 09 by the amounts shown in Table 1.

Table 1: Reduced FY 09 Appropriations

<i>Agency/Account</i>	<i>For</i>	<i>FY 09 Reduction</i>
GENERAL FUND		
Contracting Standards Board	Contracting Standards Board	\$265,000
Reserve for Salary Adjustments	Reserve for salary adjustments	5,200,000
Policy & Management	Furnace boiler upgrade (PA 08-2)	1,500,000
	Furnace boiler rebate (PA 08-2)	3,000,000
	Energy audit subsidy (PA 08-2)	4,000,000
	Heating assistance, age 65 (PA 08-1)	2,500,000
	Operation Fuel 200% of FPL (PA 08-1)	1,500,000
	Operation Fuel Median (PA 08-1)	1,500,000
Labor	Workforce Investment Act	1,225,120
Environmental Protection	Invasive Plants Council	313,000
Mental Health & Addiction Services	Medical adult rehabilitation option	1,800,000
Education	High school technology initiative	100,000
SPECIAL TRANSPORTATION FUND		
State Comptroller - Fringe Benefits	Employer's Social Security tax	900,000
Reserve for Salary Adjustments	Reserve for salary adjustments	5,592,122

TRANSFERS TO THE GENERAL FUND FOR FY 09

The act transfers a total of \$126,677,067 from available balances in special funds and non-appropriated accounts to the General Fund to be counted as General Fund revenue for FY 09. The amount transferred from each fund or account is listed in Table 2 below.

Table 2: Transfers To FY 09 General Fund Revenue

<i>Agency</i>	<i>Fund/Account</i>	<i>Amount Transferred</i>
	Banking Fund	\$6,000,000
	Special Transportation Fund	6,492,122
	Tobacco and Health Trust Fund	5,000,000
	Connecticut Cancer Partnership Account	1,000,000
Military	Insurance recoveries account	81,596
Board of Education & Services for the Blind	Sales and Services Business Enterprise Program account	600,000
	Birth-to-three service coordination account	5,972
CT Health & Educational Facilities Authority	CT health and educational facilities account	900,000
Agriculture	Dog licenses account	1,414,874
	Agriculture exposition account	40,104
	Animal population control account	534,811
	CT Creative Store account	18,285
	CT Grown Food account	13,941
	Invasive species detection and control account	15,000
Administrative Services	Conference and seminars account	120,000
Children and Families	Wilderness School Program account	110,000
Criminal Justice	Drug assets forfeiture account	50,000
	Seized assets to support undercover operations account	10,465
Consumer Protection	CT Itinerant Vendors' Guaranty Fund	43,000
	Bedding and filling material account	280,000
	New automobile warranties (Lemon Law) account	500,000
Developmental Services	Self-determinations conference account	7,028
	Governor's Career Internship Program account	2,755
	Energy unit load management account	50,000
Economic & Community Development	International trade account	53,499
	Tourism account	210,762
	CT economic impact and analysis account	150,095
	Center for Manufacturing Networks at CCSU account	15,746
	Dry cleaning establishment remediation administrative account	650,000
Environmental Protection	Environmental Quality Fund	16,700,000
	Conservation Fund	9,000,000
	Bird Mitigation Survey Project account	524,799
	Wetlands Restoration, Projection account	6,982
	Soil conservation equipment account	71,858
	Forest firefighting equipment account	23,494
	Clean Air Act account	16,900,000
	Digital Map Generation account	\$10,138
	Recreation and Natural Heritage Program account	713,831

Agency	Fund/Account	Amount Transferred
Higher Education	Academic Scholars Program (ELEET)	\$579,871
	Private occupational school student protection account	600,000
Mental Health & Addiction Services	General education account	5,329
	Drug assets forfeiture revolving account	346,135
	Community Mental Health Strategic Investment account	805,114
	Chronic gamblers treatment and rehabilitation account	200,000
	Psychological, psychosexual evaluation account	20,000
	CT Recovery Purchase Project phase 2 account	200,000
	PACCT account	2,960
Banking	Investor Education Fund	245,000
Correction	Correction industries account	1,200,000
	Correction commissaries account	1,613,133
	Sale of Enfield property account	37,750
	General welfare fund	2,672,368
	Culinary Arts Program account	97,802
Insurance	Utilization review fees account	956,641
	Preferred provider network account	98,735
Information Technology	Capital Equipment Data Processing Revolving Fund	3,500,000
Labor	Individual Development Account Reserve Fund	222,953
	Conferences and seminars account	7,991
	Wage and Workplace Standards Civil Penalty Fund	400,000
	Apprenticeship registration account	200,000
Public Health	Emergency Medical Technician Program account	60,000
	Women's Health Summit account	2,094
	Caregiver Conference account	18,174
	Tobacco Health Trust Fund	10,000,000
Public Safety	Applicant fingerprint card submission account	210,359
	Drug assets forfeiture revolving account	1,500,000
	Pistol permits photographic costs account	100,000
	Court reimbursements account	250,000
	Fire Safety Standard Act account	37,000
Public Utility Control	Siting Council account	800,000
	Public, educational and governmental program and educational technology investment account	1,900,000
Social Services	Conference fees	35,274
	Support system for early care project account	65,667
	Brain injury prevention and services account	200,000
Fire Prevention & Control	Fire school training and educational extension account	75,000
	State fire school auxiliary services account	\$25,000
Judicial	Judicial Data Processing	1,100,000

Agency	Fund/Account	Amount Transferred
	Operations Revolving Fund	
	Meriden Courthouse maintenance reserve account	\$875,000
	Derby Courthouse maintenance reserve account	550,000
	Community service labor program	354,685
	Law Library – donated copier receipts account	246,716
Military	Inaugural Ball account	7,485
Legislative Management	Child Poverty and Prevention Council account	18,000
Policy & Management	Regional Energy Conference account	10,230
	Long Term Care Insurance Study account	175,000
	Low-Level Radioactive Waste Management account	668,963
	Energy Advisory Board conferences account	1,000,000
	Local Emergency Relief account	10,642
	Disposition of State Surplus Property account	19,000
Comptroller	CMA Settlements account	309,893
Treasurer	Debt Retirement Fund SCRF account	7,500,000
	Rental Housing Fund	9,045,535
Education	Vocational education instruction account	175,000
Secretary of the State	Commercial recording administration account	1,500,000
State Library	Historic documents preservation account	900,000
Workers' Compensation	Workers' Compensation seminars account	34,894
Elections Enforcement	Citizen's Election Fund	700,000

PA 09-214—SB 1162 (VETOED; OVERRIDDEN)
Appropriations Committee
Finance, Revenue and Bonding Committee
Government Administration and Elections Committee

AN ACT REQUIRING CONSENSUS REVENUE ESTIMATES

SUMMARY: This act requires the Office of Policy and Management (OPM) secretary and the Office of Fiscal Analysis (OFA) director to agree on and issue consensus revenue estimates each year by October 15 and to issue any necessary consensus revisions of those estimates in January and April. The estimates must cover the current biennium and the three following years. If the secretary and the director cannot issue a consensus estimate, they must issue separate ones. In such a case, the comptroller must issue the consensus estimate based on the separate estimates. The comptroller's estimate must equal one of the separate estimates or fall between the two.

The act also establishes an additional procedure for developing a consensus revenue estimate for the FY 10-11 biennium and requires the governor and legislative fiscal committees to take certain actions based on those estimates if no budget for those years has become law by the act's effective date.

Under the act, the consensus revenue estimates and revised estimates must (1) be the basis for the governor's proposed budget and the revenue statement included in the budget act the legislature passes and (2) be included in the annual fiscal accountability reports submitted to the legislature's fiscal committees each November. If the estimates or revised estimates lead to forecasted deficits or increased deficits exceeding certain levels, the act requires the governor and the legislature's fiscal committees to take specified actions to address the estimates.

EFFECTIVE DATE: Upon passage

ANNUAL CONSENSUS REVENUE ESTIMATES

Process and Timetable for Developing Consensus Revenue Estimates

The act requires the OPM secretary and the OFA director to agree on and issue consensus revenue estimates each year by October 15. The estimates must cover a five-year period that includes the current biennium and the three following fiscal years. It also requires the two offices, by January 15 and April 30 each year, to issue either (1) a consensus revision of their previous estimate or (2) a statement that no revision is needed.

If the secretary and the director do not issue a consensus estimate or revision by these deadlines, they must issue separate estimates or revisions. The state comptroller must then issue a consensus estimate or revision based on the separate estimates. The comptroller must either (1) adopt one of the separate estimates or revisions or (2) issue an estimate that falls between the two. The deadline for the comptroller to issue the October consensus estimate, if required, is October 25. For any required revised January and April consensus estimates, the comptroller's deadline is no later than five days after OFA and OPM fail to issue a consensus revision, i.e., by January 20 and May 5, respectively.

Requirements for Using Consensus Estimates

The act requires the governor to base the draft revenue and appropriations bills needed to carry out her budget recommendations on the consensus estimate or most recent revised consensus estimate. It also requires the consensus estimate or revised consensus estimate to serve as the basis for the estimated revenue statement

for each fiscal year that, under existing law, the legislature must include in the state budget act. By law, this statement must be itemized by major revenue source for each major state fund and show that the budget's spending requirements and the state's estimated revenues are balanced in each fiscal year.

Finally, the act requires OPM and OFA to include the October consensus revenue estimate in the state fiscal accountability reports they must each submit annually to the Finance, Revenue and Bonding and Appropriations committees by November 15.

Revised Consensus Estimates Forecasting Deficits or Increased Deficits

When the revised consensus revenue estimate issued in January or April of any year changes the previous consensus estimate to forecast a deficit or deficit increase greater than 1% of total General Fund appropriations for the current year, the act requires the governor and the General Assembly to address the revised estimates if (1) the General Assembly is in session and (2) no budget for the upcoming fiscal year has been adopted. (Since revenue projections alone cannot forecast a deficit, presumably the existence and size of any deficit forecast under the act would be determined by comparing the consensus revenue estimate to state spending projections.)

If the January or April revised estimate forecasts such a deficit or deficit increase, the governor must submit a budget document to the legislature within 25 calendar days after the January estimate is issued or within 10 calendar days after issuance of the April revised estimate. The document must be based on the consensus or revised consensus revenue estimate and must include drafts of appropriations and revenue bills necessary to address the most recent of these estimates.

If the April revised estimate forecasts such a deficit or deficit increase, the Appropriations and Finance, Revenue and Bonding committees must, by the 10th business day after the April consensus revision is issued, prepare and vote on adjusted appropriations and revenue plans needed to address the revised estimate.

ADDITIONAL REQUIREMENTS FOR FY 10-11 BIENNIUM

If no budget for the July 1, 2009 to June 30, 2011 biennium has become law by the act's effective date, the act gives the secretary and the director five days after its passage to issue the revised consensus revenue estimate for that biennium. If the offices do not issue the estimate by the deadline, they must issue separate revised estimates. Immediately afterwards, the comptroller must consider the two estimates and issue the revised consensus estimate for the FY 10-11 biennium. The

estimate must be the same as OFA's or OPM's revised estimate or fall between the two.

Unless a budget for the July 1, 2009 to June 30, 2011 biennium has become law by the act's effective date, the Appropriations and Finance, Revenue and Bonding committees must, by the 10th day after that date, prepare and vote on adjusted appropriations and revenue plans needed to address the revised consensus estimate. Also by the 10th day after the act takes effect, the governor must submit a budget document to the legislature that addresses the revised consensus estimate. The document must be based on the revised estimate and include drafts of appropriations and revenue bills necessary to address it.

PA 09-23—sHB 6327

Banks Committee

AN ACT CONCERNING SURETY BONDS FOR DEBT ADJUSTERS

SUMMARY: This act changes the method for calculating the required surety bond that debt adjusters must file with the banking commissioner. It also sets the bond for a debt adjuster applicant who acquires a predecessor's business. The act (1) allows the banking commissioner to change the bond amount based on certain conditions and (2) requires applicants who cannot meet the bond requirements to deposit a certain amount in a bank, instead of obtaining an insurance policy as is the option under current law. It also makes conforming changes.

EFFECTIVE DATE: July 1, 2009

CALCULATING THE REQUIRED BOND

Prior law set the bond amount for debt adjuster license applicants at the greater of (1) \$40,000 or (2) twice the amount of the highest total payments received from Connecticut debtors in connection with the applicant's debt adjustment activity in any month during the preceding 12 months ending on July 31 of each year. The act requires the average daily balance over the preceding 12 months to be used instead of the highest monthly total. It limits the bond for applicants that have acquired the business of a predecessor debt adjuster to the lesser of the predecessor's debt adjustment activity during such 12-month period or \$1 million.

The act allows the banking commissioner to require a larger bond if he determines that (1) a licensee has engaged in a pattern of conduct resulting in bona fide consumer complaints of misconduct and (2) the increased bond is necessary for consumer protection. The act also allows the commissioner to change the bond amount based on the applicant's or licensee's financial condition, business plan, or the amount of payments and fees Connecticut debtors paid to the applicant.

Prior law required licensees to submit evidence that the bond complies with the statutory requirements by September 1 of each year. Instead, the act requires licensees to submit annually, by September 1, a report specifically containing information on the average daily balance of payments received from Connecticut debtors during the preceding 12 months ending on July 31. The licensee must subscribe and affirm it as true in a form the commissioner prescribes.

LICENSEES AND APPLICANTS UNABLE TO MEET THE BOND REQUIREMENTS

Under prior law, when a licensee or renewal applicant could not comply with the bond requirements, the person could ask the commissioner for an alternative by July 1. If the commissioner determined it was warranted, he could allow the licensee or applicant to supplement the maximum bond, as long as it was at least \$40,000, with other bonds and insurance policies, and the details approved by the commissioner. The act instead requires a licensee or applicant in this situation to file the highest bond it can get, as long as it is at least \$40,000. In lieu of the balance, the licensee or applicant must deposit an amount equal to what it was required to pay, minus the bond amount or more in cash or cash equivalents with a commissioner-approved Connecticut bank, out-of-state bank with a Connecticut branch, or Connecticut or federal credit union. The commissioner may impose other conditions he deems necessary for consumer protection and the public interest.

The act prohibits such deposits from being made until the institution and licensee execute a depository agreement that the commissioner finds satisfactory. The agreement must pledge the deposited funds to the commissioner and prohibit the institution from releasing any of the pledged funds without his authorization. The act specifies that the deposited amount secures the same obligations as would the surety bond and that it is to be held at the institution to cover claims during the license period and for two years after the license is surrendered, revoked, suspended, or expired. The applicant or licensee may, however, collect interest on the deposit in accordance with the agreement.

The act deems the deposits, by operation of law, to be held in trust for the benefit of a debtor damaged by (1) the applicant's or licensee's failure to perform a written agreement or (2) the wrongful conversion of funds paid to a licensee in the event of the licensee's bankruptcy. The funds are immune from attachment by creditors or judgment creditors.

PA 09-71—SB 873

Banks Committee

AN ACT CONCERNING STATE CHARTERED BANKS

SUMMARY: By law, anyone possessing personal information about another person must safeguard it and the computer files and documents that contain it. "Personal information" is information that can be associated with an individual through an identifier like a Social Security number. The law gives each state agency the authority to enforce this provision against its

licensees, registrants, or certificate holders. This act gives agencies the authority to enforce the law against holders of charters subject to their supervision, thereby clarifying that the Department of Banking can enforce the provision against banks.

The act also specifies that a financial institution's adoption of safeguards that comply with the federal Gramm-Leach-Bliley Act constitutes compliance with the law on safeguarding personal information.

Finally, the act eliminates a requirement that monetary penalties for violations of laws safeguarding personal information be deposited into the privacy protection guaranty and enforcement account. This account was never established. Instead, enforcing agencies deposit these penalties into the General Fund.

EFFECTIVE DATE: October 1, 2009

BACKGROUND

Gramm-Leach-Bliley Act

The 1999 federal Gramm-Leach-Bliley Act applies to financial institutions and how they handle nonpublic personal information. It requires federal regulators to establish comprehensive standards for ensuring the security and confidentiality of consumers' personal financial information.

PA 09-100—sSB 617

Banks Committee

Finance, Revenue and Bonding Committee

AN ACT CONCERNING BRANCHING AND AUTHORITY TO IMPLEMENT THE NATIONAL DEFENSE AUTHORIZATION ACT

SUMMARY: This act allows the banking commissioner, between October 1, 2009 and September 30, 2011, to accept applications for "expedited" Connecticut banks. These are banks organized primarily for the purpose of assuming liabilities and purchasing assets from the Federal Deposit Insurance Corporation (FDIC) when it is acting as receiver or conservator of an insured depository institution. Additionally, the act allows the banking commissioner to waive the filing of a Community Reinvestment Act (CRA) plan for banks that meet certain standards, and expedites the process for them to establish bank branches.

The act also:

1. allows Connecticut banks to open "special need limited branches" for high school students, under certain conditions;
2. provides that no fee can be charged for an application to relocate a Connecticut bank's main office;

3. allows a Connecticut capital stock bank to declare a dividend on its capital stock if it has received the commissioner's prior approval;
4. clarifies the laws applicable to, and allowable activities of, out-of-state banks;
5. requires Connecticut institutions subject to a federal law that limits the consumer credit interest rate that can be charged to members of the armed services and their dependents to follow the law and allows the commissioner to share information with the federal government to enforce it; and
6. makes technical and conforming changes.

EFFECTIVE DATE: Upon passage, except that the provisions on the relocation fee, capital stock bank dividends, and expedited banks are effective October 1, 2009.

EXPEDITED BANKS

§§ 5, 6 — Application Procedure

Conditional Approval. Under the act, a person, including an individual or legal entity, wishing to organize an expedited Connecticut bank must execute, acknowledge, and file with the banking commissioner an application to organize. The application must be made on a form acceptable to the commissioner and must contain sufficient information for him to evaluate:

1. the amount, type, and sources of capital that would be available to the bank;
2. the ownership structure and holding companies, if any, over the bank;
3. the identity, biographical information, and banking experience of each of the initial organizers and prospective initial directors, senior executive officers, and any individual, group, or proposed shareholders of the bank that will own or control 10% or more of the bank's stock;
4. the organizers' and investors' overall strategic plan for the bank; and
5. a preliminary business plan outlining intended product and business lines, retail branch plans, and capital, earnings, and liquidity projections.

The commissioner, acting alone, must grant conditional preliminary approval of the application if he finds that:

1. the organizers have sufficient committed funds available to invest in the bank;
2. the organizers and proposed directors possess capacity and fitness for the duties and responsibilities with which they will be charged;
3. the proposed bank charter has a reasonable chance of success and will be operated in a safe

- and sound manner; and
4. the \$15,000 fee for investigating and processing the application imposed by the act has been paid.

The commissioner's approval is subject to the conditions he deems appropriate, including requirements that the bank not commence the business of a Connecticut bank until after its bid or application for a particular insured depository institution is accepted by the FDIC and that the background checks are satisfactory. The organizers also must submit, for the safety and soundness review by the commissioner, more detailed operating plans and current financial statements as potential acquisition transactions are considered, and such plans and statements must satisfy the commissioner.

The act allows the commissioner to alter, suspend, or revoke the conditional preliminary approval if he deems any interim development warrants such action. This approval expires if the bank has not commenced business and consummated an initial acquisition within 18 months, unless the commissioner extends it.

Final Approval and Waivers. The commissioner must not issue a final certificate of authority to commence the business of a Connecticut bank until all conditions and reopening requirements and applicable state and federal regulatory requirements have been met and the requisite \$15,000 fee for assuming liabilities and purchasing assets has been paid.

The act allows the commissioner to waive any requirement in the banking laws and regulations necessary for the consummation of a bank acquisition involving an expedited Connecticut bank if he finds that it is advisable and in the interest of depositors or the public. However, he cannot waive the requirement that the institution's insurable accounts or deposits be federally insured. Any waiver the commissioner grants must be in writing and include the reasons for the waiver. He may impose conditions he deems necessary on the final certificate of authority to ensure that the bank will be operated in a safe and sound manner. Finally, the commissioner must cause notice of the issuance of the final certificate of authority to be published in the department's weekly bulletin.

§ 3 — *Disclosure of Records*

By law, there are a number of records that (1) cannot be disclosed by the banking commissioner or any banking department employee and (2) are not subject to public inspection or disclosure. The act adds to that list information obtained, collected, or prepared in connection with the organization of an expedited Connecticut bank prior to the issuance of a final certificate of authority.

§ 2 — *Annual Report to Governor and Banks Committee*

The act requires the commissioner to report annually to the governor and the Banks Committee on the final certificates of authority issued for expedited banks.

EXPEDITED BRANCHING FOR ELIGIBLE ENTITIES

§ 4 — *Community Reinvestment Act*

By law, the commissioner cannot grant an application to entities that received a rating other than outstanding on their most recent community reinvestment performance evaluation unless they submit a plan illustrating how they will provide adequate services to meet the banking needs of all community residents, including those with low- or moderate-income. This applies to a Connecticut branch (including a limited and mobile branch); an out-of-state bank de novo branch; merger, consolidation, or acquisition by a Connecticut or out-of-state bank; or Connecticut or out-of-state holding company. The commissioner and the entity must publish notice that the plan will be available to the public for inspection and comment for 30 days. After this 30-day period, the commissioner must decide whether to approve the entity's proposed activity.

For eligible entities, described below, the act allows the commissioner to (1) waive the requirement to file a plan or (2) require them to submit information he deems appropriate instead of the plan. The commissioner could already take this action with regard to mobile branches. For Connecticut bank acquisitions, the act only allows the commissioner to waive the requirement.

§ 8 — *Branching Application*

When the commissioner receives an application from a Connecticut bank to establish a branch in this state (including a limited, special needs limited, and mobile branch) or a branch outside of the state (including a limited or mobile branch), the act requires the commissioner to publish a notice of the application in the department's weekly bulletin. The commissioner must determine if the applicant is an "eligible entity" and must promptly notify the applicant of his determination.

The act requires an eligible entity's application to be deemed approved on the 12th day after the end of the comment period provided in the department's weekly bulletin, unless the commissioner informs the applicant, in writing, before then that:

1. an adverse comment has been received that warrants additional investigation or review;
2. the application presents a significant community reinvestment or compliance concern;
3. the application presents a significant supervisory concern or raises significant legal or policy issues; or
4. the application requires additional information.

The application may be deemed approved prior to the expiration of the 12th day if the commissioner issues a written notice of his intent not to disapprove the application.

§ 4 — *Eligible Entities*

The act defines an “eligible entity” as an applicant that:

1. received a composite rating of one or two under the Uniform Financial Institutions Rating System as a result of its most recent safety and soundness examination (five is the lowest rating);
2. received a compliance rating of one or two on its most recent compliance examination;
3. received a satisfactory or better rating on its most recent community reinvestment performance evaluation;
4. is well capitalized in that it (a) has a total risk-based capital ratio of 10% or greater; (b) has a tier one risk-based capital ratio of 6% or greater; (c) has a tier one leverage capital ratio of 5% or greater; and (d) is not subject to any written agreement, order, capital directive, or prompt corrective action directive under applicable federal laws to meet and maintain a specific capital level for any capital measure;
5. is not subject to a cease and desist order, consent order, prompt correction action directive, written agreement, memorandum of understanding, or other administrative agreement with its primary state or federal banking regulator; and
6. is not subject to any formal or informal administrative action by its primary state or federal banking regulator.

§ 8 — SPECIAL NEED LIMITED BRANCH FOR HIGH SCHOOL STUDENTS

The act allows any Connecticut bank to establish a special need limited branch (which provides limited services or is open for limited time periods) to participate or assist in a financial education program for high school students where, in connection with the program, the branch receives deposits, cashes checks, or

lends money. A bank may do this if:

1. the deposits are received, checks are paid and money is loaned on school premises or a facility the high school uses;
2. the receipt of deposits, paying of checks and lending of money are in accordance with the school’s policy;
3. the principal purpose of each program is financial education; and
4. each program is conducted in a manner that is consistent with safe and sound banking practices.

The bank must submit written notice to the commissioner at least 30 days before the date of the establishment of such branch. The notice must include a detailed description of the program, the location of the high school or facility where the program will take place, and any other information the commissioner requires.

§ 9 — LAWS APPLICABLE TO, AND ACTIVITIES OF, OUT-OF-STATE BANKS

Laws Applicable to Out-of-State Banks

Prior law specified that Connecticut law applied to any out-of-state branch in the same way it would apply if the branch were a federal bank. However, certain community reinvestment, consumer protection, fair lending, and branching laws applied to those out-of-state banks in the same way they would have applied to a Connecticut bank branch. The act instead provides that Connecticut law, including the areas listed above, with the exception of laws on certain reports to the banking commissioner and holidays, apply to out-of-state banks (excluding federally chartered banks) to the extent they would apply to an out-of-state branch of a national banking association.

Activities of Out-of-State Banks

Prior law specified that an out-of-state bank, other than one that is federally chartered, could conduct any activity permissible under the laws of its home state, to the same extent that the activity is permissible either for a Connecticut bank or for a branch in this state of an out-of-state federally chartered bank. Instead, the act provides that an out-of-state bank, other than one that is federally-chartered, can conduct any activity that is permissible under the laws of its home state, to the same extent that the activity is permissible either for a Connecticut bank or for a branch in this state of an out-of-state national banking association.

§ 10 — NATIONAL DEFENSE AUTHORIZATION ACT

The act requires compliance with the provision of the John Warner National Defense Authorization Act that limits the consumer credit interest rate that can be charged to armed services members and their dependents by Connecticut banks, credit unions, and other persons whose lending activities in Connecticut are subject to that law. Whenever it appears that any financial institution has violated, is violating, or is about to violate this law, the act allows the banking commissioner to use his powers to take action against it.

It also allows the commissioner to enter into agreements with the U.S. Department of Defense to enhance communication and exchange of information about financial institutions to achieve prompt and effective resolution and redress of consumer complaints and of alleged violations of the above provision.

PA 09-144—sSB 951

Banks Committee

Planning and Development Committee

Judiciary Committee

AN ACT CONCERNING NEIGHBORHOOD PROTECTION

SUMMARY: This act creates a registration system for tracking the owners of uninhabited one- to four-family dwellings obtained by strict foreclosure or foreclosure by sale (“registrants”). It specifically allows municipalities to enforce against a registrant any provision of the statutes or municipal ordinance on the repair or maintenance of real estate after the municipality has provided notice and an opportunity to remedy the situation.

The act prohibits municipalities from imposing registration requirements outside of the act unless they were in effect before the act’s effective date. It also prohibits municipalities from adopting property maintenance ordinances or regulations that apply only to people who obtained title by foreclosure. However, any such ordinances or regulations adopted before the act’s effective date remain in effect and municipalities can enact or enforce ordinances or regulations that apply generally to all property owners. The act also provides that these provisions do not prohibit or limit a municipality from adopting or enforcing an ordinance or regulation adopted under statutes relating to (1) the prevention of housing blight, (2) the maintenance of safe and sanitary housing, or (3) the abatement of nuisances.

Finally, the act extends an existing law allowing municipalities to recover from the real estate’s owner,

expenses incurred for the inspection, repair, demolition, removal, or other disposition of real estate to make it safe and sanitary. It does this by allowing for the recovery for expenses incurred (1) for maintenance and (2) to remedy a blighted condition on the real estate. The law allows the municipality in these situations to place a lien on the owner’s interest in the real estate or an insurance policy covering the real estate, but limits the insurance policy provisions to property other than single- or two-family dwellings. The act specifies that this limitation does not apply to properties subject to the registration requirements.

EFFECTIVE DATE: October 1, 2009

REGISTRATION

The properties must be registered with the town clerk of the municipality in which they are located or with the Mortgage Electronic Registration Systems (MERS), an online system the real estate finance industry created for originating, selling, and servicing rights. The deadline for doing this depends on when the property becomes vacant. If the property is vacant on the day title vests, then it must be registered within 10 days of that date. If the property becomes vacant due to an execution of ejectment or eviction within 120 days after title vests, then it must be registered within 10 days after the property becomes vacant.

If the registration is with the municipality, the registrant must pay a \$100 fee. If the registrant is an individual, he or she must provide his or her name, address, telephone number, and electronic mail address (“contact information”). If the registrant is a corporation or an individual who resides out-of-state, it must also provide the contact information for a direct contact. In either case, the registrant must also provide the contact information for the local property maintenance company responsible for the security and maintenance of the vacant residential property, if there is one. The registrant must indicate whether it prefers to be contacted by first class or electronic mail and the preferred addresses for such communications and must report any changes in the registration information within 10 days after the date of the change.

Those registering with MERS must provide contact information for either the registrant or the property maintenance company, if there is one.

VIOLATIONS AND DUE PROCESS

If the registrant violates any state law or municipal ordinance on the repair or maintenance of real estate, the municipality can issue a notice citing the violating conditions. The notice must be sent by first class or electronic mail, or both, and must be sent to the address or addresses identified on the registration. A copy of the

notice must be sent by first class or electronic mail to the identified local property maintenance company, if there is one. The notice must also meet the same standards as notices to remedy a health, housing, or safety code violation (i.e., notice must be sent to the lienholder).

The notice must provide a date by which the registrant can remedy the conditions in question. The date must be reasonable under the circumstances. If the registrant or property maintenance company fails to do so, the municipality can enforce its rights under the relevant statute or ordinance.

The act allows municipalities to use the act's notice procedure when enforcing property maintenance and repair ordinances and statutes against registrants.

PA 09-160—sHB 6232

Banks Committee

Judiciary Committee

AN ACT CONCERNING THE CONNECTICUT BUSINESS OPPORTUNITY INVESTMENT ACT

SUMMARY: This act makes changes to the Connecticut Business Opportunity Act (CBOA), which regulates the sale and lease of products, equipment, supplies, or services that enable a person to start his or her own business. It consolidates existing registration procedures and requires more business opportunities to be registered by eliminating certain exemptions. It expands the situations under which the banking commissioner can issue a stop order. It also enhances disclosure requirements, including by prohibiting a person, in connection with any procedures under CBOA, from omitting to state a material fact that, in light of the circumstances under which it was made, makes the statement false or misleading.

The act also specifies that a trust account associated with selling a business opportunity can be with a licensed bank or other depository institution. Prior law specified that the trust account be with a bank or a savings institution.

Finally, the act adds definitions and makes minor changes to the Uniform Securities Act, and makes other minor, technical, and conforming changes.

EFFECTIVE DATE: October 1, 2009

§ 1 — DEFINITIONS

The CBOA includes disclosure requirements for the business opportunity seller's affiliates. This act defines the term "affiliate" as a person who:

1. directly or indirectly controls, is controlled by, or is under common control with, a seller;

2. directly or indirectly owns, controls or holds with power to vote 10% or more of a seller's outstanding voting securities; or
3. has, in common with a seller, one or more partners, officers, directors, trustees, branch managers, or other persons occupying similar status or performing similar functions.

The act also changes the definition of "seller" in the context of a business opportunity, to clarify that the CBOA applies to the seller of even a single opportunity, rather than more than one, as appeared to be the case under prior law.

§ 3 — DISCLOSURES

By law, business opportunity sellers must provide certain disclosures to purchasers. Under prior law, the disclosure document had to include, relative to certain individuals, a statement disclosing who at any time during the previous seven years:

1. has been convicted of a felony or pleaded nolo contendere to a felony charge if it involved fraud;
2. has been held liable in a civil action resulting in a final judgment or has settled out of court any civil action, or is a party to any civil action, that (a) involved allegations of fraud or (b) was brought by a present or former purchaser-investor and which involves or involved the business opportunity relationship; or
3. is subject to any currently effective state or federal agency or court injunctive or restrictive order, is a party to a proceeding currently pending in which such an order is sought, affecting business opportunity activities or the seller-purchaser-investor relationship, or involving fraud.

This information must be provided generally for the seller, its affiliate, predecessor, current directors, executive officers, trustees, general partners, general managers, persons who will represent the seller in offering or selling business opportunities in the state, and any other persons charged with responsibility for the seller's business activities.

The act instead requires the information to be provided going back 10 fiscal years instead of seven. It also requires information to be provided for these individuals if they are or were a principal, director, executive officer, or partner of any other person who was held liable, settled, or is a party to the civil actions or pending proceedings discussed above.

The act also changes, from seven to 10 fiscal years, the look-back period for those that have (1) filed bankruptcy or been adjudged bankrupt; (2) been reorganized due to insolvency; or (3) been a principal, director, executive officer or partner of any other person

who has so filed or was so adjudged or reorganized, during or within one year after the period that such a person held that position with the other person.

The act also makes a number of other minor changes to the disclosure requirements. For instance, it specifies that the document must contain the seller's business address, rather than just an address. Additionally, it must specify whether the seller is a limited liability company or partnership, rather than just an individual, partnership, or corporation.

§ 5 — EXEMPTIONS

By law, certain business opportunities are exempt from complying with certain requirements and prohibitions under the CBOA. The act eliminates the exemption as to the laws:

1. requiring sellers to file with the banking commissioner an irrevocable consent appointing the commissioner as the seller's attorney for service of process;
2. prohibiting a person from representing that the business opportunity will provide income or earning potential of any kind unless the seller has documented data to substantiate the claims of income or earnings potential and discloses this data to the prospective purchaser-investor at the time the representations are made; and
3. prohibiting the use of the trademark, service mark, trade names, logotype, advertising or other commercial symbol of any business which does not either control the ownership interest in the seller or accept responsibility for all representations made by the seller in regard to the business opportunity, unless it is clear from the circumstances that the owner of the commercial symbol knows of and consents to its use and is not involved in the sale of the business opportunity.

By law, the burden of proving an exemption is on the person claiming it. The act expands this requirement to cover any exclusion or exception from a definition.

§ 6 — STOP ORDERS

The act expands the circumstances under which the commissioner can issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any business opportunity registration. It allows the commissioner to issue stop orders relative to business opportunity registrations if he makes certain findings about the (1) seller, or any partner, officer or director; (2) any person occupying a similar status or performing similar functions; or (3) any person directly or indirectly controlling the seller or charged with responsibility for the seller's business activities. In order

to issue the order, the commissioner must find that the person:

1. has, at any time during the previous 10 fiscal years, been convicted of a felony or pleaded nolo contendere to a felony charge or a misdemeanor that involved fraud, provided any denial, suspension, or revocation for this reason must be in accordance with the statutes governing the denial of employment based on a prior conviction;
2. is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving business opportunity or securities activities, the seller-purchaser-investor relationship, or fraudulent conduct;
3. is the subject of a cease and desist order, consent order, or order imposing fines entered by the commissioner within the past 10 years and involving a violation of the CBOA or the Uniform Securities Act; or
4. is the subject of any state or federal agency order or any securities or commodities self-regulatory organization sanction entered within the past 10 years and involving (a) business opportunity activities or the seller-purchaser-investor relationship, or (b) fraud, including a violation of any business opportunity law, franchise law, securities law or unfair or deceptive practices law, embezzlement, fraudulent conversion, misappropriation of property or restraint of trade.

The commissioner can also issue a stop order if he finds that (1) the seller's enterprise or method of business, or that of the business opportunity, includes or would include activities which are illegal where performed; (2) the business opportunity or the offering of the business opportunity has worked or tended to work a fraud upon purchaser-investors or would do so; or (3) the seller's literature or advertising is misleading, incorrect, incomplete, or deceptive.

By law, a stop order cannot generally be entered without notice, opportunity for hearing, and the issuance of written findings of fact and conclusions of law by the commissioner. However, if the commissioner has already issued a stop order relative to a registration, the act allows him to deny any subsequent application for registration without meeting these requirements. He can do this if he makes the findings necessary to grant a stop order and notifies the seller in writing of the denial.

§§ 7 & 11 — HEARINGS UNDER THE ACT AND THE UNIFORM SECURITIES ACT

By law, whenever it appears, as the result of an investigation, that a person has violated the CBOA or

the Uniform Securities Act or any regulation, rule or order adopted or issued under those acts, the commissioner can send a notice to the person by certified mail or by any express delivery carrier that provides a dated delivery receipt. Under prior law, the notice had to include, among other things, the time and place for the hearing. The hearing had to be fixed for a date no earlier than 14 days after the notice was mailed.

The act instead requires the notice to include (1) a statement indicating that the person may file a written request for a hearing on the matters asserted not later than 14 days after receipt of the notice and (2) the time and place for the hearing. The act specifies that notice must be deemed received on the earlier of the actual receipt date or seven days after the notice was sent. The commissioner does not have to hold the hearing unless it is requested in the specified time period.

The act also adds that the notice under the Uniform Securities Act can be provided by certified, rather than just registered, mail.

§ 10 — UNIFORM SECURITIES ACT

By law, the commissioner can deny, suspend, or revoke a registration under the Uniform Securities Act if he makes certain findings. Among other reasons, he can take such an action if the person has been convicted of a misdemeanor involving, or is enjoined from engaging in, the securities or commodities business. The act expands this to include a business involving investments, franchises, business opportunities, insurance, banking, or finance.

The commissioner can also take these actions if a person is subject to certain sanctions. The act eliminates from consideration an order by the securities administrator of a Canadian province or territory. It adds a denial, suspension, revocation, or other sanction issued by the commissioner or any other state or federal financial services regulator based on nonsecurities violations of any state or federal law under which a business involving investments, franchises, business opportunities, insurance, banking, or finance is regulated.

BACKGROUND

Related Act

Public Act 09-209 makes a minor change to this act. Prior law required a person selling or offering to sell a business opportunity to register it with the banking commissioner. This act changes the law to require that the person register with commissioner. PA 09-209 restores prior law.

PA 09-161—HB 6233

Banks Committee

Judiciary Committee

AN ACT CONCERNING SAFE HARBOR PROVISIONS FOR REVOLVING LOANS

SUMMARY: This act extends the protections for commercial revolving loans to “commercial future advance loans.” Under the open-end mortgage law, a “commercial revolving loan” involves advances of all or part of the loan proceeds and repayments of all or part of the outstanding balance of the loan from time to time. As long as the mortgage and underlying note comply with certain statutory requirements, the mortgage and the advances made under it have priority over other claims recorded after the mortgage was recorded (including advances made after the other claims).

The law also permits a person who guarantees an open-end loan, including a commercial revolving loan, for someone else to secure that guarantee with a mortgage on his or her real estate under the same conditions as apply to the borrower if certain statutory conditions are met.

The act extends them to all “commercial future advance loans,” which specifically include (1) a commercial revolving loan wherein all or part of the loan proceeds that have been repaid may be readvanced and (2) a commercial nonrevolving loan wherein previously advanced loan proceeds, once repaid, cannot be readvanced.

EFFECTIVE DATE: October 1, 2009

PA 09-167—sHB 6483

Banks Committee

Higher Education and Employment Advancement Committee

AN ACT CONCERNING CREDIT CARD OFFERS ON COLLEGE CAMPUSES

SUMMARY: This act requires the Board of Governors of Higher Education, by January 1, 2010, to adopt policies regulating credit card issuer marketing practices on Connecticut’s public college campuses. The act defines “marketing” as activities a credit card issuer’s agent or employee attends and facilitates to offer a credit card to students enrolled at a Connecticut public college. The act exempts (1) activities open to or accessible by the general public, such as advertisements in posters, newspapers, magazines, television, radio, Internet, or other similar activities; and (2) activities or merchandising conducted within the physical boundaries of an on-campus financial services business.

The act also prohibits credit card issuers from taking any debt collection action, including telephone

calls or demand letters, against a student's parent or legal guardian who has not agreed, in writing, to be liable for the student's debts under the credit card agreement. The act defines a "student" as a person who is under age 21 and enrolled full- or part-time at a public college.

EFFECTIVE DATE: July 1, 2009

POLICIES

Requirements and Prohibitions

The policies regulating credit card marketing on public college campuses must require credit card issuers to:

1. register with a public higher education institution before marketing on a campus;
2. at least once every year that they market on campus, personally appear at an on-campus location open to all students to provide educational information and answer questions (the school must advertise the appearance); and
3. distribute credit card management education material along with any marketing material.

The policies must also restrict the time and place for marketing credit cards and prohibit:

1. credit card issuers from soliciting undergraduate students during orientation and class registration periods,
2. public colleges from disclosing undergraduate students' identifying information to credit card issuers unless the schools provide the students with notice and the opportunity to opt out of the disclosure in accordance with federal Family Educational Records and Privacy Act regulations,
3. public college employees from marketing credit cards to students, and
4. the use of gifts and incentives in marketing at intercollegiate athletic events.

PA 09-174—HB 6231

Banks Committee

AN ACT CONCERNING THE USE OF A CERTIFICATE, PROFESSIONAL DESIGNATION OR ADVERTISING IN ADVISING SENIOR CITIZENS

SUMMARY: This act prohibits anyone directly or indirectly involved in securities sales from falsely expressing or implying that they have special training, education, or experience in providing financial advice or services to seniors. The act exempts from this prohibition a person who meets certain education

requirements and allows the banking commissioner to adopt implementing regulations. A person who willfully violates this prohibition is subject to a fine of up to \$2,000, two years imprisonment, or both.

The act also requires the insurance commissioner to adopt regulations pertaining to the sale of life insurance or annuities to seniors and requires him to take certain enforcement actions against anyone who violates these regulations.

EFFECTIVE DATE: July 1, 2009

EDUCATION REQUIREMENTS

Under the act, a person cannot sell, purchase, or offer securities using a senior-specific certificate, title, or professional designation unless it was obtained by completing (1) an academic degree in a related field from an accredited higher education institution or (2) a course of study in a related field provided by an organization accredited by:

1. the American National Standards Institute,
2. the National Commission for Certifying Agencies,
3. an organization recognized as an accrediting agency by the U.S. Department of Education pursuant to the 1965 Higher Education Act, or
4. any other organization approved by the banking commissioner.

The act prohibits a person who meets these requirements from using the certificate, title, or professional designation in a false or deceptive manner. It also requires the banking commissioner to determine whether a person's academic degree is in a related field.

INSURANCE REGULATIONS

The act requires the insurance commissioner to adopt regulations to (1) prevent misleading or fraudulent marketing practices regarding life insurance and annuities sold to seniors and (2) set standards for the use of senior-specific certification and professional designations used in life insurance and annuities sales.

Under the act, a person who violates these regulations is subject to license suspension or revocation, a fine of up to \$5,000, or both.

BACKGROUND

Securities Sales and Unethical Practices

The law prohibits anyone from directly or indirectly engaging in any dishonest or unethical practice in connection with a security offer, sale, or purchase. It prohibits anyone from (1) employing any device, scheme, or artifice to defraud; (2) making any untrue statement of a material fact or omitting a material fact

needed to make the statements not misleading; or (3) engaging in any act, practice, or course of business that operates or would operate as a fraud or deceit upon anyone.

PA 09-189—HB 5099

Banks Committee

Judiciary Committee

AN ACT CONCERNING REPOSSESSION OF MOTOR VEHICLES FROM RETAIL BUYERS

SUMMARY: By law, when a buyer defaults on a retail installment contract or installment loan contract, the contract holder can repossess the goods if the contract expressly allows him or her to do so. The act prohibits a retail buyer's Chapter 7 or 11 bankruptcy petition filing or bankruptcy debtor status from being considered a default under the contract or grounds for repossession of the vehicle.

EFFECTIVE DATE: October 1, 2009

COMMENT

Possible Contracts Clause Violation

As the act does not exclude contracts executed before the act's effective date, it is possible that it could be challenged as a violation of the Contracts Clause of the U.S. Constitution (Article I, Section 10) for those contracts making bankruptcy a default or grounds for repossession.

The Contracts Clause bars states from passing any law that impairs the obligation of contracts. However, the U.S. Supreme Court has held that claims of a contract clause violation must undergo a three-step analysis. Courts must determine whether (1) there is a contractual relationship, (2) a change in a law has impaired that relationship, and (3) the impairment is substantial (*General Motors Corp. v. Romein*, 503 U.S. 181 (1992)). If the court determines that the contract has been substantially impaired, it must then determine whether the law at issue has a legitimate and important public purpose and whether the adjustment of the rights of the parties to the contractual relationship was reasonable and appropriate in light of that purpose. A challenged law will not be held to impair the contract clause if the impairment, although substantial, is reasonable and necessary to fulfill an important public purpose (*Energy Reserves Group v. Kansas Power & Light*, 459 U.S. 400, 411-412 (1983)).

PA 09-207—sSB 949

Banks Committee

Judiciary Committee

AN ACT CONCERNING MORTGAGE PRACTICES

SUMMARY: This act creates the crime of residential mortgage fraud. It provides that a person who commits a single act of residential mortgage fraud is guilty of a class D felony, while a person who commits two or more acts is guilty of a class C felony (see Table on Penalties).

The act also:

1. modifies the interest rate that makes a home loan "nonprime";
2. extends, by one year, the banking commissioner's authority to adjust interest rate parameters for nonprime loans;
3. allows the commissioner, under certain conditions, to deem mortgage professional license applications abandoned and keep the application fee;
4. applies a prohibition against increasing the interest rate after default in certain loans to all, rather than just high cost, residential mortgage loans; and
5. makes minor and technical changes.

EFFECTIVE DATE: October 1, 2009, except for a technical change and the provisions on abandoned licenses and high cost loans, which are effective on passage.

§§ 1 & 2 — RESIDENTIAL MORTGAGE FRAUD

Definition

Under the act, a person commits residential mortgage fraud when, for financial gain and with the intent to defraud, the person:

1. knowingly and in writing makes any material misstatement, misrepresentation, or omission during the mortgage lending process with the intention that a lender or broker, a borrower, or any other person involved in the mortgage lending process will rely on it;
2. knowingly uses, facilitates the use, or attempts to use or facilitate the use of any written misstatement, misrepresentation, or omission during the mortgage lending process with the intention that a mortgage lender, borrower or any other person involved in the mortgage lending process rely on it;
3. receives or attempts to receive proceeds or any other funds in connection with a residential mortgage closing that the person knew or

should have known resulted from an act or acts constituting residential mortgage fraud; or

4. conspires with or solicits another to engage in an act or acts constituting residential mortgage fraud.

The act defines a “person” as (1) a mortgage broker, lender, or loan originator or (2) any other individual who makes more than three individual mortgage loans or purchases or sells more than three residential properties in a consecutive 12-month period. It defines the “mortgage lending process” as the process through which an individual seeks or obtains a residential mortgage loan, including solicitation, application, origination, negotiation of terms, underwriting, signing, closing and funding of a residential mortgage loan and services coinciding with the mortgage loan, including the appraisal of the residential property. It defines residential property as it is defined in the mortgage lending statutes.

The act specifies that the residential mortgage fraud is considered to be committed in the county in which:

1. the residential real property for which the mortgage loan is being sought is located or
2. any act was performed in furtherance of residential mortgage fraud.

It is also considered to be committed in any county in which:

1. any person alleged to have engaged in an act that constitutes residential mortgage fraud had control or possession of any proceeds of the fraud;
2. the closing occurred, if a closing occurred; or
3. a document containing a deliberate misstatement, misrepresentation, or omission is filed with an official registrar.

Standard of Proof

The act provides that, in a prosecution for residential mortgage fraud, it is sufficient to show that the party accused committed the act with the intent to deceive or defraud. The act specifies that it is unnecessary to show that any particular person was harmed financially in the transaction or that the person to whom the deliberate misstatement, misrepresentation, or omission was made relied on it.

Penalties and Whistleblower Protection

In order to secure a fine levied against a person convicted of residential mortgage fraud, the act subjects to a judgment lien in favor of the state all real and personal property of every kind used or intended for use in the course of, derived from, or realized through, the act. The lien must comply with the statutes governing postjudgment procedures and be subordinate to any

security interest in the property recorded prior to the date the lien is recorded.

Additionally, the act allows courts to order restitution to any person who has suffered a financial loss due to any act or acts constituting residential mortgage fraud.

The act protects from civil liability a person who has furnished information regarding suspected residential mortgage fraud to a regulatory or law enforcement agency, as long as there is no fraud, bad faith, or malice.

§§ 3 & 4 — NONPRIME LOANS

Definition

The law sets criteria for what constitutes a nonprime loan. Under prior law, loans had to meet two interest rate provisions in order to be considered nonprime. The act eliminates one that specifies that nonprime loans are those where the difference between the annual percentage rate (APR) for the loan or extension of credit and the yield on United States Treasury securities having comparable periods of maturity is either 3% or more on first mortgage loans or 5% or more on second mortgage loans.

The act instead specifies that a loan is nonprime if the difference, at the time of consummation, between the APR for the loan or extension of credit and the average prime offer rate for a comparable transaction, as of the date the interest rate is set, is greater than 1.5% if the loan is a first mortgage loan or 3.5% if the loan is a secondary mortgage loan. Under the act “average prime offer” rate has the same meaning as it does in federal Truth-in-Lending regulations.

The other interest rate provision is mostly unchanged by the act. By law, a loan is nonprime if the difference between the APR for the loan and the conventional mortgage rate is either equal to or greater than 1.75% for a first mortgage or 3.75% for a second mortgage. The act specifies that the difference is at the time of consummation. Prior law specified that the conventional mortgage rate is the most recent daily contract interest rate on commitments for fixed-rate mortgages published by the Board of Governors of the Federal Reserve System in its statistical release H. 15, or any publication that may supersede it, during the week in which the interest rate for the loan is set. The act changes this to the week before the loan’s interest rate is set and also eliminates the requirement for it to be the “most recent daily” contract interest rate.

The act provides that, for the nonprime loans law, APR has the same meaning as under the Connecticut Abusive Home Loan Lending Practices Act.

Although the law sets interest rate parameters for identifying nonprime loans, it allows the banking

commissioner to increase them after considering relevant factors. Under prior law, the commissioner's authority expired on August 31, 2009. The act extends this authority to August 31, 2010.

Provisions Prohibited in a Nonprime Loan

The act expands the list of provisions that are prohibited in nonprime laws to include:

1. for a loan with a term of less than seven years, a payment schedule with regular periodic payments that when aggregated does not fully amortize the outstanding principal balance, except that this limitation does not apply to loans with maturities of less than one year if the loan's purpose is a bridge loan, as defined in federal regulation, connected with the acquisition or construction of a dwelling intended to become the borrower's principal dwelling;
2. a payment schedule with regular periodic payments that cause the principal balance to increase;
3. a payment schedule that consolidates more than two periodic payments and pays them in advance from the proceeds, unless such payments are required to be escrowed by a governmental agency;
4. default charges in excess of 5% of the amount in default; or
5. a call provision that permits the lender, in its sole discretion, to accelerate the indebtedness.

This last prohibition does not apply when repayment of the loan is accelerated by bona fide default pursuant to a due-on-sale clause provision or pursuant to another provision of the loan agreement unrelated to the payment schedule.

As under existing law, if a nonprime loan contains any of these provisions, it is void and unenforceable.

§ 5 — ABANDONED APPLICATIONS FROM MORTGAGE PROFESSIONALS

The act allows the commissioner to deem an application for a license as a mortgage lender, mortgage correspondent lender, mortgage broker, or mortgage loan originator abandoned if the applicant fails to respond to any request for information under the mortgage licensing statutes. Before doing this, the act requires the commissioner to notify the applicant in writing that the application is deemed abandoned if the information is not submitted within 60 days. The act allows the banking department to keep the application fee for abandoned applications, and provides that abandonment does not preclude the applicant from submitting a new application.

§§ 4, 6 & 8 — PROHIBITION AGAINST INCREASING INTEREST RATE AFTER DEFAULT

Under prior law, a high-cost home loan could not provide for an increase in the interest rate after default or default charges in excess of 5% of the amount in default. Similarly, nonprime loans could not have a provision that increases the interest rate after default. The act eliminates the (1) high-cost loan prohibition starting on the date of the act's passage and (2) the nonprime loan provision starting on October 1, 2009. Instead, starting October 1, 2009, the act prohibits lenders from including in any mortgage loan a provision that increases the interest rate as a result of default.

The act maintains for all loans the existing law's nonprime loan exception for an increase for a failure to comply with a provision to maintain an automatic electronic payment feature, if the maintenance provision was provided in return for an interest rate reduction and the increase is no greater than the reduction.

RELATED ACT

Public Act 09-209

This act provides that a person subject to the new mortgage practice rules it creates includes, among others, an individual who makes more than three individual mortgage loans or who purchases or sells more than three residential properties in a consecutive 12-month period. PA 09-209 specifies that the term instead includes an individual who is a mortgagor (borrower) on such loans.

PA 09-209 also adds a definition of APR from the Connecticut Abusive Home Loan Lending Practices Act and makes technical changes.

PA 09-208—sSB 950

Banks Committee

Judiciary Committee

AN ACT CONCERNING CONSUMER CREDIT LICENSEES

SUMMARY: This act makes a number of changes regarding consumer credit licensees. It specifies how licenses must be surrendered, allows the banking commissioner to deny an application for a specified period after a prior application has been withdrawn, and requires license applicants to provide a history of criminal convictions and allows the commissioner to deny the application on that basis.

The act broadens those who can be a licensed debt adjuster to include for-profit entities and sets additional consumer-protection requirements for all debt adjusters.

It defines debt negotiation, which includes debt settlement, foreclosure rescue, and short sales, and creates a new license for debt negotiators that tracks the same licensing requirements as for debt adjusters with regard to application procedures, requirements, and enforcement. The act also:

1. requires money transmitter licensees to notify the commissioner of certain events, requires contracts between them and their agents, and clarifies the commissioner's enforcement authority;
2. expands the applicability of the small loan lender laws;
3. provides for automatic suspension of certain licenses when the required surety bond is cancelled; and
4. makes minor, technical, and conforming changes.

EFFECTIVE DATE: October 1, 2009, except for the provisions on the following subjects, which are effective on passage:

1. mortgage originators, mortgage servicing, notice of intent to withdraw and surrendering of mortgage licenses;
2. most of the criminal history requirements; and
3. money transmitter definition and contracts, debt adjuster surety bonds, and consumer collection agency license requirements.

LICENSEES IN GENERAL

§ 1 — Surrendering a License

The act requires any licensee who is surrendering its license to give it to the banking commissioner in person or by registered or certified mail. Prior law required only written notice that the license was surrendered. The act allows the commissioner to institute a suspension, revocation, or refusal to renew proceeding within one year after any licensee surrenders such a license, even if no proceeding is pending at the time of surrender.

§§ 6-10, 12, 15, 16, 24, 29, & 35 — History of Criminal Convictions in and Denial of Applications

The act requires that an applicant for a sales finance company, small loan lender, check cashing service, money transmission or payment instrument issuer, debt adjuster, debt negotiator, or consumer collection agency license include in its application its history of criminal convictions and that of certain of the applicant's related persons for the 10-year period prior to the date of the application. Applicants must include sufficient information pertaining to the history of criminal convictions in a commissioner-accepted form.

The act also allows the commissioner to deny licenses to these applicants if the commissioner finds that they or certain related persons have been convicted, within the past 10 years, of any felony or any misdemeanor involving any aspect of the business for which they seek to be licensed. The act specifies that any denials of a money transmitter or payment instrument issuer license must be in accordance with the statutes governing denials based on a prior conviction.

Where applicable, the act requires applicants to provide, and allows the commissioner to deny applications based on, the criminal history or convictions of shareholders owning at least 10% of the applicant's shares.

§§ 3, 7, 8, 9, & 24 — Notice of Intent to Withdraw

The act allows the commissioner to deny any license application for lenders, brokers, originators, sales finance companies, small loan lenders, and debt adjusters up to one year after he receives a notice of intent to withdraw such application. Such notice is effective upon receipt.

MORTGAGE LENDERS, BROKERS, ORIGINATORS

§ 2 — Originators

By law, a mortgage originator's license is tied to the broker or lender with whom the originator is associated and the license is not effective when the originator is not associated with the lender or broker. The act specifies that the mortgage originator's license is also not effective when the associated lender or broker's license is suspended.

§ 4 — Surrendering a License

The act specifies that lender, broker, and originator licenses must be surrendered, revoked, or suspended in accordance with the banking statutes, rather than the sections applicable to these specific licensees.

MONEY TRANSMITTERS, PAYMENT INSTRUMENT ISSUERS

§ 13 — Definitions

The act broadens the definition of "licensee" to include a person who is required to be licensed pursuant to the Money Transmission Act, rather than just a person who is already licensed. It also broadens the definition of "purchaser" to include a person who has given money or monetary value for current or future transmission.

§ 15 — Events Requiring Commissioner Notification

The act requires a licensee to provide the commissioner with written notice no later than one business day after it has reason to know of the occurrence of any of the following events:

1. the filing of a petition by or against the licensee under the U.S. Bankruptcy Code for bankruptcy or reorganization;
2. the filing of a petition by or against the licensee for receivership, the commencement of any other judicial or administrative proceeding for its dissolution or reorganization, or the making of a general assignment for the benefit of its creditors;
3. the commencement of a proceeding to revoke or suspend its license to engage in money transmission in another state or foreign country, or other formal or informal regulatory action by any governmental agency against the licensee, and the reasons for it;
4. the commencement of any action by the Connecticut attorney general or the attorney general of any other state and the reasons for it;
5. the cancellation or other impairment of the licensee's bond or other security, including notice of claims filed against the licensee's bond or other security;
6. a conviction of the licensee or of a partner, director, trustee, principal officer, member, or shareholder owning 10% or more of each class of the licensee's securities of a felony or of a misdemeanor involving the money transmission business or the business of issuing Connecticut payment instruments; or
7. a conviction of its agent for a felony.

§§ 14 & 19 — Contracts Between Licensee and Agent

The act prohibits a money transmitter or payment instrument issuer agent from acting through a subagent, and eliminates all references to subagents.

The act requires licensees to enter into a contract with each of its agents that (1) requires the agent to operate in full compliance with the Money Transmission Act and (2) provides that appointment of the agent is not effective during any period when the license of the licensee has been suspended. The licensee must provide each agent with policies and procedures sufficient to ensure compliance with the Act.

The agent must give all money owing to the licensee in accordance with the terms of the contract between the licensee and the agent and the agent cannot provide money transmission services outside the scope of activity permissible under that contract.

The act requires a licensee and agent of a licensee to promptly notify the commissioner, in writing, of the termination of the contract between the agent and licensee.

§§ 13 & 20 — Enforcement

The act allows the commissioner to suspend, revoke, or take any other action in his power if the licensee engages in fraud, intentional misrepresentation, or gross negligence, or engages in an unsafe or unsound practice. The act defines "unsafe or unsound practice" as a practice or conduct by a licensee or its agent that is likely to result in a material loss, insolvency, or dissipation of the licensee's assets, or otherwise materially prejudice the interests of purchasers.

Under existing law, whenever it appears that someone has violated, is about to violate, or is currently violating the Money Transmission Act, the commissioner can impose a civil penalty or seek a court order imposing a penalty, injunctive relief, or restitution. The act allows these enforcement tools to be used when any licensee has:

1. failed to pay a judgment ordered by any court in Connecticut or elsewhere 30 days after the judgment becomes final or 30 days after the expiration or termination of a stay of execution of the judgment;
2. engaged in fraud, intentional misrepresentation, or gross negligence; or
3. engaged in an unsafe and unsound practice.

It also allows the commissioner to impose cease and desist orders for violations of existing law and the act.

The act also allows the commissioner to order the licensee to terminate its agency relationship with any agent if:

1. the agent violated any provision of the Act or its regulations, or any other law or regulation applicable to the conduct of its business;
2. the agent engaged in fraud, intentional misrepresentation, or gross negligence or misappropriated funds or has been convicted of a violation of a state or federal anti-money laundering statute;
3. the competence, experience, character or general fitness of the agent or a manager, partner, director, trustee, principal officer, member, or shareholder owning 10% or more of each class of the agent's securities demonstrates that it would not be in the public interest to permit the agent to engage in the business of issuing Connecticut payment instruments or the business of money transmission on behalf of a licensee; or

4. the agent is engaging in an unsafe or unsound practice.

Existing law already allows the commissioner to do this if the agent refuses to allow an examination of its books and records regarding the business of such licensee as required by law.

DEBT ADJUSTMENT

§§ 23 & 24 — Fees

The act specifies that receiving, as the debtor's agent, money for the purposes of distributing it to creditors must be done for, or with the expectation of, valuable consideration in order to meet the definition of debt adjustment.

The act also eliminates a restriction limiting debt adjusting in Connecticut to bona fide nonprofit organizations. However, it requires for-profit applicants for initial and renewal licenses to pay a \$1,600 application fee or an \$800 fee if the application is filed a year or less before the license's expiration date. The fee for non-profits remains at \$250.

§§ 25-27 — Debt Adjustment Agreements

The act requires debt adjuster licensees to:

1. provide the debtor with a written agreement that sets forth the services the licensee will provide and any related fees;
2. provide free individualized credit counseling and budgeting assistance to the debtor before entering into a written agreement with the debtor;
3. determine that the debtor has the financial ability to make the payments stated in the written agreement, which must be suitable for the debtor; and
4. contact each debtor's creditors to determine if they will accept the payments contemplated by the written agreement.

The act also requires the written statement of the debtor's account which the licensee must provide the debtor be given at least quarterly, rather than within a reasonable time after the debtor requests it.

The act prohibits licensees from directly or indirectly requiring the debtor to purchase other services or materials as a condition of entering a written service agreement.

Finally, the act provides that a debt adjustment agreement is voidable by the debtor if (1) the licensee imposes a fee or other charge or receives money or other payments not specified in the written agreement with the debtor or (2) any person is not licensed as required by the debt adjustment statutes. If a debtor voids a written agreement, the licensee does not have a

claim against the debtor for breach of contract or for restitution.

DEBT NEGOTIATION

§ 29 — Definition

The act defines "debt negotiation" as assisting a debtor in negotiating or attempting to negotiate on behalf of a debtor the terms of a debtor's obligations with one or more of the debtor's mortgagees or creditors for or with the expectation of valuable consideration. The act specifies that a "debtor" is any individual who has incurred indebtedness or owes a debt for personal, family, or household purposes. A "mortgagee" is the original lender under a mortgage loan secured by residential property, or its agents, successors or assigns. A "mortgagor" is the owner-occupant of a one-to-four family residential property located in the state who is also the borrower under a mortgage encumbering the residential property. Finally, "residential property" is one-to-four family owner-occupied real property.

The act specifies that debt negotiation includes the negotiation of short sales of residential property or foreclosure rescue services. The act defines a "short sale" as the sale of residential property by a mortgagor for an amount less than the outstanding balance owed on the loan secured by the property where, prior to the sale, the mortgagee or his or her assignee agrees to accept less than the outstanding loan balance in full or partial satisfaction of the mortgage debt and the proceeds of the sale are paid to the mortgagee or his or her assignee. It defines "foreclosure rescue services" as those services related to or promising assistance in connection with (1) avoiding or delaying actual or anticipated residential foreclosure proceedings or (2) curing or otherwise addressing a default or failure to timely pay with respect to a residential mortgage loan. The term specifically includes the offer, arrangement, or placement of a mortgage loan secured by residential property or other extension of credit when those services are advertised, offered, or promoted in the context of foreclosure related services.

§§ 29 & 31 — People Required to Obtain a License

The act requires a person to obtain a license before engaging or offering to engage in debt negotiation in the state. The act specifies that a person is engaging in debt negotiation in the state if the person has (1) a place of business located within the state; (2) a place of business located outside of this state and the debtor is a resident of the state who negotiates or agrees to the terms of the services contract in person, by mail, by telephone, or via the Internet while physically present in this state; or (3) a place of business located outside of this state and the

contract concerns a debt that is secured by property located in the state (see COMMENT).

The act specifies that the following are exempt from the licensing requirements: (1) any attorney admitted to the practice of law in this state, when engaged in such practice; (2) any bank, out-of-state bank, Connecticut credit union, federal credit union, or out-of-state credit union, provided subsidiaries of such institutions other than operating subsidiaries of federal banks and federally-chartered out-of-state banks are not exempt from licensure; (3) any person licensed as a debt adjuster under the banking statutes, while performing debt adjuster services; (4) any person acting under the order of a court; or (5) any bona fide nonprofit organization organized under IRS Code § 501(c)(3) or any subsequent corresponding section.

§ 29 — *Licensing Requirements*

The license must be obtained for each location where debt negotiation will be conducted. The act does not define “location.” Applicants and licensees must notify the commissioner of any business change that differs from that stated in the license application.

The act prohibits the commissioner from issuing a license unless he finds that (1) the applicant is solvent and has had no proceeding in bankruptcy, receivership, or assignment for the benefit of creditors commenced against the applicant and (2) the financial responsibility, character, reputation, integrity and general fitness of the (a) applicant; (b) partners thereof, if the applicant is a partnership; (c) members, if the applicant is a limited liability company or association; and (d) officers, directors and principal employees, if the applicant is a corporation, are such as to warrant belief that the business will be operated soundly and efficiently, in the public interest, and consistent with the debt negotiation law.

The act specifies that the licenses are not transferable and that any change of license location requires prior written notice to the commissioner. Additionally, the act prohibits a licensee from using any name unless it has been approved by the commissioner. If the commissioner fails to make such findings, the commissioner can not issue a license and must notify the applicant of the reasons for such denial.

§ 29 — *Fees*

The act sets the initial and renewal debt negotiation license fee at \$1,600, which must be paid at the time of the application. However, if the license will expire in one year or less, the applicant only has to pay \$800. Licenses expire at the close of business on September 30th of the odd-numbered year following its issuance unless they are renewed. Each licensee must, on or

before September 1st of the year in which the license expires, file a renewal application as the commissioner may require. The act imposes an additional \$100 processing fee for renewal applications for licenses that expire less than 60 days before the application filing.

The act requires the commissioner to automatically suspend a license or a renewal license that has been issued but is not yet effective when he determines that an application fee has been dishonored. He must give the licensee notice of the automatic suspension pending proceedings for revocation or refusal to renew and an opportunity for a hearing on such actions in accordance with the banking statutes.

Finally, the act specifies that there is no abatement of the license fee if the license is surrendered, revoked, or suspended prior to the expiration of the period for which it was issued. Additionally, the application fee is nonrefundable. It is unclear if the additional processing fee is also nonrefundable.

§ 30 — *Surety Bond*

The act requires applicants to file a surety bond in the aggregate amount of \$40,000 for all licensed locations in order for a license or renewal to be granted. The surety bond must be written by a surety authorized to write such bonds in this state. The attorney general must approve the surety bond’s form.

The act specifies that any filed surety bond must be conditioned upon the licensee faithfully performing any and all written agreements with debtors and conducting such business consistent with the debt negotiation laws. Any debtor who may be damaged by failure to perform any written agreement or by conduct inconsistent with the debt negotiation law can proceed on any such surety bond against the principal or surety, or both, to recover damages. The commissioner can proceed on any such surety bond against the principal or surety, or both, to collect any civil penalty imposed on the licensee pursuant to the banking statutes. The proceeds of any bond, even if commingled with other assets of the licensee, must be deemed to be held in trust for the benefit of such claimants against the licensee in the event of bankruptcy of the licensee and must be immune from attachment by creditors and judgment creditors. The bond must be maintained during the entire period of the license granted to the applicant, and the aggregate liability under any such bond must not exceed the principal amount of the bond.

The act specifies that the surety has the right to cancel the bond at any time by a written notice to the licensee stating the effective date of the cancellation. The notice must be sent by certified mail to the licensee at least 30 days before the cancellation date. The bond cannot be cancelled unless the surety provides written notification to the commissioner at least 30 days before

the effective date of cancellation.

The act prohibits licensees from using, attempting to use, or making either direct or indirect reference to any word or phrase that states or implies that the licensee is endorsed, sponsored, recommended, bonded, or insured by the state.

§ 32 — *Debt Negotiation Contract*

A debt negotiator must provide each debtor with a contract that must include a complete, detailed list of services to be performed, the costs of such services, and the results to be achieved. Each debt negotiation service contract must contain (1) a statement certifying that the person offering debt negotiation services has reviewed the consumer's debt and (2) an individualized evaluation of the likelihood that the proposed debt negotiation services would reduce the consumer's debt or debt service or, if appropriate, prevent the consumer's home from being foreclosed.

Each contract must allow the consumer to cancel or rescind it within three business days after the consumer signed the contract. It must contain a clear and conspicuous caption that reads: "Debtor's three-day right to cancel", along with the following statement: "If you wish to cancel this contract, you may cancel by mailing a written notice by certified or registered mail to the address specified below. The notice shall state that you do not wish to be bound by this contract and must be delivered or mailed before midnight of the third business day after you sign this contract." Business day means any calendar day except Sunday or any of the following business holidays: New Year's Day, Washington's Birthday, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, or Christmas Day.

The act prohibits a person offering debt negotiation services from receiving valuable consideration for the performance until the services are fully performed. A person offering debt negotiation services can receive reasonable periodic payments as services are rendered, provided such payments are clearly stated in the contract. The act allows the commissioner to establish a schedule of maximum fees that a debt negotiator may charge for specific services. It provides that any contract that does not comply with these requirements is voidable by the consumer.

§ 33 — *Enforcement*

The act specifically allows the commissioner to suspend, revoke, or refuse to renew any license or take any other action, in accordance with the applicable banking statutes, for any reason that would be sufficient grounds for the commissioner to deny application for a license under the debt negotiation laws, or if the

commissioner finds that the licensee or the licensee's proprietor, director, officer, member, partner, shareholder, trustee, employee, or agent has: (1) made any material misstatement in the application, (2) committed any fraud or misappropriated funds, (3) violated any law or regulation applicable to the conduct of its business, or (4) failed to perform any agreement with a debtor.

Additionally, the commissioner may take action against the person or licensee in accordance with his general powers under the banking statutes whenever it appears that (1) the person or licensee has violated, is violating, or is about to violate the debt negotiation laws or (2) any licensee or his or her proprietor, director, officer, member, partner, shareholder, trustee, employee, or agent has committed any fraud, misappropriated funds, or failed to perform any agreement with a debtor.

The act allows the commissioner to, upon complaint, review any fees or charges assessed by a person offering debt negotiation services and order a reduction or repayment of the amount of the fees or charges that the commissioner deems excessive, taking into consideration the fees that other people performing similar debt negotiation services charge for such services and the benefit of the services to the consumer. He can do this under his general power to conduct investigations.

§§ 40 & 41 — SMALL LOAN LENDERS

The act expands the restrictions of the small loan lending laws to those who (1) make, offer, broker, or assist a borrower in Connecticut to obtain such a loan or (2) in whole or in part, arrange such loans through a third party or act as an agent for a third party, regardless of whether approval, acceptance, or ratification by the third party is necessary to create a legal obligation for the third party, through any method, including mail, telephone, internet, or any electronic means. Under prior law, the provisions applied only to those who engaged in the business of making loans of money or credit.

Under existing law, no person, unless authorized under the small loan lender laws, can directly or indirectly charge, contract for, or receive any interest, charge, or consideration greater than 12% annually on the loan, use, or forbearance of money or credit of the amount or value of up to \$15,000.

Under the act, this provision applies to any loan made or renewed in this state if the loan is made to a borrower who resides in or maintains a domicile in this state and the borrower:

1. negotiates or agrees to the terms of the loan in person, by mail, by telephone, or via the Internet while physically present in this state;

2. enters into or executes a loan agreement with the lender in person, by mail, by telephone, or via the Internet while physically present in this state; or
3. makes a payment of the loan in this state.

The act defines the term “payment of the loan” to include a debit on an account the borrower holds in a branch of a financial institution or the use of a negotiable instrument drawn on an account at a financial institution. It defines “financial institution” as any bank or credit union chartered or licensed under the laws of this state, any other state, or the United States, and having its main office or a branch office in this state.

The act also allows the commissioner, whenever it appears to him that any person has violated these provisions, to investigate, take administrative action, or assess civil penalties and restitution.

§§ 5, 17, 28, 30, 36 — SURETY BOND AND LICENSE SUSPENSION

For mortgage lender and broker, money transmission, debt adjuster, debt negotiator, and consumer collection agency licensees, the act requires an automatic suspension of the license upon cancellation of the required bond, unless the bond has been reinstated or replaced, or the licensee has ceased business and has voluntarily surrendered the license. Before the automatic suspension, the act requires the commissioner to give written notice to the licensee of the date the cancellation will take effect.

The act also requires the commissioner to give the licensee notice of the automatic suspension pending proceedings and an opportunity for a hearing. It authorizes the commissioner to require the licensee whose license has been automatically suspended to take, or refrain from taking, certain actions consistent with the purposes of the statutes involved.

The act increases the bond for consumer collection agencies from \$5,000 to \$25,000.

§§ 22, 34 — MISCELLANEOUS ENFORCEMENT PROVISIONS

The act specifically allows the commissioner to issue cease and desist orders against any person who has violated, is violating, or is about to violate the laws governing creditor collection practices.

It also specifically allows the commissioner to impose civil penalties against any mortgage servicing company that violates the relevant statute.

BACKGROUND

Related act

Public Act 09-209 makes minor and technical changes to §§ 6, 10, and 29 of this act.

COMMENT

Engaging in Debt Negotiation

The act appears to imply that any person with a place of business located within the state is engaged in debt negotiation, regardless of their actual business.

PA 09-209—sSB 948

Banks Committee

Appropriations Committee

AN ACT CONCERNING IMPLEMENTATION OF THE S.A.F.E. MORTGAGE LICENSING ACT, THE EMERGENCY MORTGAGE ASSISTANCE PROGRAM, FORECLOSURE PROCEDURES AND TECHNICAL REVISIONS TO THE BANKING STATUTES

SUMMARY: This act implements the 2008 federal Secure and Fair Enforcement for Mortgage Licensing (S.A.F.E.) Act by imposing additional conditions on licensing for mortgage professionals, including education and testing. It (1) changes definitions and confidentiality and surety bond requirements, (2) expands the banking commissioner’s enforcement and investigative authority, and (3) prohibits a number of actions by persons subject to the mortgage licensing laws. The act also expands the prohibition on influencing residential real estate appraisals to everyone, rather than just mortgage brokers. It also eliminates the requirement that lenders making secondary mortgage loans of up to \$15,000 with an interest rate, charge, or other consideration higher than 12% be licensed as small loan lenders. Lenders making similar first mortgage loans are already exempt from the law.

This act changes the process for determining eligibility for the Emergency Mortgage Assistance Program (EMAP) by (1) allowing the Connecticut Housing Finance Authority (CHFA) to determine what constitutes a significant reduction in a borrower’s income and (2) expanding the circumstances that constitute a financial hardship beyond a borrower’s control and changing some of the conditions for repayment. It allows borrowers to apply for the program before they receive notice of intent to foreclose under certain circumstances. It specifies the circumstances under which the lender may proceed with the

foreclosure. The act expands eligibility for the CT FAMILIES refinancing program from homeowners with adjustable rate mortgages to include those with fixed-rate mortgages.

This act makes the foreclosure mediation program established under PA 08-176 mandatory, rather than optional, for actions with return dates on and after July 1, 2009. To that end, the act changes the mechanism by which borrowers are notified and mediation sessions scheduled and makes other conforming changes. The act also sets requirements for disclosures made during the mediation.

The act specifies that no judgment of strict foreclosure or foreclosure by sale can be entered before July 1, 2010 unless the mediation period has expired or otherwise terminated, whichever is earlier, or the mediation program is not otherwise required or available (see COMMENT).

Under existing law, lenders must appear in person at the first mediation session and be authorized to agree to a proposed settlement. If the lender's attorney appears instead, he or she must have such authority, and the lender must be available by phone or electronic means. The act specifies that the court cannot award attorney's fees to any lender for time spent in the first mediation session if it does not comply with this requirement, unless the court finds reasonable cause for it.

The act also allows judgments of strict foreclosure to be opened after title has become absolute under certain circumstances.

Finally, the act makes minor, technical, and conforming changes.

EFFECTIVE DATE: July 1, 2009, except (1) certain technical changes and the CT FAMILIES provision are effective on passage, and (2) the provision on opening strict foreclosure judgments and certain technical and conforming changes are effective October 1, 2009. (See "Related Acts" for changes to effective dates.)

§ 1 — CONFIDENTIALITY

By law, certain Banking Department records are not generally disclosable or subject to public inspection or discovery. These records include:

1. examination and investigation reports and information contained in or derived from such reports;
2. confidential supervisory or investigative information obtained from a state, federal, or foreign regulatory or law enforcement agency; and
3. information obtained, collected, or prepared in connection with examinations, inspections or investigations, and complaints from the public received by the Banking Department, if the

records are protected from disclosure under federal or state law or, in the opinion of the commissioner, they would disclose, or would reasonably lead to the disclosure of personal, investigative, or harmful information.

However, the law allows the commissioner to disclose these records for any appropriate supervisory, government, law enforcement, or other public purpose. Such disclosures must be safeguarded, and the law allows a court to issue an order to protect information in a court proceeding.

Existing law already exempts from these requirements the disclosure of any information maintained by the commissioner with the Nationwide Mortgage Licensing System to the licensee and certain agencies authorized to access the information. The act appears to exempt all disclosures of information to all state and federal regulatory officials and eliminates the provision allowing disclosure to the licensee. The act does so by specifying that, except as otherwise provided in the confidentiality provisions of the federal S.A.F.E. Act, any requirements under Connecticut or federal law or any privilege arising under Connecticut or federal law that protects the disclosure of a record provided to or maintained with the system continues to apply after it has been disclosed to the system. The act allows the record to be shared with all state and federal regulatory officials that have oversight authority over the mortgage industry without the loss of privilege or the loss of confidentiality protections provided by Connecticut or federal law. For these purposes, the act allows the commissioner to enter into agreements with other government agencies, the Conference of State Bank Supervisors, the American Association of Residential Mortgage Regulators, or associations representing government agencies. The act specifies that any Connecticut disclosure law inconsistent with this provision is superseded.

The act also exempts any information or material protected from disclosure as discussed above from (1) disclosure under any federal or state law governing disclosure to the public of information held by an officer or agency of the federal government or the respective state or (2) subpoena, discovery, or admission into evidence in any private civil action or administrative process. But a person may, at his or her discretion, waive in whole or in part a privilege held by the system concerning such information and material.

Finally, the act provides that the confidentiality provisions do not apply to records relating to the employment history of, and publicly adjudicated disciplinary and enforcement actions against, mortgage loan originators that are included in the system for public access.

§ 2 — DEFINITIONS

The act defines the term “control person” as an individual who directly or indirectly exercises control over another person. The act specifies that any person who (1) is a director, general partner or executive officer, (2) directly or indirectly has the right to vote 10% or more of a class of any voting security or the power to sell or direct the sale of 10% or more of any class of voting securities, (3) is a managing member of a limited liability company, or (4) in a partnership, has the right to receive upon dissolution, or has contributed 10% or more of the capital, is presumed to be a “control person.” The act defines “control” as power, directly or indirectly, to direct the management or policies of a company, whether through ownership of securities, by contract, or otherwise.

The act specifies that the term “depository institution” has the same meaning as it does in the Federal Deposit Insurance Act, and includes any Connecticut credit union, federal credit union, or out-of-state credit union.

The act specifies that “federal banking agency” means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the director of the Office of Thrift Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation.

The act defines an “immediate family member” as a spouse, child, sibling, parent, grandparent, or grandchild and includes stepparents, stepchildren, stepsiblings, and adoptive relationships.

The act specifies that an individual is a “natural person,” and a “person” is a natural person, corporation, company, limited liability company, partnership, or association.

The act defines a “loan processor” or “underwriter” as an employee who performs clerical or support duties at the direction of and subject to the supervision and instruction of a person licensed or exempt from licensing under the mortgage licensing statutes. Under the act, “clerical or support duties” include, subsequent to the receipt of an application, (1) the receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan and (2) communication with a consumer to obtain the information necessary to process or underwrite a loan to the extent that such communication does not include offering or negotiating loan rates or terms or counseling consumers about residential mortgage loan rates or terms.

The act eliminates the definition of “mortgage loan” (which previously just meant a first or secondary mortgage loan) and simplifies the definition of first and secondary mortgage loan. It defines a “first mortgage loan” to include a residential mortgage loan secured by

a first mortgage, and a “secondary mortgage” as a residential mortgage loan secured, in whole or in part, by mortgage, if the property is subject to at least one prior mortgage. The act defines a “residential mortgage loan” as any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling as defined in the Consumer Credit Protection Act, or residential real estate upon which a dwelling is constructed or planned.

The act replaces the definition of “residential property” with “residential real estate,” which is any real property located in Connecticut, upon which is constructed or intended to be constructed a dwelling as defined in the Consumer Credit Protection Act. Under prior law, “residential property” did not appear to include vacant land or non-owner occupied property as appears to be covered by the new term.

The act defines “real estate brokerage activity” as any activity that involves offering or providing real estate brokerage services to the public, including:

1. acting as a real estate agent or real estate broker for a buyer, seller, lessor, or lessee of real property;
2. bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;
3. negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property, other than in connection with providing financing with respect to any such transaction;
4. engaging in any activity for which a person engaged in the activity is required to be licensed or registered as a real estate agent or real estate broker under any applicable law; and
5. offering to engage in any activity or act in any capacity described above.

The act specifies that a “registered mortgage loan originator” is any individual who (1) meets the definition of mortgage loan originator and is an employee of a depository institution, a subsidiary owned and controlled by a depository institution and regulated by a federal banking agency, or an institution regulated by the Farm Credit Administration; and (2) is registered with and maintains a unique identifier through the system. A “unique identifier” is a number or other identifier assigned by protocols established by the system.

The act changes the definition of “mortgage broker” to a person who, for compensation or gain, or in expectation of compensation or gain (1) takes a residential mortgage loan application or (2) offers or negotiates terms of a residential mortgage loan. It excludes an individual sponsored by another mortgage

lender, mortgage correspondent lender, or mortgage broker. “Sponsored” means employed or retained as an independent contractor.

The act defines “mortgage loan originator” similarly, eliminating prior law’s requirement that originators act on behalf of a lender or broker. It states that an originator is an individual who takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan for or with the expectation of compensation or gain. The act specifies that this does not include:

1. an individual engaged solely as a loan processor or underwriter, except for those acting as independent contractors;
2. a person who only performs real estate brokerage activities and is licensed under the statutes governing real estate brokers and salespersons, unless the individual is compensated by a mortgage lender, mortgage correspondent lender, mortgage broker, or other mortgage loan originator or by one of their agents;
3. a person solely involved in extensions of credit relating to timeshare plans; or
4. any individual who only renegotiates terms for existing mortgages and does not otherwise act as an originator, unless the U.S. Department of Housing and Urban Development (HUD) or a court of competent jurisdiction determines the individual needs to be licensed under the S.A.F.E. Act.

§ 3 — MORTGAGE LICENSING SYSTEM REQUIREMENTS

By law, the banking commissioner must participate in the Nationwide Mortgage Licensing System and allow it to process applications for and maintain records on mortgage professionals. The act specifies that the banking commissioner must require these individuals to be licensed and registered through the system. For this purpose, the act allows the commissioner to establish the requirements as necessary for participating in the system, including:

1. background checks for criminal history through fingerprint or other databases, civil or administrative records, or credit history or any other information as deemed necessary by the system;
2. payment of fees to apply for or renew licenses through the system;
3. setting or resetting of license renewal or reporting dates; and
4. requirements for amending or surrendering a license or any other such activities as the commissioner deems necessary for

participation in the system.

To implement an orderly and efficient licensing process, the act allows the commissioner to adopt licensing regulations and interim procedures for licensing and acceptance of applications. For previously licensed individuals, it allows the commissioner to establish expedited review and licensing procedures.

For the purpose of participating in the system, the act allows the commissioner to waive or modify by regulation or order any requirement of the mortgage licensing statutes and to establish new requirements as reasonably necessary to participate in the system.

The act requires the commissioner to report regularly to the system on violations of, and enforcement actions under, the mortgage licensing statutes and the act’s provisions on investigative authority, prohibited acts, and other relevant information. The act also allows him to establish relationships or enter into contracts with the system or other entities designated by the system to collect and maintain records and process transaction fees or other fees related to licensees or other persons subject to the mortgage licensing statutes.

For the purposes of the act and to reduce the points of contact that the FBI may have to maintain to comply with the act’s background check requirements, the act allows the commissioner to use the system as a channeling agent for requesting information from and distributing information to any government agency or any other source. The act also requires the commissioner to establish a process for mortgage lenders, mortgage correspondent lenders, mortgage brokers, and mortgage loan originators to challenge information the commissioner enters into the system.

Finally, the act also requires mortgage lenders, brokers, and originator licensees to submit to the system reports of condition that must be in the form and must contain the information the system requires.

§ 5 — ORIGINATOR LICENSING

Effective April 1, 2010, the act requires any individual (natural person) to obtain a mortgage loan originator license before conducting such business unless the individual does not engage directly in the activities of a mortgage loan originator. The license must be maintained annually and each licensed originator must register with, and maintain a valid unique identifier issued by, the system.

The act specifies that a person, other than a licensed originator acting on a broker’s behalf, must be deemed to be acting as a broker if the person advertises that he or she will negotiate, solicit, place, or find a residential mortgage loan, either directly or indirectly.

The law prohibits an individual from acting as an originator for more than one person at a time.

Additionally, a mortgage loan originator license is not effective during any period when the originator is not associated with a lender or broker. Finally, the law allows the originator or the broker or lender to file a notification of termination of employment with the system. The act specifies that the brokers and lenders serve as the originator's sponsor.

The act exempts from the originator licensing requirements:

1. a registered mortgage loan originator or an employee of an institution or subsidiary who is not required to be registered under the S.A.F.E. Act, when acting for the institution or subsidiary;
2. an individual who offers or negotiates the terms of a residential mortgage loan with or on behalf of an immediate relative;
3. an individual who offers or negotiates the terms of a residential mortgage loan secured by a dwelling that served as the individual's residence; and
4. a licensed attorney who negotiates the terms of a residential mortgage loan on behalf of a client as an ancillary matter to the attorney's representation of the client, unless the attorney is compensated by a mortgage lender, mortgage correspondent lender, mortgage broker or other mortgage loan originator or by any agent of one of these entities.

The act prohibits an individual who engages solely in loan processor or underwriter activities from representing to the public, through advertising or other means of communicating or providing information, that the individual can or will perform any of the activities of a mortgage loan originator.

Starting July 31, 2010, the act prohibits loan processors or underwriters who are independent contractors from engaging in loan processor or underwriter activities unless they are licensed as mortgage loan originators. These individuals must also have and maintain a valid unique identifier issued by the system.

Finally, if HUD or a court of competent jurisdiction determines that the S.A.F.E. Act requires an individual who only renegotiates terms for existing mortgages and does not otherwise act as an originator to be licensed as an originator under state law, the act allows the individual to act in his or her current capacity as long as the person files a license application within 60 days of the decision that it is necessary.

§ 6 — EXEMPTIONS FROM LICENSURE

By law, any bank, out-of-state bank, or Connecticut or federal credit union, and their federally chartered subsidiaries are exempt from the mortgage licensing

requirements. The act also extends this exemption to Connecticut banks and credit unions' wholly-owned subsidiaries. The act specifies that the exemption applies only if the banks are federally insured. The act requires the Connecticut subsidiaries to provide written notification to the commissioner before engaging in such activity.

§ 7 — GENERAL LICENSING REQUIREMENTS

The act adds prelicensing education and testing to the requirements necessary to obtain a broker or lender license. Existing law requires the broker or lender to have a qualified individual at the main office for which the license is sought, and a branch manager at each branch. Effective April 1, 2010, the act requires the individuals to meet the education and testing requirements.

Under existing law, broker, lender, and originator license applications must be filed with the system. The act specifies that they must be filed on a commissioner-prescribed form. It requires that the form include content as set forth by the commissioner's instruction or procedure and may be changed or updated as necessary by the commissioner to carry out relevant statutes. The applicant must at least furnish to the system information on the applicant's identity, any control person of the applicant, the qualified individual, and any branch manager, including personal history and experience in a form prescribed by the system, and information related to any administrative, civil, or criminal findings by any government jurisdiction. The act eliminates the requirement that a financial statement, which must be filed with the initial application, also be filed with renewal application.

The act requires a broker or lender license applicant, any control person of the applicant, and the qualified individual or branch manager with supervisory authority at the office for which the license is sought to submit authorizations for the system and the commissioner to obtain an independent credit report from a consumer reporting agency. Originator applicants and licensees must provide this authorization starting July 31, 2010, or 30 days after the system starts accepting the authorizations. Applicants and licensees must furnish their fingerprints to the system starting April 1, 2010.

§ 8 — STANDARDS FOR ISSUANCE AND RENEWAL OF LICENSES

Minimum Standards for Issuance

The act prohibits the commissioner from issuing an initial license for a mortgage lender or broker, unless he finds, at a minimum, that:

1. the applicant meets net worth and prelicensing education and testing requirements;
2. regardless of the law on denial of employment based on prior conviction, the applicant, the control persons of the applicant, and the qualified individual or branch manager with supervisory authority at the office for which the license is sought have not been convicted of, or pled guilty or nolo contendere to, a felony in a domestic, foreign, or military court during the seven-year period preceding the date of the application for licensing or at any time preceding the date of application if such felony involved an act of fraud, dishonesty, a breach of trust or money laundering, provided any pardon of a conviction cannot be a conviction for purposes of this subdivision;
3. similar to current law, the applicant demonstrates that the financial responsibility, character, and general fitness of the applicant, the control persons of the applicant, and the qualified individual or branch manager having supervisory authority over the office for which the license is sought are such as to command the confidence of the community and to warrant a determination that the applicant will operate honestly, fairly, and efficiently within the purposes of this chapter;
4. the applicant has met the required surety bond requirement; and
5. as under current law, the applicant has not made a material misstatement in the application.

If the commissioner denies a license based on an applicant's failure to meet these requirements, he must notify the applicant of the reasons for the denial.

Under prior law, the commissioner had to issue an initial license for originators if certain requirements were met. Under the act, the commissioner cannot issue an initial license for a mortgage loan originator unless he, at a minimum, finds that the applicant has:

1. never had a mortgage loan originator license revoked in any government jurisdiction, except that a subsequent formal vacating of such revocation must not be deemed a revocation;
2. similar to current law, has not been convicted of, or pled guilty or nolo contendere to, a felony and demonstrates financial responsibility, character, and general fitness as discussed above, regardless of the law on denial of employment based on prior conviction;
3. effective April 1, 2010, completed the prelicensing education requirement and passed a written test as required by the act;
4. effective July 31, 2010, met the surety bond requirement; and

5. as under current law, has not made a material misstatement in the application.

For originators, the act specifies that a person has shown that he or she is not financially responsible when such person has shown a disregard in the management of such person's own financial condition. Such determination may include: (1) current outstanding judgments, except judgments solely as a result of medical expenses; (2) current outstanding tax liens or other government liens and filings; (3) foreclosures during the three years preceding the date of application for an initial or renewal of a license; or (4) a pattern of seriously delinquent accounts within the previous three years.

If the commissioner denies an application for a mortgage loan originator license, he must notify the applicant in the same way he must notify a broker or lender applicant.

Minimum Standards for Renewal

The act provides at a minimum, that in order to renew a mortgage lender or broker license, the applicant must continue to meet the minimum standards above; effective April 1, 2010, each qualified person and branch manager has completed the prelicensing education requirement and passed a written test, or has satisfied the annual continuing education requirements; and the lender or broker has paid all fees for renewal of the license. The act adopts similar standards for originators, except that continuing education is mandatory for them.

If these standards are not met, the license expires. The act allows the commissioner to adopt procedures for the reinstatement of expired licenses consistent with the standards established by the system.

The act provides that originators licensed as of the act's enactment date have until October 31, 2010 to complete the prelicensing education requirement and pass the written test.

§ 9 — PRELICENSING EDUCATION, TESTING, AND CONTINUING EDUCATION

Prelicensing Education

The act requires a person to complete at least 24 hours of approved education with at least (1) three hours of instruction on relevant federal law and regulations; (2) three hours of ethics, including instruction on fraud, consumer protection, and fair lending issues; and (3) two hours of training related to lending standards for the nontraditional mortgage product marketplace.

These courses must be reviewed and approved by the system based on reasonable standards. This must include review and approval of the course provider.

Prelicensing education may be offered either in a classroom, online, or by any other means approved by the system, and courses provided by the applicant's affiliated entity or sponsor are permitted. The act requires a person who has successfully completed prelicensing education system-approved requirements in another state to be granted reciprocity.

After April 1, 2010, a previously licensed person applying to be licensed under the new standards must prove that he or she has completed all of the continuing education requirements for the year in which the license was last held.

Testing

The act requires an individual to pass, with a score of at least 75%, a qualified written test developed by the system and administered by a system-approved test provider based on reasonable standards. The test must adequately measure the applicant's knowledge and comprehension in appropriate subject areas, including (1) ethics; (2) federal and state law and regulation pertaining to mortgage origination; and (3) federal and state law and regulation, including instruction on fraud, consumer protection, the nontraditional mortgage marketplace, and fair lending issues. The act allows the test provider to provide a test at the location of (1) the applicant's sponsor or its subsidiary or (2) any entity with which the applicant holds an exclusive arrangement to conduct the business of a mortgage loan originator.

The act allows an individual to retake a test three consecutive times with at least 30 days between tests. After failing three consecutive tests, an individual has to wait at least six months before taking the test again. The act requires a licensed mortgage lender, mortgage correspondent lender, mortgage broker, or mortgage loan originator who fails to maintain a valid license for at least five years, not taking into account any time during which such individual is a registered mortgage loan originator, to retake the test.

Continuing Education

The act requires a licensed originator to complete at least eight hours of education on the same topics and subject to the same conditions as the prelicensing education courses. The act allows a licensee to only receive credit for a continuing education course in the year in which the course is taken and prohibits the licensee from taking the same approved course in the same or successive years to meet the annual requirements for continuing education. However, procedures or regulations adopted under the act can provide otherwise. The act allows a licensee who is an approved instructor of an approved continuing

education course to receive credit toward the licensee's own annual continuing education requirement at the rate of two hours credit for every one hour taught.

The act requires a licensed mortgage loan originator who subsequently becomes unlicensed to complete the continuing education requirements for the last year in which the license was held prior to issuance of an initial or renewed license.

The act allows a person who meets the minimum standards discussed above and who paid all required fees to compensate for any deficiency in continuing education requirements pursuant to regulations adopted by the commissioner.

The act defines the term "nontraditional mortgage product" as any mortgage product other than a 30-year fixed rate mortgage.

§ 10 — SURRENDER OF LICENSES

Under prior law, any licensee who intends to permanently cease engaging in the business of making residential mortgage loans or acting as a mortgage broker at any time during a license period for any cause, must file a surrender of the license on the system. The act instead requires him or her to file a request to surrender the license and specifies that the surrender is not effective until it has been accepted by the commissioner.

The act also eliminates the requirement that a lender or broker licensee notify the system, or if the information cannot be filed with the system, the commissioner, about any proposed change in control in the ownership of the licensee, or among the licensee's officers, directors, members or partners. The change had to be filed on a commissioner prescribed form and he could investigate as if the licensee were applying for an initial license.

§ 11 — EXPIRATION OF ORIGINATOR LICENSES AND LICENSING FEES

Under prior law, mortgage loan originator licenses expired when the licenses of the retaining lender or broker expired, if they were not renewed. The act aligns the expiration date for originator licenses with broker and lender licenses, providing that they generally expire at the close of business on December 31. The act also eliminates a late filing option whereby a licensee could file its renewal by March 1st with a \$100 fee and have its filing be deemed timely and sufficient.

The act also sets the license fee for originators at \$300, starting November 1, 2009. Under prior law, lenders and brokers had to pay a \$100 initial fee and a \$125 renewal fee for each originator. As the act eliminates these requirements, it is not clear what fee will apply between the act's effective date and

November 1, 2009.

§ 12 — BONDING REQUIREMENT

Under prior law, the surety bond that mortgage lenders and brokers are required to obtain is scheduled to increase from \$40,000 to \$80,000 starting August 1, 2009. The act instead keeps the bond at \$40,000 until July 31, 2010, when it requires the bond to be in an amount that reflects the dollar amount of the loans originated by the lender or broker, as determined by the commissioner. The act provides that, effective July 31, 2010, each person licensed as a mortgage loan originator must be covered by a surety bond. The coverage must be provided through the bond of the mortgage lender or broker that sponsors the originator. The act requires the bond's penal sum to be maintained in an amount that reflects the dollar amount of loans originated by the mortgage loan originator, as determined by the commissioner. The act allows the commissioner to adopt regulations with respect to the requirements for the surety bonds.

The act requires licensees to notify the commissioner of the commencement of an action on the licensee's bond. When an action is commenced on a licensee's bond, the commissioner may require the filing of a new bond, and immediately on recovery on any action on the bond, the licensee must file a new bond.

§ 14 — ENFORCEMENT

The act allows the commissioner to remove an individual conducting business under the mortgage lending statutes, as amended by the act, from office and from employment or retention as an independent contractor in the mortgage business in the state (1) whenever he finds, as a result of an investigation, that the person has violated the mortgage licensing law or any regulation or order issued there under or (2) for any reason that would be sufficient grounds for the commissioner to deny a license.

To do this, the act requires the commissioner to notify the person by registered or certified mail, return receipt requested, or by any express delivery carrier that provides a dated delivery receipt. The notice is deemed received by such person on the earlier of the date of actual receipt or seven days after mailing or sending. The notice must include:

1. a statement of the time, place, and nature of the hearing;
2. a statement of the legal authority and jurisdiction under which the hearing is to be held;
3. a reference to the particular sections of the general statutes, regulations, or orders alleged

to have been violated;

4. a short and plain statement of the matters asserted; and
5. a statement indicating that such person may file a written request for a hearing on the matters asserted not later than 14 days after receipt of the notice.

If the commissioner finds that the protection of borrowers requires immediate action, the act allows him to suspend the person and require him or her to take or refrain from taking action, as the commissioner determines is necessary, by incorporating a finding to that effect in the notice. The suspension or prohibition becomes effective on receipt and, unless stayed by a court, remains in effect until the entry of a permanent order or the dismissal of the matters asserted. If a hearing is requested within the time specified in the notice, the commissioner must hold it on the matters asserted in the notice unless the person fails to appear at the hearing.

After the hearing, if the commissioner finds that the person has violated the laws or lacks financial responsibility, he can order the "removal of the person from office" and from any employment in the mortgage business in this state. It is unclear what is meant by "removal of the person from office." The commissioner can still do this if the person fails to appear at the hearing.

If a license was issued by mistake, the act allows the commissioner to issue a temporary order to cease business. The commissioner must give the licensee an opportunity for a hearing. The order becomes effective upon receipt by the licensee and, unless set aside or modified by a court, remains in effect until the effective date of a permanent order or dismissal of the matters asserted in the notice.

§ 19 — COMMISSIONER'S INVESTIGATIVE AUTHORITY

In addition to his existing authority under the banking statutes, the act gives the commissioner the authority to conduct investigations and examinations under certain circumstances.

For purposes of (1) initial licensing; (2) license renewal, suspension, conditioning, revocation, or termination; or (3) general or specific inquiry or investigation to determine compliance with the mortgage licensing statutes, the act allows the commissioner to access, receive, and use any books, accounts, records, files, documents, information, or evidence. This includes:

1. criminal, civil, and administrative history information;
2. personal history and experience, including independent credit reports obtained from a

- consumer reporting agency; and
3. any other documents, information, or evidence the commissioner deems relevant to the inquiry or investigation regardless of their location, possession, control, or custody.

The act also allows the commissioner to review, investigate, or examine any mortgage lender, broker, or originator subject to the laws as often as necessary in order to carry out the law. The act allows the commissioner to direct, subpoena, or order the attendance of and examine under oath all persons whose testimony may be required about the loans or the business or subject matter of any examination or investigation. He may direct, subpoena, or order such person to produce books, accounts, records, files, and other documents he deems relevant to the inquiry.

The act requires each lender, broker, and originator to make or compile reports or prepare other information as directed by the commissioner in order to carry out these purposes. These include accounting compilations, information lists, and data on loan transactions in a format prescribed by the commissioner or such other information the commissioner deems necessary to carry out the act's purposes.

In conducting any examination or investigation under these provisions, the act allows the commissioner to control access to any documents and records of the licensee or person under examination or investigation. The commissioner can take possession of the documents and records or place a person in exclusive charge of them in the place where they are usually kept. During the period of control, the act prohibits an individual or person from removing or attempting to remove any of the documents and records except under a court order or with the consent of the commissioner. Unless the commissioner has reasonable grounds to believe the licensee's documents or records have been, or are at risk of being, altered or destroyed to conceal a violation, the licensee or owner of the documents and records must have access to them as necessary to conduct its ordinary business affairs.

In order to carry out these powers, the act allows the commissioner to:

1. retain attorneys, accountants, or other professionals and specialists, such as examiners, auditors, or investigators to conduct or assist in examinations or investigations;
2. enter into agreements or relationships with other government officials or regulatory associations to improve efficiencies and reduce the regulatory burden by sharing resources, standardized or uniform methods or procedures, and documents, records, information, or evidence obtained under his powers;

3. use, hire, contract, or employ public or privately available analytical systems, methods, or software to examine or investigate the lender, broker, or originator;
4. accept and rely on examination or investigation reports made by other government officials, in or outside this state; and
5. accept audit reports made by an independent certified public accountant for the lender, broker, or originator, in the course of that part of the examination covering the same general subject matter as the audit, and may incorporate the audit report in the report of the examination, investigation, or other document.

The act specifies that this authority remains in effect, whether the lender, broker, or originator acts or claims to act under any Connecticut licensing or registration law, or claims to act without such authority. The act prohibits a licensee, individual, or person subject to investigation or examination under these provisions from knowingly withholding, abstracting, removing, mutilating, destroying, or secreting any books, records, computer records, or other information.

§ 20 — PROHIBITED BEHAVIORS BY PERSONS SUBJECT TO THE MORTGAGE LICENSING LAWS

The act prohibits any person subject to the mortgage licensing law from:

1. directly or indirectly employing any scheme, device, or artifice to defraud or mislead borrowers or lenders or to defraud any person;
2. engaging in any unfair or deceptive practice toward any person;
3. obtaining property by fraud or misrepresentation;
4. soliciting or entering into a contract with a borrower that provides in substance that such person or individual may earn a fee or commission through "best efforts" to obtain a loan even though no loan is actually obtained for the borrower;
5. soliciting, advertising, or entering into a contract for specific interest rates, points, or other financing terms unless the terms are actually available at the time of solicitation, advertisement, or contracting;
6. conducting any business as lender, broker, or originator without holding a valid license, or assisting or aiding and abetting any person in the conduct of business without a valid license;
7. failing to make disclosures as required by the mortgage licensing statutes and any other applicable state or federal law;
8. failing to comply with the mortgage licensing statutes, or any other state or federal law

- applicable to mortgage lending;
9. making, in any manner, any false or deceptive statement or representation including, with regard to the rates, points or other financing terms or conditions for a residential mortgage loan, or engaging in bait and switch advertising;
 10. negligently making any false statement or knowingly and willfully omitting any material fact in connection with any information or reports filed with a government agency or the system or in connection with any investigation conducted by the commissioner or another government agency;
 11. making any payment, threat, or promise, directly or indirectly, to any person for the purposes of influencing the independent judgment of the person in connection with a residential mortgage loan, or making any payment threat or promise, directly or indirectly, to any appraiser of a property to influence the independent judgment of the appraiser with respect to the value of the property;
 12. collecting, charging, or attempting to collect, charge, use, or propose any agreement purporting to collect or charge any fee prohibited by the mortgage licensing laws;
 13. causing or requiring a borrower to obtain property insurance coverage in an amount that exceeds the replacement cost of the improvements as established by the property insurer; or
 14. failing to truthfully account for monies belonging to a party to a residential mortgage loan transaction.

§ 21 — UNIQUE IDENTIFIER ON DOCUMENTS

The act requires any licensed originator originating a residential mortgage loan to clearly show his or her unique identifier on all residential mortgage loan application forms, solicitations, or advertisements, including business cards or web sites, and any other documents as established by rule, regulation, or order of the commissioner.

§ 22 — SEVERABILITY

The act provides that a Connecticut court's finding that any of its provisions or applications to any person or circumstance are invalid, does not affect the remainder of the sections or the application of the provision to other persons or circumstances.

§§ 27-33 — EMERGENCY MORTGAGE ASSISTANCE PROGRAM

Financial Hardship

By law, in order to be eligible for EMAP, a person must be experiencing "financial hardship due to circumstances beyond his or her control." Prior law defined this to include a significant reduction of at least 25% of aggregate family household income that reasonably could not be alleviated by the liquidation of assets by the borrower, including a reduction resulting from a number of specified situations. The term also included a significant increase in the mortgage payment amount. The act eliminates this as an independent definition of financial hardship, and instead, makes it one of several criteria that can cause a reduction in income. It also eliminates from the definition reductions specifically resulting from uninsured damage to the mortgaged property which affects livability and necessitates costly repairs. It adds reductions resulting from an unanticipated rise in housing expenses. The act also specifies that "financial hardship due to circumstances beyond his or her control," does not include the accumulation of credit, rather than just installment debt, incurred for recreational or nonessential items prior to the occurrence of the circumstances beyond the mortgagor's control.

The act allows CHFA to generally determine what amount constitutes a significant reduction and eliminates reference to the 25% threshold. It also includes in the definition a significant increase in expenses that cannot or could not have been alleviated by the liquidation of assets.

Application

The act allows borrowers to apply for EMAP before they receive notice of intent to foreclose if they (1) are 60 days or more delinquent on their mortgage or (2) anticipate they will be 60 or more days delinquent based on financial hardship beyond their control, if CHFA agrees with them. Under prior law, borrowers applied when they received information about the program with the lender's notice of intent to foreclose. The act also allows CHFA to refer an applicant to a HUD approved counseling agency as part of the application process.

Repayment

By law, when determining EMAP eligibility, one of the things that CHFA must consider is whether there is a reasonable prospect that the mortgagor will be able to resume full mortgage payments within a certain time period. The act specifies that these payments can be on

the original, modified, or refinanced mortgage.

By law, upon approval of EMAP payments, the authority must enter into an agreement with the mortgagor for repayment with interest. Under prior law, if the mortgagor's total housing expense was 35% or less than his or her aggregate family income, he or she had to pay CHFA the difference between 35% and the total housing expense, unless CHFA determined otherwise after examining the mortgagor's financial circumstances and ability to repay. The act eliminates this provision.

In situations where the amount is greater than 35%, repayment is deferred until the total housing expense is 35% or less of the aggregate family income. The act specifies that the total housing expense includes projected repayments for mortgage assistance.

Proceeding with Foreclosure

Under existing law, before foreclosing on certain mortgages, a lender has to notify the borrower about the default and that they have 60 days in which to meet with the lender or consumer credit counseling agency and contact CHFA to get information about and apply for EMAP if the default is unable to be resolved. If the borrower fails to (1) meet with the lender or (2) act within the designated time period, or if the EMAP application is denied or is not filed on time, the foreclosure can continue without any further interruption. The act specifies that this does not apply if the lender refuses to meet with the borrower. Additionally, the act provides that nothing in the EMAP statutes prevents a person from applying or reapplying and being considered for EMAP if the person is referred to the program by the foreclosure mediation program.

§§ 34-36 — FORECLOSURE MEDIATION PROGRAM

Mediation Notice

By law, the lender has to inform the borrower about the foreclosure mediation program by attaching a notice of its availability and a mediation request form to the front of the foreclosure complaint. Because the act makes mediation automatic for actions with a return date on and after July 1, 2009, for those actions, it requires lenders to attach instead (1) a notice of foreclosure mediation; (2) a foreclosure mediation certificate; and (3) a blank appearance form, all in a chief court administrator-prescribed form.

The foreclosure mediation certificate must require the borrower to provide enough information to allow the court to confirm that the defendant in the foreclosure action is actually an owner-occupant of a one-to-four family residential real property located in Connecticut

and also the borrower under a mortgage encumbering the real property, which is the primary residence. The act also specifies that the notice and certificate should be attached to the front of the writ summons, which typically appears in front of the complaint.

Generally, when a lender serves a borrower in the foreclosure action, it must return the writ to the court. After the lender returns the writ, the act gives the court three days to issue a notice of foreclosure mediation to the borrower. The notice must tell the borrower to file the appearance form and foreclosure mediation certificate with the court no more than 15 days after the foreclosure action return date (the date by which the lender must respond to the foreclosure action). When the court receives the forms from an eligible borrower, the court must schedule a foreclosure mediation date and notify all appearing parties no earlier than five business days after the return date. If the forms are not returned by the deadline, the court cannot schedule mediation. However, the act allows the court to refer people meeting the requirements to the program any time they appear in a foreclosure action.

By law, the mediation period starts when notice is sent to each appearing party, which has to be within three business days of the court's receipt of the mediation request. For actions with a return date on or after July 1, 2009, the three day requirement is eliminated.

Confidentiality

The act provides that information submitted by the mortgagor to a mediator, either orally or in writing, including financial documents, is not subject to disclosure by the Judicial Branch.

§ 37 — OPENING A STRICT FORECLOSURE JUDGMENT

Under prior law, a judgment foreclosing the title to real estate by strict foreclosure could not be opened after title has become absolute in any encumbrancer. The act allows such judgments to be opened upon agreement of each party who has filed an appearance in a foreclosure action and any person who acquired an interest in the real estate after title became absolute in any encumbrancer, with two conditions:

1. the judgment cannot be opened more than four months after a judgment of strict foreclosure was entered or more than 30 days after title has become absolute in any encumbrancer, whichever is later and
2. all rights and interests of (a) all appearing and nonappearing parties and (b) any person who acquired an interest in the real estate after title became absolute in any encumbrancer, are

restored to the status that existed on the date of judgment.

If a judgment is opened, the person who filed the written motion must record a certified copy of the court's order to open the judgment on the land records in the town in which the real estate is situated.

§ 38 — CONNECTICUT BUSINESS OPPORTUNITY INVESTMENT ACT CHANGES – PA 09-160

The act makes a minor change to Public Act 09-160. Prior law required a person selling or offering to sell a business opportunity to register the opportunity with the banking commissioner. PA 09-160 changed the law to require that the seller register with the commissioner. This act restores prior law.

§§ 39 - 41 — CONSUMER CREDIT LICENSES – PA 09-208

The act makes technical changes to PA 09-208.

§§ 42 & 43 — MORTGAGE PRACTICES – PA 09-207

Public Act 09-207 provides that a person subject to the new mortgage practice rules it creates includes, among other things, an individual who makes more than three individual mortgage loans or who purchases or sells more than three residential properties in a consecutive 12 month period. The act specifies that the term instead includes an individual who is a mortgagor (borrower) on said loans.

The act also adds a definition of APR from the Connecticut Abusive Home Loan Lending Practices Act and eliminates technical changes.

COMMENT

Foreclosure Judgments Entered After July 1, 2010

By law, and under the act, mediations are allowed to begin up until June 30, 2010 (and therefore continue after that date). However, it appears that this provision allows actions that continue after June 30, 2010 to go to judgment without meeting the act's requirements.

BACKGROUND

Public Law 110-289

P.L. 110-289 encourages participation in the Nationwide Mortgage Licensing System and Registry (NMLSR) system created in 2004 by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators. It requires

licensing of all "loan originators," which it defines as individuals who (1) take a residential mortgage loan application and (2) offer or negotiate terms of a residential mortgage loan for compensation or gain.

The act establishes requirements for loan originator licensing or registration, including fingerprint and background checks; 20 hours of pre-licensing education; a written test; and eight hours of continuing education annually. It also prevents the issuance of a license to certain applicants.

The act requires HUD to establish a backup licensing system for a state if, after one year (or two years for biennial legislatures), a state does not (1) participate in the Nationwide Mortgage Licensing System or (2) have a system in place that addresses certain requirements. The HUD secretary can extend this period by up to two years. The Act also requires federal bank regulators to establish a parallel registration system for FDIC-insured banks.

Related Act

Public Act 09-219 makes effective upon passage provisions in this act related to the emergency mortgage assistance program. Most of the provisions were effective July 1, 2009, except for the repayment and conforming provisions, which were effective October 1, 2009.

PA 09-219—sHB 6481

Banks Committee

Appropriations Committee

AN ACT CONCERNING THE EMERGENCY MORTGAGE ASSISTANCE PROGRAM

SUMMARY: This act makes effective upon passage certain provisions of PA 09-209, which changes the process for determining eligibility for the Emergency Mortgage Assistance Program (EMAP) by (1) allowing the Connecticut Housing Finance Authority (CHFA) to determine what constitutes a significant reduction in a borrower's income, (2) expanding the circumstances that constitute a financial hardship beyond a borrower's control, and (3) changing some of the conditions for repayment. PA 09-209 also allows borrowers to apply for the program before they receive notice of intent to foreclose under certain circumstances and specifies the circumstances under which the lender may proceed with the foreclosure. Most of the provisions were effective July 1, 2009, except for the repayment and conforming provisions, which were effective October 1, 2009.

EFFECTIVE DATE: Upon passage, and applicable to EMAP applications filed on and after July 1, 2008.

PA 09-96—sHB 5915

*Select Committee on Children
Human Services Committee*

AN ACT CONCERNING “STUCK KIDS”

SUMMARY: This act requires the Department of Children and Families (DCF) to review annually the cases of all children and youth in DCF care during the previous calendar year and report the number and age of those:

1. living in a psychiatric hospital or out-of-state treatment center,
2. who have run away or are homeless,
3. who have a permanency plan of “another planned permanency living arrangement,” or
4. who have refused DCF services.

For the first group, DCF must report their average length of stay, the number who have overstayed their estimated placement time, and analyze the reasons for the out-of-state placements and overstays. For the second group, DCF must report the number of days each has been a runaway or homeless and analyze the trends relating to runaways and homelessness. For the third group, DCF must analyze the trends relating to permanency plans. For the fourth group, DCF must analyze trends relating to participation in services.

DCF must conduct case and service reviews for each child in these groups. The first report is due by February 1, 2010 and must be sent to the Children’s and Human Services committees.

EFFECTIVE DATE: July 1, 2009

PA 09-175—sHB 6486

*Select Committee on Children
Human Services Committee
Judiciary Committee
Appropriations Committee*

AN ACT CONCERNING RESPONSIBLE FATHERHOOD AND STRONG FAMILIES

SUMMARY: This act allows family support magistrates in all Title IV-D support cases to order the parent who owes child support (obligor) into an educational, training, skill-building, work, rehabilitation, or other similar program. The magistrate may suspend support payments or elect not to impose court-based enforcement actions based on the parent’s participation in a program.

The act requires:

1. the chief court administrator to submit reports of the Judicial Branch’s Problem Solving in Family Matters Committee to the Human Services and Children’s committees by July 1, 2010, and July 1, 2011;
2. the Department of Social Services’ (DSS) commissioner, within available resources, to seek federal and private funds to provide grants to promote programs supporting the positive involvement and interaction of fathers with their children; and
3. DSS, within available resources, to report to the Children’s Committee on child support collection efforts and noncustodial parents.

EFFECTIVE DATE: October 1, 2009

TITLE IV-D SUPPORT CASES

The act gives family support magistrates the authority to place a child-support obligor into an educational, training, skill-building, work, rehabilitation, or other similar program, as long as the magistrate finds doing so will significantly increase the parent’s ability to fulfill the duty of support within a reasonable period of time. When this type of order is entered, the magistrate must also enter an order requiring a report on the obligor’s compliance. Title IV-D refers to a section in the federal Social Security Act that directs states’ child support enforcement role.

The magistrate may suspend payment of a support order, in whole or part, or choose not to impose or order specified court-based enforcement actions based on the obligor’s participation in one of the programs described above.

By July 1 in 2010 and 2011, the chief court administrator must submit reports of the Judicial Branch’s Problem Solving in Family Matters Committee to the Human Services and Children’s committees.

GRANTS

The DSS commissioner must, within available resources, seek to obtain all available federal and private funding for programs that promote the following objectives:

1. public education on the financial responsibility of fatherhood;
2. preparing for the legal, financial, and emotional responsibilities of fatherhood;
3. establishing paternity at childbirth;

4. encouraging fathers, regardless of marital status, to foster an emotional connection to, and financial support of, their children;
5. establishing support mechanisms for fathers in their relationship with their children, regardless of their marital and financial status; and
6. integrating state and local services available for families.

If funds are obtained, DSS must award grants to programs and service providers that provide:

1. employment and training opportunities for low-income fathers to increase their earning capacity;
2. classes in parenting and financial management; and
3. other support services and programs that promote responsible parenting, financial stability, and communication and interaction between fathers and their children.

Those seeking grants must apply to the commissioner by a date and in a manner he determines. The commissioner sets eligibility and award criteria and must require applicants to:

1. implement accountability measures and results-based outcomes as a condition of being awarded the grant;
2. leverage funds through existing resources and collaboration with community-based and nonprofit organizations; and
3. consult with experts in domestic violence to ensure that, when appropriate, the programs and services described above address issues concerning domestic violence.

Annually, starting October 1, 2010, the commissioner must report to the Children's and Human Services committees on the grant program's effectiveness in achieving the six objectives above.

REPORT

The act requires DSS, within available appropriations, to report to the Children's Committee by February 1, 2010 on:

1. the effectiveness of child support arrears management efforts,
2. the effectiveness of efforts aimed at reducing teen fatherhood,
3. the number of newly employed noncustodial parents, and
4. the number of noncustodial parents who are at or below federal poverty level.

PA 09-194—sHB 6419

Select Committee on Children
Human Services Committee
Judiciary Committee
Appropriations Committee

AN ACT CONCERNING THE POLICIES, PRACTICES AND PROCEDURES OF THE DEPARTMENT OF CHILDREN AND FAMILIES AND A PILOT PROGRAM TO INCREASE PUBLIC ACCESS TO JUVENILE PROCEEDINGS

SUMMARY: This act makes several unrelated changes in statutes governing the Department of Children and Families (DCF). It:

1. requires the department to include specific information in permanency plan documents;
2. requires DCF to file annual reports with the (a) Select Committee on Children on its case review findings and (b) Human Services Committee on its progress in incorporating measurable outcomes into contracts with providers;
3. establishes a pilot program to increase public access to juvenile court proceedings concerning abused, neglected, or dependent children or those petitioning for termination of parental rights;
4. creates the Juvenile Access Pilot Program Advisory Board; and
5. requires DCF to notify all attorneys of record when it decides to transfer a child to an out-of-state facility.

EFFECTIVE DATE: October 1, 2009, except for the provision concerning out-of-state transfers, which is effective October 1, 2010, and the provision establishing the Advisory Board, which is effective upon passage.

§ 3 — PERMANENCY PLANNING

State and federal laws require DCF to establish and periodically revise permanency plans for children in its care or custody, which include abused and neglected children, delinquents, and children in its voluntary services program (i.e., children whose mental health needs could not otherwise be met).

Permanency Plan Documents

The act requires all DCF documents entitled “Study in Support of Permanency Plan” or “Status Report for Permanency Planning Team” to contain:

1. a description of any problems or offenses that caused the child to be placed under DCF’s custody, control, or supervision;
2. a description of the type, and an analysis of the effectiveness, of its care, treatment, and supervision of the child;
3. for each child in substitute care, the current visitation schedule for the child and his or her parents and siblings;
4. a description of every effort DCF has taken to reunify the child with a parent or find a permanent placement, including, where applicable, every effort to assist the parent in remedying factors that contributed to the child’s removal from the home; and
5. a proposed timetable for reunifying the child and parent, a permanent placement if continued substitute care is recommended, or a justification of why extended substitute care is necessary.

If a child is in an out-of-state placement, the plan must indicate whether he or she has been visited at least every three months by a state or private agency worker.

§§ 1 & 2 — REQUIRED DCF ANNUAL REPORTS

Case Reviews

The act requires DCF to report annually to the Select Committee on Children on:

1. the results of Connecticut’s comprehensive objective reviews (internal qualitative reviews), including any recommendations contained in the reviews and any steps DCF has taken to implement them;
2. aggregate data from each administrative case review, including any information on the strengths and deficiencies of its case review process; and
3. steps DCF is taking to address department-wide deficiencies.

Provider Contracts

The act requires DCF to determine measurable outcomes for each type of service it provides. The department must incorporate them in each contract with providers and include achievement of the outcomes and other quality indicators in its annual review of each provider.

The act directs the DCF commissioner to file annual reports with the Human Services Committee on its efforts to determine measurable outcomes and incorporate them in provider contracts. Reports must also include:

1. the number of service types with outcomes,
2. the types of outcomes, and
3. the application of outcome information to quality improvement.

§§ 5-7 — JUVENILE ACCESS PILOT PROGRAM

Pilot Program

By law, juvenile court hearings are heard separately from other Superior Court business and are closed to the public. The act requires the Judicial Branch to establish a pilot program to increase public access to proceedings where a child is alleged to be uncared for, neglected, abused, or dependent or is the subject of a petition for termination of parental rights. But it permits a juvenile court judge to order on a case-by-case basis, upon a motion of any party, that any proceeding be kept separate from other Superior Court business. The pilot program is to be located in a juvenile court designated by the chief court administrator. As in all juvenile matters, records of these proceedings are confidential.

Juvenile Access Pilot Program Advisory Board

The board must:

1. review the methods other states use to increase public access to similar juvenile court proceedings;
2. monitor the Judicial Branch’s progress in implementing the pilot program;
3. submit written recommendations concerning the pilot program to the Judicial Branch and the Judiciary and Human Services committees by December 31, 2010; and
4. consult with the Judicial Branch on policies and procedures relating to the pilot program.

The board consists of:

1. the chief court administrator or her designee;
2. an attorney who represents children in abuse, neglect, or dependency proceedings, appointed by the House speaker;
3. an attorney who serves as a guardian ad litem in proceedings in the juvenile court, appointed by the Senate president pro tempore;
4. a member or former member of the media who has experience reporting on juvenile matters, appointed by the House majority leader;
5. an attorney who represents parents in abuse, neglect, or dependency proceedings, appointed by the Senate majority leader;

6. a Superior Court judge assigned to hear juvenile matters, appointed by the chief justice of the Supreme Court;
7. an assistant attorney general assigned to the child protection unit in the Attorney General's Office, appointed by the attorney general;
8. an attorney who represents children and parents under a contract with the chief child protection attorney, appointed by the House minority leader;
9. a DCF Child Welfare Services Division employee, appointed by the commissioner;
10. a DCF social worker who, at the time of appointment, has experience working directly with children and families on behalf of the department, appointed by the Senate minority leader;
11. the chief child protection attorney, or her designee;
12. the child advocate, or her designee;
13. the chief state's attorney, or his designee; and
14. the chief public defender, or her designee.

Members must be appointed within 30 days after the act's passage. The chief court administrator and the attorney appointed by the House speaker serve as the board's co-chairs. They must schedule the first meeting of the board within 60 days of the act's passage.

After consultation with the Juvenile Access Pilot Program Advisory Board, the Judicial Branch must adopt policies and procedures for operating the pilot program.

The board terminates on January 1, 2011.

Pilot Program Review

The Judicial Branch must conduct a comprehensive review of the pilot program. The chief court administrator must submit a report on the review and the pilot program to the Judiciary and Human Services committees by December 31, 2010. The report must include:

1. an assessment of the pilot program's effectiveness in balancing the interest in public access to proceedings included in the program against the best interests of the children who are the subject of the proceedings and
2. a recommendation on whether, and to what extent, the pilot program should be continued at the established juvenile matters location or expanded to other juvenile matters locations.

PA 09-205—sSB 877

*Select Committee on Children
Human Services Committee
Judiciary Committee
Appropriations Committee*

AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE CONCERNING THE DEPARTMENT OF CHILDREN AND FAMILIES

SUMMARY: This act implements a number of changes in statutes relating to the Department of Children and Families' (DCF) planning, programming, and reporting functions. It:

1. requires DCF to develop and regularly update a single comprehensive strategic plan, which replaces the biennially updated five-year master plan;
2. expands the authority and oversight of the State Advisory Council on Children and Families (SAC) with respect to DCF programs and services;
3. requires, rather than allows, DCF to establish advisory groups for each facility it operates (the Connecticut Children's Place, the Connecticut Juvenile Training School (CJTS), High Meadows, Riverview Hospital, and the Wilderness School) and provide them administrative support;
4. requires state agencies cited in an Office of the Child Advocate report to respond to the governor and General Assembly in writing within 90 days; and
5. requires DCF to collect and analyze data about child abuse and neglect that involve a parent or guardian with a substance abuse problem.

The act also eliminates several reporting requirements and advisory groups and makes technical and conforming changes.

EFFECTIVE DATE: July 1, 2009

§ 1 — STRATEGIC PLAN

The act eliminates a requirement that DCF submit to the legislature a five-year master plan every two years. Instead, with the assistance of SAC, it must develop and regularly update a single, comprehensive strategic plan for meeting the needs of the children and families it serves. In developing and updating the plan, DCF must consult with representatives of children and families it serves, service providers, advocates, and others interested in child and family well-being in the state. The plan must identify and define agency goals and indicators of progress in achieving them.

Table 1: Previous Master Plan vs. Current Strategic Plan

<i>Previous Plan</i>	<i>Current Plan</i>
1. the long-range goals and the current level of attainment of such goals of the department;	1. a mission statement;
2. a detailed description of the types and amounts of services presently provided to the department's clients;	2. expected results for the department, each of its mandated areas of responsibility (child welfare, juvenile justice, children's mental health and substance abuse services, and child abuse and neglect prevention), and each of its programs and services;
3. a detailed forecast of the service needs of current and projected target populations;	3. a schedule and timeframe for achieving these results and fulfilling its mission that includes strategies for working with other state agencies to leverage resources and coordinate service delivery;
4. detailed cost projections for alternate means of meeting projected needs;	4. priorities for services and estimates of the funding and other resources needed to implement them;
5. funding priorities for each of the five years included in the plan and specific plans indicating how the funds are to be used;	5. program and service standards that are based on results-based best practices, when available; and
6. a written plan for the prevention of child abuse and neglect;	6. relevant progress measures.
7. a comprehensive mental health plan for children and adolescents, including children with complicating or multiple disabilities;	
8. a comprehensive plan for children and youths who are substance abusers, developed in conjunction with the Department of Mental Health and Addiction Services; and	
9. an overall assessment of the adequacy of children's services in Connecticut.	

DCF must prepare the plan within existing funds.

The act requires DCF to begin the strategic planning process on July 1, 2009. DCF must hold regional meetings on the plan to ensure public input and must post the plan and the plan's updates and progress reports on the department's website. Before submitting the plan to the legislature and governor, which it must do by July 1, 2010, DCF must submit it to SAC for review and comment.

Progress Reports

The DCF commissioner must track progress in achieving the results and file quarterly reports with SAC beginning October 1, 2010. She also must submit annual progress reports to the legislature and governor beginning July 1, 2011.

§ 5 — STATE ADVISORY COUNCIL ON CHILDREN AND FAMILIES

By law, SAC makes recommendations to DCF about programs, legislation, and other matters to improve services; annually advises the commissioner on her proposed budget; explains DCF's policies, duties, and programs to the public; and issues reports to the governor and commissioner on an as-needed basis. The act directs DCF to provide the council with funding for administrative support and to facilitate participation by council members representing families and youth (10 of its 17 members are parents or relatives of children receiving, or who have received, DCF services).

The act requires the council to hold its meetings at locations that facilitate public participation. DCF must post the council agenda and minutes on its website.

New Duties

The act assigns SAC the following new duties:

1. to assist in development of reviewing and commenting on DCF's strategic plan,
2. to receive quarterly reports from the commissioner concerning the department's progress in carrying out the strategic plan,
3. to independently monitor the department's progress in achieving the strategic plan's goals, and
4. to offer the department assistance and an outside perspective to help it achieve its goals.

Membership

The act does not change the number of members but changes the membership so that SAC must include:

1. two people aged 18 to 25 served by DCF and
2. one attorney with expertise in children and youth issues.

By law, the balance of the membership of the council includes young persons, parents, and others interested in the delivery of services to children and youths. The act specifies that this include child protection, behavioral health, juvenile justice, and prevention services.

§ 3 — FACILITY REPORTS TO ADVISORY GROUPS

The act requires each DCF-operated facility to submit an annual report to its advisory group and SAC that includes:

1. aggregate resident profiles;
2. descriptions of, and updates on, major initiatives;
3. key outcome indicators and results;
4. operating costs; and
5. descriptions of its (a) educational, vocational, and literacy programs; (b) behavioral, treatment, and other services for residents; and (c) their outcomes.

DCF must serve as administrative staff and post these reports on its website. The act directs the advisory groups to respond to their facilities' annual report and recommend improvements and enhancements that they deem necessary.

§ 4 — STATE AGENCY RESPONSES TO CHILD ADVOCATE REPORTS

The act requires any state agency cited in an official report issued by the child advocate to submit a written response to the governor and General Assembly no later than 90 days after the agency receives the report. The General Assembly must submit a copy of the response to the Office of the Child Advocate.

§ 10 — COLLECTION OF CHILD ABUSE DATA

The act requires DCF to collect and analyze data to determine the percentage of the department's cases of child abuse and neglect that involve a parent or guardian with a substance abuse problem and use the data to develop strategies to reduce the number of future cases.

§§ 6 – 9 & 12 — ELIMINATING REPORTS AND THE ADOPTION ADVISORY COMMITTEE

The act eliminates obsolete reporting statutes and the following mandated reports:

1. annual self-evaluations and review of discharge summaries by community collaboratives;
2. annual child care facility reports from DCF licensees;
3. annual performance reports on DCF's Unified School District #2;
4. a five-year evaluation of Connecticut KidCare, the state's child behavioral health program, by DCF and the Department of Social Services; and

5. DCF's monthly reports to the Public Health and Human Services committees concerning hospitalized children receiving subacute psychiatric care due to a lack of community-based services.

The act also eliminates (1) an advisory committee that studies and makes annual reports to DCF on programs to promote adoption of minority and hard-to-place foster children and (2) a committee that is required to make quarterly reviews of safety and security issues at CJTS that affect Middletown.

PA 09-19—sHB 5930

Commerce Committee

**AN ACT REQUIRING SMALL BUSINESS
IMPACT ANALYSES FOR PROPOSED
REGULATIONS**

SUMMARY: This act requires any state agency proposing a regulation to identify how it affects small businesses (i.e., small business impact analysis) and include the analysis as part of the fiscal note it must submit to the Regulations Review Committee. The law already requires agencies to determine if a proposed regulation adversely affects small businesses, which the act redefines as those employing 75 rather than 50 employees, and, if it does, to consider other less burdensome ways to achieve the regulation’s goal (i.e., regulatory flexibility analysis). The act does not define “small business” for the small business impact analysis.

Before adopting a regulation, the act requires agencies to notify the public about how to obtain copies of the small business impact and regulatory flexibility analyses. The agencies must also notify the Commerce Committee about the regulation if they believe it could adversely affect small businesses, and the committee must help agencies prepare the flexibility analysis. Agencies must already notify the Department of Economic and Community Development about proposed regulations that could adversely affect small businesses, and the department must help them prepare the analysis.

Under the act, a proposed regulation does not take effect until the agency submits the regulatory flexibility analysis to the Regulations Review Committee. The law already specifies that the regulation does not take effect until the agency gives the committee the original proposed regulation, as approved by the attorney general, and 18 copies.

EFFECTIVE DATE: October 1, 2009

SMALL BUSINESS IMPACT ANALYSIS

Scope

By law, agencies must prepare and attach a fiscal note to a proposed regulation when they submit it to the Regulations Review Committee. The fiscal note must include the regulation’s cost and revenue impact on the state or any municipalities. The act requires agencies to prepare the fiscal note either before or at the same time as, rather than after, publishing the regulation’s public notice. It also requires that the fiscal note include an estimate of the regulation’s cost or revenue impact on the state’s small businesses, including the (1) estimated number of small businesses that would have to comply with the regulation and (2) how much it would cost

them to do so. Costs include reporting, recordkeeping, and administration. The law already requires the agency to include the regulatory flexibility analysis in the fiscal note, which it must also submit to the committee.

Public Notice

The act requires agencies to inform the public about how it can obtain copies of the small business impact and regulatory flexibility analyses before adopting a regulation. (The act contains an incorrect statutory reference regarding the small business impact analyses.) They must include this information in the notice advising the public of their intent to adopt regulations. By law, agencies must publish this notice in the *Connecticut Law Journal* at least 30 days before adopting a regulation.

REGULATORY FLEXIBILITY ANALYSES

The law requires agencies to determine if a proposed regulation adversely affects small businesses and, if it does, to prepare a regulatory flexibility analysis to consider ways to minimize the impact and still accomplish the regulation’s purpose without compromising public health, safety, and welfare. The act specifies that the regulatory methods must be consistent with public health, safety, and welfare. And it makes a technical change.

The act requires agencies to include the regulatory flexibility analysis in the regulation’s official record.

By law, agencies do not have to prepare regulatory flexibility analyses for emergency regulations, those indirectly affecting small businesses, or certain other types of regulations.

Small Business Definition

Under prior law, independently owned and operated businesses with fewer than 50 full-time employees or gross sales under \$5 million were considered small businesses. The act increases this threshold to 75 employees. By law, agencies may set a higher full-time employee threshold if necessary to meet or address specific small business needs and concerns. The limit cannot exceed the applicable federal standard or 500 employees, whichever is less.

PA 09-61—sSB 885*Commerce Committee**Finance, Revenue and Bonding Committee***AN ACT CONCERNING THE TAX INCREMENTAL FINANCING PROGRAM**

SUMMARY: This act extends the sunset dates for two Connecticut Development Authority (CDA) programs that provide bond financing for large-scale development projects. Both programs use the new or incremental tax revenues the projects generate to repay the bonds (i.e., tax increment financing). Prior law prohibited CDA from approving new projects under the programs on or after July 1, 2010. The act extends the sunset date to July 1, 2012. It also makes a technical change.

The programs use different tax revenues to fund different types of projects. One uses incremental property tax revenues to repay the bonds issued for projects that clean up and redevelop contaminated property or involve the use of information technologies. The other uses incremental hotel, sales, dues, cabaret, and admission tax revenues to repay bonds issued for projects that create jobs or stimulate significant business activity.

EFFECTIVE DATE: Upon passage

PA 09-93—SB 973*Commerce Committee**Planning and Development Committee**Finance, Revenue and Bonding Committee***AN ACT CONCERNING THE DEFINITION OF MEDIAN INCOME IN ENTERPRISE ZONES FOR ASSESSMENT PURPOSES**

SUMMARY: This act changes the criterion under which property owners qualify for a property tax exemption when they improve homes, apartments, condominiums, and other types of residential property in the state's 17 enterprise zones. By law, municipalities must exempt a portion of the property's assessed value attributed to the improvements over seven years.

Property owners who improve rental units or convert them into condominiums must rent or sell them, respectively only to people meeting an income criterion. Under prior law, they had to rent or sell the units to people earning no more than 200% of the municipality's median family income. Under the act, property owners must rent or sell the units to people earning no more than 200% of the median income for the area in which the municipality is located, as determined by the U.S. Department of Housing and Urban Development (HUD).

EFFECTIVE DATE: Upon passage

BACKGROUND*Enterprise Zone Property Tax Exemptions*

The law requires municipalities to grant two types of property tax exemptions to taxpayers in enterprise zones who improve their properties. They must exempt 80% of the assessed value of newly constructed or improved factories, warehouses, banks, and other specified property for five years. The state reimburses municipalities for this revenue loss.

Municipalities must also exempt a portion of the assessed value of other types of property, but under a different schedule. Homes, apartments, stores, offices, and other types of property ineligible for the five-year, 80% exemption, qualify for a seven-year exemption. The exemption is 100% of the improvement's assessed value in the first two years, drops to 50% in the third, and declines by 10% per year in each of the remaining four years. The state does not reimburse municipalities for this revenue loss.

HUD Area Median Income

HUD annually determines median family income for metropolitan and nonmetropolitan areas based on census data. It uses this data to determine whether someone is eligible for housing or housing assistance under many different programs. According to the census, a family consists of two or more people related by birth, marriage, or adoption and residing together. One member of this group is the "householder," the person in whose name the housing unit is owned, rented or maintained.

Related Act

Public Act 09-234 makes an identical change to the income criterion for the enterprise zone property tax exemption for rental apartments and converted condominiums.

PA 09-172—sSB 972*Commerce Committee**Government Administration and Elections Committee**Finance, Revenue and Bonding Committee***AN ACT CONCERNING CONNECTICUT INNOVATIONS, INCORPORATED**

SUMMARY: By law, Connecticut Innovations, Inc. (CII) must file an annual report on its financial assistance programs that has certain information about the companies receiving financial assistance, including each company's gross revenue for its most recent fiscal year. This act requires CII to report gross revenue only

for companies that make the information public in the normal course of business. It requires CII to report the gross revenues of other companies separately while concealing their names and identities. This must be consistent with the law that already exempts from the Freedom of Information Act financial and credit information and trade secrets applicants submit.

The act allows the governor and chairpersons and ranking members of the Finance, Revenue and Bonding and Commerce committees, after a request to CII, to examine the detailed report data in confidence, including the specific revenue data for each identifiable business included in the report. It allows the committee chairpersons and ranking members to disclose the data to other committee members and requires that they also keep the data confidential.

EFFECTIVE DATE: July 1, 2009

PA 09-184—sHB 5821

Commerce Committee

AN ACT CONCERNING ECONOMIC DEVELOPMENT PROJECTS, IN-STATE MICRO BUSINESSES AND THE STANDARD WAGE

SUMMARY: This act allows certain state-licensed engineers to certify to permitting agencies that economic development projects comply with all state permitting requirements and specifies the professional criteria they must meet before they can do so. But the act does not indicate if the agency funding the project, the project's developer, or the agency issuing the permit must approve the engineer. Nor does it state if the permitting agency must issue the permit when the engineer certifies compliance.

The act authorizes a maximum 10% state bid preference for businesses that purchase goods or services from a business whose gross revenue in the most recently completed fiscal year does not exceed \$3 million (i.e., "micro businesses"). The administrative services commissioner may grant the preference when determining the lowest qualified bidder on all open market orders or contracts. Existing law already authorizes the same preference for businesses selling specific types of products and requires state agencies to set aside contracts for exclusive bidding by small and minority-owned businesses.

Lastly, the act amends PA 09-183 that requires, among other things, a business taking over a state building service contract to retain the people hired under the prior contract for at least 90 days. The law imposes a similar requirement on businesses taking over a food and beverage service contract at Bradley International Airport from another business. This act exempts Bradley food and beverage contracts from PA 09-183's

requirement.

EFFECTIVE DATE: July 1, 2009, except that the authorization regarding state-licensed engineers takes effect October 1, 2009.

CERTIFYING ECONOMIC DEVELOPMENT PROJECTS

Eligible Engineers

The act authorizes certain state-licensed engineers to certify that an economic development project complies with state permitting requirements. The authorization applies to people who are educated or receive practical training in mathematics, physical science, and engineering principles to work as engineers. Their work may include consulting, investigating, evaluating, planning, designing, or supervising construction projects related to public or privately owned structures, buildings, machines, equipment, processes, or works. The projects must affect the public welfare or present the need to safeguard life, public health, or property.

Eligible Projects

The act's certification option is available for four types of economic development projects. The first type includes many traditional economic development uses, such as manufacturing, industrial, research, office, product warehousing and distribution, and hydroponic or aquaponic food production facilities. These uses qualify for permit certification if the Connecticut Development Authority (CDA) determines they will maintain or create jobs; maintain or increase the tax base; or maintain, expand, or diversify industry.

A wide range of environmental quality projects also qualifies for permit certification. Eligible projects include controlling, abating, preventing, or disposing of land, water, air, and other environmental pollution, including thermal, radiation, sewage, wastewater, solid waste, toxic waste, noise, or particulate pollution. They do not include new resources recovery facilities used mainly to process municipal solid waste.

Alternate energy and energy conservation projects involving commercial or industrial applications qualify for permit certification. They include projects using cogeneration technology or solar, wind, hydro, biomass, or other renewable energy sources.

Lastly, permit certification is also available to any type of project that improves the capacity of the state's economy to generate new wealth. CDA must first determine if the project will create or retain jobs, promote exports, encourage innovation, or support the state's economic base in other ways.

MICRO BUSINESS BID PREFERENCE

The act extends the current maximum 10% bid preference to businesses that purchase goods or services from micro businesses. Existing law allows the DAS commissioner to grant the preference when purchasing goods made with recycled materials or that can be recycled or remanufactured, if doing so would promote recycling or remanufacturing. She can also grant the preference for motor vehicles using clean alternative fuels or that can use both these fuels and conventional ones.

Existing law also requires state agencies to set aside contracts for exclusive bidding by small businesses. A business qualifies for set-aside bidding if it grossed no more than \$15 million in the most recently completed fiscal year and meets other specified criteria.

BACKGROUND

Related Act

Public Act 09-183 requires, among other things, a new contractor that takes over an existing state building service to keep the employees from the previous contract for at least 90 days after the date it begins service under the new contract and permits it to fire those employees only for cause. It excludes from this requirement people with disabilities or disadvantaged people working in the janitorial work pilot program under contracts with no more than four full-time workers.

PA 09-233—sSB 881
Commerce Committee

AN ACT CONCERNING INTERNATIONAL COMMERCE AND CERTAIN DEPARTMENT OF ECONOMIC AND COMMUNITY DEVELOPMENT REPORTS

SUMMARY: This act requires the Department of Economic and Community Development (DECD) commissioner to evaluate Connecticut's competitiveness as a place to do business and summarize her findings in the comprehensive annual report she submits to the governor and legislature. In doing so, she must evaluate:

1. how the state's programs and policies affect the economy and business environment,
2. the state's ability to retain and attract businesses,
3. other states' steps to improve their competitiveness, and

4. programs and policies the state could implement to improve its competitiveness.

This evaluation is in addition to the economic analysis the commissioner must include in the comprehensive report under already existing law. The analysis must assess how DECD's programs benefit the state's economy.

The comprehensive report, which is due February 1, annually consists of many formerly separate DECD reports. The act adds to the comprehensive report the separate DECD reports on two energy programs it administers—the Biodiesel Producer Incentive and the Fuel Diversification grant programs. Under prior law, annual reporting requirement applied to the latter if DECD selected an entity to administer the Fuel Diversification Grant Program. PA 09-234 eliminates this requirement.

EFFECTIVE DATE: July 1, 2009

BACKGROUND

Related Act

Among other things, PA 09-234 makes corresponding changes to the statutes governing the Biodiesel Producer Incentive and the Fuel Diversification grant programs. It eliminates the requirement that DECD prepare the report on the Biodiesel Distributors Grant Program in consultation with the entity DECD selected to run the program. It also eliminates the requirement that it submit the report to the Environment and Energy and Technology Committees.

The act also eliminates the reporting requirement that applies if DECD selects an entity to administer the Fuel Diversification Program. Under prior law, the entity had to submit annual reports to the commissioner about the program.

PA 09-234—sSB 887
Commerce Committee
Planning and Development Committee
Environment Committee
Finance, Revenue and Bonding Committee
Government Administration and Elections Committee

AN ACT CONCERNING CHANGES TO ECONOMIC DEVELOPMENT STATUTES AND INFRASTRUCTURE ENHANCEMENTS AT THE UNITED STATES NAVAL SUBMARINE BASE-NEW LONDON

SUMMARY: This act allows municipalities implementing the one-time amnesty program authorized under PA 08-2, NSS to apply amnesty payments against

any outstanding tax owed on property. Under prior law, municipalities had to apply delinquent payments against the oldest outstanding tax owed on a property.

The act also makes changes to several unrelated economic development statutes. It:

1. exempts the U.S. Navy and Defense departments and their eligible contractors from certain requirements when using state funds for improving infrastructure at the U.S. Naval Submarine Base—New London,
2. extends the deadline for allocating up to \$155 million in state bonds for various Hartford projects,
3. changes the income criterion that improved condominiums and multifamily housing units in enterprise zones must meet to qualify for a property tax exemption,
4. removes the Department of Economic and Community Development (DECD) from the law that automatically terminates the department on July 1, 2013 unless the legislature reestablishes it,
5. requires DECD to incorporate an assessment of two energy programs it administers in its comprehensive annual report and eliminates the requirements under which DECD had separately to report on them, and
6. makes many minor and technical changes to the economic development statutes, including those governing enterprise zone reporting and the strategic economic development plan.

EFFECTIVE DATE: Upon passage, except the provisions regarding the strategic plan and DECD's annual report take effect July 1, 2009.

§§ 12-13 — SUBMARINE BASE INFRASTRUCTURE CONTRACTS

The law authorizes \$50 million in Manufacturing Assistance Act (MAA) bonds for enhancing infrastructure at the Naval Submarine Base—New London to support long-term, ongoing naval operations there. Under prior law, DECD had to grant the bond proceeds to the U.S. Navy and other eligible applicants for this purpose. The act makes the U.S. Defense Department eligible for the grants and changes the Navy reference to U.S. Department of the Navy.

The act exempts the sub base infrastructure project grants and contracts, as well as the Navy and Defense departments and other eligible contractors, from certain requirements that apply to state contracts, subcontractors, and applicants for state financial assistance. It:

1. waives, for these departments and other eligible applicants, the requirement to apply for financial assistance to the DECD commissioner;
2. exempts any state contractor working under a contract between the state and the Navy or Defense departments from restrictions on state contractors' political contributions to candidates for state office; and
3. exempts contracts between the state and either department from the requirement that state contractors and their subcontractors comply with state antidiscrimination laws and affirmative action requirements.

The act also allows DECD to provide grants covering up to 100% of the total infrastructure project costs. Existing law limits MAA funding to 50% to 90% of a project's costs, depending on its location and other specified factors.

§ 14 — BOND ALLOCATION DEADLINE FOR HARTFORD PROJECTS

The act extends the deadline, from June 30, 2009 to June 30, 2013, for the State Bond Commission to allocate up to \$115 million in state bonds for various Hartford projects. The bond authorization covers riverfront infrastructure development; housing rehabilitation; new construction, demolition, and redevelopment projects; and parking.

ENTERPRISE ZONES

§ 3 — *Enterprise Zone Property Tax Exemption for Residential Property*

The state's 17 enterprise zones are relatively small economically distressed areas where businesses qualify for property tax exemptions and corporate business tax incentives if they improve property and create jobs. The act changes the income criterion people living in improved condominiums and multifamily housing units must meet for housing to qualify for a property tax exemption.

Under prior law, the condominiums or the units had to be occupied by people earning no more than 200% of the municipality's median family income. Under the act, they must be occupied by people earning no more than 200% of the median income of the area where the municipality is located, as determined by the U.S. Department of Housing and Urban Development (HUD). HUD annually determines area median income for families adjusted for size.

§ 1 — Reporting and Evaluation

The law specifies a process for evaluating the zones that includes deadlines for submitting data and evaluation reports. The act extends these deadlines.

Prior law required all businesses in the zones, regardless of whether they qualified for or received the zones' tax incentives, to report specified information to their host municipalities every five years, beginning July 1, 2011. The act limits the requirement to those businesses certified to receive the incentives and pushes back the reporting deadline to November 1, 2011.

Prior law required municipalities to submit performance reports to the DECD commissioner every five years, beginning July 1, 2011. The act pushes back this deadline to October 1, 2011. The reports must measure the extent to which the zones achieve their goals.

The law requires the commissioner to submit two consecutive reports to the legislature evaluating the enterprise zones and, with respect to the second report, recommending whether the enterprise zone designation should be removed from any area that has not met its goals. The act pushes back the deadline for the first report from February 1, 2011 to February 1, 2012. It does not change the second report's deadline, which is January 1, 2013.

§ 2 — ECONOMIC DEVELOPMENT STRATEGIC PLAN

The law requires the DECD commissioner to prepare a five-year strategic plan addressing a wide range of issues including, the factors, issues, and forces that impede economic development. The first plan is due July 1, 2009. The act requires her to include in the plan a review and evaluation of several programs providing incentives to businesses in designated areas. The programs are:

1. Urban Jobs, which provides grants to businesses in state-designated distressed municipalities;
2. Enterprise Zones, which provides property and corporate tax incentives for improving property and creating jobs; and
3. those programs providing enterprise zone benefits to other targeted areas, including railroad depots, qualified manufacturing plants, entertainment districts, and enterprise corridors.

The review and evaluation must also include an analysis of the enterprise zones that were expanded to include a section of a contiguous municipality and in which plant or closed military base closures occurred.

§ 4 — REGIONAL INFRASTRUCTURE PROJECTS

The act updates a reference to a manual used to determine if projects qualify for regional infrastructure grants. (The legislature has not funded the program since 1993.) Under prior law, the commissioner had to determine if a project creates manufacturing jobs based on the Standard Industrial Classification System. The act substitutes the North American Industrial Classification System.

§§ 6-8 — REPORTING ON DECD ADMINISTERED ENERGY PROGRAMS

The act requires DECD to include in its annual report an assessment of its Biodiesel Distributors Grant and Fuel Diversification Program. It correspondingly eliminates the requirements that DECD prepare the report on the Biodiesel Distributors Grant Program in consultation with the entity DECD selected to run the program and submit it to the Environment and Energy and Technology committees. The act also eliminates a reporting requirement that applies if DECD selects an entity to administer the Fuel Diversification Program. Under prior law, the entity had to submit annual reports to the commissioner about the program.

BACKGROUND

Enterprise Zone Property Tax Exemption for Residential Property

The law requires municipalities to grant two types of property tax exemptions to taxpayers in enterprise zones who improve their properties. They must exempt 80% of the assessed value of newly constructed or improved factories, warehouses, banks, and other specified property for five years. The state reimburses municipalities for this revenue loss.

Municipalities must also exempt a portion of the assessed value of other types of property, but under a different schedule. Homes, apartments, stores, offices, and other types of property ineligible for the five-year, 80% exemption, qualify for a seven-year exemption. The exemption is 100% of the improvement's assessed value in the first two years; it drops to 50% in the third, and declines by 10% per year in each of the remaining four years. The state does not reimburse municipalities for this revenue loss.

Related Acts

Public Act 09-166 delays for two years, the Program Review and Investigations Committee's review of agencies and programs the sunset law terminates on specified dates. The termination happens after the review, unless the legislature reestablishes the

agencies and programs.

Public Act 09-93 makes identical changes to the enterprise zone program.

Public Act 09-233 requires DECD to include an assessment of the Biodiesel Producer Incentive and the Fuel Diversification Grant programs in its comprehensive annual report to the legislature.

PA 09-235—sHB 6097

Commerce Committee

Planning and Development Committee

Appropriations Committee

Judiciary Committee

AN ACT CONCERNING BROWNFIELDS DEVELOPMENT PROJECTS

SUMMARY: This act makes many changes affecting the regulatory framework for identifying, investigating, remediating, and developing contaminated property (brownfields). It expands the protections from liability for municipalities when entering and inspecting brownfields and acquiring and conveying them to other parties. It also expands the circumstances under which municipalities are exempted from the Transfer Act when acquiring and conveying a potentially contaminated property (i.e., an establishment).

The act changes some of the rules under which parties may convey brownfields. Under the Transfer Act, the party conveying an establishment cannot do so until it assesses its condition and, if contaminated, identifies who will remediate it. The party is liable for damages if it transfers the property without complying with the Transfer Act. The act sets deadlines for remediating the property after transfer. It also sets conditions under which a party could transfer the property while the groundwater is still undergoing long-term monitoring and remediation.

The act establishes a program protecting brownfield developers from liability for contamination that escapes from a brownfield before they acquired it. It also allows any party, rather than just the owner or a municipality, to assess the property's environmental condition based on state criteria.

Lastly, the act reduces the regulatory criteria state agencies must meet when developing contaminated mill sites in floodplains. It also requires state agencies and quasi-public agencies to provide for the use of green remediation technologies when soliciting bids, requesting proposals, or negotiating contracts for remediating brownfields.

EFFECTIVE DATE: October 1, 2009, except for the floodplains, municipal Transfer Act exemptions, and municipal inspection provisions, which are effective upon passage, and the developers' liability protections

and innocent third party status, which are effective July 1, 2009.

§§ 8-10—REMIEDIATING PROPERTY UNDER THE TRANSFER ACT

The act imposes a deadline for remediating certain establishments under the Transfer Act, which requires the parties involved in the transfer of certain property to assess its environmental condition and remediate it if necessary. The parties must do this if the establishment was used for dry cleaning, furniture stripping, or vehicle repair or generated at least 100 kilograms of hazardous waste per month. They must also comply with the act if hazardous waste generated at another site was recycled, reclaimed, reused, stored, handled, treated, transported, or disposed of at the property.

By law, the parties must notify the Department of Environmental Protection (DEP) commissioner about the transaction and their knowledge of the establishment by submitting a "Form III." The form must also identify the party responsible for investigating and remediating the property (i.e., certifying party). The commissioner must notify them if the form is complete. Parties must submit a "Form IV" when any preexisting contamination is remediated. They must also agree to monitor the remediation, investigate any signs of contamination, and record an environmental land use restriction.

Prior law required a certifying party to submit a schedule for investigating and remediating an establishment after submitting a Form III or Form IV. It imposed this requirement on a party submitting a Form IV even though it signifies that the establishment was investigated and remediated. The party submitted the schedule after the commissioner notified it that the relevant form was complete. Prior law also required a party submitting either form to finish investigating the establishment within two years after receiving the commissioner's notice and begin remediating it within three years of that date. The act limits these requirements to only parties submitting a Form III.

The act requires certifying parties to a Form III or IV to finish remediating the establishment or record an environmental land use restriction within eight years of the commissioner's notice, unless she specified a later date. These requirements apply to certifying parties submitting a Form III or a Form IV on or after October 1, 2009. Prior law imposed no deadlines for completing remediation.

The act also requires certifying parties to a Form IV to submit a schedule for monitoring the groundwater for contamination and recording an environmental land use restriction, as applicable.

By law, the remediation must meet DEP standards. The certifying party or a licensed environmental professional (LEP) acting on its behalf must verify the remediation by submitting a final verification report to the commissioner. The act creates an alternative remediation procedure for Forms III and IV submitted after October 1, 2009. It allows a LEP to certify that the soil has been remediated and that the groundwater is being remediated under a long-term remedy (i.e., interim verification).

To meet this standard, an LEP must submit a written opinion to the commissioner stating that:

1. the investigation was performed according to current standards and guidelines;
2. the property, except for the groundwater, was remediated according to DEP standards;
3. a long-term remedy for remediating the groundwater is being implemented; and
4. there is no pathway by which the polluted groundwater can escape.

The written opinion must also identify the remedy and how long it is expected to take. It must describe what needs to be done to operate and maintain the remedy.

The certifying party must operate and maintain the remedy according to the remedial action plan, the interim verification report, and any approvals by the commissioner. It must also prevent exposure of the groundwater plume and submit annual status reports to the commissioner. A party submitting a Form IV must also submit a schedule for monitoring the groundwater and recording an environmental land use restriction, as applicable.

The certifying party must achieve the standards for interim verification within eight years of the commissioner's notice, unless she specified a later date in writing. The requirement applies to Form III and Form IVs submitted on or after October 1, 2009.

§§ 2, 3, 4, & 6 — MUNICIPAL DEVELOPMENT ORGANIZATIONS

Existing law grants various powers and protections to municipalities and, in some cases, municipal economic development agencies involved in different aspects of brownfield remediation. The act extends these powers and protections to other municipal development agencies and private organizations acting on a municipality's behalf (i.e., municipal development organizations (MDOs)).

MDOs are (1) redevelopment, municipal development, and implementing agencies and (2) nonprofit economic development corporations and nonstock or limited liability companies (LLCs). A nonprofit economic development corporation qualifies as a MDO if it was formed to promote the

municipality's common good, general welfare, and economic development and receives funds or in-kind services from the municipality. A nonstock corporation or LLC qualifies if it was established by the municipality or its economic development, redevelopment, or municipal development agencies and operates under their control.

§ 5 — RECOVERING DAMAGES UNDER THE TRANSFER ACT

As explained above, the Transfer Act requires the party transferring a contaminated property (transferor) to assess its condition and identify who will clean it up before transferring it to another party (transferee). The law holds the transferor strictly liable for all cleanup costs and direct and indirect damages for failing to comply with the Transfer Act's requirements. It also allows the transferee to sue, or recover from, the transferor any damages the transferee suffers because the transferor failed to comply with the Transfer Act.

The act imposes deadlines for starting this recovery action. It requires the transferee to do so within six years after the later of:

1. the due date for filing the appropriate Transfer Act form or
2. the date the transferee filed the form.

The act implicitly applies these deadlines to actions to recover investigation and remediation costs by applying them to any recovery action except those that are closed and no longer appealable on or before October 1, 2009.

Existing law imposes a two-year deadline on parties exposed to a hazardous substance to seek recovery for personal injury or property damage (CGS § 52-577c).

§ 6 — MUNICIPAL INSPECTION POWERS

Inspecting Agencies

The law sets conditions under which municipalities (or LEPs acting on their behalf) can enter and inspect contaminated property without liability. The act specifically extends this authorization to municipal economic development agencies and MDOs.

Ground for Appealing Municipal Entry and Inspection

The act also changes the grounds under which an owner may appeal a municipality's decision to enter and inspect his or her property. By law, the municipality must notify the owner before it or the LEP can enter the property.

In bringing the appeal under prior law, the owner had to represent that he or she was diligently investigating the property in a timely manner and would pay all delinquent property taxes. Under the act, the

owner must show that access is not necessary and prove that he or she:

1. has completed or is completing a comprehensive environmental site assessment or investigation report;
2. gave a copy of the report to the party intending to enter the property (i.e., the municipality, MDO, or LEP) or plans to do so within 30 days after the owner received a copy of the assessment report; and
3. paid any back taxes on the property.

Liability

The act changes the extent to which municipalities and LEPs are liable for their actions when entering and inspecting a property. Under prior law, they could enter and inspect a property without liability to anyone except the DEP commissioner. The act allows them, including economic development agencies and MDO, to do so without any liability.

The act also broadens their protection from liability when entering and inspecting property. Under prior law, a municipality was not liable for any preexisting contamination or pollution unless it caused the contamination or pollution to spread by negligently or recklessly inspecting the property. But the municipality received this protection only when it acted under orders the DEP commissioner issued to address a potential pollution source.

The act extends the protection to more types of corrective orders the commissioner issues to address preexisting conditions. Besides orders to address potential pollution sources, the act extends the protection to (1) orders to a property's owner to correct actual or potential pollution sources when another party is responsible for the pollution and (2) recovery actions initiated by the commissioner and other parties. The municipality is not liable to the property owner or third party for preexisting conditions under these orders if it:

1. did not cause or contribute to the contamination or pollution,
2. did not negligently or recklessly exacerbate it, and
3. complies by reporting pollution on or emanating from the property to the commissioner as the law requires.

If the municipality negligently or recklessly caused the contamination to spread, it must address only the contamination resulting from its activities.

MUNICIPALLY ACQUIRED AND CONVEYED BROWNFIELDS

§ 2 — Transfer Act Exemptions

The act broadens the circumstances under which municipalities are exempt from the Transfer Act when acquiring and conveying establishments. Existing law broadly exempts government and quasi-government agencies from the Transfer Act when acquiring an establishment (CGS § 22a-134 (1) (U)). It also exempts conveyances to specific MDOs and the Connecticut Development Authority or its subsidiaries (CGS § 22a-134 (1) (P)).

Existing law also exempts municipalities from the Transfer Act when acquiring a property by foreclosing on a tax lien or through a tax warrant sale. The act extends this exemption to establishments they purchase under a legislative body resolution authorizing them to take them by eminent domain. It also extends the exemption to establishments they take by eminent domain under the redevelopment, municipal development community development, or the Manufacturing Assistance Act statutes. In doing so, the act exempts the redevelopment agencies and other MDOs that take and convey property under those statutes.

The act also exempts the municipality from the Transfer Act when it conveys the condemned property. It does so if:

1. the municipality or the party to whom it conveyed the property began remediating it under DEP's voluntary clean-up program before the municipality conveyed it and
2. the party is neither responsible for the contamination nor affiliated with the party that is.

The exemption applies when the municipality, an economic development agency, or an MDO transfers the property among themselves.

Prior law limited this exemption to property a municipality acquired by foreclosure and that was being remediated under the Department of Economic and Community Development's (DECD) Brownfield Remediation Pilot Program, under which selected municipalities receive funds and technical assistance for investigating and remediating property according to DEP standards.

The act exempts the conveyance of foreclosed property regardless of whether it is being remediated under the pilot program. It also exempts the conveyance of any property being remediated under that program, regardless of whether the municipality acquired it through foreclosure. But in both cases, the property must meet the same conditions that apply to the conveyance of condemned property.

§ 3 — *Liability Protections for Developers Acquiring Remediated Property*

The law protects developers from liability when acquiring brownfields remediated under DECD's Brownfield Remediation Pilot Program. Under prior law, they enjoyed this protection only if a municipality or its economic development agency remediated the property. The act extends the protection to developers acquiring a property that was remediated by an MDO on a municipality's behalf. It also appears to extend the exemption when they acquire the property directly from the MDO.

In doing so, the act extends an additional benefit to these developers. By law, DEP must enter into a covenant not to sue with a developer who acquires a property from the municipality or its economic development agency after remediating it according to DEP standards. DEP must do so without charging the statutory fee, which equals 3% of the property's value. The covenant protects the developer from future DEP orders to investigate and remediate pollution on the site. The act appears to extend this benefit under the same conditions to developers who acquire remediated property from MDOs.

The act also extends a benefit to MDOs that was previously limited to the municipalities and their economic development agencies. It allows them to keep 20% of the sale proceeds for economic development capital improvements. (The remaining 80% must go to DECD's Brownfield Office for deposit in the General Fund.)

§ 4 — *Innocent Third Party Status*

The act specifies the circumstances under which municipalities qualify as "innocent third parties," a designation that, under specific conditions protects them from liability to DEP for cleanup costs. Prior law limited this designation to municipalities and municipal economic development agencies that received Brownfield Remediation Pilot Program funds for investigating and remediating contamination. The designation applied only if the parties did not cause, contribute to, or exacerbate the contamination and complied with DEP's reporting requirements.

The act specifically extends the status to MDOs that receive brownfield investigation and remediation grants under any DECD program. But it also tightens the designation criteria by applying it only if these entities did not establish, as well as cause, contribute to, or exacerbate the contamination and comply with DEP's reporting requirements.

The act also specifies the circumstances under which an entity is liable for cleanup costs. It does so by:

1. specifying that the innocent third status applies only to conditions that existed or exist on the property when an entity acquired or took control of the property as long as it did not establish, cause, contribute to, or exacerbate the pollution and
2. requiring the entity to address any contamination it exacerbated by negligent or reckless action.

§ 7 — ABANDONED BROWNFIELD CLEANUP PROGRAM

Benefit

The act establishes a program protecting developers from liability for investigating and remediating pollution that emanated from a property before they acquired it. The DECD commissioner must establish the program in consultation with the DEP commissioner.

Application Requirements

A developer must apply to the DECD commissioner for the program's benefit on forms she provides. The commissioner has up to 60 days after receiving the application to determine if it is complete and notify the developer. The commissioner has 90 days after determining the application is complete to decide whether to award the program's benefit.

The act specifies that the commissioner's approval does not disqualify the developer or the property from funding under other brownfield remediation programs administered by DEP, the Connecticut Development Authority, or DECD.

Eligible Criteria

The property and the developer must meet the act's criteria to qualify for the program. The property must have been unused or significantly underused since October 1, 1999 and its redevelopment must benefit the municipality and the region.

The property must also meet the statutory definition of brownfield. Under that definition, a property is a brownfield if it has not been redeveloped or reused because it is contaminated or potentially contaminated. The contamination could be in the groundwater, soil, or buildings. It must be investigated, assessed, and cleaned up while the property is being restored, redeveloped, or reused or before these activities can occur. Lastly, the property must meet any other criteria the DECD commissioner establishes.

The developer qualifies for the program if the person or organization responsible for polluting the property cannot be identified, no longer exists, or cannot remediate the property. In addition, the developer qualifies if he or she:

1. intends to acquire title to the property so that it can be redeveloped;
2. did not establish or create a facility or condition at or on the property that could reasonably be expected to pollute water;
3. is unaffiliated with the party responsible for the pollution or its source through any direct or indirect familial, contractual, corporate, or financial relationship other than the one through which the property is conveyed or financed; and
4. is not required by law, a stipulated judgment, or an order or DEP consent order to remediate the pollution on or emanating from the property.

The commissioner may approve the developer for the program if he or she meets the above criteria and takes title to the property. If she does, the developer must:

1. remediate the property under DEP's voluntary remediation program as long as the developer is not also responsible for certifying the property's remediation under the Transfer Act,
2. investigate the property according to current standards and guidelines and remediate it according to state standards, and
3. eliminate any pollution that emanated or migrated from the property before the party took title.

In addition, someone other than the developer must certify the property's remediation when it is transferred.

§ 1 — REDEVELOPING MILLIS IN FLOODPLAINS

The act makes it easier for state agencies to use or allow others to use mills on contaminated floodplain sites. By law, an agency cannot implement or assist any type of project in a floodplain without first certifying to the DEP commissioner that the project meets specific criteria and that the agency will do things to mitigate or prevent increased flooding. Among other things, the agency must certify that the project promotes long-term nonintensive uses and does not encourage new development in the floodplain by constructing or extending utilities needed to support that development.

The act exempts the agency from having to certify that the proposed use meets this condition if it can show that:

1. the use complies with DEP remediation standards,
2. the use is limited to the site of the mill's historic use,
3. residential dwellings or other critical activities are above the 500-year flood elevation (i.e., the elevation that has a 1:500 chance of being flooded in any given year), and
4. the use complies with the National Flood Insurance Program.

If the agency cannot show that the project meets these criteria, it may, as under existing law apply to the commissioner for an exemption from the certification requirement.

BACKGROUND

Related Acts

Public Act 09-141 makes identical changes to the floodplain law.

PA 09-45—SB 1141
Education Committee

**AN ACT CONCERNING THE
RECOMMENDATIONS BY THE LEGISLATIVE
COMMISSIONERS FOR TECHNICAL
REVISIONS TO THE EDUCATION STATUTES**

SUMMARY: This act makes technical changes to the education statutes.
EFFECTIVE DATE: Upon passage

PA 09-81—sHB 6496
Education Committee
Appropriations Committee

**AN ACT CONCERNING GREEN CLEANING
PRODUCTS IN SCHOOLS**

SUMMARY: By July 1, 2011, this act requires local and regional school boards to implement a green cleaning program to clean and maintain their schools. The program must provide for procurement and proper use of environmentally preferable cleaning products in schools.

Under the act, school districts must provide an annual written statement notifying staff and, if they request it, parents or guardians of enrolled students of the green cleaning program. Districts must publish notice of the program on the board of education’s and each school’s website or, if there is no website, publicize it in another way. They must also notify parents or guardians of transfer students and newly hired staff of the program.

The act expands an existing biennial report each school district must make to the education commissioner on the condition of its school facilities and the implementation of its indoor air quality program in those facilities to also cover implementation of the green cleaning program in each school.

EFFECTIVE DATE: October 1, 2009

**ENVIRONMENTALLY PREFERABLE CLEANING
PRODUCTS**

Under the act, an environmentally preferable cleaning product is one that is certified as such by a Department of Administrative Services (DAS)-approved national or international certification program and includes general purpose, bathroom, glass, and carpet cleaners; hand cleaners and soaps; and floor finishes and strippers. The green cleaning program requirement does not cover antimicrobial products regulated under the Federal Insecticide, Fungicide, and Rodenticide Act, such as disinfectants, disinfecting cleaners, and

sanitizers. It also excludes products (1) for which no DAS-approved certification program has established a guideline or environmental standard, (2) that fall outside the scope of such guidelines or standards, or (3) that are otherwise excluded under such guidelines or standards.

GREEN CLEANING PROGRAM

Cleaning Product Standards

Starting July 1, 2011, the act requires school districts to use in their schools only those cleaning products that (1) meet guidelines or standards set by a national or international certification program approved by DAS in consultation with the environmental protection commissioner and (2) as far as possible, minimize potential harmful effects on human health and the environment.

Annual Notice

Every year, starting by October 1, 2010, the act requires each school district to give school staff and, if they request it, students’ parents and guardians a written statement about its green cleaning policy. It requires the “notice” (presumably the written statement and the notice are the same) to include:

1. the names and types of environmentally preferable cleaning products used in the schools and where in the buildings they are applied;
2. the schedule for applying the products; and
3. the name of the school administrator or designee from whom the parent, guardian, or student may obtain more information.

The notice must also contain the following statement: “No parent, guardian, teacher, or staff member may bring into the school facility any consumer product which is intended to clean, deodorize, sanitize or disinfect.”

Districts must provide the notice to parents and guardians of students who transfer to a school and to any staff hired during the school year. They must also post it on the board of education’s and each school’s website or, if there is no website, make it publicly available in another way.

**SCHOOL FACILITIES REPORT AND
INSPECTIONS**

By April 1, 2010, the act requires the State Department of Education, in consultation with the Department of Public Health, to change its school facilities survey form to include questions on phasing in green cleaning programs at schools. The district must post the report information on the school board’s and each school’s website, or, if there is no website,

publicize it in another way.

Finally, the act requires districts to post on the board of education and school websites the results of any required evaluations and inspections of a school building's indoor air quality. By law, such an inspection is required before January 1, 2008 and every five years thereafter for any school building that is built, extended, renovated, or replaced on or after January 1, 2003. The website posting requirement is in addition to the existing requirement that the results of the evaluation be available for public inspection at a regularly scheduled board of education meeting.

PA 09-82—sHB 6567

Education Committee

AN ACT CONCERNING READMISSION OF STUDENTS

SUMMARY: This act prohibits a school district from preventing the return of, or expelling for additional time for the same offense, a student who committed an expellable offense and who seeks to return to a district after having been in a residential placement for at least a year.

By law, boards of education can expel students whose conduct (1) on school grounds or at a school-sponsored activity violates a publicized board policy, is seriously disruptive of the educational process, or endangers persons or property or (2) off school grounds violates board policy and is seriously disruptive of the educational process.

EFFECTIVE DATE: July 1, 2009

PA 09-143—sSB 940

Education Committee

Government Administration and Elections Committee

AN ACT CONCERNING THE REPORTING OF TRUANCY DATA AND THE REDUCTION OF CERTAIN DUPLICATE REPORTS BY THE DEPARTMENT OF INFORMATION TECHNOLOGY

SUMMARY: This act requires boards of education to include truancy measures in the strategic school profile reports they must submit annually to the education commissioner. They must include these with the data about student and school performance that is already required. The act specifies that the measures include the type of data the State Department of Education is required to collect on attendance and unexcused absences to comply with federal reporting requirements (i.e., the 2001 federal No Child Left Behind Act). The

act further specifies that that data must be considered a public record under the Freedom of Information Act.

The act also eliminates reporting requirements for the chief information officer and the Department of Information Technology (DOIT).

Under prior law, the chief information officer, annually on February 1, had to submit to the Office of Policy and Management (OPM) secretary a report showing the appropriation to each state agency for the fiscal year in progress for information and telecommunication systems and the actual expenditures for such systems by each such agency as of December 31st of the fiscal year. Annually on August 1, the chief information officer had to submit the report with respect to the last completed fiscal year to the OPM secretary. The act eliminates the February report in its entirety and, starting annually on August 1, 2009, requires the officer to submit only actual expenditures for the last completed fiscal year to the OPM secretary.

Finally, the act eliminates the requirement that DOIT report annually to the Education Committee on the technical assistance it must provide to boards of education and technical schools to expand their educational technology capabilities.

EFFECTIVE DATE: July 1, 2009

PA 09-241—sSB 1014

Education Committee

AN ACT CONCERNING LONGITUDINAL STUDIES OF STUDENT ACHIEVEMENT

SUMMARY: By law, the State Department of Education (SDE) must develop and implement a state-wide public school information system. The system must provide for the tracking of the performance of individual students on each of the state-wide mastery tests. This act requires SDE to assign a unique student identifier to each student before tracking him or her.

Starting August 1, 2009, the act requires SDE to provide data maintained in the system to full-time permanent employees of nonprofit organizations exempt from taxation under IRS Code § 501(c)(3) and organized and operated for educational purposes. SDE must respond to such employees within 60 days of their written request for data and in the order it receives the requests. The act specifies that the requestor is responsible for the reasonable cost of the request. It requires the Department of Information Technology to ensure that fees are reasonable and consistent with other state agency charges.

The law specifies that the database of student information is not a public record for Freedom of Information Act purposes. The act provides that this does not prohibit SDE from providing information as described above.

EFFECTIVE DATE: July 1, 2009

PA 09-31—sHB 5694

Energy and Technology Committee

**AN ACT CONCERNING UTILITY SERVICE
TERMINATION**

SUMMARY: This act requires owners of residential buildings to give utilities and heating fuel dealers access to meters and other facilities located on their premises. It subjects owners to sanctions if they do not, including being held responsible for their tenants' utility bills.

The act also establishes verification requirements for the termination of residential utility service. These requirements apply to services provided by utility companies, municipal utilities, and competitive electric suppliers.

EFFECTIVE DATE: July 1, 2009

**ACCESS TO METERS AND OTHER UTILITY
EQUIPMENT**

The act requires the owner, lessor, manager, or agent of any residential building to give a utility or heating fuel dealer access to its meters or other facilities located on the premises during reasonable hours, upon written request. Any such party that fails to provide this access upon a reasonable request is liable for the utility's or dealer's cost in gaining access to the facilities, including collection costs and attorney fees. Under prior law, owners and related parties were not liable for services provided to their tenants that are individually metered or billed.

If the failure to provide access delays the utility's or dealer's ability to terminate service to an individually metered or billed portion of the dwelling, the owner, lessor, manager, or agent is also liable for the amount billed by the utility or dealer for that part of the building, starting 10 days after the utility or dealer requested access and until access is provided. These provisions apply to access to equipment owned by investor-owned and municipal utilities, competitive electric suppliers, and heating fuel dealers.

TERMINATIONS

The act requires anyone who seeks to terminate electric, gas, telecommunications, or water service to a dwelling to provide the utility with identification sufficient to demonstrate that he or she is the customer of record, i.e., the person responsible for the utility bill, or the customer's authorized representative. The customer or the customer's representative can do this by providing a driver's license or certain other documents that can, by law, be used to establish an account, the password previously provided by the customer, the customer code provided by the utility, or other

reasonable identifications established by the utility. The utility must not terminate service if the person does not provide reasonable identification showing that he or she is the customer of record.

If a person other than the customer of record or his or her authorized representative seeks to terminate service, the utility cannot do so unless it has notified the customer at his or her last known address at least nine days before the termination date.

However, a utility can terminate service at any time (1) at the request of a state or local fire or police authority, (2) if it determines that failure to terminate service may harm safety of public health, or (3) if the utility has complied with all applicable laws or Department of Public Utility Control regulations on terminations not requested by the customer.

PA 09-218—sHB 6306

Energy and Technology Committee

Judiciary Committee

Government Administration and Elections Committee

**AN ACT ESTABLISHING A CODE OF CONDUCT
FOR THE TRANSACTIONS BETWEEN
NATURAL GAS DISTRIBUTION COMPANIES
AND THEIR AFFILIATES, PREVENTING
PROPANE TERMINATIONS FOR CERTAIN
CUSTOMERS AND CONCERNING THE STATE'S
ENERGY ASSESSMENT**

SUMMARY: This act requires the Department of Public Utility Control (DPUC) to establish a code of conduct setting minimum standards for transactions between gas companies and their affiliates. The act gives DPUC various investigative powers regarding affiliates and their transactions with gas companies. It allows DPUC to issue enforcement orders against entities subject to the code, including cease and desist orders, and impose civil penalties of up to \$10,000 per violation of the code. DPUC must adopt regulations by November 1, 2010 establishing the code and related accounting and reporting requirements and procedures.

The act limits when propane dealers can terminate service to eligible residential customers for nonpayment of their bills. These limits are similar to those that apply to electric and natural gas utilities under current law.

The act requires electric companies to submit integrated resources assessments by January 1 of every even-numbered year, rather than every year.

EFFECTIVE DATE: Upon passage

CODE OF CONDUCT

Under the act, DPUC must establish a code of conduct setting standards for gas company transactions with its affiliates to achieve specified goals. The act defines a gas company “affiliate” as an entity or class of entities that (1) is under the control of a gas company holding company or (2) DPUC finds, after notice and hearing, has a relationship to a gas company conducting business and financial transactions that involve cross-subsidization or preferential treatment between the company and the affiliate that makes it necessary to protect ratepayers.

The code must provide rules:

1. for when the purchases or sales of goods or services between a gas company and an affiliate should be by written contract based on such factors as the nature, value, and term of the purchase or sale and
2. for sharing or giving access to certain types of customer-identifying or commercially sensitive information to affiliates that may differ between regulated and unregulated affiliates.

The code must provide for:

1. a system of records and reporting for transactions between a gas company and its affiliates and
2. a standard for avoiding conflicts of interest between a gas company and affiliates.

In addition, the code must ensure:

1. that transactions between the company and its affiliate do not have an improper and adverse impact on the company’s costs or revenue, customer rates and charges, or on the quality of service provided by the company;
2. that gas company ratepayers do not subsidize affiliate operations;
3. fair, appropriate, and equitable standards for purchases, sales, leases, asset transfers, and cost or profit-sharing transactions or any type of financing or encumbrance involving a gas company and its affiliates; and
4. that gas supply and distribution services are provided by a gas company in an appropriate manner to affiliates and nonaffiliates alike.

Finally, the code must establish standards to ensure that any payment by a gas company to any affiliate or from any affiliate to a gas company is appropriate and reasonable.

The code cannot prohibit communications needed to restore gas service or prevent or respond to emergencies. And it may not interfere with interactions with regulated affiliates that are consistent with appropriate and efficient business practice or the public interest.

The act requires any method for allocating costs between a gas company and other companies under the control of the same holding company currently approved by, or under current orders issued by, the Securities and Exchange Commission or the Federal Energy Regulatory Commission under relevant federal law to be entitled to a rebuttable presumption of reasonableness. (By law, charges must be reasonable in order to be recoverable in rates.) Under the act, charges rendered to a gas company by an affiliate that is a traditional centralized service company must be at cost. Affiliates also must be entitled to a rebuttable presumption of reasonableness.

INVESTIGATORY POWERS REGARDING GAS COMPANY AFFILIATES

DPUC, on its own motion, may investigate a gas company’s compliance with the code. DPUC must conduct these investigations as contested cases, a quasi-judicial proceeding.

The act allows DPUC, in the course of a rate case, to:

1. summon witnesses from an affiliate with which a gas company has had direct or indirect transactions;
2. examine the affiliate under oath; and
3. order production, inspection, and audit of the affiliate’s books, records, or any type of information that the department has reason to believe has or will have adverse impact on the gas company.

DPUC must protect proprietary commercial and financial information of affiliates as DPUC considers appropriate, subject to the protections of the Freedom of Information Act.

Each gas company must submit to DPUC records and information on affiliate transactions as DPUC requires, at intervals it requires, and in the form it specifies.

PROPANE DEALER TERMINATIONS

The act restricts when propane suppliers may terminate service to eligible residential customers. It applies to service to residential propane customers who meet certain criteria living at a location served by 10 or more vapor meters for central heating purposes. Under the act, an eligible customer is a propane customer (1) who receives local, state, or federal public assistance; (2) whose sole source of financial support is Social Security, Veterans’ Administration, or unemployment compensation benefits; (3) who is an unemployed head of household whose household income is less than 300%, and any individual whose income is below 200% of the federal poverty level; (4) who is seriously ill or

who has a household member who is seriously ill; or (5) whose circumstances threaten a deprivation of food and the necessities of life for himself or herself or dependent children if payment of a delinquent bill is required. Household income is the combined income over a 12-month period of the customer and all adults, except the customer's children, who are and have been members of the household for six months or more.

The act bars terminations for all of these customers (1) on a Friday, Saturday, Sunday, legal holiday, the day before a legal holiday, or less than one hour before the supplier's offices close for the day and (2) without 14 days' written notice of the termination, including the date of termination, and steps a customer can take to reinstate service. The notice must go to the customer and the owner of record (presumably of the property). In addition, the act prohibits terminations between November 1 and May 1 for customers who provide documentation that they have applied for energy assistance.

A propane supplier may collect finance charges of up to 1.5% per month on past due balances. A supplier may terminate any service at any time without notice if it determines that a dangerous condition exists.

BACKGROUND

Integrated Resources Assessment

By law, the assessment covers:

1. the energy and capacity requirements of customers for the next three, five, and 10 years;
2. how best to eliminate growth in electric demand;
3. how best to level electric demand in the state by reducing peak demand and shifting demand to off-peak periods;
4. the impact of current and projected environmental standards, such as those related to greenhouse gas emissions and the federal Clean Air Act goals and how different resources could help achieve those standards and goals;
5. energy security and economic risks associated with potential energy resources; and
6. the estimated lifetime cost and availability of potential energy resources.

PA 09-238—SB 586 (VETOED)

Energy and Technology Committee

AN ACT CONCERNING A COLLINSVILLE HYDROELECTRIC FACILITY

SUMMARY: This act requires the environmental protection commissioner to execute an agreement with Canton, Avon, and Burlington that allows the towns to:

1. enter upon and conduct physical examinations and studies of the upper and lower Collinsville dams on the Farmington River and associated structures, including power houses or gate houses, to determine the feasibility of using the dams and structures for hydroelectric generation;
2. install, operate, and maintain hydroelectric generating facilities and associated appurtenances, including fish ladders, at the dams; and
3. control the flow of water at the dams to maximize hydroelectric generation while maintaining minimum flows required by federal and state regulatory agencies. The agreement may not provide any compensation to the state or additional costs to the towns for use of, or liability concerning, the dams and structures.

The act also requires the commissioner to execute an agreement, jointly or individually, with these towns under terms and conditions acceptable to her, that allows the towns to engage in the activities identified in number 1 above and to install, operate, and maintain hydroelectric generating facilities and associated appurtenances, including fish ladders at the dams, without adjusting river flows. It is unclear how the commissioner could enter into the two agreements simultaneously.

EFFECTIVE DATE: Upon passage

PA 09-30—sSB 1021
Environment Committee
Public Health Committee

AN ACT CONCERNING NOTIFICATION OF CONTAMINANTS IN DRINKING WATER

SUMMARY: This act requires the public health commissioner, no later than five business days after receiving notice that a public water system violates U.S. Environmental Protection Agency national primary drinking water standards, to notify, either in writing or electronically, the chief elected official of (1) the municipality where the public water system is located and (2) any municipality it serves. The act does not define public water system, but under the Public Health Code a “public water system” is a water company supplying water to 15 or more consumers or 25 or more people.

EFFECTIVE DATE: Upon passage

BACKGROUND

National Primary Drinking Water Regulations

National primary drinking water regulations are legally enforceable standards that apply to public water systems. Primary standards limit the levels of contaminants in drinking water.

Public Water System

In addition to the Public Health Code definition (Conn. Agency Regs. § 19-13-B102 (65)), the statutes contain several definitions of public water systems. By law, a public water system variously means a:

1. private, municipal, or regional utility supplying water to 15 or more service connections or 25 or more people (CGS § 25-33d);
2. corporation, company, municipality, political subdivision, association, joint stock association, partnership or person, or lessee thereof, owning, maintaining, operating, managing, or controlling any pond, lake, reservoir, or distributing plant that supplies water for general use in any town, city, or borough (CGS § 22a-358); and
3. public water system as defined by the federal Safe Drinking Water Act, (CGS § 22a-475). (The federal act defines a public water system as a system that has at least 15 service connections or regularly serves at least 25 people (42 USC § 300f)).

PA 09-42—sSB 855
Environment Committee
Government Administration and Elections Committee

AN ACT CONCERNING APPOINTMENTS TO THE FARM WINE DEVELOPMENT COUNCIL

SUMMARY: This act:

1. increases, from five to eight, the appointed members on the Connecticut Farm Wine Development Council, expanding the total membership from 10 to 13;
2. requires the governor and the six top legislative leaders, instead of the agriculture commissioner, to make the appointments; and
3. eliminates the requirement that two appointed members be viticulturists (grape cultivators).

The act requires the governor to appoint two members and the six top legislative leaders to appoint one each. Each appointee must be involved in wine production. Under prior law, two members had to be grape cultivators.

By law, unchanged by the act, the five specified council members are the Agriculture and Economic and Community Development commissioners, the dean of the University of Connecticut’s Agriculture and Natural Resources, and the directors of the Storrs and Connecticut Agricultural Experiment stations, or their respective designees.

EFFECTIVE DATE: July 1, 2009

PA 09-52—HB 5277
Environment Committee
Planning and Development Committee

AN ACT IMPLEMENTING THE RECOMMENDATIONS OF THE INVASIVE PLANT COUNCIL

SUMMARY: This act prohibits, from July 1, 2009 to October 1, 2014, municipalities from adopting ordinances regulating the retail sale or purchase of invasive plants. It allows these plants to be moved for specific purposes and makes other changes in invasive plant laws.

EFFECTIVE DATE: July 1, 2009

BAN ON MUNICIPAL ORDINANCES

A law prohibiting municipalities from regulating the retail sale or purchase of invasive plants expired October 1, 2005. The act reinstates this ban, starting July 1, 2009. The ban expires on October 1, 2014.

MOVING INVASIVE PLANTS

Prior law barred people from importing, moving, selling, buying, transplanting, cultivating, or distributing any of 81 listed invasive plants. The act removes water lettuce (*Pistia stratiotes*) from the list. It allows people to (1) move any of the remaining 80 plants for research, eradication, or educational purposes and (2) cultivate them only for research. It also bars anyone from moving (except for eradication, research, or educational purposes), cultivating (except for research purposes), importing, selling, transplanting, buying, or distributing any of the reproductive portions of a listed invasive plant, including seeds, flowers, roots, and tubers.

By law, violators are subject to a fine of up to \$100 per plant. Prior law treated violations as an infraction with regard to plants listed as invasive before October 1, 2005. Under the act, violations of the invasive plant law for plants listed as invasive on or after that date, as well as violations concerning the reproductive portions of any listed invasive plant, also are treated as infractions.

STATE AGENCY TRANSPORT OF INVASIVE PLANTS

The law allows state agencies, departments, and institutions to transport invasive and potentially invasive plants for educational or research purposes. The act allows agencies to also transport them to eradicate them. It allows agents of state agencies, departments, and institutions to transport these plants for the same three purposes.

INSPECTION FOR VIOLATIONS OF INVASIVE PLANT LAWS

By law, the Connecticut Agricultural Experiment Station director may prohibit or regulate the transport of plants and plant material liable to carry dangerous pests and enforce other provisions of the law concerning plant and insect disease and infestation. The act authorizes the director to inspect nurseries and nursery stock for violations of the invasive plant laws. As under current law, the inspection by the director or his or her designee must occur at a reasonable time, and anyone who interferes with the director or the designee or violates any quarantine or regulation is subject to a fine of \$5 to \$100. The act also authorizes the agriculture commissioner to inspect pet shops for violations of the invasive plant laws. By law, the commissioner may issue orders to correct unsatisfactory conditions.

PA 09-56—sSB 1020

Environment Committee

Public Health Committee

Education Committee

Higher Education and Employment Advancement Committee

AN ACT CONCERNING PESTICIDE APPLICATIONS AT CHILD DAY CARE CENTERS AND SCHOOLS

SUMMARY: This act (1) eliminates certain restrictions on when applications of pesticides, other than lawn care pesticides, can be made in or on the grounds of day care centers; (2) broadens, with conditions, when pesticide applications are allowed in the centers; (3) establishes who may apply pesticide in the centers; and (4) requires day care center licensees or their designees to determine that emergency pesticide applications are necessary in or on the grounds of these facilities. The act defines “day care center” as a licensed child day care center, group day care home, or family day care home that provides child day care services.

The act also establishes pesticide application notification requirements for day care center licensees to inform parents and guardians of children in their care who have requested notice. By law, applications on day care center buildings and grounds cannot be of a pesticide the U.S. Environmental Protection Agency (EPA) considers a restricted use pesticide, and no child enrolled in a day care center or home may enter an area where a pesticide has been applied until it is safe to do so according to the provisions on the pesticide label.

Prior law prohibited the application of lawn care pesticides on the grounds of any public or private school with students up to grade eight, except in emergencies to eliminate threats to human health. But it allowed, until July 1, 2009, applying lawn care pesticides according to an integrated pest management plan on these schools’ playing fields and playgrounds. The act extends this exception to the ban until July 1, 2010.

EFFECTIVE DATE: October 1, 2009, except for the extension of the lawn care pesticides exception, which is effective July 1, 2009.

PESTICIDE APPLICATION AT DAY CARE CENTERS

Inside Application

Prior law prohibited anyone from applying pesticides during regular business hours in any building of any child day care center, group day care home, or family day care home, except in emergencies. The act allows pesticide applications in a day care building regardless of whether there is an emergency or the time of day. But, under non-emergency situations, it permits

only “certified pesticide applicators” to apply the pesticide. Under the act, a “certified pesticide applicator” is one with (1) supervisory certification or (2) operational certification from the Department of Environmental Protection who is under the direct supervision of a pesticide applicator with supervisory certification, according to law.

By law, a pesticide is a fungicide used on plants, an insecticide, a herbicide, or a rodenticide. It does not include a sanitizer, disinfectant, antimicrobial agent, or pesticide bait.

As under existing law, anyone may apply pesticides in such buildings to eliminate immediate threats to public health, which the act specifies includes those posed by mosquitoes, ticks, or stinging insects. In such emergencies, the act requires the day care licensee or his or her designee to determine (1) an emergency application is necessary and (2) it is impractical to obtain a certified pesticide applicator’s services.

Outside and Lawn Care Pesticide Application

The act eliminates the prohibition against anyone applying pesticides on the grounds of any day care center or group day care or family day care home during regular business hours, except in an emergency to eliminate an immediate treat to human health, such as from mosquitoes, ticks or stinging insects.

Similarly, prior law prohibited anyone from applying lawn care pesticide on the grounds of any child day care center or group day care home, except in these emergencies. The act specifies that emergency applications of lawn care pesticides on day care facility grounds require that the day care licensee or his or her designee determines an emergency application is needed. The act excludes family day care homes located on land not owned or under the control of the licensee from this requirement (presumably the land owner maintains decision making in these instances).

By law, “a lawn care pesticide” is an EPA registered pesticide that is labeled in accordance with the Federal Insecticide, Fungicide, and Rodenticide Act for use in lawn, garden, and ornamental sites or areas.

NOTICE REQUIREMENTS

The act requires day care licensees, starting October 1, 2009, to notify, at least 24 hours before applying pesticides in or on a facility’s grounds, parents and guardians of children in their care who have requested such notice. They must do so within existing budgetary resources. It exempts emergency applications from this requirement, requiring the licensee or designee in these cases to notify parents or guardians as soon as practicable.

The notice must include (1) the name of the pesticide’s active ingredient, (2) the target pest, (3) the application’s location, and (4) the date or proposed date of the application. The day care provider must keep a record of each pesticide application at the facility for five years.

BACKGROUND

Child Day Care Services

By law, child day care services include a child day care center, which provides care to 12 or more children; a group day care home, which provides care to between seven and 12 children; and a family day care home, which provides care to six or fewer children.

Integrated Pest Management Plan (IPM)

IPM is the use of all available pest control techniques, including judicious use of pesticides, when warranted, to maintain a pest population at or below an acceptable level, while decreasing the use of pesticides.

PA 09-91—HB 5809

Environment Committee

AN ACT NAMING THE STATE’S SHELLFISH RESEARCH VESSEL THE “JOHN H. VOLK”

SUMMARY: This act renames the vessel the Department of Agriculture (1) uses to research and survey shellfish in the Long Island Sound and (2) docks at the Bureau of Aquaculture office in Milford. For at least 20 years, the existing vessel (previously called the “Yankee Oyster”) and any subsequent vessel that meets the same description must be name the “John H. Volk.” (Volk was Bureau of Aquaculture Director for 21 years.) If the current vessel is removed from state service, the next most prominent vessel by size and use must also be named the “John H. Volk” until the state acquires a larger and more prominent research and surveying vessel.

EFFECTIVE DATE: Upon passage

PA 09-103—sHB 6572
Environment Committee
General Law Committee

AN ACT CONCERNING BANNING BISPHENOL-A IN CHILDREN'S PRODUCTS AND FOOD PRODUCTS

SUMMARY: This act bans, starting October 1, 2011, the sale, manufacture, or distribution in the state of:

1. infant formula and baby food stored in plastic containers, jars, and cans containing bisphenol-A and
2. reusable food and beverage containers containing bisphenol-A.

It authorizes the consumer protection commissioner to enforce the ban within available appropriations.

EFFECTIVE DATE: October 1, 2011

INFANT FORMULA AND BABY FOOD IN CONTAINERS MADE WITH BISPHENOL-A

The act bans, starting October 1, 2011, anyone from manufacturing, selling, or offering for sale or distribution in Connecticut infant formula or baby food stored in a plastic container, can, or jar that contains bisphenol-A. It allows people who can prove they purchased these containers before October 1, 2011 to sell or distribute their existing inventory until October 1, 2012, if they can show they purchased about the same number of containers before October 1, 2011 that they purchased in the same period the previous year.

The act defines “infant formula” as a commercially available milk- or soy-based powder, concentrated liquid, or ready-to-feed substitute for human breast milk, intended for infant consumption. It defines “baby food” as a commercially available prepared solid food consisting of a soft paste or an easily chewed food intended for children age two or younger.

REUSABLE FOOD AND BEVERAGE CONTAINERS MADE WITH BISPHENOL-A

Under the act, a reusable food or beverage container is a receptacle for storing food or beverages, including baby bottles, spill-proof cups, sports bottles, and thermoses, but excluding food and beverage containers intended for disposal after initial use.

BACKGROUND

Bisphenol-A

Bisphenol-A (BPA) is an industrial chemical used to make a hard, clear plastic known as polycarbonate, which is used in many consumer products, including

reusable water bottles and baby bottles. BPA is also found in epoxy resins, which act as a protective lining on the inside of metal-based food and beverage cans. It has been shown in laboratory animal studies to have reproductive and developmental toxicity.

PA 09-105—SB 824

Environment Committee
Finance, Revenue and Bonding Committee

AN ACT CONCERNING MARINE DEALERS, MARINE SURVEYORS AND YACHT BROKERS

SUMMARY: This act extends several of the law’s provisions concerning marine dealers and engine manufacturers to “marine surveyors” and “yacht brokers.” These include the requirement to be registered with the Department of Environmental Protection (DEP). The act also eliminates a \$50 fee for registering with DEP and instead allows the DEP commissioner to develop regulations for fees to provide registration numbers for these entities.

The act makes technical and conforming changes.
 EFFECTIVE DATE: July 1, 2009

MARINE TRADES

Definitions

The act defines a “marine surveyor” as a person certified by the National Association of Marine Surveyors or accredited by the Society of Accredited Marine Surveyors and engaged in the business of inspection, survey, or examination of vessels or associated equipment to assess, monitor, and report on their condition.

It defines as “yacht broker” as a marine dealer, who, for compensation or an expectation of compensation, sells or negotiates to sell or offers to sell; buys or offers to buy, solicits or obtains listings of; or negotiates the purchase, sale, or exchange of vessels, but who does not own them.

By law, a “marine dealer” is a person engaged in the business of manufacturing, selling, or repairing new or used vessels. A “yacht broker” is, thus, a subset of the “marine dealer” category under the act.

The act requires marine dealers, engine manufacturers, and marine surveyors to swear to an established place of business in an affidavit when applying for marine dealer registration numbers. It exempts yacht brokers from having to have an established place of business.

DEP Regulations

The act eliminates a \$50 registration fee for each required DEP marine dealer or engine manufacturer number and allows the DEP commissioner to adopt regulations for marine dealers (including yacht brokers), engine manufacturers, and surveyors concerning: (1) establishing fees for each marine dealer registration number issued; (2) the application for such numbers; (3) examination of a marine dealer, marine engine manufacturer, or marine surveyor with respect to criteria for number issuance; and (4) issuance and display of marine dealer registration numbers.

Registration Numbers and Certificates

By law, marine dealers and engine manufacturers must have a DEP marine dealer registration number and certificate to operate vessels they use. They (1) must use the numbers on vessels only for purposes the law allows and (2) must carry aboard a vessel they are operating the registration certificate or have copy available for inspection. The act extends these provisions to marine surveyors and yacht brokers.

It extends to marine surveyors the same registration requirements imposed on marine dealers or engine manufacturers. Surveyors' registration certificates must state they are for surveyors and contain the person's name, resident and business addresses, registration number, the certificate's expiration date, and other information the commissioner may require.

It also extends to these entities the requirement for marine dealers and engine manufacturers to renew their certificates on May 1 annually. Certificates expire April 30, unless terminated sooner or surrendered.

Display of Registration Number

The act requires any vessel that a marine surveyor uses to inspect, survey, or examine a vessel or associated equipment for assessing, monitoring, or reporting on the condition of a vessel or its associated equipment to display a registration number. The law requires (1) marine dealers to display registration numbers (a) when using a vessel for sale, trade, repair or transport and (b) on any vessel sold by such dealers for no more than five days after the date of such sale and (2) engine manufacturers to display registration numbers on any vessel they use for the sole purpose of testing or demonstrating marine engines they manufactured or repaired. The act extends the requirement to yacht brokers as well, by definition.

Use by Bona Fide Employees

The law allows a marine dealer's bona fide employees to use vessels for specific reasons (see BACKGROUND). The act allows any marine surveyor or his or her bona fide full-time employee to operate a vessel with a marine dealer's registration number when inspecting, surveying or examining the vessel or associated equipment, provided the surveyor has a written contract to perform the work and a copy of the contract is on the vessel while the surveyor's registration number is displayed on the vessel.

By law, a "bona fide full-time employee" is a person who a marine dealer employs for at least 35 hours per week and appears in the marine dealer's records as an employee for whom tax is withheld for Social Security, federal income tax, and any other withholding or deductions from salary the law requires. The act adds "marine surveyors" to this and, by definition, yacht brokers.

Prohibitions and Number Revocation

By law, nobody may use a vessel with a marine dealer's or marine engine manufacturer's registration number for any purpose other than those the law allows. The act extends this prohibition on unauthorized activities to marine surveyors' and yacht brokers' registration numbers.

The act prohibits a marine surveyor from renting, hiring out, or conveying passengers or merchandise or freight for hire on, any vessel registered with a marine surveyor's number and certificate. The law prohibits these actions for marine dealers, and thus yacht brokers under the act, and engine manufacturers.

The act also prohibits marine surveyors from loaning a number certificate to anyone. By law, marine dealers and engine manufacturers may do so for specific reasons, such as for vessel demonstration, which the act extends to yacht brokers.

Under the law, the DEP commissioner may revoke any marine dealer's or engine manufacturer's registration number if any vessel with a number issued to the dealer or engine manufacturer is used in violation of the law. The act extends this DEP enforcement authority for vessels with a number issued to marine surveyors and yacht brokers.

BACKGROUND

Marine Dealer Registration Numbers

The law allows marine dealers to operate, or direct their bona fide full-time employees to operate, a vessel with a marine dealer's registration number when:

1. a potential purchaser or customer is aboard;
2. running a new vessel from an import terminal to the dealer's place of business;
3. test running a new vessel after receiving it from the manufacturer;
4. delivering a sold vessel to the new owner;
5. running a trade-in vessel from a buyer;
6. test running a trade-in vessel before it is made available for sale;
7. running a vessel to, and using a vessel in, a fishing tournament;
8. test running a vessel after repairs, maintenance or winter storage;
9. used in connection with the business of the marine dealer;
10. running the vessel to obtain or deliver parts for the repair of the vessel or another vessel; and
11. the marine dealer chooses for personal use.

PA 09-112—SB 3 (VETOED)

Environment Committee

Planning and Development Committee

AN ACT PROHIBITING THE ACQUISITION OR USE OF CERTAIN PARCELS OF LAND AS ASH RESIDUE DISPOSAL AREAS AND CONCERNING THE OPERATION OF A FOOD-WASTE-TO-ENERGY PLANT

SUMMARY: This act prohibits the Connecticut Resources Recovery Authority (CRRRA) or any other person or entity, regardless of any law to the contrary, from condemning, buying, leasing, accepting, taking title to, otherwise acquiring, or using certain parcels of land in the towns of Franklin and Windham for an ash residue disposal site.

It also prohibits the (1) Connecticut Siting Council from issuing a certificate of environmental compatibility and public need for, and (2) Department of Environmental Protection (DEP) commissioner from issuing a solid waste permit to build or operate, a food-waste-to-energy plant in a distressed municipality of more than 100,000 people where there is a liquefied natural gas storage facility of between 10 million and 15 million gallons and a combustion turbine power plant of less than 100 megawatts, if the proposed plant would be within two miles of one or more university regional campuses; hospitals; performing arts centers; churches; and schools, including magnet schools. Waterbury appears to be the only municipality that meets these criteria.

EFFECTIVE DATE: Upon passage

AFFECTED PARCELS IN FRANKLIN AND WINDHAM

Franklin

The act prohibits CRRRA, or any other person or entity, from acquiring, for use as an ash residue disposal site, any part of a 575-acre parcel identified on the following Franklin Tax Assessor's Property maps, dated October 1, 2004: Lots 5 to 17, inclusive, on Map 1; Lots 3, 5, and 6 on Map 2; and Lot 2 on Map 4.

Windham

The act prohibits CRRRA, or any other person or entity, from acquiring, for use as an ash residue disposal site, any part of a Windham parcel adjacent to the specified Franklin site, and identified as Lots 4a, 5, and 6 in Block 211 on Windham Tax Assessor's Map 6-13, dated August 24, 2001.

BACKGROUND

Related Laws

CGS § 22a-276 authorizes CRRRA to condemn certain real property. CGS § 22a-285a authorizes CRRRA, regardless of state law or municipal charter, to establish up to four ash residue disposal sites in the state.

Related Court Case

The Connecticut Supreme Court has decided that a 1997 public act (PA 97-300, § 2) violated a waste management company's equal protection rights under the state constitution because its sole purpose was to prevent the construction of a volume reduction plant in Stamford (*City Recycling, Inc. v. Connecticut*, 257 Conn. 429, (2001)). Section two of the 1997 act prohibited the DEP commissioner from permitting establishment or construction of a new volume reduction plant or transfer station within one-quarter mile of a child day care center in a municipality with more than 100,000 people. The decision noted that the trial court had found it highly probable local authorities would have approved the plant's construction if not for PA 97-300.

Certificate of Environmental Compatibility and Public Need

By law, a certificate is needed to build or modify fuel pipelines, electric transmission lines, and electric generating plants and substations, as well as certain other facilities (CGS § 16-50k).

Distressed Municipality

The economic and community development commissioner annually designates distressed municipalities based on demographic need and economic indicators (CGS § 32-9p (b)).

PA 09-140—sSB 832*Environment Committee**Judiciary Committee***AN ACT CONCERNING BOATING SAFETY**

SUMMARY: This act re-categorizes an existing boating safety law and increases the penalty for violators by creating the crime of manslaughter in the second degree with a vessel (e.g., a boat), which under the act is a class C felony and similar to the motor vehicle law. Under prior law, the crime of reckless operation of a vessel in the first degree while under the influence included killing someone while operating a boat while under the influence of alcohol or drugs. The act takes the prior law's provisions concerning reckless operation of a vessel in the first degree while under the influence and places them under the new category of "manslaughter in the second degree with a vessel."

Under prior law, the penalty for this violation was a fine of between \$2,500 and \$5000, up to two years in prison, or both. The act increases the penalty to a class C felony (see Table on Penalties). But, the law retains the former penalty for reckless operation in the 1st degree while under the influence that results in serious physical injury to another person or property damage above \$2,000.

The act also makes technical and conforming changes.

EFFECTIVE DATE: July 1, 2009.

MANSLAUGHTER IN THE SECOND DEGREE WITH A VESSEL

Under the act, a person is guilty of this offense when, under the influence of intoxicating liquor or any drug, or both, he or she kills someone while operating a vessel on state waters as a consequence of the liquor's or drug's effect. For anyone found guilty of this offense, the court must suspend his or her safe boating or personal watercraft (e.g., jet ski) operation certificate for one year.

The act extends requirements and provisions under prior law that concerned reckless operation in the first degree while under the influence to the crime of second degree manslaughter with a vessel under the act. These include:

1. anyone whose boating certificate is suspended must participate in and complete an alcohol abuse and treatment program;
2. "operate" means the vessel is underway or aground and not moored, anchored, or docked;
3. the clerk of the court where a person is convicted must inform the Department of Environmental Protection (DEP) commissioner no later than 30 days after a boater's conviction for an operating under the influence violation (DEP administers safe boating and personal watercraft operation certificates required to operate vessels);
4. only authorized peace officers may enforce drunken boating laws and these officers may take the vessels of violators into custody or impound them;
5. any fines imposed must be placed in the Criminal Injuries Compensation Fund (the fund provides financial assistance to crime victims);
6. when test results indicate a vessel operator violated the law by operating a vessel with an elevated blood alcohol content at the time of an accident, the peace officer who obtains the results of a chemical analysis of a blood sample taken from the vessel operator who was involved in an accident and suffered or allegedly suffered physical injury in the accident must notify the DEP commissioner and submit a written report to her;
7. evidence respecting the amount of alcohol or drug in a defendant's blood or urine at the time of an alleged offense as shown by a chemical analysis of his or her breath, blood, or urine is admissible as the law provides (e.g., given that the defendant was provided reasonable opportunity to call an attorney before the test from which the analysis was made);
8. when a defendant refused a blood, breath, or urine test for an alleged violation and is tried by a jury, the court must instruct the jury as to any inference that may or may not be drawn from his or her refusal;
9. operating a boat while a certificate or right to operate is suspended or revoked for drunken boating results in a fine of between \$500 and \$1,000 and prison for up to one year, with 30 days of prison mandatory, unless there are mitigating circumstances;
10. requiring anyone whose safe boating or personal watercraft operation certificate is suspended to return the certificate to DEP within two days of suspension or revocation; and

11. if the defendant satisfactorily completes a pre-trial alcohol education program, he or she may apply for dismissal of the charges; upon a finding of satisfactory completion, the court must dismiss the charges and DEP must keep a record of program completion as part of the person's boater certification record for seven years.

BACKGROUND

Vehicular Manslaughter

By law, a person commits the crime of manslaughter in the second degree with a motor vehicle when, while operating a motor vehicle under the influence of alcohol or any drug, he or she causes the death of another person as a consequence of the effect of the alcohol or drugs. The penalty is a class C felony (see Table on Penalties).

PA 09-141—SB 271

Environment Committee

Planning and Development Committee

AN ACT CONCERNING FLOODPLAIN MANAGEMENT AND USE OF MILL PROPERTIES

SUMMARY: By law, the Department of Environmental Protection (DEP) commissioner must approve or exempt certain state agency actions proposed in or affecting floodplains. An agency proposing a nonexempt activity or critical activity in or affecting a floodplain must certify to the commissioner, among other things, that it will promote long-term, nonintensive floodplain uses and has utilities located to discourage floodplain development.

This act exempts from this requirement proposals to use a mill located on a brownfield if the proposing agency demonstrates that the activity (1) is subject to state environmental remediation regulations, (2) is limited to the area of the property where mill uses have historically occurred, and (3) complies with the National Flood Insurance Program (NFIP). In addition, an agency proposing a critical activity must show that it is above the 500-year flood elevation. (A 500-year flood has a 1-in-500 chance (0.2%) of occurring in a given year.)

EFFECTIVE DATE: Upon passage

BACKGROUND

Activity and Critical Activity

An “activity” is a proposed state action in a floodplain or that affects natural or man-made storm drainage facilities located on property the commissioner determines is under state control (CGS § 25-68b (1)). A “critical activity” is an activity, including treating, storing and disposing of hazardous waste; and the siting of hospitals, housing for the elderly, schools or homes in the 0.2% floodplain in which the commissioner determines that a slight chance of flooding is too great (CGS § 25-68b (4)).

Flood Management Program

In deciding whether to approve a proposed action in or affecting a floodplain, DEP must consider, among other things, if the action (1) will pose a flood hazard to human life, health, or property; (2) is consistent with NFIP and local floodplain requirements; and (3) promotes long-term nonintensive floodplain uses (CGS §§ 25-68b to -68n).

National Flood Insurance Program

The NFIP enables property owners in participating communities to purchase insurance as a protection against flood losses in exchange for state and community floodplain management regulations that reduce future flood damages. Participation in the NFIP is based on an agreement between communities and the federal government (44 CFR § 59).

Brownfields

By law, a brownfield is an abandoned or underused site where redevelopment and reuse has not taken place because of the presence, or potential presence, of pollution in the buildings, soil, or groundwater that requires remediation before or along with its restoration, redevelopment, and reuse (CGS § 32-9kk (1)).

PA 09-151—SB 1078 (VETOED; OVERRIDDEN)

Environment Committee

Government Administration and Elections Committee

AN ACT ESTABLISHING A BI-STATE LONG ISLAND SOUND COMMISSION

SUMMARY: This act creates a Bi-State Long Island Sound Commission and limits the responsibilities of the Bi-State Long Island Sound Marine Resources Committee. The commission must:

1. review and consider major environmental, ecological, and energy issues involving (a) Long Island Sound and (b) the lower Hudson River Valley as they affect the Sound;
2. seek consensus on strategies and polices on these issues; and
3. recommend administrative and legislative action to implement the strategies and policies.

The commission is created and assumes its responsibilities when New York adopts similar legislation. The act does not replace or override the statutory or regulatory authority of any state or municipal agency concerning the commission's projects, policies, or activities.

EFFECTIVE DATE: July 1, 2009, and when New York enacts similar legislation.

COMMISSION MEMBERSHIP, MEETING SCHEDULE, AND OTHER PROVISIONS

The commission consists of eight members each from New York and Connecticut, including the governors of each state or their designees. The governors or their designees are ex-officio co-chairmen unless a majority of commission members vote for other chairmen. The co-chairmen cannot be from the same state.

The other seven Connecticut members serve two-year terms. One member each must be appointed by the governor, Senate president pro tempore, Senate majority and minority leaders, House speaker, and House majority and minority leaders.

The commission must meet by October 1, 2009, and at least quarterly thereafter. The co-chairmen must determine the time, date, and place of the meetings. It is not clear how a meeting can occur by October 1, 2009 if New York does not adopt similar legislation by that time.

New York and Connecticut must share the commission's expenses equally. The commission is in the Department of Environmental Protection (DEP) for administrative purposes only.

LIMITING RESPONSIBILITIES OF THE BI-STATE LONG ISLAND SOUND MARINE RESOURCES COMMITTEE

By law, the Bi-State Long Island Sound Marine Resources Committee makes recommendations to maintain, protect, and restore the Sound's marine resources. The committee coordinates and recommends standardization of laws concerning the Sound, including standardizing the coastal waters jurisdiction of (1) harbor management commissions and (2) municipal waterfront and port authorities and conservation and shellfish commissions. It must consider any adverse

impact a proposed activity would have on the Sound's marine resources. The act relieves the committee of its responsibility to make recommendations concerning major environmental, ecological, and energy issues involving the Sound and lower Hudson River Valley that the commission is reviewing.

BACKGROUND

Bi-State Long Island Sound Committee

Public Act 05-137 replaced the Connecticut-New York Bi-State Long Island Sound Marine Resources Committee with the Bi-State Long Island Sound Committee (CGS § 25-138 et seq.). The latter committee takes effect when New York adopts similar legislation (CGS § 25-142). According to DEP, New York has not adopted such legislation.

PA 09-180—sHB 5108

Environment Committee

AN ACT PRESERVING CERTAIN HORSE TRAILS

SUMMARY: This act requires the Department of Environmental Protection (DEP) commissioner to preserve the following trails for equine use:

1. Larkin State Park trails (Southbury, Oxford, and Middlebury);
2. Airline State Park trails - south and north (Colchester, Hebron, Lebanon, Windham, Hampton, Pomfret, and Putnam);
3. Hop River State Park trails (Bolton, Coventry, Andover, and Columbia);
4. Moosup Valley State Park trails (Sterling and Plainfield);
5. Huntington State Park trails;
6. Natchaug State Forest trails, and
7. Cockaponset State Forest trails.

The act stipulates that (1) it does not prohibit other public uses of the specified trails and (2) DEP's preservation of these trails is not to be considered an expansion of them.

EFFECTIVE DATE: Upon passage

PA 09-195—sHB 5211*Environment Committee**Government Administration and Elections Committee**Planning and Development Committee***AN ACT CONCERNING LOCAL SHELLFISH COMMISSIONS AND THE TRANSFER OF COMMERCIAL FISHING LICENSES**

SUMMARY: By law, local shellfish commissions must prepare and periodically update a shellfish management plan, which they must submit to the Department of Agriculture (DOAG) commissioner. This act requires all management plan updates and any comments that DOAG makes regarding them to be in writing and subject to the Freedom of Information Act.

Generally, the law allows the Department of Environmental Protection (DEP) commissioner to authorize the transfer of an active commercial fishing license if the person transferring the license landed finfish, lobster, sea scallops, crabs, or squid, as verified by seafood dealer reports, in at least five of the eight calendar years before the transfer request. The act adds an exception, requiring the DEP commissioner to authorize the transfer of an active commercial fishing license when the person transferring the license (1) held the license every year from 1980 to 1989, (2) landed summer flounder in this state in at least six of the 10 years, and (3) reported the landings to the commissioner as required by law. By law, an “active” commercial fishing license is one that was renewed in the current year.

EFFECTIVE DATE: July 1, 2009, except the commercial fishing license exception is effective on passage.

PA 09-198—sHB 6552*Environment Committee**Judiciary Committee***AN ACT BANNING THE POSSESSION OF POTENTIALLY DANGEROUS ANIMALS AND THE IMPORTATION, POSSESSION AND LIBERATION OF WILD ANIMALS.**

SUMMARY: This act makes changes (1) in the law banning potentially dangerous animals and (2) affecting Department of Environmental Protection (DEP) regulations for owning and importing wildlife, among other things.

It increases the penalty for illegally owning a potentially dangerous animal, and adds the following primates: gorillas, chimpanzees, orangutans, and other members of the *hominidae* family (great apes and humans) to those animals considered potentially

dangerous. It exempts from the ban (1) certain institutions and (2) primates weighing less than 35 pounds at maturity and imported into the state or owned before October 1, 2003. It eliminates an exemption for people who legally owned a potentially dangerous animal on or before May 23, 1983. It requires owners of legally allowed primates of any size to get a DEP permit, irrespective of when they acquired the animals.

By law, with certain exemptions, no one may import, possess, or release in the state a live fish, wild bird or mammal, reptile, amphibian, or invertebrate without a DEP permit. The act eliminates an exemption and increases the penalty for violating this law. It requires, rather than allows, DEP to adopt regulations (1) determining the (a) species that must meet permit requirements and (b) number and species of fish, birds, and animals that DEP will permit to be imported or introduced into, or owned or released in, the state and (2) exempting from permit requirements municipal parks and certain other organizations and institutions.

It prohibits anyone from operating, providing, selling, using, or offering to operate, provide, sell, or use any computer software or service in the state that allows someone, when not physically present, to remotely control a firearm or other weapon to hunt a live animal or bird. (This type of hunting is commonly referred to as Internet hunting.) A violation is a class A misdemeanor (see Table on Penalties).

Finally, it allows anyone to import reindeer into the state between Thanksgiving Day and New Year’s Day, provided they are (1) individually identified, (2) certified to be in good health, and (3) exported from the state by January 8 of each year.

EFFECTIVE DATE: October 1, 2009, except the reindeer provision, which is effective July 1, 2009.

SPECIES CONSIDERED POTENTIALLY DANGEROUS

By law, members of the following wildlife species, or any hybrid of them, are considered potentially dangerous:

1. lions, leopards, cheetahs, jaguars, ocelots, jaguarundis, pumas (mountain lions), lynxes, and bobcats;
2. wolves and coyotes; and
3. black, brown, and grizzly bears.

Under the act, species of the *hominidae* family, including gorillas, chimpanzees, and orangutans, also are considered potentially dangerous, and thus illegal to own. The act specifically exempts from the definition of a potentially dangerous animal a primate imported into the state or owned before October 1, 2003 if the animal weighs less than 35 pounds when fully grown. People may own primates not listed as potentially dangerous regardless of their weight or the date they were owned

or imported into the state, provided they get a DEP permit (see below).

ILLEGAL POSSESSION OF A DANGEROUS ANIMAL

Under prior law, anyone who illegally owned a potentially dangerous animal was subject to a maximum \$1,000 fine, and the DEP commissioner had to bill the owner for the costs of seizing, caring for, maintaining, or disposing of the animal. The commissioner could ask the attorney general to sue in Superior Court to recover the penalty and any amounts owed.

The act (1) increases the maximum fine to \$2,000, (2) allows the commissioner also to relocate the animal and bill the owner for the costs of relocating it, and (3) allows her also to ask the attorney general to seek appropriate equitable and injunctive relief. Each violation continues to be a separate and distinct offense, and in the case of a continuing violation, each day is considered a separate and distinct offense.

The act makes willful violation of this law a class A misdemeanor (see Table on Penalties).

Other Exemptions

By law, the prohibition against owning potentially dangerous animals does not apply to municipal parks, zoos, nature centers, museums, laboratories and research facilities maintained by scientific or educational institutions, and others. Under the act, municipal parks and zoos must be accredited by the Association of Zoos and Aquariums or the Zoological Association of America to be exempt. The act also exempts (1) public, nonprofit aquariums and (2) exhibitors licensed or registered with the U.S. Department of Agriculture (USDA). It requires that, to be exempt, laboratories and research facilities maintained by scientific or educational institutions must be licensed or registered with the USDA.

But the act eliminates an exemption for people who legally possessed a potentially dangerous animal before May 23, 1983.

ILLEGALLY IMPORTING WILDLIFE INTO THE STATE

The law requires anyone importing, introducing, possessing, or liberating any live fish, wild bird, wild mammal, reptile, amphibian, or invertebrate in the state, to have a DEP permit. The act eliminates an exemption for people who imported or owned, before October 1, 2003, a member of a primate species weighing up to 50 pounds at maturity. The act thus requires owners of a primate of any size and species (other than a gorilla, chimpanzee, or orangutan, which the act bans) to obtain a permit unless the commissioner determines otherwise

by regulation.

The act requires, rather than allows, DEP to adopt regulations determining the (1) number and species of fish, birds, and animals that may be imported or introduced into, or owned or released in, the state, and (2) species of birds and animals that must meet permit requirements.

By law, DEP may adopt regulations exempting from permit requirements zoos, research laboratories, colleges and universities, public nonprofit aquariums, and nature centers that strictly confine these animals, birds, or fish. The act requires, rather than allows, DEP to adopt these regulations, as well as similar regulations for municipal parks and museums. It eliminates the blanket exemption for colleges and universities, requiring instead that DEP exempt only laboratories and research facilities maintained by scientific or educational institutions.

Seizure and Disposal of Illegally Imported Animals

Prior law required DEP to seize an illegally imported or owned fish, bird, or animal and dispose of it as the commissioner determined. The act allows, rather than requires, DEP to seize these animals, and allows the department to relocate them as well as dispose of them. It requires the commissioner to bill the owner or person illegally possessing (but not illegally importing, introducing, or liberating) the animal for the costs of seizing, caring for, maintaining, relocating, or disposing of it.

Under prior law, a violation of the ban on illegally importing, possessing, or releasing these animals, birds, or fish was an infraction. The act instead sets a penalty of up to \$1,000, to be set by a court, for each offense. As under current law, each violation is a separate and distinct offense, and, in the event of a continuing violation, each day is deemed a separate and distinct offense. Under the act the commissioner may ask the attorney general to bring an action in Superior Court to recover the civil penalty and any amounts owed for seizing, caring for, maintaining, relocating, or disposing of the fish, bird, or animal, and for an order providing appropriate equitable and injunctive relief.

The act makes it a class C misdemeanor to willfully violate the law or any regulation adopted under it (see Table on Penalties).

REINDEER IMPORTATION

Under the act, each imported reindeer must:

1. be individually identified by a permanent metal ear tag, legible tattoo, or microchip;
2. possess a certified veterinary report documenting an inspection that took place between one and 30 days before entering the

- state;
3. possess documentation that verifies it (a) comes from a tuberculosis- and brucellosis-free herd or (b) tested negative for these diseases between one and 30 days before entering the state; and
 4. possess documentation that the originating herd took part in a state chronic wasting disease (CWD) monitoring program for at least (a) the previous three years if from a state or province not known to have CWD or (b) the previous five years, if from a state or province known to have CWD outbreaks.

PA 09-211—sSB 995

Environment Committee

Judiciary Committee

Energy and Technology Committee

**AN ACT CONCERNING INDIVIDUAL
AUTHORIZATIONS FOR BENEFICIAL USE OF
SOLID WASTE**

SUMMARY: This act allows the Department of Environmental Protection (DEP) commissioner to issue, when certain conditions are met, (1) a general permit for the beneficial use of hazardous waste and (2) individual authorizations for the beneficial use of solid waste. Under prior law she could issue a general permit for the beneficial use of solid waste but could not issue such a permit for the reuse of hazardous waste. Beneficial use is the use or reuse of processed municipal waste for a purpose that does not harm or threaten public health, safety, welfare, or the environment.

The act also makes a technical change.

EFFECTIVE DATE: October 1, 2009

BENEFICIAL USE AUTHORIZATION

Individual Authorizations

The act allows the commissioner to issue an individual authorization for the beneficial use of solid waste in manufacturing, or as an effective substitute for a commercial product, if the authorization:

1. does not allow an activity for which DEP has issued an individual or general permit,
2. is consistent with federal Resource Conservation and Recovery Act (RCRA) requirements, and
3. the commissioner finds that the solid waste can be reused without harming or threatening harm to public health, safety, or the environment.

The commissioner must establish guidelines for these authorizations to protect public health, safety, and

the environment, and notify the public on the DEP's website of the guidelines and subsequent revisions. She must give the public 30 days from publication of the notice to submit written comments, and must post a response to these comments on the website.

A person seeking an authorization must supply the information the commissioner requires on a DEP form. The commissioner may require him or her to pay an application fee of up to \$5,000. But municipalities do not have to pay the fee.

Authorization Procedures

The act requires, regardless of solid waste facility permitting laws and regulations, that certain procedures apply to the (1) issuance or renewal of an authorization or (2) modification of an authorization, if the modification is requested by the authorization holder.

The commissioner must publish notice of her intent to issue an authorization on the DEP website. This apparently also applies to authorization renewals or modifications. The notice must include:

1. the applicant's name and mailing address;
2. the address of the proposed activity;
3. the application number;
4. the tentative decision on the application;
5. the type of authorization sought, citing the applicable law or regulation;
6. a description of the location of the proposed activity and any affected natural resources;
7. the name, address, and telephone number of a person representing the applicant from whom people may obtain copies of the application;
8. the length of time available for the public to submit comments to the commissioner; and
9. any additional information the commissioner believes necessary to comply with applicable state law or regulations or the federal Clean Air Act, Clean Water Act, or RCRA.

The commissioner must allow the public to submit written comments for 30 days following publication of the notice. The commissioner must post her response to any comment received on the DEP website. She may approve or deny the authorization after reviewing the submitted information. Any authorization she issues must clearly define the activity it covers, and may include conditions or requirements the commissioner believes appropriate, including (1) operating and maintenance requirements, (2) management practices, (3) reporting requirements, and (4) a specified term.

The commissioner may suspend or revoke an authorization, and may modify an authorization if the authorization holder does not seek modification, according to the Uniform Administrative Procedure Act and DEP's rules of practice.

BACKGROUND

Federal Environmental Laws

The Clean Water Act (33 USC § 1251) and the Clean Air Act (42 USC § 7401) regulate the discharge of pollutants to water and air, respectively. The Resource Conservation and Recovery Act (42 USC § 6901) is the primary federal law governing the disposal of solid and hazardous waste.

Hazardous Waste

By law, "hazardous waste" means any waste material that may pose a present or potential hazard to human health or the environment when improperly disposed of, treated, stored, transported, or otherwise managed, including (A) hazardous waste identified in accordance with Section 3001 of RCRA (42 USC § 6901 et seq.), (B) hazardous waste identified by DEP regulation, and (C) polychlorinated biphenyls in concentrations greater than 50 parts per million. The term excludes scrap tires or by-product material, source material or special nuclear material, as defined by law (CGS § 22a-115(1)).

PA 09-228—sSB 499

*Environment Committee
Judiciary Committee*

AN ACT CONCERNING A PET LEMON LAW AND THE RELEASE OF RABIES VACCINATION RECORDS TO ANIMAL CONTROL OFFICERS

SUMMARY: This act expands protections for people who buy a dog or cat from a licensed pet shop that is ill or dies shortly after the sale.

It also requires:

1. dogs that licensed pet shops sell to have certificates of origin that identify specific information on anyone who bred or sold the animal before sale, among other things and
2. a licensed veterinarian, upon request of the chief Animal Control Officer (ACO) or any ACO, to provide the officer a copy of a rabies certificate and any associated rabies vaccination records for a dog or cat that has bitten a person or another animal.

EFFECTIVE DATE: July 1, 2009

PET LEMON LAW

By law, pet shop licensees must refund the purchase price of a dog or cat in the case of (1) illness, when the consumer returns the dog or cat to the pet shop

and has a certificate from a licensed veterinarian stating that the animal is ill from a condition that existed at the time of sale, and (2) death, when the consumer provides a death certificate from a licensed veterinarian that states the animal died from an illness that existed at the time of sale. Under prior law, consumers had 15 days to take advantage of the reimbursement or replacement provision when the animal became ill or died from an illness that existed when they bought it. The act extends the protection period to 20 days.

The act also:

1. specifies that a diagnosis of a "congenital defect" that adversely affects or will affect a dog or cat's health triggers the consumer's refund or replacement option and gives the consumer up to six months from the sale of a dog or cat diagnosed with a congenital defect to take advantage of the option and
2. explicitly allows the consumer to choose the veterinarian who certifies that a dog or cat had or died of an illness that existed when it was sold (by law, the consumer must provide certification from a veterinarian that the animal was sick at the time of purchase or died from a disease it had when purchased, which is sufficient proof to claim reimbursement or replacement).

Under prior law, if the dog or cat was ill, the pet store had to reimburse services and medication costs up to \$200 when the consumer provided a certificate from a licensed veterinarian about the illness. The act increases, to up to \$500, the amount that pet shops must reimburse for services and medication costs and also requires such reimbursement for animals with congenital defects.

By law, pet shops that violate these requirements are subject to a penalty of up to \$500 for each animal subject to the violation, and the attorney general, upon complaint from the Department of Agriculture commissioner, may institute a civil action in Hartford Superior Court to recover refunds required under the law.

Exception

Under the act, a pet shop licensee is not subject to any of the above obligations if a cat was spayed or neutered before purchase.

CERTIFICATES OF ORIGIN AND PROHIBITED PURCHASES

The act requires any dog that a pet shop sells, or offers for sale, to come with a certificate of origin that identifies the name and address of the person, firm, or corporation that bred the dog and of anyone who sold

the dog to a pet shop licensee.

The information in the certificate must be posted in a conspicuous manner no more than 10 feet from where the dog is displayed for sale. The licensee must (1) give the consumer a copy of the certificate when it sells the animal and (2) file a copy with the Department of Agriculture no later than two days after the sale. (The law requires pet shops to display the place of a dog's birth and other information.)

Prohibited Purchases

The act prohibits a pet shop licensee from purchasing a dog or cat for resale from a breeder or any other person, firm, or corporation located outside the state that does not possess a current U.S. Department of Agriculture license and one from any applicable state agency.

Violations

A pet shop licensee who violates these requirements may be fined up to \$100, or imprisoned up to 30 days, or both, for each violation. Each day a pet shop commits a violation constitutes a separate offense.

BACKGROUND

Dogs for Sale at Pet Shops

By law, a pet shop must post on the cage of each dog it offers for sale a sign, at least 3 inches by 5 inches, which lists (1) the dog's breed, (2) the locality and state in which it was born, and (3) any individual identifying number on the veterinary inspection certificate from the state of origin.

In addition, each pet shop must prominently display a sign stating, in black, 38-point lettering that is on a white background, that the following information is always available on all puppies the pet shop sells:

1. date and state of birth;
2. breed, sex, and color;
3. the date the pet shop received the puppy;
4. the names and registration numbers of the parents (for American Kennel Club registerable puppies);
5. records of inoculations and worming treatments; and
6. any record of veterinary treatment or medications received to date.

The sign must include an Agriculture Department telephone number where information may be obtained regarding complaints about diseased or disabled animals offered for sale (CGS § 22-344d).

PA 09-229—sSB 891

Environment Committee

Finance, Revenue and Bonding Committee

Judiciary Committee

Planning and Development Committee

Appropriations Committee

AN ACT CONCERNING MILK PRODUCERS, MILK AND MILK PRODUCTS, AGRICULTURAL NOT-FOR-PROFIT ORGANIZATIONS AND THE MODERNIZATION OF CONNECTICUT FERTILIZER LAW

SUMMARY: This act creates a grant program for dairy farmers ("milk producers"); changes the law concerning adulterated milk, milk regulation, and eligibility for certain grants; and updates the laws regulating fertilizer.

The act creates an account to assist milk producers and funds it by temporarily increasing, from \$30 to \$40, the fee people pay when filing documents with town clerks. This increase is effective from the act's effective date until July 1, 2011. The act accordingly decreases temporarily a portion of funds from this fee that three entities receive for certain programs and increases the amount the Department of Agriculture (DOAG) receives. It requires DOAG to use the majority of the funds for the milk producer grant program.

The act explicitly prohibits selling, offering to sell, bartering, or exchanging adulterated milk, milk products, or cheese (i.e., dairy products), and related activities. A first violation is an infraction and a second violation within one year is a class A misdemeanor. It exempts production of dairy products for personal consumption or consumption by immediate family members from these prohibitions.

The act eliminates the DOAG commissioner's option to adopt regulations that incorporate by reference the federal Pasteurized Milk Ordinance. It requires instead that all milk dealers processing, handling, storing, distributing, transporting, selling, offering for sale, bartering, or exchanging any dairy product comply with the sanitation, handling, storage, and processing requirements of relevant state milk and milk product laws and regulations.

The act eliminates nonprofit agriculture organizations' eligibility for DOAG's farm transition grant program. It instead (1) makes these entities eligible for DOAG's farm viability matching grant program and (2) adds the development of new marketing programs and venues through or in which a majority of products sold are state grown to that grant's purposes (see BACKGROUND).

The act replaces the former fertilizer law, which was based on a 1965 recommended model law from the Association of American Plant Food Control Officials

(AAPFCO), with AAPFCO's 2008 recommended version. The act supersedes any inconsistent or conflicting special acts, municipal ordinances, or regulations concerning fertilizer. It prohibits municipalities from enacting or attempting to enforce any ordinance or regulation concerning registration, packaging, labeling, sale, storage, distribution, use, or application of a fertilizer. It explicitly extends the DOAG commissioner's enforcement powers to regulations he adopts and allows anyone aggrieved by the enforcement actions to appeal to Superior Court.

The act makes numerous minor, conforming, and technical changes.

EFFECTIVE DATE: July 1, 2009, except (1) upon passage for the milk producer grant program and (2) October 1, 2009 for adulterated milk provisions.

§§ 27-30 GRANTS FOR MILK PRODUCERS

The act creates a grant program for milk producers and funds it by temporarily increasing a document recording fee and rearranging how the fee revenues are distributed. It establishes the agriculture sustainability account and a formula for awarding grants based on the price of milk, which is federally set; the federally determined sustainability price; and the amount of milk a producer's operation produces in a month.

Document Recording Fee Increased, State and Municipal Exemption

Under prior law, people paid town clerks a \$30 fee for each document recorded in municipalities' land records. The act temporarily increases this fee to \$40 (from the effective date until July 1, 2011) and redistributes the revenues. By law, the town clerk retains \$1 of the fee and \$3 goes to the municipality's general revenue and must be used to pay for local capital improvement projects. Under prior law, the town clerk, by the 15th of each month, had to remit \$26 of each fee received during the previous calendar month to the state treasurer for credit to the "Land Protection, Affordable Housing and Historic Preservation Account," which is a separate, nonlapsing account in the General Fund. The act temporarily increases the monthly remittance to \$36 and renames the account the "Community Investment Account" (CIA).

The act extends the existing exemption from the filing fee of any document recorded by a municipal or state employee in conjunction with the employee's official duties.

Document Recording Fee Distribution

Under prior law, document recording fee revenues had to be distributed equally and quarterly to support

Connecticut Commission on Culture and Tourism (CCCT), Connecticut Housing Finance Authority (CHFA), Department of Environmental Protection (DEP), and DOAG programs. Each entity received 25% of the funds for specific purposes. From the effective date until July 1, 2011, the act decreases, from 25% to 20%, the shares for CCCT, CHFA, and DEP programs and increases, from 25% to 40%, DOAG's share. It requires the new DOAG funds to go into an Agricultural Sustainability Account (for milk producer grants) that the act establishes. It also requires that any funds which are remaining after supporting DOAG programs under existing law go into the Agricultural Sustainability Account. Under prior law, any remaining funds went to support farmland preservation programs.

The act allows DOAG to use a portion of its total receipts to administer farmland preservation programs. By law, each agency may use up to 10% of the funds it receives for administrative costs.

Agriculture Sustainability Account

The act establishes the Agricultural Sustainability Account as a separate, nonlapsing General Fund account and requires the additional document recording fee revenues to be placed in it. The DOAG commissioner must use the account for grants to Connecticut milk producers. The act establishes a formula for paying milk producers based on (1) the federally set milk price and (2) the amount needed to sustain state dairy operations, as determined by the U.S. Department of Agriculture (USDA). The act defines a "milk producer" as a person, firm, or corporation registered as a producer of milk for pasteurization.

Milk Pricing

Federal law governs the price paid to dairy farmers for milk. Generally, USDA marketing orders set the price for milk and milk products by region. One order sets the price paid in the New England and Mid-Atlantic states. The order is broken down into class 1 (fluid) milk and various other classes of milk products. The act defines the "federal pay price" as the northeast monthly uniform price for milk in the Hartford zone pursuant to the USDA Northeast Federal Milk Marketing Order.

Grant Formula and Disbursement

Under the act, for each month that the federal pay price is below the minimum sustainable monthly cost of production, a milk producer is entitled to an amount equal to the difference between the federal pay price and the minimum sustainable monthly cost of production, multiplied by the amount of milk the producer produced during the month. The act sets the

minimum sustainable monthly cost of production as 82% of the baseline determined by USDA's Economic Research Service monthly average cost of production for a New England state.

An eligible milk producer is entitled to a grant beginning on the date of the first deposit into the Agricultural Sustainability Account. Three months after that first deposit, the DOAG commissioner must make the grants on a quarterly basis.

Under the act, if the amount of available funds in the account when the quarterly grants are due is less than the aggregate amount of grants to which all producers are entitled, the commissioner must distribute all of the funds in the account to producers in proportion to their relative levels of milk production.

Criteria for Grant Eligibility

To assist DOAG in calculating these grants, the act requires milk producers and handlers who receive milk from producers in the state to file information with the DOAG commissioner on the amount milk producers produce in a form and when commissioner directs. By law, a "handler" means any person, firm, corporation, or cooperative association engaged in receiving, handling, distributing, or selling fluid milk or milk products intended, in whole or in part, for bottling, manufacturing, processing, distribution, or sale in the state.

The act also requires milk producers to have completed an energy audit to receive a grant. They must provide proof of the audit, based on existing law's standards, as the DOAG commissioner directs. (The law requires the Department of Public Works commissioner and Office of Policy and Management secretary to establish and publish standards for life-cycle cost analysis for state-owned and -financed buildings to undergo before they are built or substantially renovated. This analysis estimates the cost of alternative heating, cooling, and other building systems over the building's life.)

§§ 23 — 24 ADULTERATED MILK PROHIBITIONS AND VIOLATIONS

Under existing law, the agriculture commissioner must prohibit the sale or distribution of dairy products that (1) are insanitary or detrimental to health and (2) have not been produced, processed, cared for, or handled as the law and regulations require. The act explicitly prohibits adulterating dairy products and selling, offering to sell, bartering, or exchanging them. It also prohibits:

1. selling, offering for sale, bartering, exchanging, manufacturing, distributing, or processing such products from an unlicensed facility or

2. selling, offering for sale, distributing, or bartering or exchanging milk for pasteurization, retail raw milk, or retail raw milk cheese from an unregistered dairy farm. (By law, dairy product facilities must be licensed by, and dairy farms must be registered with, DOAG.)

Under the act, violators commit (1) an infraction for the first violation of an order and (2) a class A misdemeanor for the second or subsequent violation within a year of the first (see Table on Penalties.) The act specifies that it does not prevent the DOAG commissioner from seeking any other remedy the law provides.

By law, the DOAG commissioner may tag or otherwise mark a dairy product that it is suspected of being adulterated or misbranded. Violators are subject to an administrative civil penalty.

Adulterated and Misbranded Dairy Products

The act defines "adulterated" as any milk, milk product, retail raw milk, or cheese that:

1. bears or contains any poisonous or deleterious substance that may render the product injurious to health, except, if the substance is not added during production, the product is not considered adulterated if the quantity of the substance would not ordinarily render it injurious to health;
2. bears or contains any added poisonous or deleterious substance that is unsafe;
3. consists in whole or part of any diseased, contaminated, filthy, putrid, or decomposed substance or is otherwise unfit for food;
4. has been produced, prepared, packed, or held under insanitary conditions whereby it may have become contaminated with filth or rendered diseased, unwholesome, or injurious to health; or
5. has packaging or a container that is composed in whole or part of any poisonous or deleterious substance, which may render the contents injurious to health.

The act defines "misbranded" as the use of any label, written or printed advertising, or graphic on or accompanying a product or container of milk, milk products, or cheese, including signs, electronic displays or communication, placards, or other means of communication intended to inform consumers that is false, misleading, or violates any applicable municipal, state, or federal labeling requirement (see BACKGROUND).

CONNECTICUT FERTILIZER LAW OF 2008

The law regulates the fertilizer supply chain from those selling it for distribution in the state (registrants) to those who buy it from them (distributors) to ensure those who purchase it (nonregistrants) receive the product as advertised (i.e., with the correct ingredients).

The act requires the DOAG commissioner to adopt regulations as he finds necessary regarding fertilizer. It specifies that the commissioner or his duly authorized agent administer and enforce fertilizer laws and regulations.

Definition of Fertilizer

The act replaces the term “commercial fertilizer” with “fertilizer.” It basically maintains the same definition as a “regulated plant growing substance,” but potentially expands exemptions by allowing the commissioner to exempt products through regulation. It also specifies that wood and ash are not considered fertilizer; wood ash and gypsum were exempt under prior law.

§§ 5-7 & 12 — Registration, Fees, Labeling, and Reporting

The law requires each brand and grade of fertilizer to be registered annually before it can be distributed in the state. The act specifies that (1) the registration must be in the name of the person whose name appears on the fertilizer label and (2) a distributor’s exemption from registering a fertilizer that is already registered is only valid if the exempted fertilizer does not materially differ from the one already registered. It eliminates the requirement that the application include the source from which the nitrogen, phosphorus, and potassium were derived.

It continues to require the label to include the brand and grade but waives the grade requirement when no primary nutrients are claimed. It requires the label to include directions for use for fertilizer distributed to the end user.

Registration Fee

The act sets the registration application fee at \$75 beginning July 1, 2009 and requires the commissioner to set the fee by regulation beginning January 1, 2010. Under prior law, the fee was \$15 per major and minor element for each brand and grade listed on the application, up to \$90 per individual product.

Inspection Fee

The act requires each distributor to pay an inspection fee for all fertilizer distributed to nonregistrants in Connecticut. Under prior law, the commissioner established this fee through regulation, but it had to be at least 25¢ per ton. The act sets the fee at 25¢ per ton, with a \$10 minimum fee and exempts from the fee (1) all sales and exchanges between manufacturers and (2) sales by distributors.

§ 12 — Fertilizer Registration Report

The act changes reporting requirements. It eliminates the law requiring (1) anyone registering commercial fertilizers to furnish the commissioner with a confidential written statement of the tonnage of each grade that he or she annually sells in the state and (2) the commissioner to provide a copy of the registration to the applicant once approved. Under prior law this information was protected and could not be disclosed in a way that divulged anyone’s operations.

It also eliminates the law that specifies that when more than one person is involved in commercial fertilizer distribution, the last person who registers the fertilizer and distributes it to a nonregistered dealer or consumer is responsible for reporting the tonnage and paying the inspection fee, unless an earlier distributor did this.

Instead, the act requires anyone who distributes or sells fertilizer to a customer to provide the commissioner with a written report detailing:

1. the county of the consignee of such fertilizer;
2. the amount, in tons or fractions of tons, of each grade of fertilizer; and
3. the form in which the fertilizer was distributed, including bags, bulk, or liquid.

He or she must submit the report to the commissioner by July 30 for distributions or sales made during the preceding 12 months.

The act prohibits the commissioner from disclosing to a third party any identifying information on a person who submitted a report (presumably this protects the information, as well as information about the person).

Distributor’s Annual Statement

By law, anyone who distributes fertilizer in the state must file with the commissioner, on forms he provides, an annual statement for the year ending June 30 stating the number of net tons of each fertilizer distributed in the state. Under prior law, the report, and required inspection fee, were due on or before July 15th. The act changes the due date to July 30.

§ 15 — *Fertilizer Use and Storage*

The act explicitly requires that fertilizer use and application comply with best management practices and with regulations the commissioner adopts. It requires bulk fertilizers to be stored in a way that minimizes their release and protects the environment. By law, “bulk fertilizer” is distributed in a nonpackaged form.

§ 8 — *Inspections*

The law permits the DOAG commissioner or his authorized agent to enforce fertilizer statutes. The act expands his access for this purpose. Under prior law, the commissioner or his agent was limited to normal business hours when (1) entering any factory, warehouse, or establishment in the state where commercial fertilizers are manufactured, processed, packed, or held for distribution; (2) entering any vehicle used to transport or hold fertilizers; and (3) inspecting, in a reasonable manner, buildings, vehicles and pertinent equipment, finished and unfinished materials, containers, and labeling.

The act specifies that the commissioner or agent may also enforce fertilizer regulations and allows investigations outside of normal business hours.

Under prior law, analytical methods and sampling had to be those adopted by the director of the Connecticut Agriculture Experiment Station and commissioner from recognized authorities, such as the *Journal of the Association of Official Analytical Chemists*. The act instead requires that they be those adopted by the Association of Official Analytical Chemists International.

By law, the director must forward the results of the official analysis to the commissioner, registrant, and distributor. When asked, the director must give the registrant a portion of any sample found that is subject to penalty or other legal action. The act requires the director to retain official samples for which penalties are assessed for nutritional deficiencies for at least 90 days after the deficiency report is issued.

§§ 8-9 & 17 — *Fertilizer Content and Penalties*

Penalties

The law requires that violators pay all penalties assessed for fertilizer content violations to the consumer of the commercial fertilizer lot represented by the sample analyzed. They must pay within three months after the date the commissioner notifies them and promptly forward receipts to him. Similar to prior law, if a consumer cannot be found, the penalty must be paid to the commissioner for deposit in the General Fund. Under prior law, this applied only to purchases of one

ton or more of fertilizer. The act eliminates the one-ton threshold and the requirement for receipts.

Similar to prior law, a penalty is imposed if analysis shows a fertilizer is deficient in one or more of its guaranteed primary plant nutrients beyond the investigational allowances and compensations. Under the act, the commissioner must assess a penalty of three times the value of any deficiency against the violator instead of varying penalties based on content.

When Subject to Penalties

Under the act, when the commissioner finds satisfactory evidence that a person (1) has altered the content of fertilizer a registrant supplied or (2) mixed or commingled fertilizer from two or more suppliers, and the result of either alteration changes the fertilizer’s originally guaranteed analysis, the commissioner must require the person to obtain a registration and hold the person liable for all applicable penalty payments. The person is also subject to any other applicable provisions of the act or regulations, including seizure, condemnation, and the commissioner’s stop-sale order.

The act specifies that a deficiency in an official sample of mixed fertilizer resulting from nonuniformity is the same as deficiency due to actual plant nutrient shortage and subject to action by the commissioner.

Under the act, evidence that a registrant or an applicant has violated any provision of fertilizer law may result in revocation, refusal, or suspension of that brand of fertilizer’s registration or the commissioner’s refusal to register it. Under existing law, the commissioner may refuse to register any fertilizer brand with satisfactory evidence that the registrant or applicant for registration used fraudulent or deceptive practices to evade or attempt to evade the fertilizer laws or regulations. Under prior law, the commissioner could cancel any fertilizer brand with such satisfactory evidence.

The act specifies that it does not prevent anyone from commencing an action in Superior Court for damages or penalty payments relating to fertilizer or fertilizer material.

§§ 18 - 19 & 33 — *Lot “Stop Sale, Use, or Removal” and Seizure*

By law, the commissioner may issue and enforce a “stop sale, use or, removal” order to the owner or custodian of any fertilizer lot to hold the fertilizer at a designated place when the commissioner finds it is being offered for sale in violation of the statutes. The order is effective until the lot owner or custodian complies with the law, after which the fertilizer is released or legally disposed. The act extends this enforcement power to any regulations the commissioner

adopts.

The act eliminates the requirement that the commissioner seek a court order to seize any fertilizer lot not in compliance with the law, thus allowing him to act on his own authority. It explicitly extends this enforcement power to violations of regulations he adopts.

The act requires the owner or custodian of a fertilizer lot who has been issued a stop sale, use, or removal order to be given the opportunity for a hearing by the commissioner or his designee.

The act also transfers from the court to the commissioner (1) the ability to condemn seized fertilizer and have it disposed of and (2) the requirement to give the claimant an opportunity to ask for the lot to be released, processed, or relabeled to bring it in compliance with the law.

§§ 11 & 13 — *Misbranded and Adulterated Fertilizer*

The law prohibits distributing misbranded fertilizer. The act expands what constitutes misbranded fertilizer. Under prior law, a commercial fertilizer was misbranded if it carried a false or misleading statement on the container or the label attached to the container, or if false or misleading statements concerning it were disseminated in any manner or by any means. The act maintains that a fertilizer is misbranded if its labeling is false or misleading, as well as if it is:

1. distributed under the name of another fertilizer product,
2. not labeled as the act or any regulations the commissioner adopts requires, or
3. represented as a fertilizer or as containing a plant nutrient or fertilizer when it does not conform to regulatory requirements.

The act explicitly prohibits the distribution of adulterated fertilizer. A fertilizer is considered adulterated if the commissioner determines the:

1. fertilizer contains any deleterious or harmful substance in sufficient amounts to render it injurious to beneficial plant life, animals, humans, aquatic life, soil, or water when applied in accordance with directions on its label;
2. label for such fertilizer does not contain adequate warning statements or directions for use necessary to protect plant life, animals, humans, aquatic life, soil, or water;
3. fertilizer's composition falls below or differs from that displayed on the label; or
4. fertilizer contains unwanted crop or weed seed.

§ 20 — *Violations*

By law, when, after examining a fertilizer, the commissioner believes anyone has violated an applicable law or regulation, he has to notify the registrant, distributor, or possessor whose product was examined. These parties have the opportunity to a hearing before the commissioner. Under prior law, if after the hearing the commissioner determined a violation had occurred, he could bring the facts to the state's attorney for prosecution. If convicted, the person faced a fine of up to \$500.

The act removes the requirement that the commissioner bring the case to the state's attorney for prosecution, thus allowing the commissioner to impose the penalty directly. The act expands the potential fine to \$500 for each violation.

The act also eliminates (1) a provision allowing the commissioner to issue a warning in writing for minor violations instead of seeking prosecution and (2) another explicitly requiring each prosecuting officer to whom any violation is reported to institute appropriate proceedings in the competent jurisdiction without delay.

§ 22 — *Government Cooperation in Fertilizer Regulation*

The act explicitly allows the commissioner to cooperate and enter into agreements with other state and town agencies, other states, and the federal government to carry out the purpose of the law and regulations.

§ 4 — *Definitions*

The act adds several new definitions to the fertilizer law, including:

1. "label" means the display of all written, printed, or graphic matter on a fertilizer container or a written statement accompanying a fertilizer;
2. "labeling" means all written, printed, or graphic matter on or accompanying any fertilizer or advertisements, brochures, posters, television or radio announcements, and Internet web site content used in promoting the sale of any fertilizer;
3. "investigational allowance" means an allowance for variations inherent in taking, preparing, and analyzing an official sample of fertilizer;
4. "deficiency" means the amount of nutrient found by analysis that is less than that guaranteed, which may result from a lack of nutrient ingredients or from lack of uniformity;
5. "blender" means any person or system in the business of blending fertilizer by using mobile or fixed equipment;

6. “blending” means the physical mixing or combining of the following to produce a uniform mixture (a) one or more fertilizer materials and one or more filler materials, (b) two or more fertilizer materials, or (c) two or more fertilizer materials and filler materials; and
7. “application” means the process of placing or using fertilizer on a targeted growing area.

BACKGROUND

Farm Transition and Farm Viability Matching Grant Programs

The farm transition program provides matching grants for diversifying existing farm operations, transitioning to value-added agricultural production and sales, and developing farmers’ markets and other venues in which a majority of products sold are grown in the state. Farm viability matching grants may be used for (1) local capital projects that foster agricultural viability, including, processing facilities and farmers’ markets, and (2) the development and implementation of agriculturally friendly land use regulations and local farmland protection strategies that sustain and promote local agriculture.

Adulterated or Misbranded Food and the Connecticut Uniform Food, Drug and Cosmetic Act (CGS §§ 21a-93 to -125)

The Connecticut Food, Drug, and Cosmetic Act is intended, in part, to safeguard the public health and promote the public welfare by protecting consumers from harm caused by merchandising deceit. It bans, among other things, the sale in intrastate commerce of food that is adulterated or misbranded. A food is adulterated if, among other things, any valuable part of it has been substituted wholly or in part. A food is misbranded if, among other things, (1) its labeling is false or misleading in any particular; (2) it is offered for sale under the name of another food; (3) it is a food for which no standard of identity has been established and it (a) falls below the standard of purity, quality, or strength which it purports or is represented to possess or (b) does not bear its common or usual name of each ingredient, except that spices, flavorings, and colorings may be designated as such without being specifically named. The law deems federal Food, Drug and Cosmetic Act standards of identity to be state standards for enforcement purposes.

PA 09-43—SB 905

Finance, Revenue and Bonding Committee

AN ACT CONCERNING TECHNICAL CHANGES TO THE CALCULATION OF COST OF LIVING ALLOWANCES FOR MEMBERS OF THE TEACHERS' RETIREMENT SYSTEM

SUMMARY: This act corrects a typographical error in the statute dealing with promised annual pension cost of living adjustments (COLAs) for those who join the Teachers' Retirement System (TRS) on or after July 1, 2007. By doing so, it applies percentage COLAs for such members after they retire to the basic retirement benefits they will receive on the last day of December or June and excludes from the COLA calculation any benefits based on one percent or voluntary contributions. This matches the COLA calculation for all other TRS members.

EFFECTIVE DATE: Upon passage

BACKGROUND

One Percent or Voluntary Contributions

One percent or voluntary contributions are additional pre-tax or after-tax contributions a TRS member chooses to make to the Teacher's Retirement Fund. Such contributions receive credited interest and, at the member's option, may be paid out in a lump sum, rolled over to or from an individual retirement account according to Teachers' Retirement Board rules, or paid as an extra annuity after retirement.

PA 09-60—sSB 997

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

AN ACT CONCERNING A MUNICIPAL OPTION TO DELAY REVALUATIONS, A PROGRAM ALLOWING REGIONAL REVALUATIONS, AND THE REPEAL OF THE MUNICIPAL OPTION TO MAKE ANNUAL ADJUSTMENTS IN PROPERTY VALUES

SUMMARY: This act allows a municipality to (1) delay a revaluation scheduled for the 2008, 2009, or 2010 assessment year until the 2011 assessment year and (2) suspend a current revaluation phase-in for up to three years, also until the 2011 assessment year.

It also allows two or more municipalities to agree to revalue their property for property tax purposes according to the same schedule, even if it requires some to revalue later than their individual statutory schedules require. The Office of Policy and Management (OPM)

secretary must approve a regional revaluation schedule and any delay in a municipality's scheduled revaluation to accommodate a regional schedule.

Finally, the act repeals a law that allowed municipalities to adjust, with the approval of their legislative bodies, real property values in the assessment years between revaluations. They could do so by calculating an average annual adjustment based on sales data instead of performing an annual revaluation based on the methods the law authorizes. Municipalities that chose to adjust the values in this manner had to continue doing so until the next revaluation and still had to revalue property every five years as the law requires.

EFFECTIVE DATE: July 1, 2009 and applicable to assessment years starting on or after October 1, 2008. (Public Act 09-196 changes the effective date of the revaluation delay provisions of this act to upon passage and applicable to assessment years starting on or after October 1, 2008.)

REVALUATION AND REVALUATION PHASE-IN DELAYS

Delay Procedure

The act allows municipalities that, under prior law, revalued or must revalue real property in the October 1, 2008, October 1, 2009, or October 1, 2010 assessment years to delay revaluation to the October 1, 2011 assessment year (see BACKGROUND). In other words, these municipalities may continue taxing property based on its value as of October 1, 2007 until October 1, 2011, after which the municipality must revalue the property.

The act allows a similar delay for towns phasing in assessment increases from earlier revaluations. Towns scheduled to implement a phase-in step may suspend the phase-in for up to three years. In other words, a town scheduled to increase the assessment under a phase-in may suspend the increase and continue taxing property based on current values until the October 1, 2011 assessment year.

Before a town may implement either type of delay, it must be approved by its legislative body. The existing statutory five-year revaluation or phase-in schedule for any town that adopts a delay must resume after the delay at the point where the delay started. But a town whose regular statutory five-year schedule requires it to implement a revaluation before a resumed phase-in ends must do so when the statute requires it, even if that means it does not complete all the remaining phase-in steps.

2008 Grand Lists In Towns That Delay Revaluation

The act requires the assessor or board of assessors in a municipality that delays a revaluation or suspends a

phase-in for the 2008 assessment year to prepare a revised grand list for 2008 that reflects the assessments for the 2007 assessment year, subject only to changes in ownership, new construction, and demolitions. The assessor must send to the affected person's last-known address, notice of (1) any increase in the valuation of real estate over its 2007 valuation or (2) for new real estate, the valuation that will appear on the 2008 grand list. The person can appeal the increase or valuation during the next regular session of the board of assessment appeals at which appeals may be heard.

The act allows the person or entity authorized by law to prepare rate bills in a municipality that has delayed a revaluation or suspended a revaluation phase-in under the act to prepare new rate bills, notwithstanding any law or municipal charter to the contrary.

REGIONAL REVALUATION

Interlocal Agreements

By law, all municipalities must revalue property at least once every five years, but may do so according to different schedules. This act allows two or more municipalities to revalue property according to a regional schedule by entering into an interlocal agreement.

Existing law already allows municipalities to enter into interlocal agreements to perform any function they can perform separately, including revaluing property. But, under prior law, municipalities could postpone a scheduled revaluation only for certain specific reasons. The act allows them to do so to accommodate a regional revaluation schedule. By law, the municipalities' legislative bodies must approve any interlocal agreement the same way they approve ordinances or annual budgets.

Under the act, interlocal agreements implementing a regional revaluation schedule must:

1. establish or designate an entity, which may be a regional planning organization, to coordinate the revaluation;
2. indicate how the participating municipalities will hire and oversee a state-certified revaluation company;
3. include a schedule listing any changes that must be made to each municipality's revaluation schedule;
4. identify the administrative and procedural processes that will be used to implement the revaluation; and
5. estimate how much the regional revaluation program will save the participating municipalities.

Regional Revaluation Schedule

Under the act, an interlocal revaluation agreement must require either (1) approximately one-fifth of the parcels in the participating municipalities to be revalued over the five-year period or (2) all of the parcels to be revalued at the same time according to the same five-year schedule. In either case, the parcels must be revalued according to the same criteria and procedures that apply when municipalities separately revalue property.

OPM Secretary's Approval

In preparing the regional schedule, the participating municipalities must indicate if it requires them to deviate from their individual five-year schedules by revaluing property sooner or later than scheduled. Before entering into the agreement, they must submit that analysis to the OPM secretary for review and approval. The secretary has up to 45 days to notify the municipalities of his decision. If he disapproves the changes that must be made to each municipality's revaluation schedule, he must explain why and recommend necessary revisions. If any of the changes requires a municipality to postpone its next scheduled revaluation, the secretary must expressly approve that postponement when he notifies the municipalities about the schedule.

Withdrawing from the Interlocal Agreement

The act requires municipalities to notify the secretary if they decide to withdraw from the agreement before or after it is executed. If a municipality withdraws before the agreement is executed, it must resume revaluing property according to its original five-year schedule. If it withdraws after the property has been revalued under the agreement, it must start a new five-year cycle, using the date of the last regional revaluation as its starting point.

BACKGROUND

Implementing Revaluation

The law requires municipalities to tax property based on its fair market value as of October 1 annually. Municipalities begin taxing property based on those values during the fiscal year starting the following July 1. Thus, towns that revalued their property in the 2008 assessment year must implement the revaluation starting July 1, 2009.

PA 09-200—SB 931

Finance, Revenue and Bonding Committee

**AN ACT CONCERNING THE SALES TAX
LIABILITY OF ASPHALT MANUFACTURERS**

SUMMARY: This act makes a company that manufactures a finished product that it then uses to fulfill a paving contract eligible for the same state sales tax exemptions for the machinery, materials, tools, and fuel it buys to make the product as other manufacturers. It makes such manufacturers eligible for sales tax exemptions on:

1. gas and electricity directly used to make a finished product to be sold (CGS § 12-412 (3)(A));
2. materials, tools, and fuel (“production materials”) used directly in an industrial plant in making a finished product to be sold (CGS § 12-412 (18));
3. machinery used directly in a manufacturing production process (CGS § 12-412 (34)); and
4. materials that are not otherwise exempt and are used or consumed in manufacturing tangible personal property to be sold (CGS § 12-412i).

Under Department of Revenue Services (DRS) regulations, a taxpayer that produces an item of tangible personal property and installs it into a customer’s real property is generally considered to be acting as a contractor rather than a manufacturer and is therefore required to pay sales tax on the materials it buys to make the item (*Conn. Agencies Reg.* § 12-426-18 (d)). The act states that its exemption for production materials (#2 above) does not extend to someone, such as a contractor, who buys materials to use as ingredients or components for making a finished product to fulfill a paving contract.

EFFECTIVE DATE: Upon passage

BACKGROUND

Related DRS Rulings

In determining whether a company is eligible for sales tax exemptions on manufacturing materials, DRS determines the company’s “predominant purpose.” In 2005, DRS ruled that asphalt that is consumed by the company that makes it “may not be counted as a manufactured product to be sold and therefore may not be included in determining” the company’s predominant purpose. Consequently, a company that consumes more than 50% of the asphalt it manufactures in providing paving services is not a “manufacturing plant” eligible for the sales tax exemption for machinery used directly in a manufacturing production process under CGS § 12-412 (34) (DRS Ruling 2005-1).

A 1989 DRS ruling also states that the sales tax exemption for production materials under CGS § 12-412 (18) does not apply when a company that manufactures asphalt uses it as part of a construction contract where the asphalt is not separately sold (DRS Ruling 89-7).

PA 09-18—sHB 5414
General Law Committee

AN ACT CONCERNING DISCLOSURES BY HOME IMPROVEMENT CONTRACTORS AND NEW HOME CONSTRUCTION CONTRACTORS

SUMMARY: This act requires contractors to include a disclosure provision in new home and home improvement construction contracts. They must disclose every corporation, limited liability company, partnership, sole proprietorship, or other legal entity that is or has been a home improvement or new home construction contractor in which they were shareholders, members, partners, or owners within the past five years.

EFFECTIVE DATE: July 1, 2009

BACKGROUND

New Home Contractor Disclosure

The law requires new home contractors to register with the Department of Consumer Protection (DCP) and inform customers, before entering into a contract, that they should (1) check with DCP to see if the contractor is properly registered and request his or her complaint history and (2) ask the contractor for a list of customers over the last 24 months to discuss the quality and timeliness of the contractor’s work. Contractors must also advise their customers to ask about their customer service policy and if they will hold customers harmless for work performed by subcontractors (CGS §§ 20-417a to 20-417j).

Home Improvement Disclosure

All home improvement contracts must include certain provisions describing the contractor and the job. Contracts must:

1. be written, dated, and signed by both parties;
2. include the entire agreement;
3. identify the contractor and state his or her address and registration number;
4. include a notice of cancellation rights;
5. include starting and completion dates; and
6. be entered by registered contractors or salesmen.

A contractor, in any ensuing litigation, may recover payment for the work actually performed if the contract meets the above criteria (CGS § 20-429).

PA 09-22—sHB 6301
General Law Committee
Public Health Committee

AN ACT CONCERNING THE PRACTICE OF PHARMACY AND ELECTRONIC PRESCRIPTIONS

SUMMARY: This act changes state requirements relating to how pharmacies may receive and store prescriptions for controlled substances. Under current state and federal law, prescriptions for Schedule II controlled substances may not be transmitted or recorded electronically.

EFFECTIVE DATE: July 1, 2009

COMPLIANCE WITH FEDERAL REGULATIONS

The act requires all prescriptions to comply fully with the federal Controlled Substances Act instead of Part 306, U.S. Department of Justice, Bureau of Narcotics and Dangerous Drugs—Federal Register Volume 36, No. 80 et seq. It allows pharmacies to make an immediate conversion to an electronic system should proposed federal regulations be accepted. Current state law, not changed by the act, allows records to be created and maintained electronically, but the written drug record prevails where a conflict exists as to whether to maintain a written or electronic record (CGS § 21a-244a).

DEFINITIONS

The act changes the definition of (1) “prescription,” which includes written or oral orders for any controlled substance to a pharmacist for a patient, to also include electronic orders and (2) “drug record” to include records maintained pursuant to the Pharmacy Practice Act; general provisions governing food and drugs; the Connecticut Food, Drug and Cosmetic Act; and the provisions governing dependency-producing drugs and controlled substance registration.

PRESCRIPTION RECORDS

The act requires that when pharmacies receive prescriptions, excluding those for controlled drugs, pharmacists or pharmacy interns must record them on a form or in an electronic record. Just as under current law, the prescription must be recorded by the end of the business day in which it is received. This act does not change the information that must be recorded or included with the prescription.

When an institutional pharmacy in a hospital dispenses a drug or device for an outpatient or employee, it must create certain specified records. The

act allows the records to be kept in an “electronic file” and requires the records to include the pharmacist’s name instead of initials. Under the act, prescription refills may be recorded on the original prescription, as under existing law, or in an electronic system. This does not apply to records made in accordance with Department of Consumer Protection pharmacy regulations.

The act adds electronic recording to the accepted manner in which prescriptions for controlled drugs may be received. It also limits the requirement that prescriptions for Schedule II substances be signed at the time of issuance only to written prescriptions.

By law, a prescribing practitioner may issue an oral or electronically transmitted order and, with some exceptions, the order must be promptly written on a prescription blank or hardcopy printout. The act allows such orders to be created as an electronic record for the pharmacist.

By law, pharmacies must file separately filled prescriptions for controlled substances. The act also allows such prescriptions to be kept in an electronic file and amends the law to require only written controlled substance prescriptions to be filed chronologically.

PA 09-32—sHB 5792
General Law Committee

AN ACT CONCERNING EFFICIENCY STANDARDS FOR RESIDENTIAL AUTOMATIC LAWN SPRINKLER SYSTEMS

SUMMARY: This act requires any automatic lawn sprinkler installed on residential property on or after July 1, 2010 to be equipped with a rain sensor or device that automatically overrides the system when enough rainfall has occurred. The law requires any state agency or commercial enterprise installing an automatic lawn sprinkler system to equip it with such a device and allows municipalities to adopt ordinances requiring the devices on systems installed on or after October 1, 2003.

EFFECTIVE DATE: October 1, 2009

PA 09-47—SB 312
General Law Committee

AN ACT CONCERNING THE SALE OF CIDER AND APPLE WINE, WINE FESTIVALS AND THE HOURS OF OPERATION OF FARM WINERIES

SUMMARY: This act allows a holder of a manufacturer permit for cider and apple wine to sell and ship cider or apple wine (1) outside the state and (2) to

consumers in the state in the same manner as wine is sold and shipped. It also allows out-of-state cider manufacturers to obtain a permit to ship in the state cider with up to 6% alcohol and apple wine with up to 15% alcohol.

In addition, the act creates two types of liquor permits allowing their holders to host or participate in wine festivals. It allows an (1) association promoting the manufacture and sale of farm wine in this state, or its not-for-profit subsidiary and (2) an out-of-state entity to each host one festival per calendar year.

Finally, the act extends the hours farm wineries can sell wine for on- or off-premises consumption and hold wine tastings by allowing them to close at 9:00 p.m. instead of 8:00 p.m. every night.

EFFECTIVE DATE: Upon passage, except for the provision extending the hours of operation for farm wineries, which is effective July 1, 2009.

SHIPPING PROCEDURES

The act allows cider manufacturers to ship directly to consumers in the same manner as farm wineries, requiring permittees to:

1. ensure that all packages of cider and apple wine shipped to Connecticut consumers bear labels stating: “CONTAINS ALCOHOL—SIGNATURE OF A PERSON AGE 21 OR OLDER REQUIRED FOR DELIVERY;”
2. obtain the signature of a person age 21 or older before delivering, after requiring the signer to prove his or her age by showing a valid driver’s license or Connecticut identity card;
3. file tax returns and pay all sales and alcoholic beverage taxes due to the Department of Revenue Services (DRS);
4. report to the Department of Consumer Protection (DCP) a separate and complete record of all sales and shipments to consumers in the state, on a ledger or similar form, which readily presents a chronological account of the permittee’s dealings with each consumer;
5. hold an in-state transporter’s permit or ship to Connecticut consumers using a delivery company that holds such a permit; and
6. clearly and conspicuously state their liquor permit number when advertising or offering cider or apple wine for direct shipment to Connecticut consumers on the Internet or any other on-line computer network.

The act also requires out-of-state shippers to allow DRS and DCP to perform records audits and sign a written consent to the jurisdiction of the state. In-state permittees are already subject to state enforcement.

The law prohibits shipping (1) more than five gallons of cider or apple wine in a two-month period to anyone in Connecticut or (2) to any town in the state where the sale of alcoholic beverages is prohibited under the local option provision of the Liquor Control Act.

WINE FESTIVAL PERMITS

Types

The act establishes two permit types for hosting wine festivals. One permit allows farm winery manufacturer permittees to participate in an annual festival hosted by an association or its not-for-profit subsidiary promoting the manufacture and sale of farm wine in this state. Only one festival may be held per year and only one wine festival permit may be issued per year to each manufacturer permittee. The act allows holders of a farm winery permit or an out-of-state farm winery permit to also hold a wine festival permit.

The second permit allows an out-of-state person or organization holding a valid permit issued by another state authorizing the manufacture of farm wine to participate in an out-of-state wine festival held in Connecticut. Only one out-of-state festival permit may be issued per year, regardless of the number of participating organizations. The act does not specify the type of organization that must host this event.

Permit Privileges

Both permits allow the sale and shipment by a permittee to persons outside the state; free samples and tasting at the event; sale of sealed bottles for off-premises consumption; and sale of wine by the glass at the event, if the glass has the name and date of the festival on it.

Permit Requirements

Permit recipients must notify the local chief municipal law enforcement official in writing of the hours and dates of the festival no later than seven days before the event. Hours for festivals must be between 11:00 a.m. and 8:00 p.m. on Sundays and 10:00 a.m. and 8:00 p.m. all other days, though towns may vote to further limit the hours in which sale or tasting may be permitted. A permittee may not sell or offer wine not made by the permittee. The cost of either permit is \$75 and both have a three-day limit.

An out-of-state entity winery festival permittee must disclose to individuals purchasing admission, at the time of purchase, any restriction or limitation of such admission, including the maximum number of wine or brandy glasses to which the purchaser is entitled by admission to the festival. The act does not place

these requirements on permittees of the Connecticut wine festival.

BACKGROUND

Apple Wine and Hard Cider

The law allows holders of manufacturer permits for cider and apple wine to produce hard cider with up to 6% alcohol and apple wine with up to 15% alcohol. Although both are made by fermenting apple cider or juice, the distinction between hard cider and apple wine is generally based on alcohol content, which is traditionally above 7% for apple wine and below 7% for hard cider.

Related Court Case

In *Granholm v. Heald*, 544 U. S. 460 (2005), the U.S. Supreme Court considered whether a state's regulatory scheme that permits in-state wineries to ship alcohol directly to consumers but restricts the ability of out-of-state wineries to do so violates the Commerce Clause in light of § 2 of the 21st Amendment. In general, the U.S. Constitution's Commerce Clause prohibits states from adopting laws that benefit in-state economic interests to the detriment of out-of-state interests. In similar broad terms, § 2 of the 21st Amendment forbids transporting or importing liquor into a state in violation of its laws.

The Court held that laws banning or severely restricting the ability of out-of-state shippers to ship wine directly to consumers while allowing in-state wineries to do so violate the Commerce Clause. The Court's opinion stressed that, if states choose to allow the direct shipment of wine to consumers, they must do so impartially.

PA 09-102—HB 6433

General Law Committee

AN ACT CONCERNING THE REGULATION OF CHARITABLE FUNDS

SUMMARY: This act increases, from \$200,000 to \$500,000, the minimum gross revenue threshold requirement for a charity's annual report to be audited. By law, all charitable organizations that solicit funds must register and file annual financial reports with the Department of Consumer Protection (DCP). Organizations above the gross revenue threshold must also file an audit report prepared by a certified public accountant. By law, government grants and trust fund revenue do not count towards the threshold.

The act allows the DCP commissioner to waive audit requirements and waive or reduce late fees. It also extends the deadline the commissioner may grant for filing reports.

The act expands the definition of “paid solicitor” to include a person who for consideration, rather than compensation, solicits or arranges the solicitation of contributions.

The act also specifies that nothing in the statute regarding the release or modification of restrictions contained in a gift instrument on the management, investment, or purpose of institutional funds in the Uniform Prudent Management of Institutional Funds Act can be construed to amend or alter the existing standards in the law (which apparently includes the common law), rather than the general statutes. Related common law doctrines include *cy pres* or approximation and equitable deviation actions (see BACKGROUND). EFFECTIVE DATE: July 1, 2009.

WAIVERS, EXTENSIONS, AND LATE FEES

The act authorizes the commissioner to (1) waive the audit requirement and (2) waive or reduce late fees on written request showing good cause. Under prior law, he could grant a 180-day extension to late filers; the act allows him to grant up to six months from the report due date. By law, the \$25 per month late fee is not due in extension months.

ORGANIZATION EMPLOYEES

The act expands the definition of “paid solicitor” to include a person who for consideration, rather than compensation, solicits or arranges for solicitation of contributions, excluding salaried non-temporary officers or employees. This does not include nonmonetary, nominal gifts given to volunteers as an incentive or token of appreciation.

BACKGROUND

Release or Modification of Restrictions Contained in a Gift Instrument

An institution may release or modify, in whole or in part, a restriction contained in a gift instrument on the management, investment, or purpose of an institutional fund with the donor’s consent on record. The fund still must be used for a charitable purpose of the institution. The term “charitable purpose” includes purposes related to relieving poverty, advancing education or religion, promoting health, and other purposes that are communally beneficial.

A court, upon application of the institution, may modify a restriction that becomes impracticable or wasteful; impairs the management or investment of the

fund; or because of unanticipated circumstances, could be modified to further the purposes of the fund. In such cases, the institution must notify the attorney general, who must be given an opportunity to be heard. To the extent practicable, any modification must be made in accordance with the donor’s probable intent (CGS § 45a-535, et seq.).

Common Law Doctrines

The *cy pres* doctrine allows the court to amend the terms of a charitable trust as closely as possible to the original intention of the deceased when the original objective becomes impossible, impracticable, or illegal to perform. Approximation is, like *cy pres*, a legal principle that a court may vary the terms of the administration of a trust to carry out the intentions of the trustor or to preserve the trust. Equitable deviation changes only the administrative provisions of a trust, while *cy pres* involves an alteration of the purpose to which the rest of the trust is to be applied.

PA 09-104—sSB 778

General Law Committee

Labor and Public Employees Committee

Insurance and Real Estate Committee

AN ACT CONCERNING EVIDENCE OF WORKERS’ COMPENSATION INSURANCE FOR CONTRACTORS ON PUBLIC WORKS PROJECTS

SUMMARY: The law requires applicants for a license or permit necessary to operate a business to present “sufficient evidence” of compliance with the workers’ compensation insurance coverage requirements. This act allows applicants for licenses and permits issued by the Department of Consumer Protection to meet the sufficient evidence requirement by providing the name of the applicant’s insurer, the policy number, and the effective coverage dates, certified as truthful and accurate, as an alternative to presenting a hard copy of the insurance certificate. Prior law required applicants to present a hard copy of a certificate of self-insurance issued by a workers’ compensation commissioner, a certificate of compliance issued by the insurance commissioner, or a certificate of insurance issued by a stock or mutual insurance company.

EFFECTIVE DATE: Upon passage

PA 09-119—HB 5222

General Law Committee

Planning and Development Committee

**AN ACT CONCERNING CHARITABLE
DONATION BINS**

SUMMARY: This act prohibits anyone from placing a donation bin in a public place without permission from the place's owner or agent and unless it contains a notice in block letters at least two inches high stating that the donation is (1) for a charitable purpose or (2) not for a charitable purpose.

If the donation is for a charitable purpose, the notice must also state (1) the name of the nonprofit organization that will benefit from the donation and (2) that the public may contact the Department of Consumer Protection for more information. The notice must appear on the side of the bin where the donation is made. Under the act, a "public place" is an area used or held out for use by the public, whether owned or operated by private or public interests. It defines "donation bin" as a large container commonly placed in a parking lot to encourage the donation of clothing or other items.

EFFECTIVE DATE: October 1, 2009

PA 09-122—HB 6501

General Law Committee

Environment Committee

Energy and Technology Committee

**AN ACT ELIMINATING SURETY BOND
REQUIREMENTS FOR RESIDENTIAL
UNDERGROUND HEATING OIL TANK
REMOVAL OR REPLACEMENT
CONTRACTORS**

SUMMARY: This act eliminates the requirement that a contractor who intends to remove or replace residential underground heating oil tanks provide evidence of a \$250,000 surety bond to the Department of Consumer Protection (DCP) when applying for a home improvement contractor registration certificate. It does not change the requirements that the applicant show that he or she has (1) completed the hazardous material training program approved by the Department of Environmental Protection (DEP) and (2) liability insurance coverage of \$1 million. For contractors who wish to register for payment from DEP's residential underground heating oil storage tank clean-up subaccount, it eliminates a surety bond as a way to prove financial responsibility and raises the minimum amount of liability insurance coverage or liquid company assets that contractors must have from

\$250,000 to \$1 million. It does not change the requirement that contractors provide DEP with evidence of training and experience to register.

EFFECTIVE DATE: Upon passage

PA 09-146—sSB 785

General Law Committee

Labor and Public Employees Committee

Planning and Development Committee

Government Administration and Elections Committee

**AN ACT CONCERNING CONSTRUCTION
CHANGE ORDERS**

SUMMARY: This act requires payment requests made in accordance with construction contracts among owners, contractors, subcontractors, and suppliers to state the status of all pending change orders, change directives, and approved changes to the original contract or subcontract. The statement must include (1) when they were initiated, (2) their associated costs, and (3) a description of completed work. The act applies to commercial construction contracts subject to state law applying to private sector construction contracts and public works contracts exceeding \$100,000, other than those administered by or in conjunction with the Department of Transportation. It defines "pending construction change order" and "other pending change directive" as an authorized directive for extra work that has been issued to a contractor or subcontractor.

EFFECTIVE DATE: July 1, 2009

BACKGROUND

Commercial Construction Contracts

The law requires construction contracts to include a provision to ensure timely payment of contractors, subcontractors, and suppliers. By law, a commercial construction contract is a contract or subcontract for construction, renovation, or rehabilitation between an owner and contractor or a contractor and subcontractor. But it is not a contract (1) for public works entered into by the United States or this state or any of its municipalities or political subdivisions; (2) funded or insured by the United States Department of Housing and Urban Development; (3) between an owner and contractor for less than \$25,000, or a subcontract made under one; or (4) for a building intended for residential occupancy with four or fewer units (CGS § 42-158i).

PA 09-150—SB 325*General Law Committee**Public Health Committee**Government Administration and Elections Committee***AN ACT CONCERNING PHARMACY ERRORS AND PHARMACY COMMISSION MEETING MINUTES**

SUMMARY: This act allows the Department of Consumer Protection (DCP), the Pharmacy Commission, and the Department of Public Health to publicly disclose information that identifies individuals or institutions when it relates to a proceeding in which the commission has voted to formally discipline a licensed pharmacist or pharmacy for an error in dispensing medication. Prior law allowed disclosure only of proceedings that considered questions of licensure or the right to practice. The act does not affect the ability of the DCP commissioner, in the interest of public health, to disclose information gained through the inspection of pharmacies and outlets permitted to sell nonlegend (over-the-counter) drugs.

The act also requires the Pharmacy Commission to make records of its proceedings available to the public upon request. The records must include the name and license number of any pharmacy or pharmacist against whom the commission has recommended formal disciplinary action.

EFFECTIVE DATE: October 1, 2009

PA 09-239—sSB 838*General Law Committee**Judiciary Committee**Appropriations Committee***AN ACT CONCERNING CONSUMER PRIVACY AND IDENTITY THEFT**

SUMMARY: This act makes numerous changes in laws relating to identity theft, Social Security numbers, and the dissemination of personal identifying information.

It makes the definition of “identity theft” broader, increases the penalty for criminal impersonation, and creates the crime of unlawful possession of personal access devices. The law makes it a crime to possess skimmers and reencoders under certain circumstances. The act also increases the penalties for identity theft when the victim is age 60 or older.

The act allows a victim of identity theft to sue for damages if the perpetrator was found guilty of trafficking in personal identifying information. Victims can already sue for damages if the perpetrator was found guilty of identity theft. The act extends the statute

of limitations from two to three years and specifies that damages include documented lost wages and any financial loss suffered by the plaintiff as a result of the identity theft. It allows the court to award remedies that may be provided by law. It requires, rather than allows, courts to issue orders to correct public records when a person is convicted of identity theft.

The act voids a credential issued by the state or political subdivision of the state (1) obtained by making a material false statement or (2) physically altered to misrepresent a material fact. It requires the credential to be returned to the issuing authority provided the authority complies with notice provisions.

The act (1) allows perpetrators to be prosecuted in the geographical area or judicial district where the victim lives rather than where the alleged crime was committed; (2) penalizes employers for failing to (a) obtain and retain employment applications securely and (b) take reasonable measures to destroy or make them unreadable when disposing of them; (3) subjects property gained from committing identity theft to forfeiture and requires proceeds from its disposition to be deposited into the Department of Consumer Protection’s (DCP) Privacy Protection Guaranty and Enforcement Account, which this act creates, to pay for enforcing certain privacy protection laws; (4) authorizes the DCP commissioner to investigate violations of these laws; and (5) allows the attorney general, upon request of the commissioner or another state agency required to enforce its provisions, to apply to the court to restrain or enjoin a violator.

The act creates the Privacy Protection Guaranty and Enforcement Account to enforce the law and reimburse individuals hurt by violations of the act’s provisions on disseminating personal identifying information. The account is funded with fines imposed on violators and property forfeited under the act’s provisions.

The act establishes a fine of between \$500 and \$5,000, to be deposited into the privacy protection account, for (1) filing a notice, statement, or document required by the act that includes false information or (2) willfully violating the provisions of this act or identity theft laws. It also establishes an appeals process for anyone aggrieved by a decision or order made by the commissioner under the act.

EFFECTIVE DATE: October 1, 2009, except for the provisions relating to the penalties for violating the duty to safeguard personal data investigations, the privacy protection account, appeals, and regulations, which are effective upon passage.

§ 1 — IDENTITY THEFT

The act expands the definition of “identity theft” by eliminating the requirement that personal identifying information be obtained without permission. Under the

act, a person commits identity theft when he or she knowingly uses another's personal identifying information to obtain or attempt to obtain money, credit, goods, services, property, or medical information. Under prior law, a person committed identity theft when he or she intentionally obtained, without permission, another person's personal identifying information and used it to illegally obtain or attempt to obtain money, credit, goods, services, property, or medical information. A violator commits a class D, C, or B felony, depending on the amount involved (see Table on Penalties).

By law, "personal identifying information" for this purpose includes any name, number, or other information that may be used, alone or with any other information, to identify a specific individual. It specifies that the information includes a person's (1) name; (2) birth date; (3) mother's maiden name; (4) motor vehicle operator, Social Security, employee identification, employer identification, taxpayer identification, alien registration, government passport, health insurance identification, demand deposit account, savings account, or credit or debit card number; or (5) unique biometric data, such as a fingerprint, voice print, retina or iris image, or other unique physical representation.

§§ 2 & 3 — INCREASED PENALTIES FOR CRIMES AGAINST SENIORS

By law, identity theft in the first degree is committed when the value of the goods or services is greater than \$10,000. The act lowers the threshold to \$5,000 if the crime is perpetrated against someone age 60 or older. First-degree identity theft is a class B felony.

Identity theft in the second degree is committed when the value of the goods or services is greater than \$5,000 and less than \$10,000. The act lowers the threshold to any amount if the crime is perpetrated against someone age 60 or older. Second-degree identity theft is a class C felony.

The effect is to raise the penalty for committing identity theft against a senior from a class D to a class C felony when the amount involved is less than \$5,000 and from a class C to class B felony when it is more. These provisions are apparently in addition to penalties for larceny, which is the act of wrongfully taking, obtaining or withholding property from an owner, intending to deprive another of property or to appropriate the property to oneself or a third person (CGS § 53a-119).

§ 4 — CRIMINAL IMPERSONATION

The act increases the penalty for criminal impersonation from a class B misdemeanor to a class A misdemeanor. By law, a person commits criminal impersonation when he or she:

1. impersonates another and acts in the assumed character with intent to obtain a benefit or to injure or defraud another;
2. pretends to represent a person or organization and acts in the pretended capacity with intent to obtain a benefit or to injure or defraud another; or
3. pretends to be a public servant, other than a police officer (which is another crime), with intent to induce another to submit to, or act in reliance on, the pretended authority.

§ 5 — UNLAWFUL POSSESSION OF PERSONAL INFORMATION ACCESS DEVICES

The act creates the crime of unlawful possession of "personal identifying information access devices." A person is guilty of committing it when he or she possesses access devices, document-making equipment, or authentication implements to alter, obtain, or use another's personal identifying information. The law already prohibits possession of a scanning device or reencoder under circumstances manifesting intent to use it to commit identity theft (see BACKGROUND).

For this purpose, "access devices" include a card, plate, code, account number, mobile identification number, personal identification number, telecommunication service access equipment, card-reading device, scanning device, reencoder or other means that could be used to access financial resources or obtain financial information, personal identifying information, or another person's benefits.

A violator commits a class A misdemeanor.

It is already a crime to (1) fraudulently use an automated teller machine with intent to deprive someone of property or to appropriate property to oneself or a third person and (2) knowingly use in a fraudulent manner an automated teller machine for the purpose of obtaining property (CGS § 53a-127b).

§ 6 — CREDENTIALS OBTAINED WITH FALSE INFORMATION

The act prohibits obtaining or attempting to obtain a license, registration, or certificate for another by misrepresentation or impersonation. It makes void from the date of issue any credential (1) obtained under these circumstances or (2) issued by the state or a political subdivision based upon an application containing a material false statement. It requires the credential, and

any money paid for it, to be surrendered, on demand, to the issuing authority, provided the authority has complied with the notice requirements of the Uniform Administrative Procedure Act (UAPA). These provisions do not limit the power or authority of the state or any political subdivision to seek administrative, legal, or equitable relief. In many cases, such as driver's licenses, the law already makes void a credential issued based on a material false statement (CGS § 14-43).

A violator commits a class A misdemeanor.

§ 7 — CIVIL ACTION FOR DAMAGES, TRAFFICKING IN PERSONAL IDENTIFYING INFORMATION, AND STATUTE OF LIMITATIONS

By law, victims of identity theft can bring a civil action for damages against the offender in Superior Court. The act also allows civil actions for damages if the offender was guilty of trafficking in personal identifying information.

The law requires courts to award prevailing plaintiffs the greater of \$1,000 or triple damages, costs, and reasonable attorney's fees. The act specifies that damages include documented lost wages and any financial loss the plaintiff suffered as a result of identity theft. Furthermore, it explicitly allows the court to award other remedies provided by law, including the cost of providing at least two years of commercially available identity theft monitoring and protection.

The act extends the two-year statute of limitations with regard to these cases to three years. By law, the limitation period starts from the date the violation is, or reasonably should have been, discovered.

§ 8 — CORRECTING PUBLIC RECORDS

The act requires, rather than allows, a court to issue orders necessary to correct a public record that contains false information due to identity theft when a person is convicted of identity theft. It also applies the requirement to convictions of trafficking in personal identifying information.

§ 9 — VENUE FOR PROSECUTING IDENTITY THEFT CASES

The law allows alleged identity theft offenders to be prosecuted in the Superior Court for the geographical area where the victim lives rather than the area where the crime was allegedly committed. The act specifies that the alleged violator may also be prosecuted in that judicial district or geographical area. It also applies the provision to prosecutions for trafficking in personal identifying information.

§ 10 — SAFEGUARDING EMPLOYMENT APPLICATIONS

The act requires employers to obtain and retain applications in a secure manner and, when disposing of the applications, to employ reasonable measures to destroy or make them unreadable at least by shredding them. An "employer" is an individual, corporation, partnership, or unincorporated association. The requirement does not apply to state agencies or political subdivisions.

A violation is subject to a civil penalty of \$500 per violation, not to exceed \$500,000 per event. Civil penalties received must be deposited in the Privacy Protection Guaranty and Enforcement Account.

§ 11 — ALTERED CREDENTIALS

The act prohibits anyone from physically altering any license, registration, or certificate issued by the state or a political subdivision to conceal or misrepresent a material fact. It makes any credential so altered void from the date of alteration. The act requires the credential to be surrendered on demand to the issuing authority, provided the authority has complied with the notice requirements of the UAPA. Under the act any money paid for the credential is forfeited to the issuing authority.

These provisions do not limit the power or authority of the state or any of its political subdivisions to seek administrative, legal, or equitable relief.

A violator commits a class A misdemeanor.

§ 12 — FORFEITURE OF PROCEEDS OF IDENTITY THEFT

The act subjects to forfeiture all proceeds, or property derived from the proceeds, obtained, directly or indirectly, from identity theft, trafficking in personal identifying information, unlawful possession of personal information access devices, credentials obtained with false information, and altered credentials. It provides that property is not subject to forfeiture (1) to the extent of an owner's or lienholder's interest if the owner or lienholder did not know and could not have reasonably known that the property was being used, intended to be used, or derived from criminal activity or (2) if it is used, or is intended to be used, to pay legitimate attorney's fees in connection with the defense in a criminal prosecution.

The act establishes procedures for hearings to handle the proceeds from the sale of this forfeited property. The procedures are the same as those in the drug forfeiture law (CGS § 54-36h). The proceeds must be used to pay (1) preserved liens; (2) storage, maintenance, security, and forfeiture costs; and (3) court costs. The act requires balances from the following to be

deposited in the Privacy Protection Guaranty and Enforcement Account: sale of property made in connection with a prosecution for identity theft, criminal impersonation, unlawful possession of personal information access devices, making a material misstatement to obtain a credential, and altering a credential.

§ 13 — VIOLATION REVENUE

Public Act 09-71 eliminates the requirement that penalties for violating the duty to safeguard certain personal information be deposited into the Privacy Protection Guaranty and Enforcement Account (see BACKGROUND) because the account was not created when the duty to safeguard personal information was established (PA 08-167). This act establishes the account (§ 16) and reestablishes the requirement that penalties for violating the duty to safeguard information be deposited in it.

§ 14 — PENALTY FOR VIOLATING THE RESTRICTION AGAINST DISSEMINATING SOCIAL SECURITY NUMBERS

The law restricts the dissemination of Social Security numbers and subjects willful violators to a criminal fine of \$100 for a first offense, up to \$500 for a second offense; and up to \$1,000, six months imprisonment, or both, for subsequent offenses (see BACKGROUND). The act also subjects willful violators to a civil penalty of \$500 for each violation, up to a maximum of \$500,000 per event.

§ 15 — INVESTIGATIONS

The act authorizes the DCP commissioner to conduct investigations and hold hearings on violations of laws against misuse or failure to safeguard Social Security numbers, as well as the provisions of the act related to (1) safeguarding employee data, (2) filing documents with DCP containing false or material misstatement of fact, or (3) DCP regulations adopted in accordance with this act.

The commissioner may (1) issue subpoenas; (2) administer oaths; (3) compel testimony; and (4) order the production of books, records, papers, and documents. If an individual refuses to comply, the Superior Court may make an appropriate order to aid enforcement. The attorney general, at the request of the commissioner or other state agency required to enforce the act's provisions, may apply to the Superior Court for an order temporarily or permanently restraining and enjoining a person from violating the relevant laws.

§ 16 — PRIVACY PROTECTION GUARANTY AND ENFORCEMENT ACCOUNT

Establishment of Account

The act establishes the Privacy Protection Guaranty and Enforcement Account as a nonlapsing General Fund account and allows it to contain any money the law requires to be deposited in it.

The act requires the DCP commissioner to use the account to (1) reimburse individuals hurt by violations of laws against misuse of or failure to safeguard Social Security numbers (SSNs), as well as (a) the provisions of the act related to safeguarding employee data, (b) the filing of documents with DCP containing false, untrue, or material misstatements of fact, or (c) DCP regulations adopted in accordance with this act and (2) enforce the above laws and provisions.

Payments to Account

The act requires penalty payments for violating laws and implementing regulations against misuse of or failure to safeguard SSNs, as well as (1) failure to safeguard employee data, (2) filing documents with DCP containing false or material misstatements of fact, or (3) violating DCP regulations set forth in accordance with this act to be credited to the account. The money in the account may be invested or reinvested and any interest earned by the investments must be credited to the account.

Applying for Payment

After someone hurt by a violation of the act's, or implementing regulation's, restriction on disseminating personal identifying information has obtained a court judgment, the individual may apply to the commissioner for a payment from the account for the unpaid amount of the judgment for actual damages and costs, but not for punitive damages. The application must be made on DCP forms and be accompanied by a certified copy of the court judgment and a notarized, signed, and sworn affidavit. The affidavit must affirm that the applicant has:

1. complied with all the application requirements,
2. obtained a judgment, and
3. stated the judgment amount and the amount still owed as of the application date.

The applicant must also cause a writ of execution to be issued on the judgment, and the officer executing it must have made a return showing that it could not be satisfied, that the amount recovered was not enough to satisfy the actual damage portion of the judgment, or the amount realized and the balance remaining. It does not require an applicant who obtained a judgment in small claims court to fulfill these requirements.

The act also requires a true and attested copy of the executing officer's return, when required, to be attached to the application and affidavit.

Applications may be made after the final determination of, or expiration of time for, an appeal in connection with a judgment.

Commissioner's Determination

The act requires the DCP commissioner or his designee to inspect the application and accompanying documents for veracity. Once he determines that they are complete and authentic and that the applicant has not been paid, he must pay the unpaid amount, other than punitive damages, from the account.

Orders of Restitution

The act allows an individual awarded restitution for loss or damages sustained from a violation of the act or implementing regulations in a proceeding brought by the commissioner or the attorney general, to apply for payment of the unpaid amount from the account. The commissioner may make the payment after determining that the individual has not been paid and the time for appeal has passed.

Violator's Right to a Hearing

The act requires the commissioner, before making a payment from the account, to first notify the person or entity responsible for the damage caused by disseminating personal information of (1) the application for payment and (2) the person or entity's right to a hearing to contest the disbursement if the person or entity has already paid the applicant.

The act requires the notice to be given within 15 days after the commissioner receives an application for payment. If the person or entity requests a hearing in writing by certified mail within 15 days after receiving the commissioner's notice, the commissioner must conduct a hearing in accordance with the UAPA. If the commissioner does not receive such a request by certified mail, he must determine that the individual has not been paid and make a payment from the account.

Restitution Hearing

The act allows the commissioner or his designee to proceed for restitution from any person or entity for (1) dissemination of SSNs, (2) failure to safeguard SSNs and employee data, (3) filing false information in documents required by this act, or (4) violating DCP regulations adopted in accordance with this act. Proceedings must be held according to the UAPA. The act requires the commissioner or designee to decide in the course of the hearing whether to order restitution

and whether to order payment from the account.

The act allows the commissioner or designee to hear complaints of all individuals submitting claims against a single person or entity in one proceeding.

Deadline for Applying

The act requires applications for payments to be made before three years have elapsed from the final determination or expiration of time for appeal of the court judgment.

Exemption from Applicant's Duty to Satisfy Judgment

The act allows the commissioner or his designee to dispense with the requirement that an applicant attempt to execute a judgment if the applicant satisfies the commissioner or designee that (1) it is not practicable, (2) he or she has taken all reasonable steps to collect, and (3) he or she has been unable to collect.

Preserving the Account's Integrity

It allows the commissioner, in his sole discretion, to pay less than the actual loss or damages or the amount of a court or DCP restitution order to preserve the integrity of the account. It requires the commissioner, when sufficient money has been deposited in the account, to satisfy such unpaid claims.

Account Shortfall

If the money in the account is insufficient to satisfy a claim, the act requires the commissioner to pay unsatisfied claims when enough money has been deposited in the order that such claims were determined.

Subrogation

The act requires individuals to assign to the commissioner the right to recover the amount they have been paid from the fund, plus reasonable interest. Any amount and interest the commissioner recovers on the claim must be deposited in the guaranty account.

Commissioner's Duty to Seek Recovery

If the commissioner pays from the account, the act requires him to determine if the person or entity that caused the injury has assets that could be sold or applied to satisfy the claim. If he discovers any such assets, the act requires the attorney general to take necessary action to reimburse the account.

Commissioner's Authority to Make Repayment Agreements

The act authorizes the commissioner to make repayment agreements where the party agrees to repay the account in full through periodic payments over a set period of time.

§ 17 — FALSE STATEMENTS

The act subjects to a fine of from \$500 to \$5,000 anyone who files with DCP a notice, statement, or other document required by the act or implementing regulation on dissemination of personal identifying information if it is false or includes a material misstatement of fact.

§ 18 — APPEALS

The act authorizes anyone aggrieved by any decision or order the commissioner makes under the act's or implementing regulation's provisions restricting the dissemination of personal identifying information to appeal in accordance with the UAPA.

§ 19 — REGULATIONS

The act authorizes the DCP commissioner to adopt regulations implementing the act's provisions on restricting the dissemination of personal identifying information. It subjects violators of the regulations to the same penalties as violators of the act.

BACKGROUND

Scanning Devices and Reencoders

The law prohibits using a scanning device to access, read, obtain, memorize, or temporarily or permanently store information encoded on a computer chip or a payment card's magnetic strip without the authorized user's permission and with the intent to defraud the authorized user, issuer, or a merchant. It also prohibits using a reencoder to take information encoded on a computer chip or a magnetic strip and put it on a computer chip or the strip of a different card without the authorized user's permission and with the intent to defraud the authorized user, the card issuer, or a merchant.

By law, a "scanning device" is a scanner, reader, or any other electronic device used to access, read, scan, obtain, memorize, or store information on a computer chip or a magnetic strip of a payment card. A "reencoder" is an electronic device that places encoded information from a computer chip or magnetic strip of a payment card on a computer chip or magnetic strip of another card or any electronic medium that allows an

authorized transaction to occur. A "payment card" is a credit, charge, debit, or any other card issued to an authorized user allowing him to obtain goods, services, money, or anything else of value from a merchant. A "merchant" is a person who receives a payment card from its authorized user or someone he believes to be its authorized user in return for goods or services.

The law authorizes the attorney general to sue to enforce its scanner and reencoder provisions. A violator is subject to one to 10 years imprisonment, a fine of up to \$10,000, or both (CGS § 53-388a).

Restrictions on Disclosing Social Security Numbers

With certain exceptions, the law prohibits individuals and businesses from publicly disclosing Social Security numbers. The prohibition does not prevent the numbers from being (1) collected, used, or released as required by state or federal law or (2) used for internal verification or administrative purposes.

Specifically, the law prohibits any person, firm, corporation, or other entity, other than the state or its political subdivisions, from:

1. intentionally communicating or otherwise making available to the general public an individual's Social Security number;
2. printing anyone's Social Security number on any card that the person must use to access the person's or entity's products or services;
3. requiring anyone to transmit his Social Security number over the Internet, unless the connection is secure or the number is encrypted; or
4. requiring anyone to use his Social Security number to access an Internet web site, unless a password or unique personal identification number or other authentication is also required to access it.

The penalty for willful violations is a fine of up to \$100 for the first offense, up to \$500 for a second offense, and up to \$1,000 or six months in prison for each subsequent offense (CGS § 42-470).

Duty to Safeguard Personal Information

The law requires anyone possessing personal information about another person to safeguard it and the computer files and documents that contain it. "Personal information" is information that can be associated with an individual through an identifier like a Social Security number.

It requires a business that collects Social Security numbers to create a privacy protection policy that must ensure confidentiality of Social Security numbers.

The law exempts state agencies and political subdivisions from the duty to safeguard personal information.

It subjects willful violators to a fine of \$500 for each violation, up to a maximum of \$500,000 per event. It provides that a violation is not a violation if it is unintentional. Civil penalties must be deposited into the privacy protection guaranty and enforcement account (CGS § 42-471).

PA 09-15—HB 6717

Emergency Certification

**AN ACT CONCERNING THE CAPITOL AREA
DISTRICT HEATING AND COOLING SYSTEM**

SUMMARY: This act authorizes the Department of Public Works (DPW) to purchase, from the TEN Companies, Inc., the system that heats and cools state and non-state buildings in the capitol district. Among the state buildings the system serves are the Capitol, Legislative Office Building, Supreme Court building, and various Executive Branch office buildings. DPW must purchase the system in accordance with the Asset Purchase Agreement dated November 4, 2008 between the state and TEN Companies.

The act amends the charter of the Hartford Steam Company (TEN's predecessor) to allow the company or its parent or successor to sell the system to the state. The sale must at least include all assets and property related to or needed for the system's operation, as described in the Asset Purchase Agreement, relating to the sale. The act ratifies this agreement and requires DPW to comply with its terms. To the extent any provision in the agreement may be interpreted as waiving the state's sovereign immunity, such as indemnification provisions, these provisions are effective and enforceable against the state solely in accordance with their specific terms. The act's provisions may not be construed to waive the state's sovereign immunity in any other context.

The act gives the DPW commissioner broad powers regarding the system. These include entering into contracts for the system's operation, providing energy services to state and non-state customers, granting easements with respect to state land in connection with the system's operation, and administering the Public Works Heating and Cooling Energy Revolving Account (created by the act) for paying the system's expenses and receiving its revenues.

The act authorizes the commissioner to (1) assume all vendor and customer contracts, supplier agreements, and third party contracts concerning the system and (2) undertake any obligation and enter into any agreement to accomplish any transaction necessary to carry out the agreement.

The act does not limit the state's use of the system to its own use or functional capacity as of the date the state purchases the system. It also does not preclude the state from reselling the system to a third party if it is determined that this is in the state's best interest.

It authorizes the State Bond Commission to issue general obligation bonds of up to (1) \$10.6 million to acquire the system, including all assets and property covered by the agreement and (2) \$1 million for certain transactional costs, including funding for the account.

The bonds can have terms of up to 20 years and are subject to standard statutory bond issuance procedures and repayment requirements.

EFFECTIVE DATE: Upon passage

PURCHASE AUTHORIZATION

The act authorizes the DPW commissioner to purchase the "Capitol Area System" in accordance with the Asset Purchase Agreement dated November 4, 2008. The act allows the commissioner to assume all vendor contracts, customer contracts, supplier agreements, and third-party contracts regarding the system. It allows him to undertake any obligation and enter into any agreement to accomplish any transaction necessary to carry out the act's provisions or the agreement. Among other things, these include the grant or acceptance of any release set forth in the agreement.

Except as expressly required by the act, the acquisition of the system and any transaction needed for the acquisition is not subject to (1) any other review, approval, or authorization by any other state agency, board, department, or instrumentality and (2) any otherwise applicable sales or conveyance taxes.

COMMISSIONER'S POWERS

System Operation

In order to operate the system, the commissioner may (1) furnish heat or air conditioning from plants located in Hartford by means of steam, heated or chilled water, or other media; (2) lay and maintain mains, pipes, or other conduits; (3) erect other necessary or convenient fixtures in and on Hartford streets, highways, and public grounds to carry steam, heated or chilled water, or other media from the plants to the location to be served and back; and (4) lease to one or more corporations formed or specially chartered to furnish heat or air conditioning, one or more of these plants or distribution systems it owns that are built or adapted for these purposes.

The act allows the commissioner to:

1. contract with third parties to procure energy products and services or for system operations, maintenance, repairs, and improvements;
2. provide energy products and services produced from the system or distributed by it, to any buildings owned by, or leased to, the state or any state instrumentality;
3. sell energy products and services produced from the system or distributed by it, to the owners or tenants of non-state buildings;
4. occupy and use rights-of-way needed to own, maintain, repair, improve, and operate the system in and on Hartford streets, highways,

and public grounds, on all state-owned property; and on property where the system is located, and to serve public and private end-use customers;

5. lay and maintain mains, pipes, or other conduits and erect other necessary and convenient fixtures in and on Hartford streets, highways, and public grounds to carry energy products to the location to be served and return these products; and
6. enter into contracts with third parties to procure other products and services and provide or sell other products or services to the state or the owners or tenants of non-state buildings that are being produced, provided, or distributed through the system on or before the act's passage date.

Easements and Land Acquisition

The act allows the commissioner to (1) grant easements with respect to state land in connection with the system's operation, subject to the approval of the agency responsible for the care and control of the land and the State Properties Review Board (SPRB); (2) acquire easements with respect to land not owned by the state in connection with the system, subject to SPRB approval; (3) lease any type of space or facility necessary to meet the system's operating needs, subject to SPRB approval; and (4) when the General Assembly is not in session, subject to the state facility plan, purchase or acquire for the state any land, or interest in land, if this action is needed for the system's operation.

The commissioner must notify (1) the chief elected official of the municipality where any easement granted under the act is located and (2) the members of the General Assembly representing this municipality.

Public Works Heating and Cooling Energy Revolving Account

The act allows the commissioner to establish and administer the account. It must be used to (1) deposit receipts from the sale of energy products and services to state agencies or to the owners or tenants of non-state buildings and (2) pay expenses related to the system's operation, maintenance, repair, and improvement. The commissioner may spend funds needed for all reasonable direct expenses related to the account.

RATE SETTING

The act requires the commissioner to periodically bill and collect the system's costs from each entity it serves, to the extent not prohibited by contracts in effect as of November 4, 2008. These must be based on

customers' pro-rata share of (1) all costs of acquiring the system, at least including those for legal and consultant services; (2) the cost of the energy products or services, whether produced by the state or purchased from third parties; (3) the costs of operating, maintaining, and repairing the system, including the cost of services provided by vendors and the cost of equipment; (4) an amount needed for long-term capital improvements or replacement, which must be specifically identified in the revolving account and allocated for long-term capital improvements or replacement; (5) DPW's personnel costs related to the system's operation, maintenance, repair, and improvement, provided only one full-time DPW employee's expenses can be allocated to the system; and (6) the cost of other products or services incurred and permitted by the act. Once per quarter, DPW must transmit to the General Fund the part of rates that cover the cost of system acquisition.

The DPW commissioner must periodically submit proposed rate-setting methods and proposed rates to the Office of Policy and Management (OPM) secretary for his approval. Within 45 days after receiving the proposal the OPM secretary must approve or disapprove the proposed rate calculation method or rate. If the secretary fails to act on the proposal, it is considered approved.

BONDING

The act authorizes the State Bond Commission to issue up to \$10.6 million of general obligation bonds for DPW to acquire the system, including all assets and property necessary for its operation, as described in the Asset Purchase Agreement.

It authorizes the State Bond Commission to issue up to \$1 million in general obligation bonds for the transactional costs related to the purchase of the system. These include the state's insurance costs and legal fees, reimbursement to TEN Companies, Inc. for prepaid property taxes, a reasonable amount for start-up funding for the Public Works Heating and Cooling Energy Revolving Account, and the cost to purchase and install pipe necessary for the system's operation. The last item includes the cost of pipe and its installation as the interconnection between the supply and return lines of the system at or near the point of interconnection between the system and TEN Companies, Inc.'s other district energy system located in downtown Hartford.

PA 09-36—HB 6439

*Government Administration and Elections Committee
Appropriations Committee*

**AN ACT CONCERNING THE VOTING RIGHTS
OF CERTAIN SEVENTEEN YEAR OLD
PERSONS**

SUMMARY: This act implements the constitutional amendment electors passed during the 2008 election allowing 17-year-olds who will turn 18 on or before the day of a regular election to vote in its primary.

Under the act, like the constitutional amendment, such an individual must apply and otherwise qualify for admission as an elector. He or she may then vote in a primary of the party with which he or she is affiliated that is held to determine nominees for the regular election. Upon turning 18, the individual's electoral rights attach. By law, a "regular election" is any municipal or state election. State elections include candidates for federal office.

EFFECTIVE DATE: Upon passage

PA 09-170—sSB 913

*Government Administration and Elections Committee
Appropriations Committee*

**AN ACT CONCERNING UNITED STATES
SENATE VACANCIES**

SUMMARY: This act eliminates the governor's power to fill U.S. Senate vacancies by appointment and instead requires a special election, with two exceptions. It authorizes the governor to (1) appoint a replacement if there are 50 or more U.S. Senate vacancies among the states and (2) nominate someone to fill a vacancy occurring during the last 14 months of a senator's term, which the General Assembly must confirm.

The act establishes a procedure for issuing the writs of election and holding the special election and specifies the process for selecting convention delegates to endorse a candidate, holding a convention, and holding a primary if someone challenges the party-endorsed candidate. Electors whose names appeared on the voter registry list compiled for the last regular election prior to the vacancy, or any supplementary list, are eligible to vote in the special election.

EFFECTIVE DATE: Upon passage

SPECIAL ELECTIONS TO FILL VACANCIES

When a U.S. Senate vacancy occurred under prior law, the governor appointed a replacement. If there was sufficient time before the scheduled end of the term, a successor was elected at the next regular election, filling

the office for the remainder of the term.

The act eliminates the governor's power to appoint a replacement in most circumstances. Instead it requires her to issue writs of election to town clerks or assistant town clerks within 10 days after a vacancy to fill it for the remainder of the term. With some exceptions, the special election must be held on the 150th day after the writs are issued, but not on a weekend. Senate-elect vacancies are filled in the same way as Senate vacancies.

Under the act, the governor's writs are conveyed to a state marshal who transmits an attested copy to town clerks or assistant town clerks. Several procedures are the same as those for state elections: the process clerks follow to notify electors of the election date; the way the special election is organized and conducted; and the way the vote is declared, certified, directed, deposited, returned, and transmitted.

Exceptions to the 150-Day Special Election Calendar

If the vacancy occurs more than 63, but less than 125, days before the next regular November state or municipal election, the governor must issue the writs on the 60th day before it and the special election to fill the vacancy must be held at the same time as the regular election. However, if it occurs after the municipal election in the year preceding the last year of a senator's term or during the last year of a senator's term, the governor nominates a replacement (see NOMINATION OR APPOINTMENT below), unless there are 62 days or less before a regular state election and the vacant U.S. Senate office will be on that ballot. In that case, the vacancy remains and there is no special election. This means, if the vacancy occurs 62 days or less before the next regular state election and the vacated office will not be on the ballot, the governor must issue the writs and a special election is held 150 days later to fill the remainder of the term.

**NOMINATION OR APPOINTMENT TO FILL
VACANCIES**

The act addresses two circumstances under which a U.S. Senate vacancy in Connecticut would not be filled at an election. First, if the vacancy occurs after the municipal election in the year preceding the last year of a senator's term or during the last year of a senator's term, the governor nominates someone to fill it. The nomination must be (1) filed with the clerks of the state Senate and the House of Representatives and (2) approved by two-thirds of the membership of each chamber.

Second, in the event that 50 or more simultaneous U.S. Senate vacancies occur, including in Connecticut, the act authorizes the governor to fill the vacancy by

appointment. If there is sufficient time before the scheduled end of the term, an election is held to elect a successor to fill the office until the end of the term. The calendar is the same as the one under prior law for gubernatorial appointments. If the vacancy occurs:

1. at least 150 days before a November state election, the appointee serves until the January 3 immediately following, and a replacement is elected at that election to serve the remaining portion of the vacated term, if any;
2. less than 150 days before a November state election and the vacated term does not expire the January 3 immediately following, the appointee serves until the January 3 following the next November municipal election, and a replacement is elected at the municipal election to serve the remaining portion of the vacated term, if any; or
3. less than 150 days before a state election and the vacated term expires January 3 immediately following, the appointee serves until that January 3.

CONVENTIONS, PARTY ENDORSEMENTS, AND PRIMARIES

As under prior law, the parties must hold a convention to endorse candidates to fill a U.S. Senate vacancy. For the purposes of a special election to fill a vacancy, the act changes the law on convention delegates and revises the deadlines for making party endorsements and holding primaries. Under the act, the convention must be held between the date when the vacancy occurs and 56 days before the date when a primary would occur (56 days before the election), whether or not one does. The endorsements are not effective until the presiding officer and secretary of the convention certify them to the secretary of the state.

Delegates to the convention are the same ones who served at the convention held for the previous state election. In the event of a vacancy in the delegation, the town committee in the former delegate's town fills it.

The act prohibits a primary from being held if a vacancy occurs between the 125th day and 63rd day before a regular November state or municipal election. Instead, the party-endorsed candidate is the party's nominee. In that case, the parties must make their endorsements by the 60th day before the election.

The act allows for a primary any other time a special election will take place to fill a vacancy. If a person challenges the endorsed candidate within 14 days after the party endorsement, a primary is held on the 56th day before the election.

The secretary of the state must make petition forms available on the day after the writs of election are issued. The process for obtaining the forms is the same

as under current law. This means the secretary of the state must fill in identifying information on each petition form page and give the requestor petition pages that can be duplicated. If the candidate is indigent, the secretary must give the requestor a sufficient number of pages or as many as the person requests. Anyone requesting a petition form must give his or her name and address and the name, address, and office sought for each petition candidate, along with a consent statement signed by the candidate.

PA 09-203—sHB 6695 (VETOED)

Government Administration and Elections Committee

AN ACT CONCERNING THE CONVEYANCE OF CERTAIN PARCELS OF STATE LAND

SUMMARY: This act:

1. authorizes conveyances of state property to the towns of Bridgeport, East Lyme, Putnam, South Windsor, Stamford, and Trumbull;
2. amends prior conveyances in Greenwich, Griswold, Middletown, New Britain, New Haven, Norwalk, and Windham;
3. requires (a) the Department of Transportation (DOT) to convey an easement to Danbury, (b) the Department of Environmental Protection (DEP) to lease property to Ridgefield, and (c) the Department of Public Works (DPW) to grant an easement to Norwich at Three Rivers Community College and transfer and convey an easement for the Department of Developmental Services to Enfield;
4. authorizes DPW to acquire title from Torrington for a portion of Clark Street;
5. allows DEP to lease or authorize occupancy to preserve the Penfield Lighthouse; and
6. exempts the sale of a particular parcel of electric company real property in Rocky Hill from the law that requires the company to use sale proceeds to reduce its stranded costs.

The act replaces a process for disposing of property taken for the expansion of Route 6 with one that requires its sale at the request of a former property owner (or an heir) and reinstates a restriction on the DOT commissioner's control of property adjacent to Route 7 in Danbury.

The act authorizes the exchange of maintenance facilities between DOT (a 3.375 acre parcel) and the town of Westbrook (2.087 acres). The transaction is subject to State Properties Review Board (SPRB) approval and the town must pay the administrative costs while DOT is required to pay for any property survey. It requires another exchange of parcels between DEP (17.4 acres) and the Goodspeed Opera House

Foundation, Inc. (all or part of a 2.7-acre parcel) and Riverhouse Properties, LLC (all or part of 87.7 acres). The exchange, by mutual agreement reached by December 31, 2009, must follow a public hearing on the matter and is subject to SPRB approval.

Finally, the act gives DEP exclusive custody and control of all publicly-owned Connecticut River islands north of East Windsor across to South Windsor and south of King's Island.

EFFECTIVE DATE: Upon passage, except for the section dealing with the Route 7 Expressway Project, which is effective July 1, 2009.

NEW CONVEYANCES

The act requires the following conveyances from the agencies to the towns named for the purpose specified:

1. the Military Department to East Lyme for municipal purposes (0.9 acres);
2. DOT to South Windsor for economic development purposes, provided that proceeds from any sale or lease of all or part of the parcel must be deposited in the state's General Fund (4.84 acres);
3. the Military Department to Putnam for recreational or municipal purposes (3.56 acres);
4. DOT to Trumbull for fair market value plus administrative costs (0.32 unrestricted acres); and
5. DEP to Bridgeport, two parcels (33 acres located in Trumbull) for \$2.8 million plus administrative costs for educational and municipal purposes.

Unless Bridgeport begins construction of a regional magnet high school within 10 years or maintains the property as a public park (with such a restriction recorded in Trumbull land records), the property reverts to the state. The DEP commissioner must use the sale proceeds to purchase property in Bridgeport and may consider a previously identified 10-acre site.

Within 120 days of the act's passage, the act requires DEP to lease to Ridgefield for \$1 per year for a term of 10 years, 2.146 acres for recreational purposes. DEP must give the town at least two years' notice before changing the terms of the lease.

The act also requires the State Department of Education (SDE) to lease land (18.6 acres) and improvements at the J. M. Wright Technical High School to Stamford, if the department discontinues the vocational education programs there. The lease must be for 20 years at \$1 per year. SDE must give five years' notice to change lease terms, and Stamford must use the property for municipal purposes.

Each of the new conveyances and the lease agreements are subject to the SPRB's approval within 30 days and must be made at a cost equal to the administrative cost of the conveyance, unless otherwise noted. The property reverts to the state and the Ridgefield and Stamford leases terminate if the recipient uses the parcel for any purpose other than that specified in the act.

CONVEYANCE AMENDMENTS

The act amends a 2007 land conveyance from the DOT to Derek Viel, conveying the 0.06-acre parcel instead to the city of New Britain.

The act adds the improvements on two parcels of land that the Department of Children and Families conveyed to Middletown in 1999 at fair market value. It changes the specified use from redevelopment to open space, thus amending the price of the property that was to have been reduced by the amount of demolition and disposal costs necessary to redevelop the parcels. Under the act, the price reduction compensates the city for its costs to prepare the parcels for use as open space. It also deletes a provision that required the proceeds from the sale to be deposited in the Connecticut Juvenile Training School's donation fund.

The act substitutes municipal purposes for open space as the required use for 0.49 acres of DPW property conveyed in 1998 to Greenwich. It deletes from the reversion clause a requirement in a 2007 conveyance from DEP to Griswold that it develop recreational fields within five years of the conveyance. It makes a technical correction to a 2008 authorization to convey land from Norwalk to the state.

The act requires DEP to convey to Loretta M. Budkofsky for \$825 land in Windham that the state mistakenly acquired.

It conveys property adjacent to the Air Rights Garage in New Haven to the city of New Haven, rather than transferring it to the Department of Mental Health and Addiction Services (DMHAS). The city must use the 2.7-acre parcel for economic development; under the 2007 conveyance, DMHAS had to use it for Connecticut Mental Health Center parking. The conveyance to the city includes the typical conditions that it be made for administrative costs and subject to the SPRB's approval, and includes the reversion requirement. Under the act, New Haven may convey or lease all or part of the property for economic development and, if it does so, must transfer to the state any proceeds above the cost of improvements. New Haven must get State Traffic Commission and DOT approval to adjust the Route 34 right-of-way.

EASEMENTS

The act requires DOT to convey to Danbury, for the fair market value of a defined trail corridor, an easement over DOT land for the creation of the Ives Trail and Greenway. DPW must grant an easement in favor of Norwich at Three Rivers Community College along New London Turnpike to provide sidewalks and a snow shelf area.

LIGHTHOUSE

The act authorizes DEP to lease or otherwise authorize control over the Penfield Reef Lighthouse with a right of occupancy to preserve it pursuant to provisions of state and federal law. It limits any lease to no more than 10 years, subject to renewal, and allows for reasonable public access, preservation, and education.

UTILITY COMPANY PROPERTY

By law, the net proceeds of all sales and leases of electric company real property received after July 1, 1998 must be used to reduce the company's stranded costs. These are costs that the company had incurred, with the approval of the Department of Public Utility Control (DPUC), whose recovery was jeopardized with the passage of the electric deregulation law. The act exempts the sale of part of a specific parcel from this requirement. The exemption applies if DPUC approves the sale, before July 1, 2011, of approximately 26 acres and applies to approximately 22 acres of this parcel that (1) is no longer used or useful, as determined by DPUC; (2) is not and never was in the company's rate base; and (3) was maintained by the company's shareholders. By law, utility companies are allowed to recover in rates the cost of property in their rate bases, as long as this property is used and useful.

HIGHWAY PROPERTIES

Route 6

The act repeals the 2007 law that authorized and established procedures for the DOT commissioner, with advice and consent from the secretary of the Office of Policy and Management and the SPRB, to sell, lease, and convey or otherwise dispose of or enter into agreements regarding the land and state-owned buildings obtained for the Route 6 Expressway that are no longer needed for the project. Under the prior law, the commissioner had to notify the chief elected official and local legislators where the property is located within one year after the property is declared surplus. The law set out the procedures and requirements for transactions involving such property, including Federal Highway

Administration approval. It included a requirement that, for 25 years after the property's acquisition by the state, the former property owner or owners have the right of first refusal to purchase it for the amount of its appraised value. Within a year of declaring the property unnecessary, DOT had to send a notice of the offering to the owners.

The act instead gives a former owner (or the heir of a former owner) of property taken to expand Route 6 the option, upon his or her written request, to repurchase it at fair market value. The fair market value is determined by the state, but in no case can it be less than the price DOT paid to acquire the property. The act seems to require DOT (in consultation with DEP) to adopt and publish a master plan for retention or disposition of the Route 6 expansion property within two years of the act's passage.

Route 7

The act reinstates a change made by PA 09-186 (an act vetoed, then overridden) that eliminates provisions in current law on the sale or use of property acquired for the Route 7 Expressway Project. It restores the provision barring the DOT commissioner from selling, or using in any manner that is incompatible with transportation purposes, any property under his control in Danbury adjacent to Route 7 and south of Wooster Heights Road.

PA 09-224—sHB 6693

Government Administration and Elections Committee

AN ACT CONCERNING GOVERNMENT ADMINISTRATION AND THE DESIGNATION OF CERTAIN DAYS AND MONTHS BY THE GOVERNOR

SUMMARY: This act (1) authorizes the state librarian to establish the Real Property Electronic Recording Advisory Committee before, rather than on or after, October 1, 2009; (2) repeals the requirement for state agencies to include a cost-benefit analysis of volunteer services in their annual report to the General Assembly and governor; (3) designates several days, one week, and one month to heighten public awareness of various issues; and (4) requires that national and Connecticut state flags purchased after July 1, 2009 and displayed on state-owned or -leased public buildings be manufactured in the United States.

EFFECTIVE DATE: Upon passage, except that the flag provision is effective July 1, 2009.

REAL PROPERTY ELECTRONIC RECORDING ADVISORY COMMITTEE

Effective October 1, 2009, PA 08-56 §5 requires the state librarian to (1) establish a Real Property Electronic Recording Advisory Committee and (2) adopt regulations to implement the Uniform Real Property Electronic Recording Act, in consultation with the committee and the public records administrator.

The act makes this requirement effective upon signing by the governor (May 12, 2008), rather than October 1, 2009, thus authorizing the state librarian to establish the committee and regulations before the time the librarian must implement the Uniform Real Property Electronic Recording Act.

STATE DESIGNATIONS

The act requires the governor to proclaim, with suitable exercises held in the State Capitol and elsewhere as the governor designates:

1. September as Arnold-Chiari Malformation Awareness Month to heighten public awareness of its symptoms and treatments;
2. the third week in September of each year as Mitochondrial Disease Awareness Week to raise awareness of the disease;
3. January 29 of each year as Thomas Paine Day to honor the author and theorist for his instrumental role in the cause of independence leading to the American Revolution;
4. March 1 of each year as Self Injury Awareness Day to increase awareness of the issues surrounding self injury;
5. May 12 of each year as Fibromyalgia Awareness Day to heighten public awareness about its symptoms and treatments;
6. July 1 of each year as Canada Appreciation Day to honor the close geographic, cultural, and economic ties between the United States and Canada;
7. August 23 of each year as Missing Persons Day to raise awareness of the plight of families of state citizens who have been reported as missing; and
8. September 13 of each year as Fragile X Awareness Day to heighten public awareness of its symptoms and treatments.

The act also adds the designation “Honor Our Heroes” to Remembrance Day, which, by law, is observed on September 11 each year in memory of those who lost their lives or were injured in the September 11, 2001 terrorist attacks and to honor the service, sacrifice, and contributions of the responders.

STATE AND NATIONAL FLAGS

The act requires that national and Connecticut state flags purchased after July 1, 2009 be manufactured in the United States if they are (1) displayed on or in state-owned or -leased public buildings; on the walls of polling places during election hours; or outside of courthouses, the State Armory, State Office Building, state police building, or the State Library in Hartford or (2) provided by the veterans’ affairs commissioner for use on the graves of legislators or statewide officers.

PA 09-99—sSB 809

*Higher Education and Employment Advancement Committee
Banks Committee
Finance, Revenue and Bonding Committee*

**AN ACT CONCERNING PRIVATE
OCCUPATIONAL SCHOOLS**

SUMMARY: This act revises and expands the requirements a private occupational school must meet to operate in the state. It:

1. conforms the law to Department of Higher Education (DHE) practice by increasing certain fees and establishing new ones that private occupational schools must pay to operate in the state;
2. revises the process for a private occupational school to appeal the DHE commissioner's decision to deny or revoke its authorization or assess an administrative penalty; and
3. prohibits Private Occupational School Student Protection Account funds from being used to refund federal student loans if a school becomes insolvent or ceases operating.

EFFECTIVE DATE: July 1, 2009, except for the provisions concerning (1) hearings for schools whose authorization has been revoked or that have been assessed an administrative penalty and (2) the DHE commissioner's authority to enforce orders, which are effective October 1, 2009.

**ADDITIONAL REQUIREMENTS FOR NEW
PRIVATE OCCUPATIONAL SCHOOLS**

Financial Condition

By law, anyone applying for an initial certificate of authorization to operate a private occupational school in the state must submit financial statements detailing its financial condition that have been prepared by management and reviewed or audited by an independent licensed certified public accountant or licensed public accountant. The act requires that the financial statements conform to generally accepted accounting principles. And it requires the applicant to show that its net worth consists of sufficient liquid assets or produce other evidence of fiscal soundness to demonstrate, during the period for which it is seeking a certificate of authorization, the school's ability to (1) operate; (2) achieve all of its objectives; and (3) and meet all of its obligations, including those concerning staff and students.

On-Site Directors

The act prohibits the DHE commissioner, or his designee, from authorizing a private occupational school to operate in this state if it does not have an on-site director at the school and each of its in-state branches. This requirement applies to private occupational schools applying for or renewing a certificate of authorization because (1) the commissioner may place a school on probation, and ultimately revoke its authorization, if it fails to comply with any of the authorization requirements and (2) a school must meet all conditions of its authorization to be renewed.

By law, the commissioner, or his designee, appoints a team to evaluate, based on specified criteria, a private occupational school seeking an initial certificate of authorization to operate in this state. The act requires the team to determine whether the school and each of its in-state branches has an on-site director responsible for overseeing daily operations.

Letter of Credit

The act increases, from \$20,000 to \$40,000, the amount of the irrevocable letter of credit a new private occupational school must file with DHE to guarantee its payments to the student protection account. Additionally, it (1) requires that the letter of credit be issued by a bank with a main office or branch in the state and (2) extends, from eight to 12 years, the period for which the DHE commissioner holds the letter of credit.

FINANCIAL REPORTS AND RECORDS

Financial Records and Filing Requirements

The act requires each private occupational school authorized to operate in the state to keep financial records that conform with generally accepted accounting principles. The school's management must prepare and submit an annual financial statement detailing the school's financial status that has been reviewed or audited by a licensed certified public accountant or licensed public accountant, in accordance with the American Institute of Certified Public Accountants' standards.

The act requires nationally accredited schools recognized by the U.S. Department of Education to file copies of their financial statements within six months after their fiscal year ends. All other schools must do so within the first four months following the end of their fiscal year, unless they make a written request for a filing extension. The commissioner may grant nonaccredited schools up to a 60-day extension for good

cause. Nationally accredited schools must submit audited financial statements and cannot receive a filing extension.

Financial Reports Due at Renewal

By law, a private occupational school must submit reports or audits on its fiscal condition or continuing eligibility for participation in federal student aid programs when renewing its certificate of authorization with DHE. The act specifies that the school must submit the reports or audits as the commissioner, or his designee, prescribes.

The act additionally requires a renewing school to submit documentation that it has a passing score on the financial ratio test the U.S. Department of Education uses for institutions participating in federal student aid programs. In doing so, it conforms the law to DHE's practice.

FEES

Application Fee

The act conforms the law to practice by increasing the application fee, from \$2,000 to \$2,000 plus \$200 per branch school, for a private occupational school applying for an initial certificate of authorization to operate in the state. The fee continues to be payable to the student protection account.

Annual and Renewal Fees

Under prior law, a private occupational school had to pay, to the Board of Governors of Higher Education (BOG), an annually nonrefundable \$200 fee for the school and each of its branches as a condition of its reauthorization. The act conforms the law to practice by requiring the school to pay a nonrefundable \$200 renewal fee to the BOG for the school and each of its branches in addition to the annual fee (\$200 per school plus \$200 per branch). It makes the annual fee payable to the student protection account for each year after the school's, or branch school's, initial year of authorization.

By law, a private occupational school's certificate of authorization must be renewed annually for the school's first four years, after which it may be eligible for an extended authorization of up to five years.

Change of Ownership Process and Fee

Under prior law, a private occupational school that changed ownership had to ask DHE for a revision to its certificate of authorization. The act requires such schools to (1) reapply for authorization; (2) file with the commissioner an irrevocable letter of credit, which the

act increases from \$20,000 to \$40,000; and (3) pay a nonrefundable change of ownership fee of \$2,000 plus \$200 for each in-state branch to the student protection account.

Hospital-Based Occupational School Fees

The act conforms the law to practice by requiring hospital-based occupational schools to pay a \$200 annual fee to the student protection account for each year after the school's initial period of authorization. The law already requires these schools to pay a \$200 renewal fee, in addition to quarterly assessments on tuition revenue. By law, a hospital-based occupational school must renew its certificate of authorization with DHE every three years.

HEARINGS FOR AGGRIEVED SCHOOLS

The law permits the higher education commissioner to (1) deny or revoke a private occupational school's certificate of authorization or (2) assess an administrative penalty against any school that violates any provision of the occupational school law. The act transfers, from the BOG to the commissioner, the authority to hear complaints from aggrieved schools. Hearings must continue to comply with the Uniform Administrative Procedure Act.

The act also makes a conforming change by giving the commissioner the sole authority, through the attorney general, to ask the Hartford Superior Court to enforce any order it issues and for other appropriate relief. Previously, the BOG or the commissioner could petition the court.

PRIVATE OCCUPATIONAL SCHOOL STUDENT PROTECTION ACCOUNT

By law, the Private Occupational School Student Protection Account is used to make tuition refunds to students who are unable to complete a course at a private occupational school that becomes insolvent or ceases operating. The act prohibits the account from being used to repay federal student loans. And it requires that the student protection account contain, in addition to quarterly tuition assessments, any fees and other funds the law requires.

BACKGROUND

Federal Student Loan Discharge for School Closure

The U.S. Department of Education discharges a student's obligation to repay federal student loans if he or she cannot complete a program of study due to a school's closure. The loan discharge application requires applicants to assign and transfer to the

department any right to a refund on the discharged loans made by a third party, including those made by a tuition recovery program.

Financial Ratio Scoring System

The U.S. Department of Education uses a financial ratio scoring system as a measure of an institution's financial responsibility in determining its eligibility for participation in federal student aid programs. The system uses composite scoring, based on an institution's primary reserve, equity, and net income ratios, to measure its viability, profitability, liquidity, ability to borrow, and capital resources.

Related Act

The law permits the DHE commissioner to assess a \$500-per-day administrative penalty against any private occupational school that violates any provision of the occupational school law. Public Act 09-116 extends the penalty to violations of any applicable regulations.

PA 09-110—SB 842

*Higher Education and Employment Advancement Committee
Banks Committee*

AN ACT CONCERNING A STUDENT LOAN GUARANTEE PROGRAM RESERVE FUND

SUMMARY: This act requires the Connecticut Health and Education Facilities Authority (CHEFA) to allocate up to \$3.5 million from its reserves to guarantee qualifying student loans issued by credit unions participating in the Credit Union League of Connecticut (CULC) Student Loan Program. CULC administers the program, which offers low interest loans to students having difficulty obtaining financing for higher education due to (1) restrictive underwriting criteria, (2) reduced access to home equity loans, or (3) the decreased market value of homes.

EFFECTIVE DATE: Upon passage

CREDIT UNION LEAGUE STUDENT LOAN PROGRAM

Loan Guarantee

CHEFA must keep the allocated funds in a separate Credit Union League Student Loan Program protection account for as long as they are needed for the program, after which they revert to CHEFA's general reserves. The funds must be used to provide participating credit unions a first loss guarantee of up to 20% of the qualifying student loans' outstanding principal. The

amount of an individual loan guarantee cannot exceed 20% of the loan's original principal.

Qualifying Student Loans

The act defines a qualifying student loan as a loan:

1. made to an eligible student;
2. originated by a participating credit union;
3. subject to the participating credit union's student loan underwriting standards;
4. subject to an annual interest rate of up to (a) 5.75% or (b) 6% for loans that defer interest payments for one year; and
5. disbursed by December 31, 2009, or at a later date if CHEFA's board of directors approves.

To be eligible, a student must be (1) enrolled in an accredited higher education institution in the state or (2) a state resident enrolled in any accredited higher education institution.

BACKGROUND

CULC

CULC is a nonprofit trade association representing and serving 146 credit unions in the state.

CHEFA

CHEFA is a quasi-public agency that issues tax-exempt bonds on behalf of nonprofit colleges and health care institutions to support the construction of facilities such as dormitories, academic buildings, athletic facilities, clinics, hospitals, and laboratories. Its bonds are not financed with state funds.

PA 09-116—sSB 801

*Higher Education and Employment Advancement Committee
Judiciary Committee*

AN ACT CONCERNING THE ASSESSMENT OF AN ADMINISTRATIVE PENALTY FOR VIOLATING REGULATIONS CONCERNING PRIVATE OCCUPATIONAL SCHOOLS

SUMMARY: The law permits the Department of Higher Education (DHE) commissioner to assess a \$500-per-day administrative penalty against any private occupational school that violates any provision of the occupational school law. This bill extends the penalty to violations of any applicable regulations.

EFFECTIVE DATE: October 1, 2009

BACKGROUND

Related Act

Public Act 09-99 revises the process for a private occupational school to appeal the DHE commissioner's decision to deny or revoke its authorization or assess an administrative penalty.

PA 09-130—sHB 6336

*Higher Education and Employment Advancement Committee
Public Health Committee*

AN ACT CONCERNING NURSES PURSUING ADVANCED DEGREES

SUMMARY: This act requires the Board of Trustees of the Community-Technical Colleges to take all feasible steps to maximize available federal funds to establish a nursing program at Northwestern Connecticut Community College.

EFFECTIVE DATE: July 1, 2009

PA 09-159—SB 795

Higher Education and Employment Advancement Committee

AN ACT CONCERNING GRADUATE PROGRAMS AT CHARTER OAK STATE COLLEGE, THE KIRKLYN M. KERR GRANT PROGRAM AND VETERAN TUITION WAIVERS

SUMMARY: The law requires the boards of trustees of UConn, the Connecticut State University system, and the regional community-technical colleges to waive tuition for veterans who meet certain criteria. This act allows the institutions to recover federal educational assistance payments under the 2008 Post-9/11 Veterans Educational Assistance Act by limiting the waiver for eligible veterans who apply for these benefits. It (1) requires that the college waive only the tuition charges that exceed the amount of federal benefits granted for tuition and (2) establishes a formula for calculating the federal benefit amount.

The act explicitly authorizes the Board for State Academic Awards to award undergraduate and graduate credits and degrees and allows it to do so through courses offered by Charter Oak State College.

The act designates the Department of Higher Education grant program for state residents pursuing veterinary medicine degrees as the Kirklyn M. Kerr grant program. It also makes technical and conforming changes and corrects internal references.

EFFECTIVE DATE: July 1, 2009

POST- 9/11 VETERANS EDUCATIONAL ASSISTANCE

The act requires, for qualifying veterans who have applied for federal educational assistance under the 2008 Post-9/11 Veterans Educational Assistance Act, that the institution waive only the tuition charges that exceed the "veteran tuition benefit." It defines "veteran tuition benefit" as the portion of federal educational assistance, pursuant to the federal act, that represents payment for tuition due to the college on behalf of the veteran. The act establishes the following formula for calculating the veteran tuition benefit:

Total amount of federal educational assistance due to the college on behalf of the veteran	x	Actual tuition charged to the veteran
		Actual tuition and fees charged to the veteran

If the veteran certifies to the pertinent board of trustees that his or her application for such federal educational assistance has been denied or withdrawn, the board must waive the veteran's tuition pursuant to the state's existing tuition waiver law.

Veterans Tuition Waiver Eligibility

To qualify for a tuition waiver under existing law, a veteran must:

1. have at least 90 days of wartime service during or in specified wars, operations, or conflicts unless he or she was separated from service sooner because of a Veterans' Administration-rated, service-connected disability or served for the duration of any military operation that lasted for less than 90 days;
2. be honorably discharged from active service;
3. be accepted for admission at one of the state's public colleges or universities; and
4. be domiciled in the state when he or she is accepted for admission.

BOARD FOR STATE ACADEMIC AWARDS

Prior law authorized the Board for State Academic Awards to (1) award credits and degrees based on examinations and other types of learning evaluation and validation, including credit transfers and (2) appoint adjunct faculty as consulting examiners to make recommendations on requirements and standards for the board's programs, credits, and degrees.

This act explicitly authorizes the board to award undergraduate and graduate credits and degrees and allows it to do so through courses offered by Charter Oak State College. It also explicitly allows the consulting examiners to make recommendations for awarding undergraduate and graduate credits and degrees.

BACKGROUND

Post-9/11 Veterans Educational Assistance Act

Veterans, including guard members called to federal active duty, generally qualify for benefits under this federal act if they have served at least 90 days of active duty (unless released earlier for specified reasons), with at least some active duty service on or after September 11, 2001.

The amount of benefits depends on certain factors, including the veteran's enrollment (e.g., part- or full-time) and service status.

In general, veterans are eligible for up to 36 months of assistance (four academic years), including tuition and other benefits (e.g., housing, books, and supplies).

Benefits may be used only at degree-granting institutions.

Private colleges and universities can participate in the program. The federal government will pay up to 50% of the cost greater than the most expensive public program and make tuition and fee payments directly to the school.

Veterans who receive educational benefits under this act may not receive assistance under other similar programs at the same time.

PA 09-40—SB 251

Housing Committee

Planning and Development Committee

**AN ACT CONCERNING HOUSING
DEVELOPMENT IN ENTERPRISE ZONES**

By law, these zones offer generally the same types of incentives—property tax exemptions and corporation business tax credits. In most cases, to receive an incentive, a business must improve property and create new jobs.

SUMMARY: This act eliminates the option community development organizations previously had to use Department of Economic and Community Development (DECD) grants to build or rehabilitate either decent or affordable rental or owner-occupied housing in enterprise zones. It instead specifies that the organizations may use the grants to build or rehabilitate housing only for low- and moderate-income people.

EFFECTIVE DATE: October 1, 2009

BACKGROUND

Low- and Moderate-Income

Housing for low- and moderate-income people typically refers to residences for people earning 80% or less of the area median income (AMI), with low-income referring more specifically to those earning 60% or less of AMI.

Community Development Grants

The law requires DECD to establish a financial assistance program for job development and creation, neighborhood revitalization, and business stability and development promotion in enterprise zones. DECD's commissioner must solicit applications from community development organizations (which the statute does not define) located in enterprise zones to operate the programs. Applicants must indicate a strategy to achieve neighborhood economic development in the zone.

Under the law, the commissioner must contract with and provide grants within available funds to qualified community development organizations. The organizations may provide grants, loans, or deferred loans to eligible applicants. The law requires the DECD commissioner to set criteria for eligible applicants and activities.

Enterprise Zones

The law explicitly authorizes 15 enterprise zones, all of which have been designated. It also authorizes the designation of additional zones under narrow criteria, and two of these have been designated. The municipalities with enterprise zones are: Bridgeport, Bristol, East Hartford, Groton, Hamden, Hartford, Meriden, Middletown, New Britain, New Haven, New London, Norwalk, Norwich, Southington, Stamford, Waterbury, and Windham.

PA 09-8—HB 6351

Human Services Committee

AN ACT CONCERNING THE LEGISLATIVE COMMISSIONERS' RECOMMENDATIONS FOR TECHNICAL REVISIONS TO THE HUMAN SERVICES STATUTES

SUMMARY: This act makes technical corrections in certain statutes governing the Department of Social Services, the Commission on the Deaf and Hearing Impaired, and child support enforcement.

EFFECTIVE DATE: October 1, 2009

PA 09-9—HB 6401

Human Services Committee

AN ACT CONCERNING THE FEDERAL SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM

SUMMARY: This act makes the statutory changes necessary to reflect the change in the federal Food Stamp program's name to the Supplemental Nutrition Assistance Program. The 2008 federal Food, Conservation, and Energy Act changed the program's name, effective October 1, 2008. This program provides federally funded food assistance to low-income individuals and families in the form of electronic benefits on a debit-type card. The Department of Social Services (DSS) administers Connecticut's program.

To avoid confusion, the act changes the name of another DSS program, the Supplemental Nutrition Assistance Program, to the Supplemental Nutrition Commodities Assistance Program. This is a state-funded program that provides funds for the purchase of high protein and other nutritionally beneficial supplemental foods for soup kitchens, food pantries, and emergency shelters.

Finally, the act removes obsolete language regarding the sales tax for items purchased with Food Stamps. The law, unchanged by the act, exempts these purchases from the state sales tax.

EFFECTIVE DATE: Upon passage

PA 09-14—HB 6379

*Human Services Committee
Appropriations Committee*

AN ACT IMPLEMENTING THE GOVERNOR'S BUDGET RECOMMENDATIONS CONCERNING MAXIMIZATION OF PHARMACY REBATES

SUMMARY: Federal Medicaid law establishes two different formulas for calculating drug rebates for drugs dispensed to Medicaid recipients—one for brand names and another for generics. Retroactive to February 1, 2008, this act requires the rebates the Department of Social Services (DSS) collects from drug manufacturers whose products are provided to Connecticut Pharmaceutical Contract to the Elderly and Disabled (ConnPACE), State-Administered General Assistance (SAGA), and Connecticut AIDS Drug Assistance Program (CADAP) recipients to equal the rebates it collects for Medicaid recipients. For the other DSS pharmacy assistance programs, the act establishes a lower rebate for brand name drugs.

The act also:

1. prohibits DSS from paying for any prescription drugs of manufacturers that do not provide rebates unless DSS determines that a particular manufacturer's drug is medically necessary for one of its clients;
2. specifies that drug manufacturers must provide rebates only after their drug has been on the market for a certain period of time;
3. requires participating manufacturers to notify DSS when they are providing rebates, on a form DSS prescribes, and requires DSS to notify them when it establishes a new pharmacy assistance program;
4. removes a requirement that DSS have an application form and issue certificates for every manufacturer providing rebates; and
5. permits DSS to enter into additional contracts for supplemental rebates for drugs on its preferred drug list.

EFFECTIVE DATE: Upon passage

DRUG REBATES IN DSS PROGRAMS

General Rebate Requirement

The act provides that retroactive to February 1, 2008, any manufacturer of a drug covered by DSS medical assistance programs that are "federally qualified" state pharmacy assistance programs (SPAP) must provide rebates to DSS. These rebates must be the same as those DSS receives for Medicaid-covered drugs.

Under federal law, the Medicaid rebate the state receives for generic drugs equals the average manufacturer's price (AMP) times 11%. For brand name drugs, the rebate is the greater of the AMP times 15.1% or the AMP minus best price (BP). The state receives an additional rebate when the price of the drug increases faster than inflation (see BACKGROUND).

For non-federally qualified programs, and also retroactive to February 1, 2008, the act establishes a separate formula for brand name drugs. (For both federally and non-federally qualified programs, the rebates for generic drugs remain the same.) It is the Medicaid formula without the additional rebate for inflation. But if the rebate would establish a new Medicaid BP, the unit amount is capped at the AMP minus BP.

Prior law required drug manufacturers to provide rebates for drugs covered by any DSS medical assistance program, and the amount and administration of the rebates were calculated in accordance with the rebates negotiated under the ConnPACE program.

The act specifies that a manufacturer is not required to provide a rebate for a drug that is new to the market until the quarter in which the manufacturer has established a Medicaid BP for it.

The act does not define what a federally qualified program is (see BACKGROUND).

ConnPACE

The act requires the unit rebate amount for drugs dispensed under the ConnPACE program to be the same as it is under the Medicaid program.

The act eliminates a requirement that the (1) DSS commissioner establish an application form for manufacturers who want to participate in the ConnPACE program and (2) DSS issue a certificate of participation for manufacturers whose drugs are purchased under that program.

Dually Eligible for Whom Supplemental Needs Fund Pays for Prescriptions

In general, the state does not collect rebates for individuals eligible for both Medicare and Medicaid since the Medicare Part D program pays for their drugs and negotiates directly with the drug companies. But for drugs that the Part D plans do not cover, the state has used a special Supplemental Needs Fund to pay for them. Under the act, for generic drugs, the rebate for these drugs equals the average manufacturer's price (AMP) times 11%. For brand name drugs, the rebate is the greater of the AMP times 15.1% or the AMP minus BP.

The act provides that if the calculated rebate establishes a new Medicaid BP, the unit rebate amount will be capped at the AMP minus BP.

Administration of Rebates

The act requires manufacturers to submit written confirmation of participation on a form that DSS prescribes stating the terms of participation, including the process for discontinuing participation. If DSS establishes a new pharmacy assistance program, the act requires it to provide (1) advance notice to manufacturers participating in existing programs and (2) opportunity for them to stop participating. The act likewise requires DSS to promptly notify participating manufacturers if they become disqualified. If disqualification occurs and a manufacturer has paid rebates at the rate for a qualified program, DSS must reimburse the manufacturer the amount it overpaid as a result of the disqualification.

Supplemental Rebates for Drugs on Preferred Drug List (PDL)

The act permits DSS to enter into contracts for supplemental rebates for drugs that are on its PDL or a formulary that it establishes. By law, DSS can negotiate supplemental rebates for Medicaid-covered drugs on its PDL.

BACKGROUND

Medicaid Rebates—Federal Law

Since 1990, federal law has required drug manufacturers to enter into rebate agreements with state Medicaid programs and requires these programs to cover all of those manufacturer's drugs. States share any rebates collected with the federal government, since it pays a share of the states' drug expenditures.

Federal law defines "best price" with respect to a brand name drug as the lowest price available from the manufacturer during the rebate period to any wholesaler, retailer, provider, HMO, nonprofit entity, or government entity in the United States. Best price (1) includes cash discounts, free goods contingent on any purchase requirement, volume discounts, and rebates; (2) must be determined without regard to special packaging, labeling, or identifiers on the dosage form or product or package; and (3) may not take into account merely nominal prices.

The law also provides that for any covered outpatient drug that the Food and Drug Administration approves, the rebate must be provided during the first full calendar quarter after the day on which the drug is first marketed (42 USC § 1986r-8).

DSS Rebates and Federally Qualified SPAPs

DSS presently collects rebates on all drugs covered under the Medicaid program, which includes HUSKY A. It also receives supplemental rebates for Medicaid-covered drugs on its preferred drug list.

DSS also collects regular rebates from manufacturers that participate in ConnPACE, as well as the Connecticut AIDS Drug Assistance Program (CADAP). (The latter rebates go to the Department of Public Health.)

According to the federal Centers for Medicare and Medicaid Services (CMS), a SPAP is a pharmacy assistance program developed specifically for the aged, indigent, low-income elderly, or other financially vulnerable people. In Connecticut, besides Medicaid, this would include ConnPACE, but not the CADAP, HUSKY B, the Charter Oak Health Plan, or the Supplemental Needs-funded program that provides drug coverage to dually eligible individuals whose Medicare Part D plan formulary does not include particular drugs.

CMS has told the state that it cannot collect the Medicaid rebate for programs that are not federally qualified SPAPs, because to do so would set a new best price and force manufacturers to set a lower Medicaid rebate.

Although not a federally qualified program, CADAP drugs can also receive the Medicaid-level rebate.

PA 09-65—SB 854*Human Services Committee***AN ACT CONCERNING THE OFFICE OF PROTECTION AND ADVOCACY FOR PERSONS WITH DISABILITIES**

SUMMARY: The Office of Protection and Advocacy for Persons with Disabilities (OPA) is an independent state agency whose purpose is to protect and advocate for the civil rights of people with disabilities. This act adds to the director's existing powers the authority to ensure that all aspects of the agency's operations comply with federally established confidentiality requirements. By law, the director must ensure that all aspects of the agency's operations conform to federal protection and advocacy requirements for program independence and authority.

EFFECTIVE DATE: Upon passage

BACKGROUND

Federal Confidentiality Requirements

OPA administers several federally mandated programs and is subject to federal requirements specifically aimed at people with developmental and other disabilities, people seeking rehabilitation services or assistive technology, people with mental illness, and beneficiaries of Social Security Disability Insurance and Supplemental Security Income. Confidentiality requirements vary across programs, but generally relate to a broad range of client information.

For example, federal Protection and Advocacy for Individuals with Mental Illness (PAIMI) regulations require a state's protection and advocacy agency to keep confidential all records and information, including information kept in an automated electronic database, pertaining to (1) clients, (2) individuals who have been provided general information or technical assistance on a particular matter, (3) the identity of individuals who report or provide information about abuse and neglect incidents, and (4) the names of individuals who have received services and provided information to the protection and advocacy agency for the record.

PAIMI regulations also require state protection and advocacy agencies to have written policies about access, storage, duplication, and release of information from client records. Agencies must obtain written consent from the client before releasing his or her information to unauthorized individuals (42 CFR § 51.45).

PA 09-66—SB 872*Human Services Committee
Public Health Committee***AN ACT PROVIDING STATE-FUNDED MEDICAL COVERAGE TO CHILDREN IN THE CARE OF THE DEPARTMENT OF DEVELOPMENTAL SERVICES**

SUMMARY: This act expands eligibility for state-funded medical assistance to include children under the Department of Developmental Services' (DDS) voluntary services program who are not receiving, have not yet qualified for, or are ineligible for Medicaid. It also extends these benefits to any child under the Department of Children and Families (DCF) commissioner's supervision who is ineligible for Medicaid, not just those ineligible because of institutional status. By law, children under DCF care who are not receiving or have not yet qualified for Medicaid are also eligible.

The act requires the DDS commissioner, to the extent practicable, to apply on behalf of a child, or help a child in the program qualify for, Medicaid. The law already requires the DCF commissioner to do this on behalf of children under her supervision.

EFFECTIVE DATE: July 1, 2009

BACKGROUND

State-Funded Medical Assistance

DSS runs a state-funded medical assistance program for children under DCF supervision through a cooperative arrangement with DCF. These include children who are (1) incarcerated or residing in detention facilities, (2) undocumented non-citizens, (3) being placed in residential treatment facilities under the voluntary services program, and (4) not yet determined eligible for Medicaid. Federal law prohibits states from granting Medicaid eligibility to individuals in correctional institutions.

State medical assistance provides one month of bridge coverage to children in the voluntary services program who are placed in residential treatment while their parent's income is still counted in determining their child's Medicaid eligibility. It may also cover children placed in out-of-state treatment facilities who may not be eligible for Medicaid.

The voluntary services program was operated solely by DCF until 2005 when it signed an interagency agreement with DDS to transition children in the program with a dual mental health and mental retardation diagnosis to DDS. DDS also serves new applicants with this dual diagnosis.

PA 09-67—sSB 893

*Human Services Committee
Public Health Committee*

AN ACT CONCERNING NOTIFICATION TO THE OFFICE OF PROTECTION AND ADVOCACY FOR PERSONS WITH DISABILITIES OF DEPARTMENT OF MENTAL HEALTH AND ADDICTION SERVICES CLIENT DEATHS

SUMMARY: This act requires the Department of Mental Health and Addiction Services (DMHAS) commissioner to report to the Office of Protection and Advocacy for Persons with Disabilities (OPA) director, the death of anyone receiving inpatient behavioral health services in a DMHAS-operated facility. The commissioner must report within 30 days after the individual's death.

Existing law requires the commissioner to report serious injuries or deaths resulting from the use of physical restraint or seclusion in a facility DHMAS operates, licenses, or supports.

EFFECTIVE DATE: Upon passage

PA 09-73—sSB 957

*Human Services Committee
Public Health Committee*

AN ACT CONCERNING THE ELIGIBILITY OF PERSONS LIVING IN RESIDENTIAL CARE HOMES FOR STATE SUPPLEMENT ASSISTANCE

SUMMARY: In general, individuals who transfer assets within 24 months before applying for State Supplement Program assistance are presumed to have done so to qualify for the program. Such transferors are generally ineligible for State Supplement for a period of time based on the value of the asset. But eligibility is not affected if the applicant can provide convincing evidence that the transfer was made for another reason.

This act adds a second exception by allowing transfers to "special needs trusts" by individuals who (1) are living in residential care homes (RCH) or New Horizons, Inc. (a facility for people with severe physical disabilities, located in Farmington) and (2) have available income that is above 300% of the maximum federal Supplemental Security Income (SSI) program benefit for an individual (\$2,022 per month in 2009) and below the private rate that the RCH or New Horizons charges. By law, an individual whose gross income exceeds 300% of the SSI benefit ("excess income") cannot qualify for State Supplement benefits. The act requires the social services commissioner to disregard excess income deposited into such trusts for purposes of State Supplement eligibility.

The act requires the trust to be funded solely with the individual's excess income. The trust must provide that, once the individual dies, the state will receive all amounts remaining in it after the Medicaid program is reimbursed for Medicaid-funded services the individual received, up to the amount of State Supplement provided. The type of trust someone may establish is the same that federal law allows for purposes of Medicaid eligibility (42 USC § 1396p(d)(4)).

EFFECTIVE DATE: July 1, 2009

BACKGROUND

State Supplement

The State Supplement Program (SSP) provides cash assistance to aged, blind, and disabled individuals

eligible for federal SSI benefits or who would be, but for excess income. To qualify, income cannot exceed 300% of the maximum SSI benefit, and assets are limited to \$1,600 for a single person and \$2,400 for a married couple.

The amount of the SSP benefit depends on the person's income and needs. Needs are based on the individual's living arrangement, with higher needs allowed for people residing in boarding homes (e.g., residential care homes) than for those living alone in the community. The amount of benefits paid is the difference between need and net income (income after certain deductions are taken).

PA 09-75—SB 989

*Human Services Committee
Public Health Committee*

**AN ACT CONCERNING THE ALZHEIMER'S
RESPITE CARE PROGRAM**

SUMMARY: The State-Wide Respite Care Program provides respite care for people with Alzheimer's disease or related disorders, regardless of age, who are not enrolled in the Connecticut Homecare Program for Elders (CHCPE). This act increases, from \$30,000 to \$41,000, the program's annual income limit and increases its asset limit from \$80,000 to \$109,000. Beginning July 1, 2009, the act requires the Department of Social Services (DSS) commissioner annually to increase the income and asset limits to reflect Social Security cost of living adjustments.

The act requires the commissioner to adopt regulations allowing program participants who demonstrate a need for additional services to receive up to \$7,500 for respite care services. Prior law limited respite care services to \$3,500 annually.

The act also adds personal care assistant (PCA) services to the list of respite care services the program provides. Respite care services provide short-term relief for family members caring for an individual with Alzheimer's or related diseases. They include homemaker services, adult day care, short-term medical facility care, home-health care, and companion services.

Finally, the act makes a technical change.
EFFECTIVE DATE: July 1, 2009

PA 09-118—sSB 817

*Human Services Committee
Judiciary Committee
Planning and Development Committee*

**AN ACT CONCERNING THE RIGHT TO A
HEARING IN THE RENTAL ASSISTANCE
PROGRAM AND TRANSITIONARY RENTAL
ASSISTANCE PROGRAM**

SUMMARY: This act gives individuals in the rental assistance and transitionary rental assistance programs aggrieved by decisions of the Department of Social Services (DSS) commissioner or his designated agent, the right to a hearing in accordance with the Uniform Administrative Procedure Act (UAPA) and allows them to appeal final decisions to Superior Court.

Under prior law, these individuals could request an informal hearing and a subsequent desk review to appeal DSS decisions to deny, modify, or terminate program assistance. But, because DSS was not statutorily required to hold formal hearings, individuals were unable to appeal final decisions.

EFFECTIVE DATE: October 1, 2009

UAPA HEARING PROCESS

Judicial Review

Under the act, an individual whose assistance is denied, modified, or terminated may request a department hearing in accordance with UAPA and, if still not satisfied, can appeal to Superior Court. Under UAPA, aggrieved parties have 45 days to appeal final agency decisions in "contested cases" to Superior Court. UAPA generally defines "contested cases" as those where a statute requires an agency to determine a party's legal rights, duties, or privileges after a hearing (CGS § 4-166).

Under the UAPA, the court can only overturn an agency's decision under limited circumstances. These include situations where (1) a statute or constitutional law was violated; (2) an agency acted without statutory authority; (3) the agency erred in considering the evidence; (4) the agency's procedures were unlawful; or (5) the agency was arbitrary, capricious, or abused its discretion.

PA 09-185—sHB 5421
Human Services Committee
Judiciary Committee

AN ACT CONCERNING PROCEEDINGS AND OPERATIONS OF THE DEPARTMENT OF CHILDREN AND FAMILIES AND THE DISCLOSURE OF ADOPTION INFORMATION

SUMMARY: This act requires courts to look for suitable caretaker relatives (related by blood or marriage) in the early stages of cases where children have been, or are at risk of being, removed from their homes due to allegations of abuse or neglect. It allows a parent who is the subject of the abuse or neglect charges to ask the Department of Children and Families (DCF) commissioner to investigate placing the child with relatives and, where practicable, requires the commissioner to report on a relative's suitability at the first court hearing in the case. It establishes court procedures for making placement decisions when a relative seeks custody and creates a rebuttable presumption that placing a child with a relative is in the child's best interests.

The act also:

1. prohibits DCF and courts from considering a parent's applying for or receiving DCF voluntary behavioral health services for his or her child when making certain decisions about the person's suitability to care for a child;
2. eliminates a requirement for both biological parents' consent before identifying information about either one is released to an applicant, such as a biological child, and instead allows access to the records of any consenting biological parent;
3. requires DCF employees to notify the commissioner when they suspect a co-worker of illegally disclosing confidential information and specifies that they have whistleblower protections for such reports;
4. extends the relatives DCF must notify and the notice it must give when a child is removed from his or her home because of suspected abuse;
5. describes actions DCF may take concerning a guardianship custody when a guardian dies or becomes disabled;
6. adds licensed foster parents to the existing list of mandated reporters of abuse or neglect; and
7. makes minor and technical changes.

EFFECTIVE DATE: October 1, 2009, except the provisions concerning temporary relative placements are effective on passage and the provisions concerning guardianship transfers and mandated reporters are effective July 1, 2009.

§ 3 — RELATIVES AS PREFERRED CAREGIVERS – ABUSE AND NEGLECT CASES IN SUPERIOR COURT

Notice to Parents at Outset of Case

By law, when DCF, or any other agency or authorized person, files an abuse or neglect petition and the court finds that there is reasonable cause to believe that removing a child from home is necessary, it must hold a preliminary hearing within 10 days. It must give the child's parents certain information in clear and simple language about the case and their legal rights before the hearing. The act requires this information to include that they can request the DCF commissioner to investigate placing the child with a person who is related to the child by blood or marriage and who might serve as a licensed foster parent or temporary custodian. Where practicable, the DCF commissioner must investigate such a placement and report to the court on a relative's suitability at the preliminary hearing.

Identifying Relatives at Preliminary Hearings

At the preliminary hearing, the act allows the court to order DCF to investigate and determine, within 30 days after the hearing, the appropriateness of placing a child with his or her relatives living in Connecticut who might serve as licensed foster parents or temporary custodians. If out-of-state relatives are identified at the hearing, the act requires DCF to complete its investigation and make a determination within a reasonable time, following the procedures in the Interstate Compact on the Placement of Children.

Granting Temporary Custody to Relatives on Request

Intervening Relatives. When DCF determines that there is no suitable relative and the court has not granted temporary custody to a relative, the act allows any relative to file a motion seeking temporary custody. The court must grant intervenor status when motions are filed not later than 90 days after the preliminary hearing date, unless it finds good cause for not doing so. The act gives the court discretion to grant intervenor status when motions are filed after that period, except when the child's most recent placement has been disrupted or is about to be disrupted, in which case the motion must be granted unless there is good cause for not doing so.

The act eliminates a requirement that courts grant grandparents' motions to intervene unless they find good cause for not doing so. Instead, grandparents are subject to the provisions regarding relatives described above.

Under the act, relatives who are granted intervenor status must appear personally in court, with or without an attorney. They are not entitled to free representation by attorneys appointed by the court or assigned by the chief child protection attorney unless a judge authorizes appointment of counsel to appeal the court's child custody decision.

Investigating the Suitability of Intervening Relatives. When the court grants a relative intervenor status, the act requires the judge to order the DCF commissioner to conduct an assessment and file a written report with the court within 40 days of the order if the relative lives in-state; for out-of-state relatives, the order must be issued in accordance with the Interstate Compact on the Placement of Children.

The act also permits the court to ask the intervening relative to release his or her medical records, including psychiatric or psychological treatment records. It may order him or her to submit to a physical or mental examination, with the expenses paid in the same way as commitment costs.

The court must schedule a hearing on the relative's motion for temporary custody within 15 days after receiving the assessment. At the hearing, anyone opposing the motion (DCF, the child's attorney or guardian ad litem, or the parent or guardian) must prove by a fair preponderance of the evidence that granting the relative temporary custody would not be in the child's best interest.

Relatives granted temporary custody must comply with court orders, including those directing them to care for and supervise the child, and cooperate with DCF in implementing treatment and permanency plans and services for the child. They may object to DCF's proposed permanency or treatment plans for the child and are entitled to a court hearing to resolve the dispute. The issue may be raised by any party or the court.

The court may terminate a relative's intervenor status if, after notice and a hearing, it determines that the relative's participation in the case is no longer warranted or necessary.

Granting Legal Guardianship Relatives on Request

The act permits any relative to file a motion to intervene for purposes of seeking permanent guardianship once 90 days have passed after the preliminary hearing. It gives the court discretion to grant intervenor status to the relative, but it must do so if the child's most recent placement has been disrupted or is about to be disrupted unless it finds good cause for not doing so. The act also authorizes the court to order DCF to conduct an assessment of the intervenor.

When a court determines that a child has been abused or neglected, the law authorizes it to commit the child to DCF or place the child in the custody of a

suitable or worthy person. The act specifies that the latter may include people related to the child by blood or marriage. When the court (1) determines that a DCF commitment should be revoked and that the child should be placed with someone other than the parent or (2) terminates parental rights, the act establishes a rebuttable presumption that custody or guardianship or, in the case of termination of parental rights, a potential adoption, should be awarded to a relative who is a licensed foster parent or certified relative caregiver or is currently acting as the child's temporary custodian pursuant to a court order. The presumption may be rebutted by a preponderance of evidence showing that (1) the award of custody or guardianship to, or adoption by, the relative would not be in the child's best interests and (2) the relative is not a suitable or worthy person.

The act adds relatives related by marriage as an option for DCF when placing a child.

§§ 4 & 5 — RELATIVES AS PREFERRED CAREGIVERS – PROBATE COURT CASES

The act also authorizes relatives to file motions to intervene in probate court cases in which an application to remove one or both parents as guardians or to terminate parental rights has been filed. The court must grant these motions unless it finds good cause for not doing so. Intervening relatives may either personally appear in court or be represented by an attorney.

The act establishes a presumption that awarding temporary custody to a relative is in the best interests of the child. The presumption may be rebutted by a preponderance of evidence showing that this is not the case. Finally, it establishes a rebuttable presumption favoring relatives in guardianship or co-guardianship proceedings.

§ 7 — RELATIVE CAREGIVER'S DEATH OR ILLNESS

When a relative caregiver who is receiving a guardianship subsidy dies or becomes severely disabled or seriously ill, the act authorizes DCF to transfer the subsidy to a new relative caregiver. The new caregiver must meet DCF's foster care safety requirements and be appointed legal guardian by a court.

§ 6 — DISREGARD OF VOLUNTARY SERVICES APPLICATIONS

DCF's Voluntary Services Program is for children with serious mental health conditions who could not otherwise gain access to treatment they need. The act prohibits the fact that a parent applied for or received voluntary services for a child from being used against him or her:

1. in DCF child abuse or neglect investigations,
2. when placement decisions are being made about the child,
3. in foster care licensing decisions, or
4. in any court proceeding concerning the placement of a child who is related to the parent.

§ 10 — ACCESS TO DCF RECORDS

Under prior law, DCF could not release information identifying a biological parent without the written consent of both parents. Beginning October 1, 2009, the act allows DCF and adoption agencies to release information if the biological parent whose information is to be disclosed provides written consent. DCF or the adoption agency must first attempt to locate the other biological parent to obtain written consent to permit disclosure. If the other biological parent cannot be located or does not provide written consent, identification of the consenting parent may be disclosed provided: (1) information about the non-consenting parent is not disclosed and (2) the consenting parent signs an affidavit that he or she will not disclose information identifying the non-consenting parent without written consent.

§ 1 — REPORTING BREACHES OF DCF RECORD CONFIDENTIALITY LAWS

The act requires DCF employees to report to the commissioner in writing when they reasonably suspect a co-worker of illegally disclosing confidential department records. They must include the name of the person who disclosed the record; to whom it was disclosed; and the nature of the information involved, if known. The act explicitly protects these people from retaliation.

The act also limits the existing exception from record confidentiality laws by requiring that the subject of the record file written permission to disclose it. Prior law did not require that consent be given in writing.

§ 9 — NOTIFYING RELATIVES

When DCF removes a child from his or her home because of allegations of abuse or neglect, it must immediately, and with due diligence, identify all grandparents and other relatives of the child, including those the parents suggest, subject to exemptions for family or domestic violence. Within 30 days after the removal, the commissioner must give the relatives notice that:

1. the child has been or is being removed from his or her parent or guardian;
2. explains the options that the relative has under federal, state, and local law to participate in the care and placement of the child, including any options that may be lost by failing to respond to the notice;
3. describes the requirements (a) to obtain a foster care license and (b) for additional services and supports that are available for children placed in their homes; and
4. describes the subsidized guardianship program, including eligibility requirements, the application process, and financial assistance available under the program.

Probate Court Placement Considerations

By law, probate courts must consider the following when appointing temporary guardians for children under these circumstances:

1. the prospective guardian's ability to meet the child's physical, emotional, moral, and educational needs on a continuing daily basis;
2. the child's wishes if he or she is at least age 13 or of sufficient maturity and capable of forming an intelligent preference;
3. whether there is an existing relationship between the child and prospective guardian; and
4. the best interests of the child (CGS § 45a-617).

Confidential DCF Records

In general, DCF cannot disclose information it creates or obtains in connection with its child protection activities or other activities related to a child who is or was in its care or custody or a person it has investigated for child abuse or neglect without (1) obtaining permission from the person who is the subject of the record or an authorized representative or (2) legal authorization to do so without the person's consent. Existing law specifies many entities and officials to whom DCF must disclose records that would otherwise be confidential, in most cases expressly limiting the uses recipients can make of the information. It also lists entities and people with whom DCF may share information when the commissioner or her designee determines this is in the best interests of the person who is the subject of the record.

Anyone who discloses any part of a confidential record is subject to imprisonment for up to one year, a fine of up to \$1,000, or both.

PA 09-197—HB 6523

Human Services Committee

**AN ACT CONCERNING LICENSING OF
ADOLESCENT SUBSTANCE ABUSE
TREATMENT FACILITIES AND MATERNITY
HOMES**

SUMMARY: This act exempts from Department of Public Health (DPH) licensure requirements individuals to whom the Department of Children and Families (DCF) issues a license for operating (1) a substance abuse treatment facility or (2) maternity homes that offer care to pregnant women during their pregnancies, new mothers, and their newborns. Also, the act repeals the law requiring maternity homes to get DPH licenses. DCF licenses maternity homes.

Additionally, the act allows non-nursing staff to administer medication to children or youths residing in DCF-licensed substance abuse treatment facilities. Existing law already allows non-nursing staff to administer medication to people (1) attending day programs, living in residential treatment facilities, or receiving individual and family support under DCF or the Correction or Developmental Disabilities departments or (2) being detained in juvenile detention centers or living in residential treatment facilities dually licensed by DCF and DPH. The person administering the medication must (1) be trained and (2) do so pursuant to a written order from a doctor or other medical personnel licensed to prescribe medicine.

EFFECTIVE DATE: July 1, 2009

PA 09-210—sSB 954

Human Services Committee

Government Administration and Elections Committee

**AN ACT CONCERNING PERSONAL SERVICE
AGREEMENTS, PURCHASE OF SERVICE
CONTRACTS AND NONEMERGENCY
MEDICAL TRANSPORTATION SERVICES**

SUMMARY: The law establishes two types of contracts that state agencies execute when procuring services from private providers—personal service agreements (PSA) and purchase of services (POS) contracts. PSAs are written agreements defining the services or end product to be delivered by a contractor to a state agency. A POS is a contract between a state agency and a private provider organization or municipality for the purchase of ongoing direct health and human services for agency clients. This act:

1. changes how the Office of Policy and Management (OPM) reports to the legislature annually on PSA activities, and eliminates a

requirement that OPM report on POS activities;

2. eliminates (a) the requirement that state agencies submit semi-annual reports on their PSA activities and (b) other reporting requirements;
3. prohibits state agencies from hiring certain health or human service providers without first executing POS contracts; and
4. clarifies the POS definition.

The act also deletes an obsolete reference to purchase orders and makes technical and conforming changes.

Additionally, the act requires any contractor (broker) (1) to which DSS awards a contract to coordinate nonemergency transportation (NEMT) to Medicaid recipients and (2) that also coordinates transportation for individuals not receiving Medicaid to disclose to any transportation provider with which it contracts the source of payment when the transportation service is requested. (If the Medicaid recipient requests the transport from the broker, the broker would not be able to contact the provider at the same time.)

And the act requires all NEMT brokers to make prior authorization (PA) decisions for nonemergency hospital discharge ambulance trips no later than three business days after the hospital or ambulance company submits the PA request. If the broker fails to communicate a decision by the deadline, the request is deemed approved.

EFFECTIVE DATE: Upon passage, except the NEMT provisions are effective on July 1, 2009 and the provision requiring the annual reports on PSAs is effective October 1, 2009.

PSA AND POS CONTRACTS

OPM Reports

Beginning October 1, 2009, the act requires the OPM secretary annually to submit a report to the General Assembly on PSAs executed during the preceding fiscal year. This information includes the name of the personal service contractor, a description of services provided, the term and cost of the agreement, selection methods, and amounts paid for each contract. The act eliminates a requirement that OPM submit a summary report on PSA activity annually.

Previously, the Department of Transportation (DOT), every six months, had to report to OPM on agreements it executed with (1) persons or entities performing consultant services or (2) federal or state agencies. The act instead requires OPM to report separately to the General Assembly on agreements for these specific types of contracts, not just DOT ones, executed during the preceding fiscal year, as well as

those for contractual services as defined in state law (see BACKGROUND).

By law, personal service contactors are people or entities that state agencies hire to provide services to the agency. They do not include those performing contractual or consultant services (CGS § 4-212).

Finally, the act eliminates a requirement that the OPM secretary report every two years on the POS system.

Elimination of Agency Responsibilities

The act eliminates two separate requirements that every six months each state agency submit reports to the OPM secretary on PSAs executed during the previous six months. The first one required a report for PSAs costing no more than \$20,000. The second one required a reporting of PSAs executed with a person, firm, or corporation providing “contractual services,” regardless of the PSA cost, as well as those between agencies and consultants and federal or state agencies. By definition, a PSA cannot cover these types of services so it is not clear how this was interpreted under prior law.

The act also eliminates a requirement that each agency with proposed PSAs costing between \$20,001 and \$50,000 submit information about the PSAs to OPM at the same time it submits the information to the commissioner of administrative services or the attorney general.

POS Contracts

The act codifies prior practice by prohibiting state agencies from hiring a private provider organization or municipality to provide direct health or human services to the agency’s clients without executing a POS contract with them.

The act explicitly subjects POS contracts to the same competitive procurement requirements as the law requires for PSAs. The law already authorizes the OPM secretary to waive these requirements for POS contracts.

The act specifies that POS contracts are generally not for administrative or clerical services, material goods, training, or consulting services and do not include a contract with an individual.

The act also defines terms already in the POS law. For example, it defines a “private provider organization” as a nonstate entity that is either a for- or nonprofit corporation or partnership that receives funds from the state, and may receive federal or other funds, to provide direct health and human services to agency clients.

BACKGROUND

Contractual and Consulting Services

The law governing general state purchases defines “contractual services” as any and all (1) laundry and cleaning, pest control, janitorial, or security services; (2) rental or repair or maintenance of equipment, machinery, and other state-owned personal property; (3) advertising, photostating, and mimeographing; and (4) other service arrangements where the services are provided by someone other than a state employee.

“Consultants” are defined in the state law governing the construction and alteration of state buildings as (1) architects, professional engineers, landscape architects, land surveyors, accountants, interior designers, environmental professionals, or construction administrators registered or licensed to practice their profession or (2) planners or financial specialists.

CORE-CT and PSA and POS Reports

CORE-CT, the state’s central financial and administrative computer system, encompasses central and agency accounting functions for executive branch agencies. Since 2005, agencies have been required to enter their contracting data into CORE-CT, and OPM has the ability to generate reports about agencies’ PSA and POS activities. OPM requires agencies to enter all contract data with CORE-CT and can access this data to get the reports that the law requires the agencies to provide. OPM’s annual report on PSAs includes POS contract activity.

No Legal Distinction Between PSA and POS

In 2005, the attorney general issued a formal opinion (No. 031) that there is no legal distinction between a PSA and POS contract, and that both are subject to competitive procurements.

Medicaid Nonemergency Transportation

DSS presently contracts with three transportation brokers that coordinate nonemergency transportation for Medicaid recipients. State regulations require prior authorization (PA) for most nonemergency ambulance trips, and the brokers must obtain this from DSS before they can authorize them. The contracts do not require the brokers to obtain PA within a specific time, including after hours and weekends, but at least two have back-up systems to receive and respond to PA requests.

PA 09-24—sHB 6356

Insurance and Real Estate Committee

AN ACT AMENDING THE EXTENDED WARRANTY STATUTES

SUMMARY: This act requires an insurer issuing an extended warranty reimbursement insurance policy in Connecticut to meet certain requirements when filing a policy form with the insurance commissioner and continuously thereafter. By law, insurers must file extended warranty insurance policies and endorsements with the insurance commissioner for his review prior to use.

Specifically, the act requires an extended warranty insurer to:

1. maintain surplus and paid-in capital of at least \$15 million;
2. demonstrate to the commissioner’s satisfaction that it maintains a value of net written premiums that is no more than three times the amount of surplus and paid-in capital; and
3. annually file with the commissioner copies of (a) its audited financial statements, (b) the annual statement it files with the National Association of Insurance Commissioners, and (c) any actuarial certification that it must file with its domicile state.

The act is silent with respect to penalties should an insurer fail to comply with the new requirements.

EFFECTIVE DATE: October 1, 2009

BACKGROUND

Definitions

The law defines “extended warranty” as a contract or agreement to perform or indemnify a product’s repair, replacement, or maintenance in case of an operational or structural failure that a defect in material, skill, or workmanship or normal wear and tear caused in exchange for a price separate from that charged for the product’s lease or purchase price.

An “extended warranty reimbursement insurance policy” is an insurance policy covering an extended warranty provider’s obligations and liabilities under an extended warranty the provider sold.

An “extended warranty provider” is a person who (1) issues, makes, provides, or offers an extended warranty to a buyer and (2) is contractually obligated under the warranty to provide service. It excludes a retail seller if (1) the seller, or its subsidiary, manufactured the product the warranty covers; (2) the extended warranty it offers or sells obligates the manufacturer or its subsidiary, distributor, or importer to provide the service or indemnity the warranty

requires; or (3) under the warranty’s terms, the seller performs at least 90% of the repair service.

Extended Warranty

By law, an extended warranty cannot be issued, sold, or offered unless the extended warranty provider (1) is insured under an extended warranty reimbursement insurance policy issued by an insurer authorized to do business in Connecticut or (2) can demonstrate that its claim reserves do not exceed 50% of its audited net worth. If they do, the provider must have an independent trustee hold the reserves in trust and an actuary annually certify their adequacy. The law does not apply to a home warranty contract or home warranty service agreement.

The law requires an extended warranty provider to file with the insurance commissioner a copy of its (1) extended warranty form and (2) extended warranty reimbursement insurance policy or certification from a certified public accountant attesting to the adequacy of its claim reserves.

PA 09-41—sSB 458

*Insurance and Real Estate Committee
Public Health Committee*

AN ACT REQUIRING COMMUNICATION OF MAMMOGRAPHIC BREAST DENSITY INFORMATION TO PATIENTS

SUMMARY: This act requires all mammography reports (i.e., written results of a mammogram) given to a patient on and after October 1, 2009 to include information about breast density based on the American College of Radiology’s Breast Imaging Reporting and Data System (BIRADS). When applicable, the report must include the following notice:

“If your mammogram demonstrates that you have dense breast tissue, which could hide small abnormalities, you might benefit from supplementary screening tests, which can include a breast ultrasound screening or a breast MRI examination, or both, depending on your individual risk factors. A report of your mammography results, which contains information about your breast density, has been sent to your physician’s office and you should contact your physician if you have any questions or concerns about this report.”

EFFECTIVE DATE: October 1, 2009

BACKGROUND

Federal Requirements for Mammography Report

The federal Mammography Quality Standards Act requires a mammography facility to provide a mammogram report containing the imaging results to the patient and patient's health care provider within 30 days of the exam. The physician's report is clinical in nature, but the patient's report must be in plain, easy-to-understand language. If the result is "suspicious" or "highly suggestive of malignancy," the facility must make reasonable attempts to communicate with the patient and health care provider as soon as possible (42 USC § 263b(f)(1)(G)(ii) and 21 CFR § 900.12(c)(2),(3)).

BIRADS

The American College of Radiology collaborated with the National Cancer Institute, the Centers for Disease Control and Prevention, the American Medical Association, and others to develop BIRADS, which is used to standardize mammography reporting. There are two BIRADS scales: one characterizes breast density and the other characterizes a radiologist's reading of what he or she sees on a mammogram. The breast density scale ranges from 1 (no areas with tissue that could obscure cancer) to 4 (tissue that can obscure cancer in more than 75% of the breast).

PA 09-46—sSB 46

Insurance and Real Estate Committee

AN ACT CONCERNING THE CONSUMER REPORT CARD

SUMMARY: This act requires the (1) insurance commissioner to include in the annual health insurance consumer report card the medical loss ratio of each insurer and HMO included in the report and (2) Insurance Department to prominently display a link to the report card on its website. The act requires each health insurer or HMO to disclose its medical loss ratio, as reported in the most recent consumer report card, in writing to a person when he or she applies for coverage. (In effect, this provision only applies to HMOs and the 15 largest insurers that offer managed care plans in Connecticut, as these are the companies included in the report by law.)

The act defines "medical loss ratio" as the ratio of incurred claims to earned premiums for the prior calendar year for managed care plans issued in Connecticut. It limits "claims" to medical expenses for services and supplies provided to enrollees, excluding

expenses for stop loss coverage, reinsurance, enrollee educational programs, and other cost containment programs or features.

It also applies this definition to the laws requiring a managed care organization (MCO) to give certain information, including its medical loss ratio, to the commissioner and plan enrollees. Prior law described an MCO's medical loss ratio as the "percentage of the total premium revenue spent on medical care compared to administrative costs and plan marketing." The act also changes the date by which an MCO must annually report to the insurance commissioner from May 1 to January 1.

The act names the report card the "Consumer Report Card on Health Insurance Carriers in Connecticut" and changes, from March 15 to October 15, the date by which the insurance commissioner, after consultation with the public health commissioner, must annually develop and distribute it.

EFFECTIVE DATE: October 1, 2009

BACKGROUND

Managed Care Organizations

The law defines an MCO as an insurer, HMO, hospital or medical service corporation, or other organization delivering, issuing, renewing, or amending individual or group health managed care plans in Connecticut.

PA 09-48—sSB 764

Insurance and Real Estate Committee

AN ACT CONCERNING DERIVATIVE FINANCIAL TRANSACTION CONTROLS

SUMMARY: This act specifically allows a U.S. insurer doing business in Connecticut to enter into derivative financial transactions as long as it is prudent given the company's business and diversification considerations. This is, by law, the standard that generally applies to an insurer's investments. The act specifies that derivative financial transactions include swaps, options, forwards, futures, caps, floors, collars, and similar instruments or combinations of them.

The act requires an insurer entering into these transactions to include in its audited financial report a statement from the independent certified public accountant (CPA) who audited the insurer. The statement must describe the CPA's assessment of the insurer's internal controls relative to the transactions.

If the CPA determines the internal controls are deficient, the insurer must include with the statement (1) the CPA's report of the deficiencies and (2) a remedial

action plan, if the CPA's statement does not include one. The remedial action plan must identify actions the insurer has taken or will take to correct the deficiencies.

By law, the insurance commissioner may adopt regulations he deems necessary to carry out the statutes on insurance company investments.

EFFECTIVE DATE: Upon passage

DEFINITIONS

Under the act, a "swap" is a contract to exchange, for a period of time, the investment performance of one underlying instrument for the investment performance of another without exchanging the instruments themselves. An "option" is a contract that gives the purchaser the right, but not the obligation, to enter into a transaction with the seller for option rights on specified terms.

The act defines "forward" as a contract, other than a future, between two parties that commits one to purchase and the other to sell the instrument or commodity underlying the contract on a specified future date. A "future" is a standardized forward contract traded on a United States or qualified foreign exchange.

The act defines a "cap" as an option contract under which the seller, in return for a premium, agrees to limit the purchaser's risk associated with an increase in a reference rate or index. If the option contract is a "floor," the seller agrees to limit the purchaser's risk associated with a decline in a reference rate or index. A "collar" is a contract with both a cap and a floor.

PA 09-49—sSB 959

Insurance and Real Estate Committee

AN ACT CONCERNING EXTERNAL APPEALS OF ADVERSE DETERMINATIONS BY A MANAGED CARE ORGANIZATION, HEALTH INSURER OR UTILIZATION REVIEW COMPANY

SUMMARY: This act establishes an expedited external appeal process that supplements the legally required standard external appeal process. By law, a health plan enrollee, or a licensed health care provider acting on the enrollee's behalf with his or her consent ("provider"), must exhaust the internal appeal process of the health insurer, managed care organization (MCO), or utilization review (UR) company that made an adverse determination before applying to the insurance commissioner for a standard external appeal.

The act permits an enrollee or provider to ask the insurance commissioner for an expedited external appeal before exhausting the company's internal appeal process if (1) he or she has filed a request for an

expedited internal review and (2) the time to complete it could cause, or exacerbate, an emergency or life-threatening situation for the enrollee.

After receiving an expedited external appeal request, the required medical release, and a \$25 filing fee, the insurance commissioner must assign the appeal to an independent review entity. The act adopts (1) standards, procedures, record maintenance, and reporting requirements for review entities and (2) qualifications for clinical reviewers. The review entities and their clinical reviewers decide whether to reverse, revise, or uphold a denial. The act makes a review entity's decisions regarding standard and expedited external appeals binding on the enrollee and the insurer, MCO, or UR company.

With respect to adverse determinations by a UR company, the act specifies that an enrollee's provider of record, the licensed practitioner with primary responsibility for the enrollee's treatment, is deemed to be acting on the enrollee's behalf and with his or her consent if (1) the admission, service, procedure, or extension of stay in question has not yet occurred or (2) the entity's coverage denial creates a financial liability for the enrollee.

It also makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2009

DEFINITIONS

The act defines "adverse determination" as a decision by a health insurer, MCO, or UR company to deny, reduce, or terminate payment for an admission, service, procedure, or extension of stay that, although a covered benefit, does not meet its requirements for medical necessity, appropriateness, health care setting, level of care, or effectiveness.

It defines a "covered benefit" as a service to which a health care plan enrollee is entitled under the terms of the plan. It defines "health care services" as services rendered to diagnose, prevent, treat, cure, or relieve a health condition, illness, injury, or disease.

The act defines "review entity" as an entity that conducts independent, external reviews of adverse determinations. By law, review entities include (1) medical peer review organizations and independent UR companies that are not related to, or associated with, any insurer or MCO and (2) nationally recognized health experts or institutions the insurance commissioner approves.

An "MCO" is an insurer, health care center (HMO), hospital or medical service corporation, or other organization delivering, issuing, renewing, amending, or continuing any individual or group health managed care plan in Connecticut.

EXPEDITED EXTERNAL APPEAL PROCESS

The act permits an enrollee or provider to ask the insurance commissioner for an expedited external appeal before exhausting the company's internal appeal process if (1) he or she has filed a request for an expedited internal review with the UR company and (2) the time to complete it could cause, or exacerbate, an emergency or life-threatening situation for the enrollee.

The request must include a \$25 filing fee and a signed medical records release form. The commissioner may waive the filing fee if the enrollee is indigent or unable to pay. The company against which the appeal is filed must also pay a \$25 fee. The commissioner must refund (1) the company's fee if, after a preliminary review, the appeal is not accepted for a full review or (2) the prevailing party's fee after a full review is completed.

Insurance Commissioner

Immediately upon receiving an expedited external appeal request, the act requires the commissioner to randomly assign it to a review entity from among the list of approved review entities established in accordance with the act. But the act prohibits the commissioner from granting an expedited external appeal if the enrollee has already received the health care services in question.

It requires the commissioner to notify the insurer, MCO, or UR company that made the adverse determination of the (1) expedited external appeal request and (2) name of the assigned review entity.

Adverse Determination Information Required

The act requires the insurer, MCO, or UR company, within one business day after receiving the commissioner's notice, to provide the review entity all documents and information it considered in making the adverse determination. It may provide this information by e-mail, telephone, fax, or other expeditious method.

An MCO that fails to provide the required information on time is subject to a \$100 penalty for each day the information is late (CGS § 38a-478n).

Preliminary Review

Upon receiving the expedited external appeal from the commissioner, the act requires the review entity to conduct a preliminary review within two business days to determine whether to accept it for full review. (If the insurer, MCO, or UR company takes its full one business day to submit information, the entity has, in effect, one business day to complete the preliminary review.)

The review entity must accept the appeal for full review if it determines the:

1. patient involved is or was the involved health insurer's or MCO's enrollee;
2. benefit or service at issue reasonably appears to be a covered service or benefit under the health care plan;
3. enrollee or provider has provided all information the commissioner requires to make a preliminary determination, including the appeal form, a copy of the coverage denial, and a fully executed release to obtain any necessary medical records from the insurer, MCO, and any relevant provider; and
4. adverse determination may cause or exacerbate an emergency or life-threatening situation for the enrollee if the appeal is not reviewed expeditiously.

The review entity must, upon completing the preliminary review, immediately notify the enrollee or provider, as applicable, in writing whether or not the appeal is accepted for full review. If it is not accepted for full review, the written notification must include the reasons for the decision.

Denied Request for Expedited Appeal

The act permits an enrollee or provider to request a standard external appeal if an expedited external appeal request is denied.

Full Review

If the review entity accepts the appeal for full review, the act requires it to determine whether the coverage denial should be reversed, revised, or affirmed. Under the act, the person performing the review must be a health care provider specializing in the field related to the enrollee's condition.

Information to Consider

In conducting the full review, the review entity may consider:

1. pertinent medical records;
2. consulting reports from appropriate health care professionals;
3. documents the insurer, MCO, enrollee, the enrollee's authorized representative, or the enrollee's provider submitted;
4. practice guidelines the federal government or national, state, or local medical societies, boards, or associations developed; and
5. clinical protocols or practice guidelines the MCO, insurer, or UR company developed.

The act defines “authorized representative” as (1) a person to whom an enrollee gives express written consent to represent him or her in an external appeal, (2) a person the law authorizes to provide “substituted consent” for the enrollee, or (3) the enrollee’s family member when the enrollee is unable to provide consent.

The act requires the review entity to consider, to the extent it is available and, in the review entity’s opinion, appropriate, (1) the relevant health plan coverage terms to ensure the entity’s decision does not conflict, (2) any applicable clinical review criteria the insurer, MCO, or UR company develops and uses in making adverse determinations, and (3) medical or scientific evidence. After considering that information, the act requires the review entity to also consider its own clinical reviewers’ opinions.

The act defines “medical or scientific evidence” as evidence found in:

1. peer-reviewed scientific studies published in, or accepted for publication by, medical journals (a) meeting nationally recognized requirements for scientific manuscripts and (b) that submit most of their published articles for review by experts who are not part of the editorial staff;
2. peer-reviewed medical literature, including literature relating to therapies reviewed and approved by a qualified institutional review board, biomedical compendia, and other medical literature meeting the criteria of the National Institutes of Health’s National Library of Medicine for indexing in Index Medicus (MEDLINE) or Elsevier Science for indexing in Excerpta Medica (EMBASE);
3. medical journals the secretary of health and human services recognizes under federal Social Security law;
4. the following standard reference compendia: (a) the American Hospital Formulary Service - Drug Information, (b) Drug Facts and Comparisons, (c) the American Dental Association’s Accepted Dental Therapeutics, and (d) the U.S. Pharmacopoeia - Drug Information; and
5. findings, studies, or research conducted by, or under the auspices of, federal government agencies or nationally recognized federal research institutes, including (a) the Agency for Healthcare Research and Quality, (b) the National Institutes of Health, (c) the National Cancer Institute, (d) the National Academy of Sciences, (e) the Centers for Medicare and Medicaid Services, (f) the Food and Drug Administration, (g) any national board the National Institutes of Health recognizes to evaluate the medical value of health care

services, and (h) any other source comparable to (a) through (e).

Appeal Decision

The act requires the review entity to (1) complete the full review within two business days after the preliminary review is completed and (2) forward the commissioner its decision to reverse, revise, or affirm the adverse determination and a report of the full review.

The act permits the review entity to ask the commissioner for an extension to complete its review if circumstances exist beyond its control. If the commissioner grants the extension, the review entity must notify the enrollee or provider in writing of the (1) review status, (2) specific reasons for the delay, and (3) anticipated completion date.

The act specifies that a review entity is not bound by any decisions or conclusions the insurer, MCO, or UR company made during a utilization review process.

STANDARD EXTERNAL APPEAL

The act adds to the standard external appeal requirements. Specifically, when a review entity accepts a standard external appeal for full review, the act requires the commissioner to notify the insurer, MCO, or UR company that made the adverse determination of the (1) external appeal request and (2) name of the review entity assigned to the appeal.

Adverse Determination Information Required

The act requires the insurer, MCO, or UR company, within five business days after receiving the commissioner’s notice, to provide the review entity all documents and information it considered in making the adverse determination. It may provide this information by e-mail, telephone, fax, or other expeditious method. By law, it must, within five days of receiving a request from the commissioner, provider, or enrollee, provide information regarding the benefit plan to which the appeal relates (e.g., whether it is a fully- or self-insured plan, if the service to which the appeal relates is covered under the plan).

By law, an MCO that fails to provide the required information on time is subject to a \$100 penalty for each day the information is late (CGS § 38a-478n).

BINDING DECISION

The act makes a review entity’s external appeal decision—standard or expedited—binding on the insurer, MCO, UR company, and enrollee (but apparently not the provider). Prior law required the commissioner to accept the review entity’s decision on a

standard external appeal and made the commissioner's decision binding.

The act does not limit or prohibit any other remedy available under federal or state law.

SUBSEQUENT APPEAL PROHIBITED

The act prohibits an enrollee or provider from requesting a subsequent external appeal involving an adverse determination that was already the subject of an external appeal.

REVIEW ENTITIES

Under prior law, the insurance commissioner, after consulting with the public health commissioner, had to contract with impartial review entities to review appeals. The act requires him, instead, to contract with independent review entities that meet specified criteria.

Qualifications for Selection

Under the act, to be selected as a review entity, the entity must (1) hold approval or accreditation from a nationally recognized private accrediting review entity the commissioner approved or (2) demonstrate to the commissioner that it adheres to qualifications substantially similar to, and that do not provide less protection to enrollees than, the policies and procedures it must have in place if selected (see below).

The act requires each review entity to provide the commissioner a statement of qualifications in accordance with state and Insurance Department contracting requirements. It deems as eligible a review entity accredited by a nationally recognized private accrediting review entity with independent review accreditation standards that the commissioner determines are at least equivalent to the minimum qualifications below.

Under the act, the commissioner's approval of a review entity is effective for two years, unless he determines before the end of the two years that the review entity is not satisfying the minimum qualifications below, in which case he must terminate the entity's contract.

Written Policies and Procedures Required

The act requires each approved review entity to have and maintain written policies and procedures governing all aspects of the external appeal processes, including expedited appeals.

The review entity's policies and procedures must include a quality assurance mechanism ensuring that the entity:

1. conducts external appeals within the required time frames and provides required notices in a timely manner;
2. selects and employs a sufficient number of qualified, impartial clinical reviewers to conduct external appeals;
3. suitably assigns reviewers to specific cases;
4. maintains the confidentiality of medical and treatment records and clinical review criteria; and
5. ensures its employees and contractors comply with the act.

The review entity's policies and procedures also must include (1) a toll-free fax service or e-mail that can receive information related to external appeals 24-hours a day, seven days a week and (2) an agreement to maintain and provide to the commissioner specified information in accordance with the act's record-keeping and reporting requirements (see below).

Clinical Reviewers' Qualifications

The act requires each clinical reviewer that a review entity assigns to an external appeal to be a physician or other health care provider who is, at a minimum:

1. an expert in treating the medical condition that is the subject of the appeal;
2. knowledgeable about the recommended health care service or treatment through recent or current clinical experience treating patients with the same or similar condition;
3. holds a nonrestricted provider license in a U.S. state;
4. if a physician, currently certified by a recognized American medical specialty board in the area or areas appropriate to the subject of the external appeal; and
5. has no history of past or pending disciplinary actions or sanctions, including loss of staff privileges or participation restrictions, by a hospital or governmental agency, unit, or regulatory body that raise a substantial question as to his or her physical, mental, or professional competence or moral character.

Conflict of Interest Prohibited

The act imposes conflict of interest restrictions for review entities. A review entity cannot own or control, be a subsidiary of, be owned or controlled by, or exercise control over, a health insurer; MCO; UR company; health plan; or a trade association of insurers, MCOs, or providers.

The act prohibits a review entity and its clinical reviewers assigned to appeals from having a “material professional, familial, or financial conflict of interest” with:

1. the insurer, MCO, or UR company that made the adverse determination being appealed or any of its officers, directors, or management employees;
2. the enrollee whose treatment is the subject of the appeal or the provider acting on his or her behalf;
3. the health care provider, medical group, or independent practice association recommending the service or treatment that is the subject of the appeal;
4. the facility or health care setting, including hospitals; licensed inpatient centers; ambulatory surgical or treatment centers; skilled nursing centers; residential treatment centers; diagnostic, laboratory, and imaging centers; and rehabilitative or other therapeutic health settings, at which the service or treatment would be provided; or
5. the developer or manufacturer of the principal drug, device, procedure, or other therapy recommended for the enrollee whose treatment is the subject of the appeal.

When determining whether a review entity or clinical reviewer has a “material professional, familial, or financial conflict of interest,” the act requires the commissioner to consider situations in which the review entity or clinical reviewer may have an apparent relationship or connection, but the actual relationship or connection does not constitute a disqualifying material conflict of interest.

The act requires a review entity to (1) be unbiased and (2) establish and maintain written procedures to ensure such impartiality.

Immunity from Liability

The act specifies that no liability for damages accrues against a review entity or its clinical reviewer, employee, agent, or contractor, for an opinion rendered, or act or omission performed, within the entity’s or person’s duties relating to an external appeal conducted in accordance with the act, unless rendered or performed in bad faith or with gross negligence.

Record Retention

The act requires a review entity to maintain for at least six years written records of the external appeals it conducts. The records must be available for insurers’, MCOs’, or UR companies’ review.

Reporting Requirements

The act requires a review entity, upon the commissioner’s request, to report in a format he prescribes. The report must include, for each insurer, MCO, and UR company:

1. the number of requested standard and expedited external appeals;
2. the number of resolved appeals by disposition (reversed, revised, affirmed);
3. the length of time to resolve each appeal;
4. a summary of the procedure and diagnosis codes relating to appeals; and
5. any other information the commissioner requires.

PA 09-51—HB 5023

*Insurance and Real Estate Committee
Appropriations Committee*

AN ACT REQUIRING HEALTH INSURANCE COVERAGE FOR WOUND CARE FOR INDIVIDUALS WITH EPIDERMOLYSIS BULLOSA

SUMMARY: This act requires certain insurance policies to cover wound care supplies that are medically necessary to treat epidermolysis bullosa and administered under a physician’s direction.

The act applies to individual and group health insurance policies delivered, issued, renewed, amended, or continued in Connecticut on and after January 1, 2010 that cover (1) basic hospital expenses; (2) basic medical-surgical expenses; (3) major medical expenses; and (4) hospital or medical services, including coverage under an HMO plan.

Due to federal law (ERISA), state insurance benefit mandates do not apply to self-insured benefit plans.

EFFECTIVE DATE: January 1, 2010

BACKGROUND

Epidermolysis Bullosa

Epidermolysis bullosa (EB) refers to a group of rare skin diseases characterized by recurring blisters and open sores.

Medically Necessary

The law defines “medically necessary” as health care services that a physician, exercising prudent clinical judgment, would provide to a patient to prevent, evaluate, diagnose, or treat an illness, injury, disease, or its symptoms, and that are:

1. in accordance with generally accepted standards of medical practice;
2. clinically appropriate, in terms of type, frequency, extent, site, and duration and considered effective for the patient's illness, injury, or disease;
3. not primarily for the convenience of the patient, physician, or other health care provider; and
4. not more costly than an alternative service or sequence of services at least as likely to produce equivalent therapeutic or diagnostic results.

"Generally accepted standards of medical practice" means standards that are (1) based on credible scientific evidence published in peer-reviewed medical literature generally recognized by the relevant medical community or (2) otherwise consistent with the standards set forth in policy issues involving clinical judgment (CGS §§ 38a-482a and 38a-513c).

PA 09-72—sSB 895

Insurance and Real Estate Committee

AN ACT CONCERNING NOTIFICATION OF UNDERINSURED MOTORIST CONVERSION COVERAGE AND THE RECOVERY OF COLLISION DEDUCTIBLE IN A SUBROGATION ACTION

SUMMARY: This act requires an auto insurer issuing a new automobile liability insurance policy to disclose to an insured at the time of sale or issuance the availability of, premium for, and description of underinsured motorist conversion coverage. The description must be made in a conspicuous manner with the legally required informed consent form regarding uninsured and underinsured motorist coverage.

Under the act, an auto insurer that subrogates a claim must (1) seek to recover any collision deductible the insured paid, unless the insured requests that it not be included in the subrogation demand and (2) share subrogation recoveries with the insured on a proportionate basis. By law, an insurer providing underinsured motorist coverage cannot subrogate against the owner or operator of the underinsured motor vehicle for underinsured motorist benefits paid or payable by the insurer.

EFFECTIVE DATE: January 1, 2010

BACKGROUND

Minimum Coverage Required

The law requires each auto insurer to provide uninsured and underinsured motorist coverage with bodily injury and death limits equal to the liability limits the insured purchased, unless the insured (1) requests a lesser amount (but not below the legal limit) in writing and (2) signs an informed consent form. A person must purchase coverage of at least \$20,000 (for injury or death of one person) and \$40,000 (for more than one person in an accident).

Must Offer Coverage

By law, each auto insurer must offer, for an additional premium, underinsured motorist conversion coverage. If purchased, an insurer cannot reduce the insured's underinsured motorist coverage limit by amounts received from a tortfeasor or third-party on the insured's behalf.

Subrogation

Subrogation is the principle that gives an insurer who pays a claim the insured's rights and remedies against a third party with respect to that claim. Thus, if an insurer pays a claim for which another was liable, the insurer may seek payment from the liable party.

PA 09-74—sSB 960

Insurance and Real Estate Committee

AN ACT CONCERNING THE LEGISLATIVE COMMISSIONERS' RECOMMENDATIONS FOR TECHNICAL REVISIONS TO THE INSURANCE STATUTES

SUMMARY: This act makes technical changes in various insurance statutes.

EFFECTIVE DATE: Upon passage

PA 09-98—sSB 212

Insurance and Real Estate Committee

Judiciary Committee

AN ACT LIMITING CANCELLATION FEES FOR AUTOMOBILE INSURANCE POLICYHOLDERS WHO CANCEL THEIR POLICIES MID-TERM

SUMMARY: This act prohibits an insurer that renews, amends, or endorses a private passenger automobile insurance policy in Connecticut from charging the

insured more than \$100 for canceling the policy before the policy term ends. It also makes technical changes.

By law, any person or corporation that violates any insurance law that does not have a specific penalty is subject to a fine of up to \$15,000.

EFFECTIVE DATE: October 1, 2009

PA 09-115—sSB 301

*Insurance and Real Estate Committee
Appropriations Committee*

**AN ACT CONCERNING HEALTH INSURANCE
COVERAGE FOR AUTISM SPECTRUM
DISORDERS**

SUMMARY: This act requires a group health insurance policy to cover the diagnosis of autism spectrum disorders and expands the requirements on insurers to cover treatment of these disorders. It requires insurers to cover behavioral therapy for a child age 14 or younger and certain prescription drugs and psychiatric and psychological services for insureds with autism. The act permits a policy to set a certain annual dollar maximum for behavioral therapy coverage.

Prior law required a group health insurance policy to cover physical, speech, and occupational therapy services provided to treat autism to the same extent that it covers them for other diseases and conditions. The act removes that limitation, but specifies different conditions for covering the therapies.

The act authorizes an insurer, HMO, hospital or medical service corporation, or fraternal benefit society to review an autism treatment plan's outpatient services in accordance with its utilization review requirements, but not more often than once every six months, unless the insured's licensed physician, psychologist, or clinical social worker agrees a more frequent review is necessary or changes the insured's treatment plan.

The act specifies that it is not to be interpreted as limiting or affecting (1) other covered benefits under the policy, the state mental and nervous condition insurance law, and the birth-to three coverage law; (2) a board of education's obligation to provide services to an autistic student under an individualized education program in accordance with law; or (3) any obligation imposed on a public school by the federal Individual with Disabilities Education Act (20 USC § 1400).

The act also specifies that it must not be interpreted to require a group health insurance policy to reimburse special education and related services provided to an insured under state law that requires boards of education to provide special education programs and services unless state or federal law requires otherwise.

By law, each violation of the act is subject to a fine of up to \$1,000. The insurance commissioner may also revoke an out-of-state insurer's license for violating the act.

EFFECTIVE DATE: January 1, 2010

AUTISM SPECTRUM DISORDERS

The act defines "autism spectrum disorders" as the pervasive developmental disorders set forth in the most recent edition of the American Psychiatric Association's *Diagnostic and Statistical Manual of Mental Disorders*, including autistic disorders, Rett's disorder, childhood disintegrative disorder, Asperger's disorder, and pervasive developmental disorder not otherwise specified.

For purposes of its provisions and the definition of "medical necessity," the act considers autism spectrum disorder an illness.

DIAGNOSIS

The act defines "diagnosis" as the medically necessary assessment, evaluation, or testing a licensed physician, psychologist, or clinical social worker performs to determine if a person has an autism spectrum disorder. It specifies that a diagnosis is valid for at least 12 months, unless a licensed physician, psychologist, or clinical social worker decides a shorter period is appropriate or changes the insured's diagnosis.

COVERAGE AND CONDITIONS

The act requires a group health insurance policy to cover:

1. behavioral therapy for children under age 15;
2. prescription drugs a licensed physician, physician assistant, or advanced practice registered nurse prescribes to treat autism spectrum disorder symptoms and co-morbidities (diseases or conditions existing together), to the extent the policy covers prescription drugs for other diseases and conditions;
3. direct and consultative psychiatric and psychological services; and
4. physical, speech, and occupational therapy services a licensed physical, speech and language, and occupational therapist provides, respectively.

Under the act, in order for the policy to cover these treatments, they must be (1) medically necessary; (2) identified and ordered by a licensed physician, psychologist, or clinical social worker for an insured person diagnosed with autism; and (3) based on a treatment plan. A licensed physician, psychologist, or clinical social worker must have developed the

treatment plan following a comprehensive evaluation or reevaluation of the insured. The act allows the policy to limit the coverage for behavioral therapy to a yearly benefit of (1) \$50,000 for a child who is less than nine years of age, (2) \$35,000 for a child between nine and 13 years of age, and (3) \$25,000 for a child age 13 or 14.

The act specifies that the coverage it requires may be subject to the other general exclusions and limitations of the group health insurance policy, including (1) coordination of benefits, (2) participating provider requirements, (3) restrictions on services provided by family or household members, and (4) case management provisions. But any utilization review must be performed in accordance with the act.

Behavioral Therapy

The act defines “behavioral therapy” as any interactive behavioral therapy derived from evidence-based research. It includes applied behavior analysis, cognitive behavioral therapy, or other therapies supported by empirical evidence of the effective treatment of individuals diagnosed with an autism spectrum disorder that are (1) provided to children under age 15 and (2) provided or supervised by (a) a behavior analyst certified by the Behavior Analyst Certification Board, which is a nonprofit professional credentialing organization, (b) a licensed physician, or (c) a licensed psychologist. Supervision involves at least one hour of face-to-face supervision of the autism services provider for every 10 hours of behavioral therapy provided.

Applied Behavioral Analysis

The act defines “applied behavioral analysis” as designing, implementing, and evaluating environmental modifications using behavioral stimuli and consequences, including direct observation, measurement, and functional analysis of the relationship between environment and behavior, to produce socially significant improvement in behavior.

COVERAGE PROHIBITIONS

The act prohibits a group health insurance policy from:

1. limiting the number of visits to an “autism services provider” (a person, entity, or group that provides treatment for autism spectrum disorders) on any basis other than a lack of medical necessity or
2. imposing a coinsurance, copayment, deductible, or other out-of-pocket expense that places a greater financial burden on an insured for access to the diagnosis and treatment of an

autism spectrum disorder than for the diagnosis and treatment of any other medical, surgical, or physical health condition under the policy.

PENALTY

By law, an insurer, HMO, hospital or medical service corporation, or fraternal benefit society, or its officer or agent, that delivers or issues a policy that violates the act is subject to a fine of up to \$1,000 for each offense. The insurance commissioner may also revoke an out-of-state insurer’s license for violating the act’s provisions (CGS § 38a-548).

APPLICABILITY OF ACT

The act applies to group health insurance policies delivered, issued, renewed, amended, or continued in Connecticut that cover (1) basic hospital expenses; (2) basic medical-surgical expenses; (3) major medical expenses; and (4) hospital or medical services, including coverage under an HMO plan.

Due to federal law (ERISA), state insurance benefit mandates do not apply to self-insured benefit plans.

BACKGROUND

Medically Necessary

The law defines “medically necessary” as health care services that a physician, exercising prudent clinical judgment, would provide to a patient to prevent, evaluate, diagnose, or treat an illness, injury, disease, or its symptoms, and that are:

1. in accordance with generally accepted standards of medical practice;
2. clinically appropriate, in terms of type, frequency, extent, site, and duration and considered effective for the patient's illness, injury, or disease;
3. not primarily for the convenience of the patient, physician, or other health care provider; and
4. and not more costly than an alternative service or sequence of services at least as likely to produce equivalent therapeutic or diagnostic results.

“Generally accepted standards of medical practice” means standards that are (1) based on credible scientific evidence published in peer-reviewed medical literature generally recognized by the relevant medical community or (2) otherwise consistent with the standards set forth in policy issues involving clinical judgment.

Related Laws

Mental or Nervous Conditions. Under Connecticut law, insurance must cover the diagnosis and treatment of mental or nervous conditions. It defines “mental or nervous conditions” as mental disorders, as it is used in the *Diagnostic and Statistical Manual of Mental Disorders*. It specifically excludes coverage for (1) mental retardation; (2) learning, motor skills, communication, and caffeine-related disorders; (3) relational problems; and (4) additional conditions not otherwise defined as mental disorders in the DSM-IV-TR (CGS §§ 38a-488a and 38a-514).

Birth-to-Three. Insurance must cover medically necessary early intervention services for a child from birth until age three that are part of an individualized family service plan. Coverage is limited to \$3,200 per child per year, up to \$9,600 for the three years (CGS §§ 38a-490a and 38a-516a).

PA 09-123—sHB 5019*Insurance and Real Estate Committee*

AN ACT PROHIBITING THE USE OF CERTAIN PRESCRIPTION DRUG HISTORY AS AN UNDERWRITING TOOL TO DENY INDIVIDUAL HEALTH INSURANCE COVERAGE

SUMMARY: This act prohibits insurers or other entities in the individual health insurance market from using as an underwriting factor a person’s history of taking a prescription drug for anxiety for six months or less. But it allows them to use such history if it arises directly from a medical diagnosis of an underlying condition.

The act applies to each insurer, HMO, hospital or medical service corporation, and fraternal benefit society that delivers, issues, renews, amends, or continues an individual health insurance policy in Connecticut.

By law, an insurer or entity cannot move an insured person from a standard underwriting classification to a substandard one after the policy is issued or increase premiums because of the person’s claim experience or health status. The law allows for a premium increase that applies to all people in an underwriting classification as a whole.

By law, an insurer, HMO, hospital or medical service corporation, or fraternal benefit society, or its officer or agent, that delivers or issues a policy in Connecticut that violates the act is subject to a fine of up to \$10,000 for each offense. The insurance commissioner may also revoke the license of an out-of-state insurer or its agent for violating the act’s provisions (CGS § 38a-506).

EFFECTIVE DATE: January 1, 2010

PA 09-124—sHB 5433*Insurance and Real Estate Committee
Appropriations Committee*

AN ACT CLARIFYING HEALTH INSURANCE COVERAGE FOR STEPCHILDREN

SUMMARY: This act requires individual and group health insurance policies to cover stepchildren on the same basis as biological children.

It also extends the coverage eligibility law for individual health insurance policies to individual policies continued in Connecticut (i.e., those in effect) that cover (1) basic hospital expenses; (2) basic medical-surgical expenses; (3) major medical expenses; (4) limited benefits; (5) accidents only; and (6) hospital or medical services, including coverage under an HMO plan. Under the law, which already applies to individual policies delivered, issued, amended, or renewed in Connecticut, a child remains eligible for coverage until the policy anniversary date on or after the date the child (1) marries, (2) ends Connecticut residency, (3) becomes covered under his or her employer’s group health plan, or (4) turns age 26, whichever occurs first. The residency requirement does not apply to a child who is under age 19 or a full-time student at an accredited college.

Due to federal law (ERISA), state insurance benefit mandates do not apply to self-insured benefit plans.

EFFECTIVE DATE: Upon passage

BACKGROUND*Insurance Coverage for Children*

By law, an employee’s unmarried children under age 26 are eligible to be covered under a group comprehensive health care plan (i.e., a group plan with the minimum benefits all health insurers must offer) (CGS § 38a-554(a)).

The law also requires a group plan to offer a child whose coverage under the plan ends the option to remain covered until the end of the month in which the child (1) marries, (2) ends Connecticut residency, (3) becomes covered under his or her employer’s group health plan, or (4) turns age 26, whichever provides the longest coverage period. The residency requirement does not apply to dependent children under age 19 or full-time students attending an accredited college. If the child elects this option, he or she may be required to pay the full premium and administrative costs, up to 102% of the full premium at the group rate (CGS § 38a-554(b)).

The law also prohibits individual and group policies from terminating a child's health coverage if, on the date his or her coverage eligibility would otherwise end, the child is (1) unmarried, (2) unable to work due to mental or physical handicap, and (3) dependent on the insured employee for support. The policyholder or employee must give the insurer proof of the child's handicap within 31 days of the date the child's coverage would otherwise end. The insurer may periodically require proof of continued incapacity and dependency (CGS §§ 38a-489, 38a-515, and 38a-554(b)).

Connecticut law also requires each group plan to provide for a right to convert to an individual policy when coverage under the group policy would otherwise cease (CGS § 38a-554(d)).

PA 09-126—sHB 5669

Insurance and Real Estate Committee

AN ACT CONCERNING EMPLOYER HEALTH INSURANCE PREMIUM PAYMENTS FOR TERMINATED EMPLOYEES

SUMMARY: Under this act, an employer may elect to stop paying group health insurance premiums for an employee and his or her dependents as of 72 hours after the employee quits or is terminated for any reason but a layoff. It outlines requirements and conditions for employers and insurers. The act does not apply if a collective bargaining agreement requires an employer to pay an employee's insurance premiums after his or her termination.

EFFECTIVE DATE: October 1, 2009

REQUIREMENTS AND CONDITIONS

Employer

An employer electing to stop health insurance premium payments due to an employee's termination must, within 72 hours of the employee's termination, notify the (1) employee and (2) affected insurance company, HMO, hospital or medical service corporation, or fraternal benefit society ("insurer").

The act requires an employer to reimburse the affected employee his or her portion, if any, of premiums that the insurance carrier credits or refunds to the employer.

Insurer

An insurer must:

1. when a policy is issued or renewed, give an employer information about the election option, including a notice that it is the

employer's responsibility to return to an affected employee his or her portion of credited premiums;

2. credit prepaid premiums to an employer that (a) makes a permissible election and (b) notifies the employee and insurer within 72 hours of the employee's termination; and
3. apply the credit to the employer's next monthly premium bill or, if the policy is not renewed, issue the employer a refund.

Amount of Credit or Refund

The act requires the premium credit or refund to equal the amount of premium previously paid attributable to insuring the employee and his or her dependents for a period after the employee's termination date. But, it specifies that no credit will be made for the first 72 hours following the employee's termination (which is the time period in which the employer must give notice of its election to the employee and insurer).

EMPLOYER DEFINED

Under the act, "employer" means any owner, person, partnership, corporation, limited liability company, or association acting as or on behalf of an employer, or in an employer's interest in relation to employees, including the state and any state political subdivision.

BACKGROUND

Related Labor Law

Under state labor law, an employer that moves out-of-state or closes its business for reasons other than bankruptcy or natural disaster must continue and pay for in full, for each affected employee and his or her dependent, coverage under an existing group health insurance policy for 120 days from the date of the relocation or closing or until the employee becomes eligible for other group coverage, whichever provides the shortest continuation period (CGS § 31-51o). This labor law does not affect an employee's or dependent's right to continue coverage as provided under federal and state insurance law. The coverage continuation under the insurance laws begins when the continuation under the labor law ends.

Related Insurance Law

Federal law, the Consolidated Omnibus Budget Reconciliation Act (COBRA), and state law provides certain former employees, retirees, spouses, former

spouses, and children the right to temporarily continue being covered under an employer's group health plan after their coverage would otherwise end, so long as the insured pays the required premiums. A person may be required to pay the full premium and administrative costs, up to 102% of the full premium at the group rate. COBRA applies to employer groups with 20 or more employees. Connecticut law applies to all groups regardless of size (CGS § 38a-554(b)).

COBRA establishes the time period for which coverage must continue for a qualified person. A plan may, however, provide longer periods of coverage. COBRA requires coverage to extend for 18 months when a person would otherwise lose coverage because his or her employment ends or work hours are reduced. Other qualifying events, or a second qualifying event during the initial period of coverage, may extend coverage up to 36 months. Longer periods may be available for a disabled person. Under state law, coverage continues for the same duration as under COBRA. In addition, state law permits an employee and his or her covered dependents to continue coverage until midnight of the day preceding the employee's eligibility for Medicare if the employee's reduced hours, leave of absence, or termination of employment results from his or her eligibility for Social Security income.

Connecticut law also requires each group plan to provide for a right to convert to an individual policy when coverage under the group policy would otherwise cease (CGS § 38a-554(d)).

PA 09-127—sHB 6114

*Insurance and Real Estate Committee
General Law Committee*

**AN ACT CONCERNING DISCLOSURE OF
HISTORIC DISTRICT DESIGNATIONS AND
LEASED ITEMS TO PROSPECTIVE
PURCHASERS OF RESIDENTIAL PROPERTY**

SUMMARY: The law requires a real estate seller to give a prospective purchaser a residential condition report before the binder or contract is executed in any residential real estate transaction (i.e., sale, exchange, or lease with option to buy). This act requires the consumer protection commissioner to adopt regulations, by April 1, 2010, to set forth the current form for the report.

The act also adds to the information that the report must include. By law, the report must disclose any municipal assessments on the property, including sewer or water charges. The act also requires the report to include information concerning (1) leased items on the premises, including propane tanks, water heaters, major appliances, and alarm systems and (2) whether the real

property is located in a designated historic zone.

Under the act, relevant historic designations include (1) a municipally designated village district, (2) a municipally designated historic district, or (3) property on the National Register of Historic Places. If the property is designated, the report must include a statement that information about village or historic districts may be obtained from the municipality's village or historic district commission.

EFFECTIVE DATE: Upon passage

BACKGROUND

Written Residential Condition Report

The residential condition report discloses information about the property, including environmental conditions, such as lead and radon (CGS § 20-327b). By law, a seller must credit the purchaser \$300 at closing if he or she failed to provide the written residential condition report as required (CGS § 20-327c).

Village and Historic Districts

Municipal zoning commissions may establish and specifically identify in the municipal plan of conservation and development village districts located in areas of distinctive character, landscape, or historic value (CGS § 8-2j).

A municipality may also establish historic districts to promote the educational, cultural, economic, and general welfare of the public through the preservation and protection of the distinctive characteristics of buildings and places associated with the history of or indicative of a period or style of architecture of the municipality, state, or nation. Such districts may be created by a vote of the municipal legislative body and in conformance with Connecticut Commission on Culture and Tourism standards and criteria (CGS § 7-147a).

PA 09-134—HB 6448

Insurance and Real Estate Committee

**AN ACT CONCERNING DISCLOSURE OF
INSURANCE REQUIREMENTS IN EQUIPMENT
LEASES**

SUMMARY: This act (1) expands disclosure requirements under the Uniform Consumer Leases Act about insurance a lease agreement may require and (2) changes the name of the act to the Consumer Leases Act.

The act also applies its insurance disclosure requirements to a lease that is subject to the Uniform

Commercial Code (UCC). The UCC allows the parties to a lease to agree upon (1) who must obtain and pay for insurance and (2) the insurance beneficiary.

EFFECTIVE DATE: October 1, 2009 and, other than the name change, applicable to consumer leases entered, renewed, modified, or extended on or after October 1, 2009.

DISCLOSURE REQUIRED

By law, a lease agreement may require a lessee to maintain (1) casualty insurance on the leased goods, (2) liability insurance against personal injury or property damage caused to others, or (3) both.

Under prior law, if a leaseholder required a lessee to maintain insurance, it had to disclose that the lessee could choose the insurer, subject to the leaseholder's right to reject the insurer for reasonable cause. But this provision did not apply if the insurance was included in the lease for no additional cost to the lessee. The act instead requires a leaseholder to make this disclosure if (1) the insurance required is not included in the lease or (2) there is an additional charge for obtaining the insurance through the leaseholder.

The act requires the leaseholder also to disclose (1) whether the insurance required is included in the lease for no additional charge and (2) that insurance policies the leaseholder offers may duplicate coverage the lessee has under his or her personal insurance policies.

By law, the disclosures must be made in a record (information inscribed on a tangible medium or stored in an electronic or other media that is retrievable in a perceivable form). If casualty insurance is neither required nor provided, the law requires the lease to state this 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." The act requires this statement and the required disclosures to be conspicuous.

When a lease obligates a lessee to pay for insurance the leaseholder provides, the law requires the leaseholder to either give a copy of the policy or insurance certificate to the lessee or arrange for it to be provided.

PA 09-135—sHB 6531 (VETOED)

Insurance and Real Estate Committee

AN ACT CLARIFYING POSTCLAIMS UNDERWRITING

SUMMARY: This act limits a health insurer's or HMO's investigation of a claimant's suspected undisclosed preexisting condition. It also makes an (1) insurance producer or agent who completes or helps to

complete an insurance application and (2) insured who signs the application or does not object to information submitted on, with, or omitted from it, jointly and severally liable for claims that result from any information the producer or agent knowingly omitted or misrepresented.

By law, in order to rescind, cancel, or limit an insured's coverage, an insurer or HMO must have the insurance commissioner's approval. Prior law required an insurer or HMO also to have conducted a thorough medical underwriting process based on information the insured submitted on, with, or omitted from, an insurance application. The act maintains this underwriting requirement for coverage that has been in effect for at least one year. But it removes it for coverage that has been in effect for less than one year, including short-term health insurance issued on a non-renewable basis for six months or less. (By law, an insurer or HMO cannot rescind, cancel, or limit any coverage that has been in effect for more than two years.)

The act defines a "rescission" as an insurer's or HMO's termination of an insurance policy, contract, evidence of coverage, or certificate as of the date of its inception on the basis of a (1) the discovery of a preexisting condition pursuant to an investigation conducted in accordance with the act or (2) a material misstatement, omission, or material misrepresentation of fact on an insurance application by the insured that the insurer or HMO relied upon to its detriment. A "cancellation" is the unilateral termination of a policy, contract, evidence of coverage, or certificate. A "limitation" is a coverage restriction or refusal for an existing or preexisting medical condition.

The act establishes certain disclosure, records, and rescission requirements for an insurer or HMO that accepts coverage applications for individual health insurance coverage over the telephone. It specifies that these requirements do not apply to Medicare supplement policies.

It also makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2009

PREEXISTING CONDITIONS

The act requires a health insurer or HMO that, during its investigation of a claim, seeks to discover any preexisting conditions an insured did not disclose on his or her insurance application, to limit its investigation to (1) issues having a direct relationship to the condition specified in the claim and (2) the period before the coverage effective date specified in the preexisting conditions provision of the policy, contract, evidence of coverage, or certificate.

The act defines a "preexisting conditions provision" as a policy provision that limits or excludes benefits for

a condition that was present and for which medical advice, diagnosis, care, or treatment was recommended or received before the coverage effective date. A preexisting condition does not include (1) routine follow-up care to determine if breast cancer has reoccurred in a person who was previously determined to be breast cancer free, unless evidence of breast cancer is found during or as a result of the follow-up; (2) genetic information, unless there is a diagnosis related to such information; and (3) pregnancy.

By law, the look-back period for purposes of a preexisting condition is the six months (group policy), 12 months (individual policy), or 24 months (short-term policy) immediately preceding the coverage effective date. Under law, a policy cannot exclude coverage for a preexisting condition for more than 12 months from the insured's policy effective date.

TELEPHONIC APPLICATIONS

The act requires an insurer or HMO that accepts applications for individual health insurance coverage over the telephone to disclose to the applicant, before the application process is completed, (1) the maximum duration of the policy or contract; (2) an accurate description of, and the relevant exclusionary period for, any preexisting condition provisions; and (3) the monthly premium.

The act also requires the insurer or HMO to mail the applicant a letter that includes a (1) copy of the completed application and (2) notice that the agreement is binding on the applicant unless he or she rescinds it in writing within 10 days after receiving the letter. The act specifies that the insurer or HMO may include in the letter a confirmation of the applicant's agreement to the policy's or contract's (1) maximum duration, (2) preexisting condition provisions and exclusionary periods, and (3) monthly premium.

The act requires the insurer or HMO to keep for two years after the policy's or contract's effective date (1) a copy of the letter and any rescission and (2) a recording of the applicant's complete telephonic application process, in a readily retrievable format.

BACKGROUND

Joint and Several Liability

Joint and several liability is a form of liability used in civil cases where two or more people are found liable for damages. The winning plaintiff in such a case may collect the entire judgment from any one of the parties or from any and all of the parties in various amounts until the judgment is paid in full. If any of the defendants do not have enough money or assets to pay an equal share of the award, the other defendants must

make up the difference.

Coverage Rescission, Cancellation, or Limitation

By law, an insurer or HMO must apply for the insurance commissioner's approval, on a form he prescribes, to rescind, cancel, or limit benefits under a health insurance policy, contract, or certificate based on information the insured provided or omitted from his or her insurance application. The insurer or HMO must provide a copy of the completed request form to the enrollee, or enrollee's representative, who then has seven business days to submit relevant information to the commissioner. Within 15 days of receiving the enrollee's submission, the commissioner must mail a written decision to the enrollee; the enrollee's representative, if any; and the insurer or HMO.

Under the law, the commissioner may approve an insurer's or HMO's coverage rescission, cancellation, or limitation if the insured, or his or her representative, knew or should have known that information material to the insurer's or HMO's risk assumption was (1) false when included with the application or (2) omitted from the application. The law permits an aggrieved person to file an appeal with Hartford Superior Court within 30 days of when the decision is mailed to the affected parties. The court may grant equitable relief.

The law applies to insurers and HMOs issuing policies or contracts that cover (1) basic hospital, medical-surgical, or major medical expenses; (2) accidents; (3) limited benefits; or (4) hospital or medical services.

Related Laws

Insurance Fraud. A person is guilty of insurance fraud when he or she, with the intent to injure, defraud, or deceive any insurance company, knowingly gives, or assists in giving, the insurer any false, incomplete, or misleading written or oral statement as part of, or in support of, any insurance application or claim, that is material to the application or claim. Insurance fraud is a class D felony (see Table on Penalties).

General Penalty. By law, any person or corporation that violates any insurance law that does not have a specified penalty is subject to a fine of up to \$15,000.

PA 09-147—sHB 6582 (VETOED)

*Insurance and Real Estate Committee
Planning and Development Committee
Appropriations Committee
Public Health Committee*

AN ACT ESTABLISHING THE CONNECTICUT HEALTHCARE PARTNERSHIP

SUMMARY: This act requires the comptroller to convert the state employee health insurance plan, excluding dental, to a self-insured arrangement for benefit periods beginning July 1, 2009 and later. (Pharmacy benefits are already self-insured.) It authorizes her to (1) merge, on or after January 1, 2010, any health benefit plans she arranges into the self-insured state plan and (2) contract with companies to provide administrative services for the self-insured state plan. It requires any such third-party administrator to charge the state its lowest available rate.

The act requires the comptroller to offer employee and retiree coverage under the self-insured state plan to (1) nonstate public employers beginning January 1, 2010; (2) municipal-related and nonprofit employers beginning July 1, 2010; and (3) small employers beginning January 1, 2011. She must do this (1) after the General Assembly receives written consent from the State Employees' Bargaining Agent Coalition (SEBAC) and (2) subject to specified requirements and conditions. Employers that apply and are approved for coverage must agree to benefit periods of at least two years. The act authorizes the comptroller to adopt regulations related to opening the state plan to these other groups.

The act requires a health care actuary to (1) review certain employer applications for coverage under the state plan and (2) certify to the comptroller in writing if the group will shift a significantly disproportionate share of its employees' medical risks to the state plan. If so, the comptroller must decline the group coverage.

The act:

1. requires the state to charge employers participating in the state plan the same premium rates the state pays, except it may adjust the rate for a small employer to reflect its group characteristics;
2. allows the comptroller to have state money withheld from a municipality or other state political subdivision participating in the state plan that fails to pay premiums and, with 10-days' notice, terminate any participating employer group that does not pay its premiums;
3. establishes a "state plan premium account" as a restricted grant fund, into which employer groups' premiums must be deposited and from which claims must be paid;

4. establishes two advisory committees to make recommendations to the Health Care Costs Containment Committee (HCCCC), a state labor and management committee that exists under agreement with SEBAC, about coverage for nonstate public and private-sector employees;
5. permits two or more municipalities to enter into a written agreement to act as a single entity to obtain health insurance for their employees, subject to specified conditions, including insurance commissioner approval; and
6. excludes from the state insurance law definition of "small employer" a municipality obtaining health care benefits through the self-insured state plan.

The act eliminates the dependent age limitation for certain children eligible for coverage under the state plan or a state-arranged plan. (State insurance law requires coverage for an unmarried child under a group insurance policy to continue until age 26.)

The act also makes conforming and technical changes.

EFFECTIVE DATE: July 1, 2009, except for the provisions about (1) self-insuring the state plan, (2) needing SEBAC's agreement before opening the state plan to other groups, (3) municipalities acting as a single entity to obtain employee health insurance, and (4) covering dependents to age 26 under the state plan, which are effective upon passage.

§ 1 — CONVERT STATE PLAN TO SELF-INSURANCE

By law, the comptroller solicits bids and enters into contracts with insurance carriers to provide health insurance for state employees and retirees. The act requires the comptroller to begin the process of converting the state employee health insurance plans, including pharmacy benefits but excluding dental benefits, to a self-insured arrangement for benefit periods beginning July 1, 2009 and later. (The state began self-insuring pharmacy benefits July 1, 2008.)

Insurer Administering Self-Insured State Plan

The act permits any licensed insurer in Connecticut to conduct business with the state with respect to the self-insured plan. Under the act, the state's contract with an insurer for administrative services must require the insurer to charge the state its lowest rate available.

Merging State-Arranged Plans

The act permits the comptroller to merge, on or after January 1, 2010, any benefit plans she arranges into the self-insured state plan.

Under authority granted by law, she arranges hospital, medical, and surgical insurance for a person who (1) adopts a child from the state foster care system, (2) has been a foster parent for the Department of Children and Families for at least six months, or (3) is a parent in a permanent family residence for at least six months. The law permits her to provide these people coverage through the state employee insurance plan.

The law also authorizes her to arrange coverage under the Municipal Employee Health Insurance Plan (MEHIP), on a fully-insured or risk-pooled (e.g., self-insured) basis, for (1) employees of municipalities, nonprofit corporations, community action agencies, and small employers; (2) people eligible for a health coverage tax credit under federal law; (3) members of an association of personal care assistants; and (4) people eligible for a retirement benefit from the Connecticut municipal employees' retirement system. The comptroller currently offers a fully-insured MEHIP plan for these groups and a self-insured "enhanced MEHIP" plan for municipalities.

§ 1 — COVERAGE FOR CERTAIN DEPENDENT CHILDREN

The act eliminates the dependent age limitation for a child who is (1) eligible for coverage under the state plan or a state-arranged plan and (2) a child of (a) a state or local police officer, firefighter, or constable with criminal law enforcement duties who dies from injuries received on the job or (b) an adoptive or foster parent or a parent in a permanent family residence for at least six months. Prior law ended dependent coverage at age 18 or, for a child of an adoptive or foster parent or parent in a permanent family residence who has not finished college, age 21. (State insurance law requires coverage for an unmarried child under a group insurance policy to continue until age 26.)

§§ 2 & 3 — OPENING STATE EMPLOYEE PLAN TO OTHERS

The act requires the comptroller to offer coverage under the self-insured state employee plan to certain employer groups, but specifies that the comptroller does not have to offer coverage from every plan offered under the state plan to every employer.

Eligible Groups

The act requires the comptroller to offer participation in the state plan, in intervals of at least two years, to the following groups:

1. nonstate public employers beginning January 1, 2010;
2. municipal-related and nonprofit employers beginning July 1, 2010; and
3. small employers beginning January 1, 2011.

She must offer coverage to a group if the group submits an application that is approved as the act provides.

The act defines "nonstate public employer" as a municipality or other state political subdivision, including a board of education, quasi-public agency, or public library. A "nonstate public employee" is an employee or elected officer of a nonstate public employer.

A "municipal-related employer" is a property management, food service, or school transportation business that contracts with a nonstate public employer.

A "nonprofit employer" is (1) a nonprofit corporation organized under federal law (26 USC § 501) that contracts with the state or receives a portion of its funding from a local, state, or federal government or (2) a tax-exempt organization under federal law (26 USC § 501(c)(5)).

A "small employer" is a person, firm, corporation, limited liability company, partnership, or association actively engaged in business or self-employed for at least three consecutive months that, on at least 50% of its working days during the preceding 12 months, employed 50 or fewer employees most of whom are in Connecticut. When counting the number of employees, companies that are affiliates under state law or eligible to file a combined tax return are considered one employer. The act specifies that a nonstate public employer is not a small employer.

Open Enrollment

Under the act, initial open enrollment for nonstate public employers must be for coverage that begins January 1, 2010. After that initial open enrollment for nonstate public employers, subsequent enrollment periods must begin July 1. Open enrollment for municipal-related, nonprofit, and small employers must be for periods beginning January 1 and July 1.

Coverage Term, Renewal, and Withdrawal

In order for an employer group to participate in the self-insured state employee plan, the group must agree to benefit periods of at least two years. An employer may apply for renewal before the end of each benefit period.

The act requires the comptroller to develop procedures for an employer group to (1) apply for initial plan participation and subsequent renewal and (2) withdraw from plan participation. The procedures must include the terms and conditions under which a group can withdraw before the benefit period ends and how to obtain a refund for any unearned premiums paid. The procedures must provide that nonstate public employees covered under a collective bargaining agreement must withdraw in accordance with any applicable state collective bargaining laws for municipal employees and teachers.

Application Form

The act requires the comptroller to create an application for employer groups seeking coverage under the state plan. In the application, the employer must disclose whether it will offer any other plan to the employees offered the state plan.

Status as a Governmental Health Plan Under Federal ERISA

The federal Employee Retirement Income Security Act (ERISA) sets certain fiduciary and disclosure standards for private-sector health plans and exempts governmental plans from these requirements. It is unclear whether opening the state plan to private-sector employers jeopardizes the plan's status as a governmental plan under ERISA.

Consequently, the act authorizes the comptroller to deny an employer admission into the state health plan if she determines that granting coverage to the employer will affect the state plan's status as a governmental plan. In addition to denying coverage to an employer if the employer will affect the ERISA exemption status, she must stop accepting applications from municipal-related employers, nonprofit, and small employers. (Presumably, municipal-related, nonprofit, and small employers that have approved applications, but for which coverage has not yet started, will be admitted to the plan.)

The act requires the comptroller to resume accepting applications from these employers if she determines that granting them coverage will not affect the plan's ERISA status. The act does not set criteria for these decisions.

The act requires the comptroller to publicly announce any decision to stop or resume accepting applications.

Taft-Hartley Exception

The act prohibits an employee from enrolling in the state plan if he or she is covered through his or her employer under a health insurance plan or arrangement issued to, or in accordance with, a trust established through collective bargaining under the federal Labor Management Relations (i.e., "Taft-Hartley") Act.

§ 4 — EMPLOYER GROUP PARTICIPATION

Permissive and Mandatory Collective Bargaining for Nonstate Public Employers

The act makes a nonstate public employer group's initial participation in the state employee plan a permissive subject of collective bargaining. If the union and the employer agree in writing to bargain over the initial participation, then the decision to join the plan is subject to binding arbitration. Authorized union and employer representatives must sign the agreement.

The act makes a nonstate public employer group's continuation in the state plan a mandatory subject of collective bargaining, subject to binding interest arbitration in accordance with applicable state collective bargaining laws for municipal employees and teachers.

The act specifies that a board of education and a municipality are considered separate employers and must apply for coverage separately under the state plan.

Application and Decision Process for All Eligible Employers

The act establishes two different processes for determining whether a nonstate public, municipal-related, nonprofit, or small employer group's application for coverage will be accepted, depending on whether the application covers all or some of the employees.

If the application covers all of an employer's employees, the act requires the comptroller to accept the application for the next open enrollment period and give the employer written notice of when coverage begins. But if the application covers only some of an employer's employees or it indicates the employer will offer other health plans to employees offered the state health plan, the comptroller must forward the application to a health care actuary within five days of receiving it.

Within 60 days of receiving an application from the comptroller, the actuary must determine whether it will shift a significantly disproportionate part of the

employer group's medical risks to the state plan. If so, the actuary must certify this in writing to the comptroller and include the specific reasons for the decision and the information relied upon in making it.

The act requires the comptroller to consult with a health care actuary that will develop actuarial standards for assessing the shift in medical risks of an employer's employees to the state plan. The comptroller must present the standards to the HCCCC for its review and evaluation before the standards are used. (Presumably, the comptroller will contract with an actuary for these services, although the act does not specify this.)

Under the act, if the comptroller receives a disproportionate risk shift certification from the actuary, she must deny the application and give the employer written notice that includes specific reasons for denial. If the comptroller does not receive such a certification from the actuary, she must accept the application and give the employer written notice of when coverage begins.

Exceptions to Actuarial Review

The act prohibits the comptroller from forwarding to the actuary an application that proposes to cover fewer than all of its employees because (1) the employer decides not to cover temporary, part-time, or durational employees or (2) individual employees decline coverage. Presumably, therefore, the comptroller must accept the application for the next open enrollment period and give the employer written notice of when coverage begins.

Regulations Regarding Actuarial Review

The act authorizes the comptroller to adopt regulations in accordance with law to establish procedures for the actuary's application reviews and the standards used in the reviews.

Self-Insured Plan is Not Unauthorized Insurer or "MEWA"

The act specifies that the self-insured state employee plan is not an unauthorized insurer or a "multiple employer welfare arrangement" (MEWA).

§ 5 — RETIREES

Employer groups eligible to cover employees under the state plan also may seek coverage for their retirees. The act states that it does not diminish any right to retiree health insurance under a collective bargaining agreement or state law.

The act requires the employer to remit premiums for retirees' coverage to the comptroller in accordance with the act's provisions. It specifies that a retiree's premiums for coverage under the state plan must be the same as those the state pays, including premiums retired state employees pay.

Application and Decision Process

The application process and decision notice requirements with respect to covering an employer's retirees, including actuarial review if the employer's application proposes to cover fewer than all retirees, is the same as for employees (described in § 4 above).

Exceptions to Actuarial Review

The act prohibits the comptroller from forwarding an application to the actuary when the only retirees an employer excludes from the proposed coverage are those who (1) decline coverage or (2) are Medicare enrollees. Presumably, therefore, the comptroller must accept the application for the next open enrollment period and give the employer written notice of when coverage begins.

§ 6 — PREMIUMS, FEES, COST SHARING, AND STATE ACCOUNT

Premiums

The act requires, with an exception for small employers, that the premiums an employer group pays to participate in the state plan must be the same as those the state pays, including any premiums state employees and retirees pay. It requires an employer to pay premiums to the comptroller monthly in an amount she determines for providing coverage for the group's employees and retirees, if any.

Small Employer Premiums

The act permits the comptroller to adjust the premiums charged a small employer to reflect one or more group characteristics specified in state insurance law. These include:

1. age, but age brackets of fewer than five years are not permitted;
2. gender;
3. geographic area, but one smaller than a county is not permitted;
4. industry, within certain variation limits;
5. group size, within certain variation limits;

6. administrative costs saved by participating in the state plan, as long as they are measurable and realized on items such as marketing, billing, or claims paying functions, but not commissions;
7. savings realized by not paying a profit to an insurance carrier by participating in the state plan; and
8. family composition, including employee, employee plus family, employee and spouse, employee and child, employee plus one dependent, and employee plus two or more dependents.

Administrative Fee, Fluctuating Reserves Fee, and Employee Contribution

The act authorizes the comptroller to charge employers an administrative fee calculated on a per-member, per-month basis. In addition, the comptroller is authorized to charge a fluctuating reserves fee that she deems necessary to ensure an adequate claims reserve. (The act provides no guidance on how she will determine this.)

It permits an employer to require a covered employee or retiree to pay part of the coverage cost, subject to any applicable collective bargaining agreement.

Penalties for Late Payment of Premiums

Interest. If an employer does not pay its premiums by the 10th day after the due date, the act requires the group to also pay interest, retroactive to the due date, at the prevailing rate, as the comptroller determines.

State Money Withheld. If a nonstate public employer fails to make premium payments, the act authorizes the comptroller to direct the state treasurer, or any state officer who is the custodian of state money (i.e., grant, allocation, or appropriation) owed the group, to withhold payment. The money must be withheld until (1) the group pays the comptroller the past due premiums or interest or (2) the treasurer or state officer determines that arrangements, satisfactory to the treasurer, have been made for paying the premiums and interest.

The act prohibits the treasurer or state officer from withholding state money from the group if doing so impedes receiving any federal grant or aid in connection with it.

Terminate Plan Participation. With respect to a (1) municipal-related, nonprofit, or small employer and (2) nonstate public employer that is either not owed state money or from which money is not withheld, the act allows the comptroller to terminate the group's participation in the state plan for failure to pay

premiums if she gives the group at least 10 days notice. The group can avoid termination by paying premiums and interest due in full before the termination effective date.

The act allows the comptroller to ask the attorney general to bring an action in Hartford Superior Court to recover any premiums and interest owed or seek equitable relief from a terminated group.

State Plan Premium Account

The act establishes a separate, nonlapsing State Plan Premium Account within the grants and restricted accounts fund. The comptroller, to whom employer groups remit premiums, must (1) deposit the premiums collected into this account and (2) administer the account to pay claims.

§ 7 — ADVISORY COMMITTEES

Nonstate Public Health Care Advisory Committee

The act establishes a 12-member Nonstate Public Health Care Advisory Committee, which must make recommendations to the HCCCC regarding health care coverage for nonstate public employees.

The committee must consist of nonstate public employers and employees participating in the state plan. Specifically, members must include three representatives each of (1) municipal employers, (2) municipal employees, (3) board of education employers, and (4) board of education employees. Of the three representatives in each category, one must represent a town with (1) 100,000 or more people, (2) at least 20,000 but under 100,000 people, and (3) under 20,000 people. The comptroller appoints the committee members. (The act does not indicate who serves as committee chair or how the chair is selected.)

Private Sector Health Care Advisory Committee

The act establishes a 12-member Private Sector Health Care Advisory Committee, which must make recommendations to the HCCCC regarding health care coverage for private-sector employees.

The committee must consist of municipal-related, nonprofit, and small employers and employees participating in the state plan. Specifically, members must include two representatives each of (1) municipal-related employers, (2) employees of municipal-related employers, (3) nonprofit employers, (4) employees of nonprofit employers, (5) small employers, and (6) employees of small employers. The comptroller appoints the committee members. (The act does not indicate who serves as committee chair or how the chair is selected.)

§ 8 — REGULATIONS

The act authorizes the comptroller to adopt regulations in accordance with the law to implement and administer the state employee plan and the provisions regarding opening the plan to other groups.

§ 9 — SEBAC CONSENT

The act prohibits the comptroller from opening the state employee plan to the specified employer groups until SEBAC provides the House and Senate clerks with its written consent to incorporate the act's terms into its collective bargaining agreement.

Presumably, SEBAC's written consent goes to the clerks for legislative action. By law, if the legislature does not take action within 30 days, the agreement is deemed approved (CGS § 5-278(b)).

§ 10 — JOINT MUNICIPAL HEALTH INSURANCE PURCHASES

The act permits two or more municipalities to enter into a written agreement to act as a single entity to obtain health insurance for their employees. It specifies that such a group is not a fictitious group.

The act requires the insurance commissioner to approve any such group, which must be fully insured (i.e., not self-insured or using alternative financing methods). The municipalities' agreement must establish:

1. the group's membership,
2. the insurance coverage duration,
3. premium payment requirements,
4. procedures for a municipality to withdraw from the agreement, and
5. procedures for terminating the insurance coverage.

§ 11 — MUNICIPAL GROUP IS NOT A SMALL EMPLOYER

The act excludes a municipality obtaining health care benefits through the self-insured state plan from the state insurance law definition of "small employer." (Thus, state insurance laws relating to small employers would not apply to such a municipality.)

BACKGROUND

Self-Insured Health Benefit Plan

A self-insured health benefit plan is one that is not backed by an insurance policy. Rather, the plan sponsor funds and administers the benefit plan (i.e., pays claims covered by the benefit plan from its own money, which may include money collected from plan enrollees as

premiums). A plan sponsor may outsource or delegate the administration of its self-insured plan to a third-party administrator (TPA) (often an insurance company), but the TPA does not provide the employer with financial backing or assume financial risk associated with the claims. Due to federal law, state insurance benefit mandates generally do not apply to self-insured benefit plans.

State Employee Plan and SEBAC

In 1997, the state and SEBAC reached a 20-year agreement regarding state employee health insurance and retirement benefits. That agreement called for fully insured health insurance. Last year, the state and SEBAC entered into a memorandum of understanding (MOU) concerning certain health care issues. Among other things, the MOU (1) permitted the state to self-insure pharmacy benefits effective July 1, 2008 and (2) gives the state sole discretion to provide pharmacy benefits in the future on a fully insured, self-insured, or other appropriate basis. It specifies that such a decision "shall not be appealed or arbitrated in any forum by SEBAC, any constituent union or state employee" (Section 2(A), MOU dated March 20, 2008).

Permanent Family Residence

The act does not define "a parent in a permanent family residence." However, the child welfare statutes define "permanent family residence" as a child care facility the Department of Children and Families licenses, subject to specified criteria, to provide permanent care to handicapped children (CGS § 17a-154). The law requires parents who intend to provide permanent foster care to a handicapped child to occupy, as their principal residence, a residential one- or two-family home that either the parents or a nonstock corporation that seeks to protect handicapped children owns or leases. At least one parent, as his or her principal occupation, must provide direct and regular care to the foster children placed in the residence.

ERISA

The federal Employee Retirement Income Security Act (ERISA, U.S. Code Title 29) governs certain activities of most private employers who maintain employee welfare benefit plans and preempts many state laws in this area. ERISA-covered welfare benefit plans must meet a wide range of (1) fiduciary, reporting, and disclosure requirements and (2) benefit requirements, including benefits required under the federal Consolidated Omnibus Budget Reconciliation Act (COBRA), Health Insurance Portability and Accountability Act (HIPAA), Mental Health Parity Act,

Newborns' and Mothers' Health Protection Act, and Women's Health and Cancer Rights Act.

Governmental Plan. ERISA does not apply to a "governmental plan," which it defines as "a plan established or maintained for its employees by the government of the United States, by the government of any State or political subdivision thereof, or by any agency or instrumentality of any of the foregoing." If the state plan permits private-sector employers to join, it may lose its status as a governmental plan, thereby subjecting it to the full requirements of ERISA, including federal oversight.

U.S. DOL Opinion on ERISA Applicability. In 1999, the California School and Legal College Services of the Sonoma County Office of Education (the office) requested an advisory opinion from the U.S. Department of Labor (DOL) concerning the applicability of ERISA. Specifically, it asked if allowing 28 private-sector employees to participate in the California Public Employees' Retirement System (CalPERS) would adversely affect CalPERS' status as a "governmental plan" within the meaning of ERISA.

In its opinion, DOL stated that "governmental plan status is not affected by participation of a de minimis number of private sector employees. However, if a benefit arrangement is extended to cover more than a de minimis number of private sector employees, the Department may not consider it a governmental plan" under ERISA (U.S. DOL Advisory Opinion 1999-10A, July 26, 1999). DOL further noted that its opinion related solely to the application of ERISA's provisions and "is not determinative of any particular tax treatment under the Internal Revenue Code." It advised the office to contact the IRS to clarify tax treatment of the proposed arrangement.

Multiple Employer Welfare Arrangement (MEWA)

An employer that self-insures a health benefit plan for its employees is generally not subject to state insurance laws because of federal pre-emption under ERISA. But a multiple employer plan may not have the same exemption.

ERISA defines "multiple employer welfare arrangement" as an employee welfare benefit plan, or any other arrangement that is established or maintained for the purpose of offering or providing benefits to the employees of two or more employers (including one or more self-employed individuals), or to their beneficiaries, except that it does not include a plan or arrangement established or maintained by a collective bargaining agreement, rural electrical cooperative, or rural telephone cooperative association (29 U.S.C. § 1002(40)).

Congress amended ERISA in 1983 to provide an exception to ERISA's preemption provisions for the regulation of MEWAs under state insurance laws (P.L. 97-473). As a result, if an ERISA-covered employee welfare benefit plan is a MEWA, states may apply and enforce state insurance laws with respect to it.

Joint Municipal Activities

By law, municipalities may jointly perform any function that each can perform separately under any law or special act, charter, or home rule ordinance (CGS § 7-148cc). Each participating municipality must approve a joint agreement in the same manner as it approves an ordinance or, if it does not approve ordinances, the budget. Any such agreement must establish a withdrawal process and require the body that approved it to review the agreement at least once every five years.

PA 09-156—sSB 897

Insurance and Real Estate Committee

General Law Committee

Judiciary Committee

AN ACT CONCERNING TIME SHARES

SUMMARY: This act replaces the prior, more limited time sharing plan laws with more detailed provisions. It establishes requirements for the sale and management of time shares, including, among other things, advertising, insurance, escrow, assessments, and various disclosures to prospective purchasers and owners. It specifies which of its provisions apply to out-of-state time shares.

The act requires a developer to record a time share instrument in the land records of each town in which an accommodation is located and register the time share plan with the Department of Consumer Protection (DCP). The act authorizes the DCP commissioner to adopt implementing regulations, enforce its provisions, and impose penalties on violators. It makes specified actions and omissions unfair trade practices.

The act provides a variety of exemptions from its requirements, including for any time share property established in Connecticut before January 1, 2010. Such properties remain subject to the state laws and regulations in existence on December 31, 2009.

EFFECTIVE DATE: January 1, 2010

§§ 2 & 3 — APPLICATION OF THE ACT

The act applies to (1) time share plans with accommodations or amenities in Connecticut and (2) exchange programs. Portions also apply to out-of-state time share plans that are sold or offered to people in Connecticut.

The act defines a “time share plan” as any arrangement or method, other than an exchange program, by which a purchaser, in exchange for consideration, receives an ownership right in or the right to use accommodations on a recurring basis for a period of time less than a year during a given year, but not necessarily consecutive years, regardless of whether the time period is determined in advance. “Arrangement” or “method” includes a membership agreement, sale, lease, deed, license, or right-to-use agreement.

Under the act, an “exchange program” is any method, arrangement, or procedure for the voluntary exchange of time share interests among purchasers or owners. A “time share interest” includes time share use or a time share estate. Both give the purchaser the right to occupy a time share property, but a time share estate also gives him or her a real estate interest in the time share property.

The act also specifies that the term “vacation ownership” may be used synonymously for “time share” in advertisements or in disclosures regarding a time share interest or time share plan.

Out-of-State Time Share Plans

Time share plans without accommodations or amenities in Connecticut that are sold or offered for sale to people in Connecticut are subject to most, but not all, of the act’s provisions. Specifically, they are excepted from the following provisions:

1. recording of time share plan (§ 5),
2. conveyance and ownership of time share plans (§ 6(a) – (c)),
3. assessments on time share interests (§ 23),
4. collection costs and fees (§ 24),
5. availability of records (§ 25),
6. resale disclosures (§ 27),
7. requirements for resale agreements (§ 28), and
8. disclosures for time share condominiums (§ 29).

§§ 3, 4, & 28 — EXEMPTIONS FROM THE ACT

Exempt Sales Offer

The act exempts from its requirements a sales offer, whether or not an accommodation is located in Connecticut, of a (1) time share plan (a) consisting of seven or fewer time share interests or (b) extending for three years or less or (2) time share interest under which the prospective purchaser’s total financial obligation will be \$3,000 or less during the term of ownership.

Exempt Offers and Dispositions

The act exempts a disposition pursuant to a court order, by a governmental agency, or by foreclosure or deed in lieu of foreclosure. And it exempts an offering or disposition if it is:

1. gratuitous (e.g., a gift);
2. by an association (a council or association made up of all time share owners) of its own time share interest acquired as a gift or through foreclosure or deed in lieu of foreclosure;
3. of all time share interests in a time share plan to five or fewer people;
4. of a time share interest in a time share property located outside Connecticut or to a purchaser who is not a Connecticut resident under a contract executed outside Connecticut, if there has been no offering to the purchaser in Connecticut;
5. of a time share interest by a purchaser who acquired the interest for his or her personal use; or
6. of a rental of an accommodation for three years or less.

Current Owner

The act exempts an offering or disposition of a time share interest in a time share property outside Connecticut to a purchaser who currently owns a time share interest from the same developer or an affiliated entity under common ownership and control, if the developer or affiliated entity:

1. has a time share plan currently registered with DCP that was originally approved within seven years from the date of the offer or disposition;
2. complies in all material respects with certain of the act’s provisions relating to advertising, cancellation of a purchase contract, required contract language and information, and acts and omissions that constitute an unfair trade practice;
3. provides the purchaser with all time share disclosure documents required to be provided to purchasers as if the offer or disposition occurred in the state or jurisdiction where the time share property is located;
4. includes a notice in the purchase contract that is the same as or substantially similar to that required by the act (§ 15(a)) and a right of rescission of at least five days; and
5. provides the purchaser, either in the disclosure documents or supplementary or additional materials, the following if the state or jurisdiction where the time share property is located does not require such documents:

- a. a description of the type of time share plan offered, including the plan's duration and operation;
- b. a description of the existing or proposed accommodations and amenities, including the type and number of time share interests expressed in use increments, a categorization by numbers of bedrooms for each type of accommodation and, if the accommodations or amenities are proposed or incomplete, a schedule for their commencement, completion, and availability;
- c. a description of the method and timing for performing maintenance on the accommodations;
- d. copies of the declaration and association articles of incorporation, bylaws, and rules and regulations, if applicable; and
- e. the time share plan's current annual budget.

To qualify for the exemption, the developer (but presumably not the affiliated entity) is deemed to consent to DCP's jurisdiction in the event of a dispute with the purchaser in connection with the offering or disposition.

Exempt Communications

The act exempts from its requirements, if delivered to a person who owns, or has previously executed a contract to purchase, a time share interest in a time share plan, any (1) communication addressed to the person and relating to his or her account or (2) audio, written, or visual publication or material relating to an exchange company or program if the person is a member of that company or program.

Time Share Established before January 1, 2010

The act exempts from its provisions a time share property established in Connecticut before January 1, 2010. It specifies that such property is subject to the state statutes and regulations that exist (and presumably are in effect) on December 31, 2009.

§ 5 — RECORDING THE TIME SHARE PLAN

The act requires the developer of a time share plan, any part of which is located in Connecticut, to properly record the time share instrument in the land records of all towns where an accommodation is located. Under the act, property is established as a time share plan when a person expressly declares an intent to subject the property to a time share plan by recording a time share instrument that contains certain information.

Required Information in Recorded Declaration

The act requires the recorded declaration to include:

1. a legal description of the time share property, including a ground plan indicating the location of each existing or proposed building included in the time share plan;
2. a description of each existing or proposed accommodation, including the location and square footage of each unit and an interior floor plan of each existing or proposed building;
3. a description of any amenities furnished or to be furnished to the purchaser;
4. a statement of the fractional or percentage part that each time share interest bears to the entire time share plan;
5. a statement that the time share property is part of a multisite time share plan, if applicable; and
6. any additional information consistent with these requirements.

Exemption from Licensing Requirement

Any sales agent who offers a time share interest in Connecticut must be licensed as a real estate broker or salesperson, unless exempt from licensure by law. The act also exempts from the licensure requirement (1) an exchange company exchanging time share periods and (2) a person who only distributes time share literature or advertises a time share, as long as a sales agent or a Connecticut-licensed real estate broker or salesperson handles the sale of the time share interest. A "sales agent" is a person who, directly or through employees, agents, or independent contractors, sells or offers to sell time share interests in a time share plan to any person located in Connecticut.

§ 6 — TIME SHARE CONVEYANCE AND OWNERSHIP

The act specifies that once a property is established as a time share plan, each time share interest may be individually conveyed or encumbered and is independent of all other time share interests in the same time share property. It allows any title or interest in a time share interest to be recorded.

The act allows any time share (1) interest to be jointly or commonly owned by more than one person and (2) estate to be jointly or commonly owned in the same manner as any other real property interest in Connecticut. It prohibits an action for partition (e.g., dividing a time share interest) during the term of a time share plan.

§ 7 — REGISTRATION REQUIRED

Reservation or Deposit Accepted Before Registration

The act generally prohibits a developer from offering or disposing of a time share interest unless the time share plan is registered with DCP. But it permits a developer or any person acting on the developer's behalf to accept a reservation and a deposit from a prospective purchaser before submitting or completing a time share plan registration application if the deposit is (1) placed in an escrow account with a closing agent and (2) fully refundable at any time at the purchaser's request. The deposit cannot be forfeited unless the purchaser affirmatively creates a binding obligation by a subsequent written instrument consisting of a binding contract to purchase, in which case the release of funds is governed by § 17 of the act.

Offer or Disposition During Registration Suspension or Revocation Prohibited

The act prohibits a developer or any person acting on the developer's behalf from offering or disposing of a time share interest during any period in which a DCP or court order is in effect revoking or suspending the time share plan registration.

Pre-Sales Permitted with Approval

The act authorizes DCP, at the developer's request, to authorize the developer to conduct pre-sales before a time share plan is registered if the registration application is administratively complete, as determined by the commissioner or established by regulations. The pre-sales authorization permits the developer to offer and dispose of time share interests while the registration application is being processed. To obtain a pre-sales authorization, the developer must submit:

1. a written request to DCP;
2. an administratively complete application for registration, including a \$300 application fee and any exhibits DCP requires; and
3. evidence acceptable to DCP that all funds the developer receives will be placed with a closing agent with instructions requiring the funds to be retained until DCP determines the registration application is complete.

Final Time Share Disclosure Statement

The act requires the developer, after DCP approves the final time share disclosure statement, to (1) give each purchaser and prospective purchaser a copy of it and (2) provide the purchaser a second opportunity to cancel the purchase contract if the commissioner

determines there is a material, adverse difference between the proposed and final time share disclosure statements.

Act Remains in Effect until All Time Shares are Offered or Disposed

The act specifies that its requirements remain in effect for as long as a developer offers or disposes of time share interests in the registered time share plan. The developer must notify DCP in writing when it stops offering the time share interests in Connecticut.

§ 8 — REGISTRATION APPLICATION

The act requires a registration application to include:

1. a time share disclosure statement (see § 11),
2. a exchange disclosure statement, if required (see § 12),
3. recorded copies of all time share instruments, and
4. other information the commissioner may require.

If the time share property is a newly developed property, the recorded copies of time share instruments must be provided promptly after they become available.

Time Share in a Condominium or Similar Development

If existing or proposed accommodations are in a condominium or similar development, the act requires that the registration application contain the development's project instruments and affirmatively indicate that they do not prohibit the creation and disposition of time share interests.

If the project instruments do not expressly authorize the creation and disposition of time share interests, the application must contain evidence that existing owners were provided written notice within 60 days before applying for registration that time share interests would be created and sold.

If the project instruments prohibit the creation or disposition of time share interests, the application must contain a certification by the authorized representative of all existing owners that the project instruments have been properly amended to permit such creation and disposition.

Abbreviated Registration Allowed in Certain Situations

The act allows the DCP commissioner to accept an abbreviated registration application from a time share developer for any accommodations located outside Connecticut.

It permits a developer with any accommodation in Connecticut to file an abbreviated application, but only if the:

1. developer is (a) a successor in interest after a merger or acquisition or (b) in a joint venture with the previous developer or its affiliate and
2. the previous developer registered the time share plan in Connecticut before the merger, acquisition, or joint venture.

The act prohibits an out-of-state developer from filing an abbreviated application unless the state in which it is registered has registration and disclosure requirements that are substantially similar to, or more stringent than, the act's requirements.

Abbreviated Registration Requirements

A developer filing an abbreviated application must identify and provide information about the (1) developer and, if the developer is not located in the state, its authorized or registered agent for service of process in Connecticut and (2) time share plan's primary contact person and managing entity. Specifically, the application must include the:

1. developer's legal name, any assumed names, principal office location, mailing address, telephone number, and primary contact person;
2. name and address of the developer's agent for service of process, if required; and
3. name, location, mailing address, and telephone number for the plan's primary contact person and managing entity.

In addition, the abbreviated application must include:

1. a declaration of whether the time share plan (a) is single or multisite and (b) if multisite, consists of specific or nonspecific time share interests;
2. each jurisdiction in which the time share plan is (a) approved or accepted and (b) pending;
3. each jurisdiction in which the developer or managing entity has been denied registration of the time share plan or, during the five years before the registration application date, was the subject of a final adverse disposition in a disciplinary proceeding;
4. if the commissioner requests it, copies of any disclosure documents required to be provided to purchasers or filed with any jurisdiction that approved or accepted the time share plan;
5. any other information required by the commissioner, statute, or DCP regulation or policy; and
6. the appropriate filing fee, as determined by the commissioner.

The act allows a developer, instead of physically providing this information, to certify that any or all of the required information can be viewed electronically, at no cost to DCP, through an electronic registry, web site, or other electronic means the commissioner approves. The developer must clearly disclose in each such certification the method for accessing the information.

DCP Investigation

The act requires the DCP commissioner to investigate all matters relating to the application and authorizes him to require a personal inspection of the proposed time share property by anyone DCP designates. The act requires the applicant to pay all direct expenses DCP incurs in inspecting the property and authorizes the commissioner to require the applicant to pay an advance deposit sufficient to cover those expenses.

Developer Must File Amendments

The act requires a developer to file with DCP amendments to the registration, reporting any materially adverse change in any document contained in the registration within 30 days after the developer knows or reasonably should know of the change. The developer may continue to offer and dispose of time share interests under the existing registration pending the commissioner's review of the amendments if the materially adverse change is disclosed to prospective purchasers. The commissioner may charge up to \$300 for processing an amendment.

§ 9 — DCP POWERS AND RESPONSIBILITIES

Regulations

The act authorizes the DCP commissioner to adopt regulations and develop and publish forms necessary to carry out the act's provisions. It also permits him to adopt regulations specifying the requirements for issuing and renewing a developer's registration, including the registration application and any required supporting documentation.

Enforcement Authority

If the commissioner determines that a person subject to the act has materially violated any provision of it or the Connecticut Unfair Trade Practices Act (CUTPA), the act authorizes him to:

1. suspend or revoke the person's registration,
2. reprimand or place him or her on probation,
3. impose a civil penalty of up to \$5,000 for each violation, or

4. take any other disciplinary action the act authorizes.

The act specifies that it does not limit or deny any rights or remedies the law otherwise provides.

Hearings and Contested Cases

The act allows the commissioner to (1) authorize specific employees to conduct hearings and issue proposed or final decisions in contested cases and (2) establish reasonable fees for (a) forms and documents DCP provides to the public and (b) filing or registering required documents.

Under the act, anyone against whom the commissioner initiates a disciplinary proceeding has the right to a hearing before the commissioner or a hearing officer he appoints. Any party aggrieved by a hearing officer's decision may appeal to the commissioner in accordance with the Uniform Administrative Procedure Act.

Attorney General

The act empowers the commissioner to authorize the attorney general to file a suit in the judicial district of New Britain to prevent a violation of the act or for any other appropriate relief.

Compliance with Other Laws

A developer who complies with the act is exempt from:

1. the registration provisions of the Uniform Securities Act, unless the timeshare is otherwise sold as a security;
2. the Home Solicitation Sales Act;
3. the Common Interest Ownership Act; and
4. state laws regarding real estate brokers and salespersons selling out-of-state land.

Registration Period and Fees

Under the act, each registration or renewal is valid for up to 24 months and subject to a \$700 fee. The commissioner may assess and collect a late fee if he has not received the registration fee or supporting documentation required within 61 days after a registration is issued or renewed. The act makes failure to pay a renewal fee a violation.

§ 10 — ADVERTISEMENT PROHIBITIONS AND REQUIREMENTS

Definition

The act defines an "advertisement" as any written,

oral, or electronic communication directed or targeted at people in Connecticut that contains a promotion, inducement, or offer to sell a time share interest, including brochures, pamphlets, radio or television transcripts, telephone or electronic media, or direct mail.

The act specifies that an "advertisement" does not include:

1. stockholder communication, including a financial report, proxy material, registration statement, securities prospectus, time share disclosure statement, or other material a state or federal governmental entity requires be delivered to a prospective purchaser;
2. the offering of a time share interest in a national publication or by electronic media that is not specifically targeted to any individual located in Connecticut;
3. audio, written, or visual publication or material relating to the availability of accommodations for transient rental if (a) a sales presentation is not required and (b) the failure to tour the property or attend a sales presentation does not result in a reduced level of services or an increase in the rental price that would otherwise be available; or
4. follow-up communication with a person relating to a promotion if he or she previously received an advertisement relating to the promotion that complied with the act.

The act also specifies that an "advertisement" does not include any oral or written statement a developer disseminates to broadcast or print media. But an "advertisement" does include (1) paid advertising or promotional material relating to plans to acquire or develop time share property and (2) (a) the rebroadcast or other dissemination of a developer's oral statements to a prospective purchaser or (b) the distribution or other dissemination of a developer's written statements, including newspaper or magazine articles or press releases, to prospective purchasers.

Prohibitions

The act prohibits an advertisement from materially misrepresenting:

1. facts or creating false or misleading impressions regarding the time share plan;
2. the size, nature, extent, qualities, or characteristics of the accommodations or amenities;
3. the time during which the accommodations or amenities will be available to any purchaser;
4. the nature or extent of any services included with the time share plan; or
5. the conditions under which a purchaser may exchange the right to use accommodations or

amenities in one location for the right to use them in another location.

Under the act, an advertisement must not:

1. contain statements concerning nonspecific or not bona fide future price increases;
2. contain an asterisk or other reference symbol to contradict or substantially change any previous statement or obscure material facts; or
3. describe any improvement to the time share plan that is not either required or completed unless it includes a (a) label in conspicuous type with words such as “need not be built,” “proposed,” or “under construction” and (b) clearly indicated date of promised completion, if applicable.

The act defines “conspicuous type” as type that (1) uses upper and lower case letters two point sizes larger than the largest non-conspicuous type on the same page, excluding headings, but not less than 10-point type or, where 10-point type is impractical or impossible, a different style of conspicuous type or print and (2) is separated on all sides from other type and print.

Promotions

The act requires that an advertisement containing a promotion (i.e., a contest, gift, or prize to induce a person to attend a time share sales presentation) must include:

1. a statement that the promotion is intended to solicit purchasers of time share interests;
2. the developer’s full name; and
3. if applicable, the full name and address of any marketing company involved in the promotion, excluding the developer or its affiliate or subsidiary.

The act requires that when a promotion uses free offers, gift enterprises, drawings, sweepstakes, or discounts, the promotion rules must be disclosed and include, when applicable, the day and year, and method by which, all prizes will be awarded. At least one of each prize featured in a promotion must be awarded by the date specified. The act makes the developer and any involved marketing company liable for making the awards.

The act requires that any promotion offering prizes, including awards, gifts, or anything of value, regardless of whether there are any conditions or restrictions attached to receiving a prize, must disclose in conspicuous type:

1. the value of each prize;
2. the odds of winning each prize, as a fraction or a ratio, or, if the odds depend upon the number of entries received, a statement to that effect; and
3. any conditions or restrictions that apply to or

void receipt of the prize.

The act requires that an advertisement containing the required disclosures must be provided in writing or electronically at least once and in a reasonable period before the scheduled sales presentation to ensure that the recipient receives the disclosures before leaving to attend it. But, it specifies that the developer does not have to provide the required disclosures in every advertisement or other written, oral, or electronic communication provided or made to a recipient before a scheduled sales presentation.

§ 11 — TIME SHARE DISCLOSURE STATEMENT

The act requires a developer to (1) give a prospective purchaser, before he or she signs an agreement to acquire a time share interest, a disclosure statement containing certain information and (2) obtain his or her written acknowledgement of having received it.

The contents of the disclosure depend on the type of time share plan and interest offered, i.e., single-site plan, specific interest in a multi-site plan, or a nonspecific interest in a multi-site plan. A specific interest includes the right to use accommodations at a specific time share property. A nonspecific interest does not include the right to use a particular accommodation.

In addition to the required information, a developer may include other information in a time share disclosure statement with commissioner approval.

Requirements for All Time Share Plans

The disclosure statement for any time share plan, whether for a single- or multi-site plan, must include or describe:

1. the developer’s name and address;
2. the plan’s duration and operation;
3. the method and timing for performing maintenance;
4. a statement that the sum of the nights that purchasers are entitled to use the accommodations each year does not exceed the number of nights they are available;
5. a statement of whether or not an association exists or is expected to be created and, if so, a description of its powers and responsibilities;
6. copies of the following documents, if applicable, and any amendments to them, unless separately provided to the purchaser at the same time as the time share disclosure statement: (a) the declaration, (b) the association articles of incorporation, bylaws, and rules, and (c) any lease or contract, excluding the purchase contract and other loan documents the purchaser must sign at closing;

7. the managing entity's name and principal address and any procedures for altering its powers and responsibilities and removing or replacing it;
8. the projected assessments and how they are calculated and apportioned among purchasers;
9. any initial or special fee due from the purchaser at closing, including the reason for and how to calculate it;
10. any lien, defect, or encumbrance on or affecting title to the time share interest and, if applicable, a copy of each written warranty the developer provides;
11. any bankruptcy that is pending or has occurred within the past five years, pending civil or criminal cases, adjudications, or disciplinary actions material to the time share plan and known to the developer;
12. any financing offered by or available through the developer;
13. the insurance on the time share (a) property against damage and destruction, (b) association against liability to others, and (c) owners against liability to others;
14. the extent to which a time share interest may become subject to a tax lien or other lien arising out of claims against purchasers of different time share interests;
15. the purchaser's cancellation right as specified in the act (§ 14);
16. a statement disclosing any right of first refusal or other restraint on the transfer of all or any portion of a time share interest;
17. if applicable, a statement that the assessments collected from purchasers may be placed in a common account with those collected from purchasers of other time share properties under the same management;
18. if the time share plan allows purchasers to participate in an exchange program, the exchange company's name and address and how a purchaser accesses the program; and
19. any other information the commissioner deems necessary to protect prospective purchasers or to implement the act.

Additional Requirements if Single-Site Plan or Specific Interest in Multi-Site Plan

The disclosure statement for a time share plan that is either for a single-site plan or a specific interest in a multi-site plan must include or describe:

1. the type of time share plan offered;
2. the site or specific interest offered;
3. the existing or proposed accommodations, including the type and number of time share

interests, the number of bedrooms and bathrooms, sleeping capacity, and whether it contains a full kitchen (i.e., it has at least a dishwasher, range, sink, oven, and refrigerator), expressed in periods of seven-day-use availability or other applicable time increment, and, if they are proposed or incomplete, a schedule for commencement, completion, and availability;

4. any existing or proposed amenities and, if they are proposed or incomplete, a schedule for commencement, completion, and availability;
5. the extent to which financial arrangements have been provided to complete all promised accommodations and amenities;
6. how the purchasers' use of the accommodations is scheduled;
7. the current, if available, or projected annual budget for the time share plan or properties managed by the same managing entity if assessments are deposited in a common account, including the (a) amount reserved or budgeted for repairs, replacements, and refurbishment, (b) any projected common expense liability by expense category, and (c) the assumptions on which the operating budget is based;
8. any current or anticipated fees or charges time share purchasers must pay to use any time share accommodations or amenities and a statement that they are subject to change;
9. the type of insurance coverage necessary to protect the purchaser and reasonably repair or replace the accommodations and amenities; and
10. a statement that (a) a closing agent must hold any deposit made in connection with the purchase of a time share interest until any right to cancel the contract expires or, if the commissioner accepts from the developer a surety bond, irrevocable letter of credit, or other form of financial assurance instead of an escrow deposit, that the developer has provided such financial assurance in an amount equal to or in excess of the funds that would otherwise be held by a closing agent, and (b) that if the purchaser cancels, any deposit must be returned to the purchaser.

Additional Requirements if Multi-Site Plan

A developer who offers a time share interest in a multi-site time share plan, whether a specific or non-specific interest, must include or describe:

1. each component site, including its name and address;

2. the amenities available at each component site;
3. the reservation system, including (a) the entity responsible for operating it, the entity's relationship to the developer, and the duration of any agreement for its operation; (b) a summary of the rules governing access to, and use of, the system; and (c) the existence, and explanation, of any priority reservation features that affect a purchaser's ability to make reservations on a first-come, first-served basis;
4. any right to make additions to, substitutions in, or deletions from accommodations, amenities, or component sites, and a description of the basis on which these can be done;
5. the purchaser's liability for any fees associated with the plan;
6. the location of each component site, the historical occupancy of each for the prior 12 months, if the site was part of the plan during that period, and any periodic adjustment or amendment to the reservation system that may be needed to respond to actual purchaser use patterns and changes in demand for the existing accommodations; and
7. if for a (a) specific interest, each type of accommodation in each component site by the number of bedrooms and bathrooms, sleeping capacity, and whether it contains a full kitchen or (b) nonspecific interest, the existing or proposed accommodations by the number of time share interests, bedrooms, and bathrooms; sleeping capacity; and whether it contains a full kitchen, expressed in periods of seven-day-use availability or other applicable time increment, and, if they are proposed or incomplete, a schedule for commencement, completion, and availability.

Additional Requirements if Nonspecific Interest in Multi-Site Plan

A developer who offers a nonspecific time share interest in a multi-site time share must include or describe:

1. the type of interest and the usage rights the purchaser will receive;
2. who holds title to the accommodations at each component site;
3. the relationship between the plan's and the component sites' managing entities, if different;
4. the current, if available, or projected annual budget for the time share plan, including the (a) amount reserved or budgeted for repairs, replacements, and refurbishment, (b) any projected common expense liability by expense category, and (c) the assumptions on which the operating budget is based;
5. any current fees or charges time share purchasers must pay to use any time share amenities and a statement that they are subject to change;
6. the act's prohibition of waiving the purchaser's cancellation right (see § 14); and
7. a statement that (a) a closing agent must hold any deposit made in connection with the purchase of a time share interest until any right to cancel the contract expires or, if the commissioner requires the developer to post a surety bond, irrevocable letter of credit, or other form of financial assurance instead of an escrow deposit, that the developer has provided such financial assurance in an amount equal to or in excess of the funds that would otherwise be held by a closing agent, and (b) that if the purchaser cancels, any deposit must be returned to the purchaser.

Time Share Plans Located Outside Connecticut

Under the act, if a time share plan is located entirely outside of Connecticut, the DCP commissioner may allow the developer to submit (1) the same disclosure statement currently given to purchasers or (2) an equivalent disclosure statement filed in another state, if that statement substantially complies with the act's requirements. The act specifies that the use of an equivalent disclosure statement does not exempt the developer from the act's other requirements.

§ 12 —EXCHANGE DISCLOSURE STATEMENT

The act requires a developer, before a prospective purchaser signs an agreement to purchase a time share interest that offers participation in an exchange program, to provide the prospective purchaser an exchange disclosure statement of any exchange company whose service is advertised or offered.

The act also requires a person who offers participation in an exchange program for the first time after a disposition has occurred to provide an exchange disclosure statement before the purchaser executes any instrument relating to program participation.

In each case, the person offering participation in an exchange program must obtain the purchaser's written acknowledgement of having received the exchange disclosure statement.

The exchange disclosure statement must include:

1. the exchange company's name and address;
2. if the exchange company is not the developer, a statement describing the legal relationship between the two;

3. the conditions under which the exchange program might terminate or become unavailable;
4. whether program membership, participation, or both is voluntary or mandatory;
5. the required procedure for exchanging time share periods;
6. any fee for program membership, participation, or both and if the fee is subject to change;
7. a statement that program participation is conditioned on compliance with the terms of a contract between the exchange company and purchaser;
8. a statement in conspicuous type that all exchanges are arranged on a space-available basis and that neither the developer nor the exchange company guarantees that a particular time share period can be exchanged; and
9. a description of seasonal demand and unit occupancy restrictions.

The disclosure statement also must include the following, which must be independently audited by a certified public accountant or accounting firm and reported annually:

1. number of purchasers currently enrolled in the program;
2. number of accommodations and facilities that have current written affiliation agreements with the program;
3. percentage of confirmed exchanges (i.e., the number of exchanges confirmed by the program divided by the number of exchanges properly applied for) and a complete, accurate statement of the criteria used to determine if a request was properly applied for;
4. number of time share periods for which the program has an outstanding obligation to provide an exchange to a purchaser who swapped a time share period during the year for one in a future year; and
5. number of exchanges the program confirmed during the year.

Finally, the disclosure must include, in boldface, a statement that the percentage of confirmed exchanges is a summary of the exchange requests entered with the program in the period reported and that the percentage does not indicate the probability of a purchaser being confirmed for any specific choice or range of choices.

Filing with DCP Required

The act requires each exchange company, annually by June 1, to file with DCP:

1. the information specified in § 12 of the act (presumably the exchange disclosure statement),

2. any membership agreement and application between the exchange company and purchaser,
3. the required audit described above, and
4. a \$500 filing fee.

An exchange company must make its initial filing within 20 days before offering an exchange program to any purchaser in Connecticut.

The act also requires each exchange company to file with DCP any material change to a filing (1) as an amendment and (2) before it becomes effective. An amendment filing must include a \$100 filing fee.

The act requires that an exchange program filing must be updated annually with respect to added or deleted time share properties, but it specifies that such an annual update is not considered a material change to the filing.

DCP Enforcement Action

The act requires DCP to take enforcement action against an exchange company if any of the information it files does not meet the act's requirements.

§ 13 — DEVELOPER'S DUTIES

The act requires a developer to supervise, manage, and control all aspects of a time share interest offering (e.g., promoting, advertising, contracting, and closing) regardless of who else is responsible for the activities under the act. When a violation of the act occurs during an offering, both the developer and transgressor are violators under the act.

§ 14 — CANCELLATION

Right to Cancel

Under the act, a purchaser has the right to cancel a purchase contract before midnight of the fifth calendar day after the date he or she signs and receives a copy of it or receives the required time share disclosure statement, whichever is later. A developer may offer a longer cancellation period if required in the jurisdiction where the time share property is located.

Waiver of Right Prohibited

The act prohibits a purchaser from waiving his or her right of cancellation. It specifies that a purchaser may void a contract that includes a waiver.

How to Exercise Right to Cancel

The act allows a purchaser to exercise his or her right to cancel the contract by:

1. hand-delivering notice to the developer,

2. faxing or mailing notice by prepaid U.S. mail to the developer or its agent for service of process, or
3. providing notice by overnight common carrier delivery service to the developer or its agent for service of process.

Return of Payments or Negotiated Instruments

The act specifies that cancellation is without penalty. It requires that all payments the purchaser made before cancellation must be refunded and any negotiable instrument the purchaser executed must be returned. The refund or return must be completed within 20 business days after the date on which the developer receives a timely cancellation notice or by the fifth day after the date the developer receives funds from the purchaser, whichever is later.

§ 15 — REQUIRED CONTRACT LANGUAGE

Right to Cancel

The act requires each purchase contract to contain, or attach as an exhibit, information about the purchaser's right to cancel in conspicuous type, including:

1. language the act specifies or similar language or type if required by the jurisdiction in which the time share property is located,
2. the developer's name and address,
3. the date of the last day of the fiscal year,
4. the address of the managing entity, and
5. space for the purchaser to sign.

Additional Requirements

The act requires the purchase contract to contain, or attach as an exhibit:

1. the developer's name and address;
2. the address of the time share property or any available time share interest being offered;
3. the name of the person or people primarily involved in the sales presentation on the developer's behalf;
4. the amount of the periodic assessments currently assessed against or collected from time share owners;
5. a statement in conspicuous type that the act specifies, or similar language or type if required by the jurisdiction in which the time share property is located, regarding a time share owner's right to request a written annual time share fee and expense statement; and
6. the date the purchaser signs the contract.

§ 16 — LIABILITY AND IMMUNITY, EXCHANGE PRIVILEGES

Liability and Immunity

Under the act, a developer is immune from liability arising from the use, delivery, or publication of written information or audio-visual materials received from the exchange company, unless the developer knows or has reason to know that they are inaccurate or false.

The act also specifies that, except for information an exchange company gave a developer, an exchange company is not liable for (1) any violation of the act's provisions arising from a developer's use of information relating to an exchange program or (2) a developer's representation of, or use, delivery, or publication of information relating to, an exchange program or company.

Exchange Privileges

The act allows an exchange company to (1) include seasonal demand and unit occupancy restrictions in its program and (2) deny exchange privileges to a purchaser whose use of accommodations is denied. It specifies that an exchange program or company is not liable to any of its members or third parties because of an exchange privilege denial.

§ 17 — DEPOSIT IN ESCROW

The act requires a time share plan developer or closing agent to deposit all funds received during a purchaser's cancellation period in an escrow or trust account in a federally insured depository. Deposits for transactions involving time share interests located in Connecticut must comply with specific provisions.

The act specifies that (1) funds or property in the account may be released only in accordance with its requirements and (2) the closing agent or developer must make available to the commissioner, upon his request, documents related to the account or any financial assurance otherwise provided.

Closing Agent's Fiduciary Duty

The act specifies that a closing agent owes the purchaser a fiduciary duty. It defines a "closing agent" as a title agent, bonded escrow company, government insured financial institution, or an attorney who is (1) licensed in the state where the closing occurs, (2) not the developer's employee, and (3) responsible for receiving and disbursing funds.

Time Share Interests in Connecticut

Any broker accepting money, paid or advanced, from the purchaser, lessee, or prospective purchaser or lessee in connection with the sale or lease of a time share interest in Connecticut must (1) deposit the money in accordance with real estate law in an escrow account acceptable to the commissioner at a bank doing business in Connecticut and (2) maintain the account until:

1. a proper and valid release is obtained,
2. either party defaults and the commissioner or court determines the money's disposition,
3. the seller or lessor orders the money returned to the purchaser or lessee, or
4. the act's time limits for revoking the contract or agreement expire.

Agreement and Escrow Statement Required

The act requires the closing agent and developer to execute an agreement that includes a statement providing that:

1. the agent may disburse funds to the developer from the escrow or trust account only (a) after the purchaser's cancellation period expires and (b) as provided by the purchase contract;
2. if the purchaser cancels the purchase contract as provided by the contract, the funds must be paid to the purchaser or, if the developer has already returned the purchaser's funds, the developer; and
3. if a developer contracts to sell a time share interest in a building that is not complete when the cancellation period expires, the developer must maintain all funds received from the purchaser under the purchase agreement in the escrow or trust account until the building is complete.

The act specifies that the evidence that construction is complete is:

1. a certificate of occupancy,
2. a certificate of substantial completion,
3. evidence of a public safety inspection from a government agency in the applicable jurisdiction, or
4. any other evidence the commissioner finds acceptable.

Other Financial Assurance

Instead of requiring an escrow or trust account, the act allows the commissioner to accept from a developer a surety bond, including a completion of construction bond or escrow bond; irrevocable letter of credit; or other form of financial assurance, including assurance posted in another state or jurisdiction.

The act requires the financial assurance to equal or exceed the amount of funds that would otherwise be placed in an escrow or trust account. But, the financial assurance provided for time share property that is under construction must equal or exceed the amount (1) of funds that would otherwise be placed in an escrow or trust account or (2) necessary to assure completion of all accommodations, including furniture, fixtures, and other improvements, promised in the time share instruments or disclosure statement. The surety bond must permit the bond amount to decrease as work is completed, if the commissioner approves the reductions.

If the developer is considering future additional phases, the financial assurance amount does not have to include the cost of completing those if they have not been promised in the time share instruments.

Release of Funds

Default. If the purchaser defaults in his or her obligations under the terms of the purchase contract, the escrow or trust funds must be paid to the developer. If the developer defaults, the funds must be paid to the purchaser.

Disbursement. If the purchaser's funds have not been disbursed previously as provided by the act, the agent may disburse them to the developer if acceptable evidence of completion of construction is provided.

Disputes. If there is a dispute relating to escrow or trust account funds, the agent must maintain the funds in the account until (1) he or she receives written directions agreed to and signed by all parties or (2) a civil action relating to the disputed funds is filed. If a civil action is filed, the agent must maintain or deposit the funds as directed by the court in which the action is filed.

DCP Approval. Excluding an encumbrance (e.g., mortgage) on the time share interest, the act prohibits a developer from releasing any escrowed funds until the developer gives the commissioner satisfactory evidence that:

1. the time share interest, and any other property or rights to property connected to it, including amenities represented to the purchaser as being part of the time share plan, are free and clear of any of claims of the developer, an owner of the underlying property, a mortgagee, judgment creditor, or other person having an interest in, lien on, or encumbrance against the interest, related property, or property rights (i.e., the "encumbrancer");
2. the encumbrancer has recorded, in the jurisdiction in which the interest is located, a subordination and notice to creditors that explicitly provides that its right, lien, or encumbrance does not adversely affect, and is

subordinate to, the time share interest owner's rights, regardless of the purchase date, on or after the subordination document's effective date;

3. the encumbrancer has transferred the accommodations, amenities, or all rights to use them to a nonprofit organization or an owners' association, which must act as the purchaser's fiduciary to hold them for purchaser's use and benefit, (a) as long as the developer either transferred control of the organization or association to the purchasers or does not exercise voting rights in the organization or association regarding the accommodations or amenities, and (b) before the transfer, any lien or encumbrance against the accommodation or facility is made subject to a subordination and notice to creditors as specified above; or
4. alternative arrangements that the commissioner approves have been made to protect the purchaser's rights.

§ 18 — UNFAIR TRADE PRACTICES

The act makes the following actions and omissions by a developer an unfair trade practice:

1. failing to make required disclosures;
2. making false or materially misleading statements of fact concerning (a) the characteristics of time share accommodations or amenities that are available to a consumer, (b) the duration that accommodations or amenities will be available to a consumer, and (c) the conditions under which a purchaser can exchange his or her unit for another;
3. representing that a prize, gift, or other benefit will be awarded in connection with a promotion but not intending to award it in that manner;
4. failing to provide a purchaser a copy of the signed purchase contract or the annual statement; and
5. failing to maintain a one-to-one "use right to use night ratio" (see below) for a time share plan during a consecutive 12-month period.

The act specifies that these provisions are (a) not exclusive and (b) in addition to any other unfair trade practices provided for under any other law.

Annual Statement (§ 21(d))

The act also makes knowingly furnishing false information in the annual time share fee and expense statement an unfair trade practice.

Use Right to Use Night Ratio

Under the act, a developer complies with the "one-to-one use right to use night ratio" if the sum of the nights that purchasers are entitled to use in a given 12-month period does not exceed the number of nights available for use by those purchasers during the same 12-month period. No individual time share unit may be counted as providing more than 365 use-nights per 12-month period or 366 in a leap year. Each purchaser's use rights must be counted regardless of whether they have been suspended for not paying assessments or other reasons.

Nonmaterial Error or Omission

The act specifies that a (1) nonmaterial error or omission is not actionable if a developer has complied with the act in good faith and (2) purchaser cannot cancel a purchase contract after the cancellation period expires due to a nonmaterial error or omission.

§ 19 — INSURANCE

Casualty and Liability Insurance

The act requires the managing entity to use due diligence to obtain, as a common expense of the time share plan and to protect the time share and property, adequate casualty and liability insurance.

In determining whether insurance is adequate, the act requires the managing entity to consider, among other things, the following factors:

1. insurance coverage available in the market and related premiums;
2. any related deductibles, exclusions, and limitations;
3. the property's probable maximum loss during the policy term;
4. the extent to which a given peril is insurable under commercially reasonable terms;
5. amounts of any deferred maintenance or replacement reserves on hand;
6. geography and any special risks associated with the location of the time share property; and
7. the property's age and type of construction.

Under the act, a deductible of 5% or less is deemed reasonable.

Insurance a Lender Requires

The act requires a managing entity to procure and maintain, as a common expense of the time share plan, any insurance coverage, subject to any required reasonable deductibles or exclusions, as may be

required by:

1. an institutional lender to a developer, for as long as it holds a mortgage on or lien against the time share property, or
2. any holder or pledge of, or institutional lender having a security interest in, a pool of promissory notes secured by mortgages or other security interests relating to the time share plan and executed by purchasers in connection with acquiring time share interests, for as long as the notes, mortgages, or other security interests are outstanding.

Use of Existing Reserves

The act authorizes the managing entity to use any existing reserves for deferred maintenance and capital expenditures to pay for insurance deductibles or property repair or replacement after a casualty, regardless of the reserve's original purpose.

Buyer's Right to See Insurance Policies

The act requires the managing entity to make a copy of each effective insurance policy available for purchasers' and their authorized agents' reasonable inspection.

§ 20 — CRIMINAL PENALTY FOR OFFERING UNREGISTERED SHARE INTERESTS

Except as permitted by the act, a developer cannot (1) accept reservations and deposits from prospective purchasers or (2) offer or dispose of a time share interest in a time share property that has not been registered with DCP. A developer who does so is guilty of a class A misdemeanor (see Table on Penalties). The act specifies that a developer cannot be prosecuted for more than one offense involving the same promotion, even if mailed or distributed to more than one person.

§ 21 — WRITTEN ANNUAL STATEMENT

The act requires a managing entity, if assessments are deposited in a common account, to give a written annual statement of the time share plan or properties it manages to each purchaser who requests it. The statement must fairly and accurately represent the collection and expenditure of assessments, be given within five months after the fiscal year ends, and include:

1. a balance sheet;
2. an income and expense statement;
3. the current budget for the (a) time share property, (b) time share properties managed by the same managing entity, or (c) multi-site time

share plan; and

4. the name, address, and telephone number of the managing entity's designated representative.

The act also requires a managing entity to give an owner who requests it the name and address of each member of the board of directors of the owners' association, if there is one.

Annual Independent Audit

The act requires a developer or managing entity to have a certified public accountant or accounting firm conduct an annual independent audit of the time share financial statements. The audit must be (1) conducted in accordance with generally accepted auditing standards as prescribed by the American Institute of Certified Public Accountants, the Governmental Accounting Standards Board, the United States General Accounting Office, or other professionally recognized entities that prescribe auditing standards and (2) completed within five months after the fiscal year ends.

Required Notice for Connecticut Accommodation

The act requires the managing entity of any accommodation located in Connecticut to post prominently in the accommodation's registration area a notice, using language the act specifies, that a time share owner has the right to request a written annual time share fee and expense statement. The notice must include the managing entity's address and the last day of the fiscal year.

Extension for Annual Statement

The act allows the commissioner, if he receives a written request from a managing entity and for good cause shown, to grant the managing entity an extension of up to 30 days to provide the annual statement.

Injunctive Relief if Delivered Late

If the commissioner has not granted an extension and the managing entity provides the statement late, the commissioner may institute an action for injunctive relief through the Attorney General's Office.

§ 22 — COMMINGLING OF ASSETS

The act prohibits an entity that manages two or more single-site plans or a multi-site time share plan from commingling the assessments collected from purchasers of different plans, unless it discloses the practice in each time share property's disclosure statement and recorder declaration (see § 5).

Similarly, the act allows an entity managing a multi-site time share plan to deposit assessments collected from purchasers of one time share property into a common account with those collected from purchasers participating in the same time share plan, but only if it discloses the practice in each property's disclosure statement and declaration. The act specifies that it is not to be construed as allowing a managing entity to commingle assessments of separate multi-site time share plans or a time share plan that is not a part of the multi-site time share plan.

Manager's Duty to Act in Owner's Best Interests

The act specifies that the managing entity has a duty to act in the best interests of each owner of a time share interest in the time share plan and the association with respect to the owners' funds.

§ 23 — TIME SHARE ASSESSMENTS

Under the act, the managing entity may levy and enforce assessments on any time share interests in accordance with the time share instrument. The assessment constitutes a debt of the person who owns the interest when the assessment is charged.

After giving a time share owner notice and an opportunity to be heard, the managing entity may impose, as an assessment, reasonable monetary penalties for violating the time share instrument, as authorized by the instrument. Assessments may include authorized personal charges and other amounts.

The managing entity may assign to delinquent owners collection costs, including attorney's fees, administrative fees, late fees, interest, and penalties or other charges authorized by the time share instrument. The act makes the amount of any assessment and other charges, as provided in the time share instrument or by law, a lien on the time share interest as of when the charge became due. Recording the time share instrument, which the act requires, constitutes notice and perfection of the lien. No further recording is required. This lien may be foreclosed in the same way as a mortgage on real property or in any other manner the law permits.

Statement of Unpaid Assessments

The act requires the managing entity, upon receiving a written request, to provide a time share owner, purchaser, or lender with a security interest a statement identifying the amount of unpaid assessments against the owner's time share interest. The statement (1) must be provided within 10 business days after receiving the request and (2) is binding on the managing entity, the association, the board, and every owner.

Foreclosure

If an association, developer, or other managing entity files a foreclosure action related to an assessment lien on time share interests, it may join in the same action multiple defendants and junior interest holders of separate time share interests, if the:

1. foreclosure involves one time share plan and one plaintiff,
2. default and remedy provisions in the written instruments on which the foreclosure is based are substantially the same for each defendant, and
3. nature of the alleged defaults is the same for each defendant.

If a defendant in a foreclosure action involving multiple defendants raises a defense or counterclaim to any count of the complaint, the court must sever that count for a separate trial.

§ 24 — COLLECTION COSTS AND FEES

The act requires collection costs, including reasonable collection agency and attorney fees incurred in collecting a delinquent assessment, to be paid by the purchaser and secured by a lien in favor of the managing entity on the time share interest to which the assessment relates. It requires a managing entity, within 60 days before turning the matter over to a consumer collection agency, to advise the purchaser that he or she may be liable for the agency's fees and a lien may result.

§ 25 — AVAILABILITY OF RECORDS

The act requires a developer or managing entity, upon an owner's written request, to make available for examination at its registered office or principal place of business, and at reasonable times, the relevant books and records relating to collecting and spending assessments.

A developer's or managing entity's records must include a copy of each purchase contract for an accommodation the developer sold for a time share period unless the contract has been canceled. If a time share estate sale is pending, the developer must keep a copy of the contract until a deed of conveyance, agreement for deed, or lease is recorded in the property records of the town where the time share property is located.

§ 26 — TIME SHARE RESALE BROKER

A time share resale broker who acts on behalf of a time share owner other than a developer or its affiliate must, before offering a time share interest in this state,

(1) be licensed as a real estate broker pursuant to state law and (2) comply with the act and submit copies to DCP of the documents and disclosures the act requires.

Under the act, a “time share resale broker” is someone who (1) acts for another person or entity and, for a fee, commission, or other valuable consideration, offers in Connecticut to advertise, list for sale, sell, exchange, buy, or rent or attempts to negotiate a sale, exchange, purchase, or rental of 12 or more time share resales in any 12 months or (2) is registered as a time share resale broker under the act. A “time share resale” is the sale or transfer of a time share interest that was previously sold to someone else, other than a developer.

Rebuttable Presumption

The act creates a rebuttable presumption that a person who has acquired 12 or more time share interests and offers them for resale in any 12-month period did not acquire them for personal use and occupancy.

Exemptions

Under the act, unless the method for reselling time shares is to evade the act’s requirements, a person or entity is not considered a time share resale broker if:

1. he or she is a real estate salesperson licensed in Connecticut who resells or offers to resell time share interests in a time share plan as an agent for a registered developer, if he or she delivers all disclosures the act requires developers to make or complies with the act’s resale disclosure requirement;
2. he or she is a developer registered under the act or the developer’s affiliate and managing entity, if the developer or affiliate delivers all disclosures the act requires developers to make or complies with the act’s resale disclosure requirement;
3. it is an association that is not a developer that (a) sells, or engages a third party to sell on its behalf, 50 or fewer time share interests in the time share plan that it governs in a given calendar year to people who are not existing purchasers of the time share plan and (b) complies with the act’s resale disclosure requirement; or
4. it is an exchange company that filed with DCP information the act requires.

Duties of a Time Share Resale Broker

A time share resale broker who offers to resell a time share interest must (1) provide a fully executed copy of the written agreement for a time share resale as provided in the act to the time share owner on the date

the owner signs the agreement and (2) make the resale disclosures the act requires before accepting anything of value from the time share owner.

§ 27 — RESALE DISCLOSURE

Before a purchaser signs a contract to purchase a time share resale, the reseller must disclose in the purchase contract, in conspicuous type:

1. the time share plan’s and its managing entity’s name, address, and telephone number;
2. when a purchaser may use the time share interest;
3. a legal description of the time share interest being acquired;
4. the earliest date that the purchaser may use the time share interest;
5. the name, address, telephone number, and, if applicable, Internet web site address of the entity from which the time share instrument and the governing documents of the association, if any, may be obtained and a specified notice about which documents should be reviewed before purchasing the interest;
6. the current fiscal year’s annual assessment for the time share interest and a statement indicating whether or not real property taxes are included in the annual assessment;
7. if the property taxes are not included in the annual assessment, the amount of taxes for the most recent tax year for which a bill was issued;
8. whether all assessments against the time share interest are paid in full and, if not, the amount owed and the consequences not paying assessments or taxes; and
9. any other information the commissioner requires disclosed pursuant to regulations.

§ 28 — RESALE AGREEMENTS

Under the act, a resale agreement between a time share owner and a time share resale broker who offers to resell the owner’s time share interest must be in writing and disclose in conspicuous type:

1. if anyone other than the owner may use, rent, or exchange the use of the interest before it is resold;
2. the name of anyone who will receive any rents, profits, or other consideration from its use before it is resold;
3. a detailed description of any relationship between the reseller and anyone receiving any benefit from the interest’s use;
4. the amount or percentage, and procedures for paying, of any commissions due to the broker

upon resale; and

5. a description, including the amount, of any fee the time share owner will have to pay the broker before the resale.

A broker who charges any fee before the resale must disclose, for each of the past three years, the number and ratio or percentage of time share interests sold versus the number of time share interests listed.

§ 29 — TIME SHARE CONDOMINIUM DISCLOSURE

By law, if a condominium's declaration provides that ownership or occupancy of any units is or may be in time shares, the public offering statement must disclose, among other things, the:

1. number and identity of units in which time shares may be created,
2. total number of time shares that may be created,
3. minimum duration of any time shares that may be created, and
4. extent to which creating time shares will or may affect the enforceability of the association's lien for assessments.

Under the act, this condominium disclosure is required in addition to the act's time share disclosure statement.

§ 30 — REPEALED LAWS

The act repeals, effective January 1, 2010, the prior time sharing plan laws.

BACKGROUND

Connecticut Unfair Trade Practices Act

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. It also allows individuals to sue. 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.

PA 09-164—sHB 6447

Insurance and Real Estate Committee

AN ACT MITIGATING FIRE LOSSES FOR HOMEOWNERS AND BUSINESS OWNERS

SUMMARY: This act makes numerous changes to the standard fire insurance policy that insurers, by law, must write in Connecticut. Specifically, it shortens the time an insurer has to pay a claim from 60 to 30 days and increases the statute of limitations for filing a lawsuit relating to a claim from 12 to 18 months after sustaining a loss. Additionally, the act allows an insured person and the insurer to agree in writing to a partial claim payment in advance of final claim adjudication and requires an insurer to reduce the total amount due to an insured by the amount of any advance partial payment made. The act specifies that an advanced partial payment does not affect the 30-day time period for total payment.

Under prior law, commercial risk insurance policies, including those issued to a condominium association, could exclude coverage for losses caused, directly or indirectly, by terrorism (1) if the premiums charged for the policy reflect projected savings from the exclusion and (2) until the terrorism risk program established under federal law expires. The act instead requires a condominium association's master insurance policy to include coverage for losses caused by terrorism if the condominium was formed after 1976. It still permits other commercial risk insurance policies, including those issued to a condominium formed before 1977, to exclude the coverage, subject to the two conditions. (The law allows the insurance commissioner to define "terrorism." He has adopted the definition used in the 2007 federal law reauthorizing the federal program.)

EFFECTIVE DATE: October 1, 2009

TERRORISM COVERAGE

The act requires a condominium association's master policy to include coverage for terrorism if the condominium is subject to the Common Interest Ownership Act (CIOA) or the Condominium Act. If the condominium is subject to the Unit Ownership Act, it may exclude such coverage, subject to the conditions specified in the law.

Three different sets of laws govern condominiums, depending on when they were created. CIOA governs the creation, alteration, management, termination, and sale of condominiums and other common interest communities formed in Connecticut after December 31, 1983 (CGS § 47-200 et seq.). The Condominium Act governs condominiums created from 1977 through 1983 (PA 76-308; CGS §§ 47-68a to 47-90c). The Unit

Ownership Act governs condominiums created before 1977 (PA 1963, No. 605, July 10, 1963; CGS §§ 47-67 to 47-115 Rev. to 1975).

BACKGROUND

Federal Terrorism Risk Insurance Act

The 2002 federal Terrorism Risk Insurance Act created a temporary program under which the federal government shares the risk of loss from foreign terrorist attacks with the insurance industry. The 2007 Terrorism Risk Insurance Program Reauthorization Act revised several provisions of the initial act and extended the program until December 31, 2014.

The act defines “act of terrorism” as an act the treasury secretary certifies, in concurrence with the secretary of state and U.S. attorney general, to:

1. be an act of terrorism;
2. be violent or dangerous to human life, property, or infrastructure;
3. have resulted in damage within the United States (or outside the United States in the case of certain air carriers, vessels, or U.S. missions); and
4. have been committed as part of an effort to coerce U.S. civilians or to influence the policy or affect the conduct of the U.S. government by coercion.

An act will not be certified as an act of terrorism if (1) aggregate property and casualty insurance losses resulting from the event do not exceed \$100 million or (2) it is committed in the course of a war declared by Congress. (This latter exclusion does not apply to workers’ compensation claims.) The federal payout under the program is capped at \$100 billion.

The act requires insurers to offer coverage for losses caused by terrorism to all commercial insureds at the initial policy offer and at renewal. It prohibits the coverage from differing materially from the terms, amounts, and other limitations applicable to losses arising from non-terrorist acts.

The act requires insurers to give policyholders a disclosure containing specified information, including the amount of premium charged for losses caused by terrorism. If a policyholder does not pay the premium allocated for terrorism coverage, the policy will not take effect.

PA 09-179—HB 5018

Insurance and Real Estate Committee

AN ACT CONCERNING REVIEWS OF HEALTH INSURANCE BENEFITS MANDATED IN THIS STATE

SUMMARY: This act establishes a health benefit review program in the Insurance Department to evaluate the social and financial impacts of “mandated health benefits” that (1) exist in statute or are effective on July 1, 2009 and (2) the Insurance and Real Estate Committee may request annually by August 1, including proposed legislation. In each case, the commissioner must report findings to the committee by the next January 1.

The act requires the commissioner to contract with the UConn Center for Public Health and Health Policy to conduct reviews the committee requests. It also authorizes him to assess insurers for the program’s costs. Assessments must be deposited in the Insurance Fund.

EFFECTIVE DATE: July 1, 2009

MANDATED HEALTH BENEFIT REVIEW

The act requires the insurance commissioner to review mandated health benefits existing or effective on July 1, 2009 and report findings to the Insurance and Real Estate Committee by January 1, 2010.

The act also requires the committee to give the commissioner, annually by August 1, a list of any mandated health benefits it wants reviewed. The commissioner must report the findings of the review to the committee by the next January 1.

Definition

The act defines “mandated health benefit” as an existing statutory obligation of, or proposed legislation that would require, an insurer, HMO, hospital or medical service corporation, fraternal benefit society, or other entity offering health insurance or benefits in Connecticut to:

1. allow an insured or plan enrollee to obtain health care treatment or services from a particular type of health care provider;
2. offer or provide coverage for the screening, diagnosis, or treatment of a particular disease or condition; or
3. offer or provide coverage for (a) a particular type of health care treatment or service or (b) medical equipment, medical supplies, or drugs used in connection with a health care treatment or service.

The term includes proposed legislation to expand or repeal an existing health insurance or medical benefit statutory requirement.

UConn

The act requires the commissioner to contract with the UConn Center for Public Health and Health Policy to conduct reviews the Insurance and Real Estate committee requests. It authorizes the center's director, as he or she deems appropriate, to (1) retain an actuary, quality improvement clearinghouse, health policy research organization, or other independent expert and (2) engage or consult with any UConn dean, faculty, or other personnel, including those from the business, dental, law, medicine, and pharmacy schools.

Assessment

The act authorizes the commissioner to assess insurers for the program's costs. It specifies that the assessment is in addition to any other taxes, fees, and money the insurers pay to the state. The act requires the commissioner to deposit the paid assessments with the state treasurer, who must credit them to the Insurance Fund as expenses recovered from insurers. It authorizes the commissioner to spend such money to carry out the act's provisions.

Review Report Requirements

Social Impact. The report must include, to the extent available, the social impact of mandating the benefit, including:

1. the extent to which a significant portion of the population uses the treatment, service, equipment, supplies, or drugs;
2. the extent to which the treatment, service, or equipment is, or supplies and drugs are, available under Medicare or through public programs that charities, public schools, the Department of Public Health, municipal health departments or districts, or the Department of Social Services administer;
3. the extent to which insurance policies already cover the treatment, service, equipment, supplies, or drugs;
4. if coverage is not generally available, the extent to which this results in (a) people being unable to obtain necessary treatment and (b) unreasonable financial hardships on those needing treatment;
5. the level of demand from the public and health care providers for (a) the treatment, service, equipment, supplies, or drugs and (b) insurance coverage for these;

6. the likelihood of meeting a consumer need based on other states' experiences;
7. relevant findings of state agencies or other appropriate public organizations relating to the benefit's social impact;
8. alternatives to meeting the identified need, including other treatments, methods, or procedures;
9. whether the benefit is (a) a medical or broader social need and (b) consistent with the role of health insurance and managed care concepts;
10. potential social implications regarding the direct or specific creation of a comparable mandated benefit for similar diseases, illnesses, or conditions;
11. the benefit's impact (a) on the availability of other benefits already offered and (b) on employers shifting to self-insured plans;
12. the extent to which employers with self-insured plans offer the benefit;
13. the impact of applying the benefit to the state employees' health plan; and
14. the extent to which credible scientific evidence published in peer-reviewed medical literature that the relevant medical community generally recognizes determines the treatment, service, equipment, supplies, or drugs are safe and effective.

Financial Impact. The report must include, to the extent available, the financial impact of mandating the benefit, including:

1. the extent to which the benefit may increase or decrease, over the next five years, (a) the cost of the treatment, service, equipment, supplies, or drugs and (b) the appropriate or inappropriate use of the benefit;
2. the extent to which the treatment, service, or equipment is, or supplies or drugs are, more or less expensive than another that is determined to be equally safe and effective by credible scientific evidence published in peer-reviewed medical literature that the relevant medical community generally recognizes;
3. the extent to which the treatment, service, equipment, supplies, or drugs could be an alternative for a more or less expensive one;
4. the reasonably expected increase or decrease of a policyholder's insurance premiums and administrative expenses;
5. methods that will be implemented to manage the benefit's utilization and costs;
6. the impact on the (a) the total cost of health care, including potential savings to insurers and employers resulting from prevention or early detection of disease or illness and (b) cost of health care for small employers and other

- employers; and
7. the impact on (a) cost-shifting between private and public payors of health care coverage and (b) the overall cost of the state's health care delivery system.

PA 09-188—sHB 5021 (VETOED)
Insurance and Real Estate Committee
Appropriations Committee

**AN ACT CONCERNING WELLNESS
PROGRAMS AND EXPANSION OF HEALTH
INSURANCE COVERAGE**

SUMMARY: This act (1) requires group health insurers to offer health wellness programs that provide insured people participation incentives and (2) allows the insurance commissioner, in consultation with the public health commissioner, to adopt regulations regarding such programs. It (1) requires health insurance policies to cover, subject to specified conditions, prosthetic devices and human leukocyte antigen (bone marrow) testing and (2) prohibits insurers from charging an insured person for a second or subsequent colonoscopy a physician orders for him or her in a policy year.

The act expands the insurance coverage required for (1) medically necessary ostomy appliances and supplies, increasing the annual benefit from \$1,000 to \$5,000; (2) children's hearing aids, requiring coverage for children under age 19, instead of under age 13; and (3) wigs, requiring coverage of at least \$350 annually for people diagnosed with alopecia areata (a type of hair loss, which is often temporary in nature), excluding androgenetic alopecia (i.e., female- or male-pattern baldness), in addition to people with hair loss due to chemotherapy, for whom the benefit is already law.

The act also broadens the applicability of several health insurance benefits required by law, including ostomy supplies, treatment of tumors and leukemia, reconstructive surgery, nondental prosthesis, chemotherapy, and wigs for chemotherapy patients. It does this by requiring all policies delivered, issued, renewed, amended, or continued in Connecticut to include the benefits, instead of only policies delivered or issued in the state.

EFFECTIVE DATE: January 1, 2010

WELLNESS INCENTIVES

The act requires an insurer or other entity writing group health insurance in Connecticut to offer a "reasonably designed" health behavior wellness, maintenance, or improvement program that gives participants one or more incentives to participate in the

program. The allowed incentives are a (1) reward; (2) health spending account contribution; (3) premium reduction; and (4) reduced copayment, coinsurance, or deductible. The act prohibits the value of any reward or incentive from exceeding 20% of "paid premiums" and requires them to comply with federal nondiscrimination requirements.

The act allows the insurance commissioner, in consultation with the public health commissioner, to adopt regulations to establish criteria for such programs and procedures for approving them. It requires an insured person or plan enrollee to give the insurer or entity proof of program participation in a manner the insurance commissioner approves.

The act exempts a permitted reward or incentive from the laws prohibiting rebates and discrimination in insurance.

PROSTHETIC DEVICES

The act defines a "prosthetic device" as an artificial device to replace all or part of an arm or leg. It includes a device containing a microprocessor that an insured person's health care provider determines is medically necessary, but excludes a device designed exclusively for athletic purposes.

The act requires a health insurance policy to provide coverage for prosthetic devices that is at least equivalent to the coverage Medicare provides for such devices. (Medicare covers 80% of the cost of prostheses, after a person pays his or her annual deductible.) It allows a policy to (1) limit coverage to a prosthetic device that a person's health care provider determines is most appropriate to meet his or her medical needs and (2) to require prior authorization for prosthetic devices, but only in the same manner and to the same extent as it requires prior authorization for other policy benefits.

The act requires a policy to cover repairs to or replacements of prosthetic devices that the person's health care provider determines are medically necessary. It excludes coverage of repairs or replacements needed because of misuse or loss of the device. The act permits a person who is denied coverage for a prosthetic device, or device repair or replacement, to file an external appeal with the insurance commissioner in accordance with law.

The act prohibits a policy from imposing a coinsurance, copayment, deductible, or other out-of-pocket expense for a prosthetic device that is more restrictive than that imposed on most other policy benefits. It specifies that a deductible limit does not apply to a high-deductible health plan designed to be compatible with federally qualified health savings accounts.

The act also prohibits a policy from considering a prosthetic device as durable medical equipment. (Thus, the amount covered cannot count toward a durable medical equipment maximum.)

BONE MARROW TESTING

The act requires health insurance policies to cover human leukocyte antigen testing, also referred to as histocompatibility locus antigen testing, for A, B, and DR antigens, to determine compatibility for bone marrow transplants. Under the act, a policy (1) may limit coverage to one covered test in a person's lifetime and (2) cannot impose a coinsurance, copayment, deductible, or other out-of-pocket expense for the testing that exceeds 20% of the cost for testing per year, unless it is a high-deductible policy designed to be compatible with federally qualified health savings accounts.

The act requires a policy to (1) require bone marrow testing be done at a facility certified under the federal Clinical Laboratory Improvement Act and accredited by the American Society for Histocompatibility and Immunogenetics, or its successor and (2) limit coverage to people who sign up for the National Marrow Donor Program when being tested.

COLONOSCOPIES

By law, health insurance policies must cover colorectal cancer screening, including (1) an annual fecal occult blood test and (2) colonoscopy, flexible sigmoidoscopy, or radiologic imaging, in accordance with recommendations the American College of Gastroenterology, in consultation with the American Cancer Society, based on age, family history, and frequency.

The act prohibits policies from imposing a coinsurance, copayment, deductible, or other out-of-pocket expense for a second or subsequent colonoscopy a physician orders for an insured person in a policy year. Other than this prohibition, benefits are subject to the same terms and conditions that apply to policy benefits. The act specifies that its prohibition does not apply to a high-deductible health plan designed to be compatible with federally qualified health savings accounts.

OSTOMY APPLIANCES AND SUPPLIES

By law, policies that cover ostomy surgery must include coverage for medically necessary ostomy appliances and supplies, including collection devices, irrigation equipment and supplies, and skin barriers and protectors. Ostomy includes colostomy, ileostomy, and urostomy.

The act increases the annual coverage amount for ostomy appliances and supplies from \$1,000 to \$5,000. The law prohibits insurers from applying any payments for ostomy appliances and supplies toward any durable medical equipment benefit maximum. And such payments cannot be used to decrease policy benefits that exceed the required coverage amount.

The act applies this coverage requirement to policies issued, delivered, renewed, amended, or continued in Connecticut. Prior law did not apply to policies amended in the state.

HEARING AIDS

The act requires health insurance policies to cover hearing aids for children under age 19, up from those under age 13. By law, a policy (1) must consider hearing aids as durable medical equipment and (2) may limit coverage to \$1,000 in a 24-month period.

WIGS

The act requires health insurance policies to provide a yearly benefit of at least \$350 to cover a wig a licensed physician or advanced practice registered nurse prescribes for a person with hair loss caused by a diagnosed medical condition of alopecia areata, excluding androgenetic alopecia. The coverage must be subject to the same terms and conditions applicable to all other policy benefits.

By law, policies must provide a yearly benefit of at least \$350 for an oncologist-prescribed wig for a person with hair loss resulting from chemotherapy, subject to the same terms and conditions as other policy benefits.

APPLICABILITY OF OTHER REQUIREMENTS BROADENED

The act requires health insurance policies renewed, amended, or continued in Connecticut to provide coverage for:

1. the surgical removal of tumors and related outpatient chemotherapy;
2. treatment of leukemia, including outpatient chemotherapy;
3. reconstructive surgery, including on a breast on which a mastectomy was performed and a nondiseased breast for symmetry (such as augmentation or reduction mammoplasty and mastopexy);
4. nondental prosthesis, including any maxillo-facial prosthesis used to replace anatomic structures lost during treatment for head and neck tumors or additional appliances essential for the support of such a prosthesis;
5. an oncologist-prescribed wig for a patient with hair loss resulting from chemotherapy; and

6. if a group health insurance policy, medically necessary removal of breast implants that were implanted before July 2, 1994.

Coverage must be subject to the same terms and conditions applicable to other benefits under the policy. But the policy must provide at least a yearly benefit of: (1) \$500 each for the surgical removal of tumors, reconstructive surgery, and outpatient chemotherapy; (2) \$350 for a wig; (3) \$300 for a nondental prosthesis, unless the prosthesis is due to the surgical removal of breasts because of tumors, in which case the yearly benefit must be at least \$300 for each breast; and (4) if a group policy, \$1,000 for a breast implant removal.

By law, policies issued or delivered in Connecticut already must include these benefits.

APPLICABILITY OF THE ACT

The act's coverage requirements for prosthetic devices, bone marrow testing, colonoscopy, ostomy supplies, and hearing aids apply to individual and group health insurance policies delivered, issued, renewed, amended, or continued in Connecticut that cover (1) basic hospital expenses; (2) basic medical-surgical expenses; (3) major medical expenses; and (4) hospital or medical services, including coverage under an HMO plan. The wig coverage and tumor, leukemia, and related benefit requirements also apply to individual health insurance policies that provide limited benefit health coverage. The wellness program requirement and related provisions apply to only group health insurance policies.

Due to federal law, state insurance benefit mandates do not apply to self-insured benefit plans.

BACKGROUND

Medically Necessary

The law requires policies to include the following definition of "medically necessary." Medically necessary services are health care services that a physician, exercising prudent clinical judgment, would provide to a patient to prevent, evaluate, diagnose, or treat an illness, injury, disease, or its symptoms, and that are:

1. in accordance with generally accepted standards of medical practice;
2. clinically appropriate, in terms of type, frequency, extent, site, and duration and considered effective for the patient's illness, injury, or disease;
3. not primarily for the convenience of the patient, physician, or other health care provider; and
4. not more costly than an alternative service or sequence of services at least as likely to

produce equivalent therapeutic or diagnostic results.

"Generally accepted standards of medical practice" means standards that are (1) based on credible scientific evidence published in peer-reviewed medical literature generally recognized by the relevant medical community or (2) otherwise consistent with the standards set forth in policy issues involving clinical judgment.

PA 09-204—sSB 47

*Insurance and Real Estate Committee
Public Health Committee*

AN ACT CONCERNING CONTRACTS BETWEEN HEALTH CARE PROVIDERS AND CONTRACTING HEALTH ORGANIZATIONS

SUMMARY: This act expands the (1) fee information a managed care organization or preferred provider network (i.e., contracting health organization) must give to health care providers with whom it contracts and (2) list of providers to whom the requirement and related provisions apply. It prohibits contracting health organizations from making material changes to a provider's fee schedule except as the act specifies.

It also requires a contracting health organization to give each contracted provider Internet, electronic, or digital access to policies and procedures regarding providers' (1) payments, (2) duties and requirements under the contract, and (3) inquiries and appeals, including (a) contact information for the office responsible for responding to them and (b) a description of appeal rights applicable to providers, enrollees, and enrollees' dependents.

The act prohibits a contracting health organization, more than 18 months after receiving a clean (i.e., complete) claim, from canceling, denying, or demanding the return of full or partial payment it made in error for an authorized covered service except under specified circumstances and subject to certain procedures.

EFFECTIVE DATE: January 1, 2010, except for the provisions relating to material changes to fee schedules and cancellation of authorized covered services, which are effective July 1, 2010.

ACCESS TO CODES AND FEES

Prior law required contracting health organizations to allow a contracted physician, physician group, or physician organization to confidentially view, in a digital format, the fees payable for the 50 current procedural terminology (CPT) codes most commonly performed by the physician, group, or organization. The

law applied with respect to physicians, surgeons, chiropractors, podiatrists, psychologists, and optometrists.

The act instead requires the organization to establish and implement a procedure to provide each contracted provider Internet, electronic, or digital access to the organization's fees for the CPT and the Health Care Procedure Coding System (HCPCS) codes (1) applicable to the provider's specialty and (2) that the provider requests for other services for which he or she actually bills or intends to bill the organization, provided the codes are within the provider's specialty or subspecialty. The act defines "provider" as a physician, surgeon, chiropractor, podiatrist, psychologist, optometrist, naturopath, or advanced practice registered nurse licensed in Connecticut, or a group or organization of such people, who has entered into or renews a participating provider contract with a contracting health organization to render services to the organization's enrollees and enrollees' dependents.

By law, (1) the right to access fees applies only to a provider whose services are reimbursed using CPT codes and (2) fee information is proprietary and confidential. The organization may penalize the unauthorized distribution of the information, including terminating the provider's contract.

CHANGES TO FEE SCHEDULES

The act prohibits contracting health organizations from making material changes to a provider's fee schedule except as specified. A contracting health care organization may make changes once a year if it gives providers at least 90 days' advance notice by mail, e-mail, or fax. Upon receipt of the notice, a provider may terminate its contract by giving the organization at least 60 days' advance written notice.

The act also allows an organization to make changes at any time if it gives providers at least 30 days' advance notice by mail, e-mail, or fax if the changes are:

1. to comply with a federal or state requirement, but if the requirement takes effect in fewer than 30 days, the organization must give providers as much notice as possible;
2. to comply with changes to the medical data code sets in federal regulations (45 CFR 162.1002);
3. to comply with changes to national best practice protocols made by the National Quality Forum or other national accrediting or standard-setting organization based on peer-reviewed medical literature generally recognized by the relevant medical community or the results of clinical trials generally recognized and accepted by the relevant

medical community;

4. consistent with changes in Medicare billing or medical management practices, as long as the changes are made to relevant provider contracts and relate to the same specialty or payment methodology;
5. because the federal Food and Drug Administration (FDA) or peer-reviewed medical literature generally recognized by the relevant medical community identifies a drug, treatment, procedure, or device as no longer safe and effective;
6. to address payment or reimbursement for a new drug, treatment, procedure, or device that becomes available and is determined to be safe and effective by the FDA or by peer-reviewed medical literature generally recognized by the relevant medical community; or
7. mutually agreed to by the organization and the provider.

PAYMENT CANCELLATION, DENIAL, OR RETURN

The act prohibits a contracting health organization, more than 18 months after receiving a clean (i.e., complete) claim, from canceling, denying, or demanding the return of full or partial payment for an authorized covered service due to administrative or eligibility error, unless the:

1. organization (a) has a documented basis to believe that the provider fraudulently submitted the claim, (b) already paid the provider for the claim, or (c) paid a claim that should have been or was paid by a federal or state program; or
2. provider (a) did not bill the claim appropriately based on documentation or evidence of what medical service was actually provided or (b) received payment from a different insurer, payor, or administrator through coordination of benefits, subrogation, or coverage under an automobile insurance or workers' compensation policy.

The act gives a provider that receives a payment from another source one year after the date of the payment cancellation, denial, or return to resubmit an adjusted claim with the organization on a secondary payor basis, regardless of the organization's timely filing requirements.

Advance Notice Required

The act requires an organization to give a provider at least 30 days' advance notice of a payment cancellation, denial, or return demand by mail, e-mail, or fax. The organization must include in a notice

demanding a return of payment the (1) amount it wants returned, (2) claim to which it relates, and (3) basis for it.

Appeal

The act allows a provider to appeal, in accordance with the organization's procedures, a payment cancellation, denial, or return demand within 30 days after receiving notice of it. It requires a payment return demand to be stayed (i.e., postponed) during the appeal.

Adjusted Claim

If there is no appeal or an appeal is denied, the act allows a provider to resubmit an adjusted claim, if applicable, to the organization within 30 days after receiving notice of (1) a payment cancellation or denial or (2) an appeal denial. A claim may not be resubmitted if the organization demanded a return of payment.

Other Appropriate Insurance Coverage

The act gives a provider one year after the date of the written notice of a payment cancellation, denial, or return demand to (1) identify any other appropriate insurance coverage applicable on the date of service and (2) file a claim with the insurer, HMO, or other issuing entity, regardless of its timely filing requirements.

BACKGROUND

HMO Provider Contracts and Billing Enrollees

By law, every contract between an HMO and a participating provider of health care services must be in writing and contain specified provisions or variations the insurance commissioner approves. If the participating provider contract is not in writing or does not have the specified provisions, the law prohibits the provider from collecting or attempting to collect from the subscriber or enrollee any amount for which the HMO is responsible (CGS § 38a-193(c)).

When an HMO has primary payment responsibility, the law makes it an unfair trade practice for a provider to (1) request payment from an enrollee, other than a copayment or deductible, for covered medical services or (2) report to a credit reporting agency an enrollee's failure to pay a bill for medical services (CGS § 20-7f).

Prompt Claim Payments

By law, an insurer or other entity must pay a clean claim within 45 days of receiving it (CGS § 38a-816(15)). If a claim contains a deficiency, the insurer must send written notice to the claimant or health care

provider, as the case may be, of all alleged deficiencies within 30 days of receiving the claim. The insurer must process the claim within 30 days of receiving the corrected claim and add 15% interest if payment is late.

PA 09-216—sHB 6279

Insurance and Real Estate Committee

AN ACT CONCERNING ACCELERATED BENEFITS OF LIFE INSURANCE POLICIES

SUMMARY: This act expands what constitutes a "qualifying event" for purposes of receiving an accelerated death benefit payment under a life insurance policy. By law, life insurers and fraternal benefit societies may include an accelerated benefit option in life insurance policies. The option pays benefits during an insured person's life upon the occurrence of a qualifying event, reducing the insurance benefit payable upon death.

The act (1) allows an insured person to collect the benefit when he or she is confined at home or in an acute care hospital, in addition to other institutions already allowed by law, due to a medically determinable condition; (2) eliminates a requirement that a licensed or certified health care provider render the person's care; and (3) specifies that the medically determinable condition that results in the insured's confinement must have resulted in the person being deemed chronically ill for the purposes of federal Internal Revenue Code.

The act allows insurers to pay accelerated benefits due to confinement in lump sum or periodic payments, instead of only in a lump sum as under prior law.

By law, the insurance commissioner may adopt regulations necessary to implement the accelerated death benefit statutes. The act specifically authorizes him to address, in any such regulations, medically determinable conditions that are considered qualifying events.

EFFECTIVE DATE: January 1, 2010

DEFINITION OF QUALIFYING EVENT

Prior law defined a "qualifying event" as a:

1. medically determinable condition, such as coronary artery disease, myocardial infarction, stroke, kidney failure, or liver disease, that can be expected to result in death within about 12 months;
2. medical condition that would result in death within about 12 months in the absence of extensive or extraordinary medical treatment; or
3. medically determinable condition that has caused the insured person to be confined for at

least six months in an institution other than an acute care hospital where he or she receives necessary care and treatment for an injury, illness, or loss of functional capacity from a certified or licensed health care provider, where it has been medically determined that he or she is expected to remain confined until death.

The act leaves intact the first two parts of the “qualifying event” definition, but it changes the third part to a medically determinable condition that has caused the insured person to be (1) considered a “chronically ill individual” for purposes of the federal Internal Revenue Code and (2) confined for at least six months in his or her place of residence or in an institution that provides necessary care and treatment of an injury, illness, or loss of functional capacity, where it has been medically determined that he or she is expected to remain confined until death.

Chronically Ill Individuals

Internal Revenue Code § 101(g) refers to the definition of “chronically ill individual” given in I.R.C. § 7702B(c)(2), excluding terminally ill individuals. I.R.C. § 7702B(c)(2) defines a “chronically ill individual” as a person whom a licensed health care practitioner certifies as (1) being unable to perform, without substantial assistance from another individual, at least two activities of daily living for a period of at least 90 days due to a loss of functional capacity, or a similar level of disability as determined under regulations, or (2) requiring substantial supervision to protect the individual from threats to health and safety due to severe cognitive impairment. A licensed health care practitioner must have certified within the preceding 12 months that the individual meets the requirements. Activities of daily living include eating, toileting, transferring, bathing, dressing, and continence.

PA 09-217—HB 6280

Insurance and Real Estate Committee

AN ACT EXTENDING THE SUNSET DATE FOR PERSONAL RISK INSURANCE RATE FILINGS

SUMMARY: This act extends the sunset date for the “flex rating” law for personal risk insurance (e.g., home, auto, marine, umbrella) from July 1, 2009 to July 1, 2011.

EFFECTIVE DATE: Upon passage

BACKGROUND

Flex Rating Law

The flex rating law permits property and casualty insurers, until the law sunsets, to file new personal risk insurance rates with the insurance commissioner and begin using them immediately without his prior approval if the rates increase or decrease by no more than 6% for all products included in the filing. The new rate cannot apply on an individual basis. The law does not apply to rates for the residual market.

The law provides that an insurer may not submit more than one rate filing using the 6% band to the Insurance Department in any 12-month period, unless all rate filings submitted within the 12 months, in combination, do not result in a statewide rate change of plus or minus 6% for all products included in the filing.

Under the law, an insurer can apply a rate increase within the 6% band only on or after a policy renewal and after notifying the insured. (The notification specifies the effective date of the increase.) Rate filings requesting to increase or decrease rates by more than 6% must follow existing rate filing requirements (i.e., insurers must receive approval from the department before using such new rates).

The law deems that any filings made under its provisions comply with the rating laws, except that the commissioner is authorized to determine whether they are inadequate or unfairly discriminatory. It requires the commissioner to order the insurer to stop using a rate change within the 6% band on a specified future date if he determines it is inadequate or unfairly discriminatory. The order must be in writing and explain the finding. If the commissioner issues the order more than 30 days after the insurer submitted the filing to him, the law requires the order to apply prospectively only and not affect any contract issued before its effective date.

PA 09-237—sSB 457

*Insurance and Real Estate Committee
Transportation Committee*

AN ACT CONCERNING MOTOR VEHICLE REPAIRS

SUMMARY: This act prohibits an auto insurer, and its agents and adjusters, from (1) requiring an insured to use a specific motor vehicle repair shop to perform auto repairs or (2) stating that repair work will be delayed or not guaranteed if the insured has repairs performed at a repair shop that does not participate in the insurer’s vehicle repair program. Prior law permitted an insurer to

require a specific facility if the insured agreed to it in writing.

The act revises the written acknowledgement that a motor vehicle repair shop must obtain from a customer. Prior law required a shop participating in an insurer's repair program to have a customer's acknowledgement state: "I am aware of my right to choose the licensed repair shop where the damage to the motor vehicle will be repaired." The act instead requires all motor vehicle repair shops to obtain a customer acknowledgement that states: "I am aware of my right to choose the licensed repair shop where the motor vehicle will be repaired." The acknowledgement is in addition to, or may be part of, the customer's written authorization to perform work, which a repair shop must obtain by law before performing any repair work. As under prior law, the acknowledgement may be sent by e-mail or fax.

By law, a violation of any law or regulation that applies to its business as motor vehicle dealer or repairer licensee may result in a license suspension or revocation, a civil penalty of up to \$1,000 for each violation, or both (CGS § 14-64). Any person or corporation that violates any provision of the state insurance code for which no other penalty applies is subject to a fine of up to \$15,000 (CGS § 38a-2).

EFFECTIVE DATE: October 1, 2009

BACKGROUND

Vehicle Repair Program

Some automobile insurers enter into contracts with specific repair shops that agree to provide services to customers at a discounted price. A person may choose any shop for repairs, but the insurer might only guarantee repairs performed at a shop that participates in its repair program.

Licensed Repair Shop

By law, no one may operate a motor vehicle repair shop without a Department of Motor Vehicle-issued new car dealer's, used car dealer's, repairer's, or limited repairer's license. A "motor vehicle repair shop" means a new car dealer, a used car dealer, a repairer, or a limited repairer.

"Repairer" includes any person, firm, or corporation qualified to conduct such business, having a suitable facility and adequate equipment, engaged in repairing, overhauling, adjusting, assembling, or disassembling any motor vehicle. It excludes a person engaged in tire repairs, upholstery, glazing, general blacksmithing, welding, and machine work on motor vehicle parts when a licensed repairer disassembles and reassembles the parts.

"Limited repairer" includes any qualified person, having a suitable place of business and adequate equipment, engaged in the business of minor repairs, including cooling, electrical, fuel, and exhaust system repairs and replacement; brake adjustments, relining, and repairs; wheel alignment and balancing; and shock absorber repairs and replacement. It excludes lubricating motor vehicles; adding or changing oil or other motor vehicle fluids; changing tires and tubes, including the balancing of wheels; or installing batteries or light bulbs, windshield wiper blades, or drive belts.

PA 09-240—sSB 894

*Insurance and Real Estate Committee
Judiciary Committee*

AN ACT REQUIRING DISCLOSURE OF AUTOMOBILE LIABILITY INSURANCE POLICY LIMITS PRIOR TO THE FILING OF A CLAIM

SUMMARY: This act requires an automobile liability insurer to disclose the limits applicable under a policy it issued within 30 days after receiving a written request for disclosure. The request must be made by, or on behalf of, a person alleging bodily injury or death resulting from a motor vehicle collision involving a person the insurer's private passenger automobile policy covers. The disclosure must be in writing and indicate all coverage the insurer provides to the insured, including any applicable umbrella or excess liability insurance.

The act requires that the request include a letter from an attorney licensed to practice in Connecticut or an affidavit from the person alleging to have suffered injury in the accident that includes certain information. The request must be sent by certified mail to the insurance adjuster or company at its last known principal place of business.

EFFECTIVE DATE: October 1, 2009, and applicable to claims arising on or after that date.

ATTORNEY LETTER

The attorney's letter or the person's affidavit must include:

1. his or her juris number (if an attorney);
2. the type of claim alleged against the insured;
3. the date and approximate time the alleged incident occurred;
4. a description of the injuries the insured is alleged to have caused;

5. a copy of the person's medical bills and treatment records for the injuries; and
 6. a copy of the accident report of the collision that allegedly caused the person's injury or death, if available.
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PA 09-13—sSB 899
Judiciary Committee

**AN IMPLEMENTING THE GUARANTEE OF
 EQUAL PROTECTION UNDER THE
 CONSTITUTION OF THE STATE FOR SAME
 SEX COUPLES**

SUMMARY: This act redefines “marriage” as the legal union of two persons. On October 1, 2010, it transforms same-sex civil unions into marriages unless they have been annulled or the couple has divorced or is in the process of dissolving their relationship. It exempts clergy; churches; and IRS-qualified, church-controlled organizations from officiating or participating in a marriage ceremony that violates their religious freedom or beliefs. It also (1) provides certain other religious organizations legal protections for refusing to provide services related to marriage ceremonies; (2) leaves unchanged the authority of fraternal benefit societies to determine membership and beneficiaries; and (3) permits religiously-affiliated organizations that provide adoption, foster care, or social services to operate in the manner they choose so long as those specific programs or purposes do not receive state or federal funds.

The act also repeals provisions in prior law that:

1. declare that the current public policy of the state is limited to marriage between a man and a woman and
2. define marriage as the union of one man and one woman.

It establishes a rule controlling when marriages or substantially similar relationships formed in other jurisdictions must be recognized in Connecticut and gives other jurisdictions the discretion to recognize same-sex marriages and substantially similar relationships formed in Connecticut.

Many of the act’s provisions conform statutes to the Connecticut Supreme Court’s decision in *Kerrigan v. Dept. of Public Health*, which held that it is unconstitutional to restrict marriage to heterosexual couples.

EFFECTIVE DATE: Upon passage, except the repeal of the civil union statutes and some conforming provisions are effective October 1, 2010.

§§ 11-13 — CIVIL UNIONS

Beginning on the date the act passes and until September 30, 2010, parties to Connecticut civil unions may apply for marriage licenses if they are eligible to marry. After the marriage is solemnized and the license certificate is filed with the appropriate vital statistics registrar, their civil union merges into a marriage.

On October 1, 2010 civil unions merge into marriages unless the couple has, or is in the process of divorcing or annulling their civil union merge into marriages by operation of law. The act states that the mergers do not impair or affect any action or proceeding brought before October 1, 2010, any accrued right or benefit, or any responsibility incurred prior to that date. The relationships that have not merged on October 1, 2010 because of pending dissolution, annulment, or legal separation are governed by the civil union statutes in effect on September 30, 2010.

§§ 7 & 17-19 — RELIGIOUS EXEMPTIONS

Religious Organizations

The act specifies that a religious organization, association, or society; or any nonprofit institution or organization operated, supervised, or controlled by one of these entities is not required to provide services, accommodations, advantages, facilities, goods, or privileges to an individual if:

1. the request is related to the solemnization of a marriage or celebration of a marriage and
2. the solemnization or celebration is in violation of its religious beliefs and faith.

It specifies that the refusal does not subject the entity to civil liability or allow the state to penalize or withhold benefits from it.

Fraternal Benefit Societies

The act specifies that the state’s marriage laws cannot be construed to affect the ability of a fraternal benefit society to determine who to admit as members under state law or to decide the scope of legal beneficiaries. The marriage laws also cannot require an existing fraternal benefit society that is (1) operated, supervised, or controlled by, or in connection with, a religious organization and (2) operating for charitable and educational purposes to provide insurance benefits to any person if doing so would violate the society’s constitutional rights to free exercise of religion.

Church-Related Adoption, Foster Care, Or Social Service Providers

The act states that nothing in its provisions can be deemed or construed to affect the manner in which a religious organization provides adoption, foster care, or social services if the entity does not receive state or federal funds for those specific programs or purposes.

§ 4 — ELIGIBILITY TO MARRY

The act's marriage eligibility provisions require that the parties be:

1. not in another marriage or substantially similar relationship, except couples who are already married to each other or in substantially similar relationships can marry;
2. at least 18 years of age, unless their parents consent to marriage at age 16 or 17 or a probate judge grants them permission to marry at a younger age;
3. not under a conservatorship, unless the conservator consents; and
4. not so closely related that their marriage would be incestuous under Connecticut law.

§§ 1 & 2 — MARRIAGE RECOGNITION

The act requires recognition of marriages or relationships that provide substantially the same rights, benefits, and responsibilities between two people entered into in other jurisdictions and recognized as valid in that jurisdiction. These relationships include same-sex and common law marriages, domestic partnerships, civil unions, and same-sex unions formed in other countries. State case law already provides for recognition of common law marriage.

It also allows other states to recognize marriages and substantially similar relationships entered into in Connecticut if the spouse or both spouses travel to or reside in the other jurisdictions, so long as the relationship would be recognized in Connecticut.

§§ 17 & 18 — STATUTORY CONSTRUCTION

The act repeals a statute that provides that a number of laws should not be construed to:

1. mean that the state condones homosexuality or bisexuality, or any equivalent lifestyle;
2. authorize the promotion of homosexuality or bisexuality in educational institutions or require the teaching in educational institutions of homosexuality or bisexuality as an acceptable lifestyle;
3. authorize or permit the use of numerical goals or quotas or other types of affirmative action programs with respect to homosexuality or bisexuality in the administration or enforcement of a number of laws;
4. authorize the recognition of same-sex marriage; or
5. establish sexual orientation as a specific and separate cultural classification in society.

The act repeals the civil union statutes, effective October 1, 2010.

BACKGROUND

Kerrigan v. Dept. of Public Health

In *Kerrigan v. Dept. of Public Health*, 289 Conn. 135 (2008), the Connecticut Supreme Court ruled that it was unconstitutional to deny same-sex couples the right to marry. The court's opinion expressly did not affect civil unions.

PA 09-26—SB 673

Judiciary Committee

AN ACT CONCERNING ACCESS TO THE CRIMINAL JUSTICE INFORMATION SYSTEM

SUMMARY: This act gives the Office of the Federal Public Defender access to shared criminal history information stored electronically in the state's Criminal Justice Information System (CJIS). As with the state Division of Public Defender Services, access is limited to (1) conviction information; (2) information that is otherwise available to the public; and (3) information, including nonconviction information, concerning a client it is representing at the time of the request.

EFFECTIVE DATE: October 1, 2009

BACKGROUND

Criminal Justice Information System

The CJIS is an electronic offender-based tracking system to which criminal justice agencies have full access and public defenders have limited access. The database contains offender and case data on felonies, misdemeanors, violations, motor vehicle violations, motor vehicle offenses that carry potential jail sentences, and infractions.

PA 09-29—sSB 1092

Judiciary Committee

Finance, Revenue and Bonding Committee

AN ACT CONCERNING THE CLIENT SECURITY FUND

SUMMARY: This act repeals the April 1, 2009 transfer of \$2 million from the Client Security Fund to the General Fund for FY 09 (PA 09-2, § 12(e)).

Prior law required the revenue services commissioner to collect the fee the courts assess on attorneys for the Client Security Fund, record the funds with the comptroller, and deposit them with the treasurer. Under the act, the Superior Court collects the

fees according to court rules and may record them with the comptroller and deposit them with the treasurer.

As under prior law, the treasurer (1) maintains the fund separate and apart from other funds and (2) credits any interest to the fund. The act also requires the treasurer to maintain the fund in trust for the sole and exclusive purposes and uses designated by statute. The act states that the money in the fund is not tax revenue and cannot be transferred or credited to the General Fund or any other fund or account unless expressly directed by the committee established to administer the fund and according to court rules. Court rules establish a 15-member client security fund committee to, among other things, process and order payment of claims and analyze the fund's status to ensure its integrity for its intended purposes (Practice Book § 2-72).

EFFECTIVE DATE: Upon passage

BACKGROUND

Client Security Fund

The law authorizes the Superior Court, under rules adopted by the judges, to create this fund to (1) reimburse claimants for losses caused by an attorney's dishonest conduct in an attorney-client relationship and (2) provide crisis intervention and referral assistance to attorneys who suffer from alcohol or substance abuse or have gambling or behavioral problems. Court rules implement the fund. The courts require attorneys to pay an annual fee to the fund. Currently, the fee is \$110 a year.

Related Court Action

A group of attorneys, on behalf of themselves and others similarly situated, filed a lawsuit seeking an injunction to prohibit the transfer of the \$2 million from the Client Security Fund to the General Fund. The plaintiffs sought a class action for all attorneys who paid the Client Security Fund fee since January 1, 1999, the date that the Judicial Branch took over the fund's control. They argued that the \$2 million transfer required by PA 09-2 to the General Fund to pay state expenses was wholly unrelated to the Client Security Fund's designated purposes and is an "illegal expropriation" that violates the constitutional separation of powers and the plaintiffs' constitutional, statutory, and common law rights.

The plaintiffs withdrew the action on May 12, 2009 (*Zeldes et al. v. Rell et al.*, CV-09-4043237-S).

PA 09-38—sHB 6643

Judiciary Committee

AN ACT CONCERNING THE RESIGNATION OR ABSENCE OF AN AGENT FOR SERVICE OF PROCESS FOR CERTAIN BUSINESS ENTITIES

SUMMARY: This act eliminates the requirement that the authority of certain out-of-state business entities to conduct business in Connecticut be automatically revoked for failing to have an agent for service of process. This applies to foreign (1) limited partnerships, (2) limited liability companies, and (3) statutory trusts. Instead, the act authorizes the secretary of the state to revoke the entity's authority for failing to have an agent for at least 60 days. The secretary must give the entity at least 20 days written notice, by registered or certified mail, of intent to revoke the certificate and the reasons for doing so. The certificate is revoked on the date specified in the notice unless the business entity shows that the reason for the revocation did not exist or has been cured. These revocation procedures apply under existing law when an entity (1) willfully misrepresents a material matter in an application, report, affidavit, or document or (2) exceeds its authority.

The act eliminates the requirement that (1) the copy of an agent's resignation statement that the secretary sends to the entity be sent by certified mail and (2) a notice be sent with the statement that the entity's authority to conduct business will be revoked.

For these foreign entities and domestic limited partnerships, the act makes the resignation of an agent for service of process effective 30 days, instead of 120, after filing a resignation statement with the secretary.

The act also eliminates the requirement that the secretary revoke a foreign statutory trust's certificate of registration to transact business for failure to file an annual report with the secretary.

EFFECTIVE DATE: October 1, 2009

BACKGROUND

Agent for Service of Process

The law requires out-of-state business entities conducting business in Connecticut to designate an agent to receive legal papers on their behalf. Service of legal papers on the agent constitutes service on the business.

PA 09-39—sHB 6685

Judiciary Committee

AN ACT CONCERNING THE REPORTING OF INMATE POPULATION DENSITY AND CORRECTIONAL FACILITY SPECIFIC DATA

SUMMARY: The law requires the Department of Correction (DOC) commissioner to submit to the governor and the Judiciary and Labor committees, quarterly reports containing the number of inmate assaults on staff and other inmates, inmate disciplinary reports, and workers' compensation claims. Beginning with the first calendar quarter of FY 2010, this act requires that the reports provide the required information for each correctional facility, instead of the system as a whole. In addition, the act requires the reports to include, for each facility and each calendar quarter, the:

1. average number of inmates,
2. average number of permanent beds, and
3. inmate population density.

The act specifies that "inmate population density" means the average number of inmates for a correctional facility divided by the average number of permanent beds for that facility.

The act requires that if, during any calendar quarter, the inmate population density for a correctional facility increased by more than 10% above what was reported for the preceding calendar quarter or for the same quarter of the preceding fiscal year, the commissioner's report must include an explanation for the increase and a general description of the measures DOC will take to address it. The law imposes the same requirement if disciplinary reports, assaults, or workers' compensation claims increased by more than 5% above the number reported in the preceding calendar quarter or the same quarter of the preceding fiscal year.

EFFECTIVE DATE: July 1, 2009

PA 09-44—SB 1136

Judiciary Committee

AN ACT CONCERNING CLAIMS AGAINST THE STATE

SUMMARY: This act authorizes the claims commissioner, whenever he deems it to be just and equitable, to (1) vacate any decision he has made concerning a claim and (2) take whatever additional action he deems appropriate. The act establishes the deadline for doing so as the date by which the claim must be submitted to the General Assembly.

The act applies to claims filed before, on, or after its effective date.

EFFECTIVE DATE: Upon passage

BACKGROUND

Claims Commissioner

By law the claims commissioner hears and determines all claims against the state except (1) claims for the periodic payment of disability, pension, retirement, or other employment benefits; (2) claims upon which suit otherwise is authorized by law, including suits to recover similar relief arising from the same set of facts; (3) claims for which the law establishes another administrative hearing procedure; (4) requests by political subdivisions of the state for the payment of grants in lieu of taxes; and (5) claims for tax refunds (CGS § 4-142).

The law authorizes the claims commissioner to:

1. order that a claim be denied or dismissed,
2. order immediate payment of a just claim in an amount up to \$7,500,
3. recommend to the General Assembly payment of a just claim in an amount exceeding \$7,500, or
4. authorize a claimant to sue the state.

By law, upon the discovery of new evidence, any claimant aggrieved by an order of the claims commissioner rejecting or recommending the rejection of his or her claim, in whole or in part, may apply for rehearing (CGS § 4-156).

Anyone who has filed a claim for more than \$7,500 may ask the General Assembly to review a decision of the claims commissioner ordering (1) the denial or dismissal of the claim or (2) immediate payment of up to \$7,500. The claims commissioner must submit to the General Assembly (1) each claim for which a request for review is filed and (2) all claims for which he recommended payment of a just claim exceeding \$7,500.

PA 09-55—SB 963

Judiciary Committee

AN ACT CONCERNING THE CONNECTICUT BUSINESS CORPORATION ACT

SUMMARY: This act makes several changes to the laws giving shareholders the right to have their shares appraised and to obtain payment of their fair value in the event the corporation takes certain actions. (This is referred to as "appraisal rights.") Among other things, the act eliminates appraisal rights under certain circumstances, requires shareholders asserting appraisal rights to certify that they did not consent to the transaction creating the appraisal right, and requires

additional information to be provided to shareholders concerning corporate action that triggers appraisal rights.

The act makes numerous changes to the laws that allow corporate actions that could be taken at a shareholders meeting to be taken without a shareholders meeting.

The act also makes several changes regarding corporate directors relating to the (1) term of office, (2) election of directors of a public corporation, (3) resignation of a director, and (4) election of directors by other directors.

The act requires corporations to deliver, instead of mail, annual financial statements to each shareholder within 120 days after the close of each fiscal year. It specifies that any such delivery by electronic transmission must be in a manner the shareholder authorizes. The act specifies that a public corporation may satisfy this requirement by delivering the specified financial statements, or otherwise making them available, in any manner applicable U.S. Security and Exchange Commission (SEC) rules and regulations permit.

With certain exceptions, the act authorizes a public corporation to adopt a bylaw that allows its directors to be elected by a “more votes for than against” system, under which a director who does not receive more votes for than against his or her election, but still wins a plurality of votes, may serve for only 90 days as a director.

The act allows a corporation to deliver one copy of a written notice, any other report or statement required by the Business Corporation Act, the certificate of incorporation, or the bylaws to all shareholders who share a common address under certain circumstances.

The act limits certain shareholder suits for judicial dissolution, eliminates the court’s duty to dissolve under certain circumstances, and permits the court to do so under other circumstances.

The act establishes a definition of “expenses” for the Business Corporation Act, defining them as reasonable expenses of any kind that are incurred in connection with a matter, including reasonable attorney’s fees.

The act also makes technical and conforming changes.

EFFECTIVE DATE: October 1, 2009

APPRAISAL RIGHTS

§§ 2 & 10 — Appraisal Notice of Intent to Demand Payment and Reply

Under prior law, the appraisal notice had to supply a form that specified the date of the first announcement to shareholders of the principal terms of the proposed

corporate action and required the shareholder asserting appraisal rights to certify (1) whether or not those shares for which appraisal rights were asserted were acquired before that date and (2) that the shareholder did not vote for the transaction. The act requires the corporation also to supply a form that specifies the first date of any announcement of the principal terms of the proposed transaction before the transaction became effective. It also requires the shareholder to certify that the shareholder did not consent to the transaction. It also makes some technical changes.

By law, a shareholder who receives notice and wishes to exercise appraisal rights must certify on the form whether the beneficial owner of the shares acquired beneficial ownership before the date required to be specified in the notice. The act specifies that the owner must sign the form and, in the case of certificated shares, include the certificates.

§ 3 — Right to Appraisal

The law specifies certain situations for which appraisal rights are not available. The act adds to these situations. Specifically, it makes appraisal rights unavailable for the holders of shares of any class or series of shares that (1) is issued by an open-end management investment company registered with the SEC under the Investment Company Act of 1940 and (2) may be redeemed at the holder’s option at net asset value. It also makes technical changes.

§ 8 — Written Consent for Corporate Actions that Trigger Appraisal Rights—Required Notices

Where any corporate action (such as a merger) that triggers appraisal rights is to be approved by written consent of the shareholders, the act requires that the corporation provide written notice that appraisal rights are, are not, or may be available to each record shareholder from whom a consent is solicited when shareholder consent is first solicited. If the corporation has concluded that appraisal rights are or may be available, the notice must be accompanied by a copy of state statutes dealing with appraisal rights. The act extends these notice requirements to non-voting and non-consenting shareholders. If it has concluded that appraisal rights are or may be available, it must include a copy of state statutes dealing with appraisal rights.

§ 9 — Consent for Approved Action, Assertion of Appraisal Rights

Under the act, if a specified corporate action is to be approved by less than unanimous written consent, a shareholder who wants to assert appraisal rights with respect to any class or series of shares may not execute

a consent in favor of the proposed action with respect to that class or series of shares.

§ 11 — *Withholding Payment*

Under prior law, a corporation could elect to withhold payment from any shareholder who did not certify that beneficial ownership of all of the shareholder's shares for which appraisal rights were asserted was acquired before the date set forth in the appraisal. The act specifies that this only applies to shareholders who are required to certify.

§ 4 — ACTIONS WITHOUT SHAREHOLDERS' MEETINGS

Actions Without Meetings-Unanimous Approval

The law allows any action that may be taken at a shareholders meeting to be taken without a meeting when one or more written consents specifying the action to be taken, and bearing the date of signature, are signed by all of the people who would be entitled to vote on the action at a meeting, or by their duly authorized attorneys. The act requires that the consents be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

Action Without Meeting — Less Than Unanimous Approval

Under prior law, if the certificate of incorporation authorized it, an action could be taken by one or more written consents bearing the signature date and describing the action to be taken, signed by people holding the designated proportion, but not less than a majority, of the voting power of shares, or of the shares of any particular class, entitled to vote or to take the action, as may be provided in the certificate of incorporation, or their duly authorized attorneys.

The act instead specifies that the certificate of incorporation may provide that any action required or permitted by law to be taken at a shareholders' meeting may be taken without a meeting, and without prior notice, if written consents describing the action taken are signed by the holders of outstanding shares having no fewer than the minimum number of votes that would be required to authorize or take the action at a meeting at which all shares entitled to vote on the action were present and voted.

The act eliminates the current requirement that directors may not be elected by shareholders' action without a shareholder meeting other than by unanimous written consent or pursuant to a merger plan.

Notice of Action Without Meetings

The law requires that if action is proposed to be taken by written consent of fewer than all shareholders, or their duly authorized attorneys, notice in writing of the proposed action must be given to each person who would be entitled to vote at a meeting held for that purpose. The act requires that written consent bear the date of signature of the shareholder who signs the consent and be delivered to the corporation for inclusion in the minutes or filing with the corporate records.

Prior law required that the notice be given in the manner of giving notice of a meeting of shareholders between 20 and 50 days before the date any consents were to become effective. The act eliminates these required time frames. Under prior law, if at least five days before the date any such consents were to become effective, the corporation's secretary had received from shareholders, or their duly authorized attorneys, holding at least one-tenth of the voting power of all shares entitled to vote at such a meeting, a demand in writing that the action not be taken by written consent, all persons to whom such notice was given were so notified and the corporation could not take the proposed action except at a shareholders' meeting. The act eliminates this requirement.

The act instead requires that if action is taken by less than unanimous written consent of the voting shareholders, the corporation must give its non-consenting voting shareholders written notice of the action within 10 days of:

1. the delivery to the corporation of written consents sufficient to take the action or
2. the later date when tabulation of consents is completed as authorized by the act.

The notice must reasonably describe the action taken and contain or be accompanied by the same material that would have been sent to voting shareholders in a notice of a meeting at which the action would have been submitted to the shareholders for action.

The act specifies that these notice requirements do not delay the effectiveness of actions taken by written consent, and a failure to comply with them does not invalidate those actions taken. But the act specifies that it does not limit judicial power to fashion any appropriate remedy in favor of a shareholder adversely affected by a failure to give notice within the required time.

Record Date for Determining the Shareholders Entitled to Take Action

Under prior law, if not otherwise fixed by the court in connection with a court-ordered meeting (CGS § 33-697) or in the bylaws (CGS § 33-701), the record date

for determining shareholders entitled to take action without a meeting was the date the first shareholder signs the consent.

The act instead establishes the record date as the first date on which a signed written consent is delivered to the corporation, if the date is not otherwise fixed in the bylaws. The act also provides that if not otherwise set in the bylaws, and if prior board action is required respecting the action to be taken without a meeting, the record date is the close of business on the day the board resolved to take the prior action.

Under prior law, no written consent to take the corporate action was effective unless written consents signed by enough shareholders to take corporate action were received by the corporation within 60 days of the earliest date appearing on a consent delivered to the corporation. The act instead specifies that written consents are ineffective unless, within 60 days of the earliest date on which a consent delivered to the corporation was signed, written consents signed by the holders of shares having sufficient votes to take the action have been delivered to the corporation.

Effect of a Signed Consent

By law, a signed consent has the effect of a meeting vote and may be described as such in any document.

The act specifies that unless the certificate of incorporation, the bylaws, or a resolution of the board of directors provides for a reasonable delay to permit tabulation of written consents, the action taken by written consent is effective when written consents signed by the holders of shares having sufficient votes to take the action are delivered to the corporation.

Non-Voting Shareholders

Under the act, if any provision of law requires that notice of a proposed action be given to non-voting shareholders and the action is to be taken by written consent of the voting shareholders, the corporation must give its non-voting shareholders written notice of the action within 10 days of:

1. delivery to the corporation of written consents sufficient to take the action or
2. the date when tabulation of consents is completed as authorized by the act.

The act requires that the notice reasonably describe the action taken and contain or be accompanied by the same material that, under any provision of the Business Corporation Act, would have been required to be sent to non-voting shareholders in a notice of a meeting at which the proposed action would have been submitted to the shareholders for action.

Electronic Transmissions

The act allows electronic transmissions to be used to consent to an action if they contain or are accompanied by information from which the corporation can determine the date on which they were signed and that they were authorized by the shareholders or their agents or attorneys-in-fact.

Delivery of Consents

The act specifies that the delivery of a written consent to the corporation means delivery to the corporation's registered agent at its registered office or to the secretary of the corporation at its principal office.

§§ 4 & 5 — CUMULATIVE VOTING AND ELECTION OF DIRECTORS BY CONSENTS

The act eliminates the requirement that directors be elected by action of shareholders in a meeting of shareholders, unless there is unanimous written consent, or pursuant to a merger plan.

The act specifies that directors may not be elected by less than unanimous written consent if a corporation's certificate of incorporation authorizes shareholders to cumulate their votes when electing directors.

§ 6 — COURT-ORDERED MEETING

Under prior law, the Superior Court for the judicial district where a corporation's principal office or, if the office was not in Connecticut, where its registered office, was located could summarily order a meeting to be held on application of any shareholder entitled to participate in an annual meeting if one was not held within the earlier of six months after the end of the corporation's fiscal year or 15 months after its last annual meeting. The act provides that the court may do so only if directors were not elected by written consent in lieu of such a meeting during that same time period.

DIRECTORS

§ 12 — Term of Office

By law, the terms of a corporation's initial directors expire at the first shareholders' meeting at which directors are elected, and the terms of all other directors expire at the next annual shareholders' meeting following their election unless their terms are staggered. The act specifies that the terms may be shorter if the certificate of incorporation provides for it or a public corporation's bylaws, adopted under the act's authority, provide otherwise.

Under prior law, despite the expiration of a director's term, he or she continued to serve until a successor was elected and qualified or the number of directors was reduced. The act specifies that a corporation's certificate of incorporation or a public corporation's bylaws adopted under this act may provide otherwise.

§ 13 — Election of Directors of a Public Corporation

Under prior law, unless a public corporation's certificate of incorporation provided otherwise, directors were elected by a plurality of votes cast by shares entitled to vote at a meeting at which a quorum is present.

With certain exceptions, the act authorizes a public corporation to adopt bylaws to choose directors as follows:

1. each share entitled to a vote may cast as many votes for or against a candidate as there are director positions to be filled (cumulative voting) or a shareholder may indicate an abstention, but without cumulating the votes;
2. the board of directors may select any qualified individual to fill the office held by a director who received more votes against than for his or her election; and
3. to be elected, a nominee must have received a plurality of the votes cast by holders of shares entitled to vote in the election at a meeting at which a quorum is present.

But the act requires that a nominee who is elected with more votes against than for must serve for a term that ends the earlier of:

1. 90 days from the date on which the voting results are determined or
2. the date on which an individual is selected by the board of directors to fill the office held by the director, which must be deemed to constitute the filling of a vacancy by the board.

A nominee who is elected but receives more votes against than for his or her election may not serve as a director beyond the 90-day period.

The act specifies that a public corporation may not adopt such bylaws if the certificate of incorporation (1) specifically prohibits it, (2) alters the vote specified by law to elect directors, or (3) provides for cumulative voting. The act also specifies that the bylaw does not apply if there are more candidates for election than the number of directors to be elected, one or more of whom are properly proposed by shareholders. The act specifies that an individual may not be considered a candidate for an election of directors if the board of directors determines before the notice of meeting is given that the individual's candidacy does not create a bona fide election contest.

The act also specifies that if a corporation originally adopts such a bylaw by vote of the shareholders, the shareholders can repeal it, unless the bylaw otherwise provides. If adopted by the board of directors, it may be repealed by the board or the shareholders.

§ 14 — Resignation of a Director

Under prior law, a director could resign at any time by delivering a written notice to the board of directors or its chairperson. The act instead requires that the director deliver a written resignation instead of a notice and permits it also to be delivered to the corporation's secretary.

Under prior law, a resignation was effective when delivered unless it specified a later effective date. The act also allows it to specify an effective date determined upon the occurrence of an event or events.

The act also provides that a resignation conditioned on failing to receive a specified vote for election as a director may provide that it is irrevocable.

§ 15 — Election of Directors by Directors

By law, if the vacant office was held by a director elected by a voting group of shareholders, only the holders of shares of that voting group can vote to fill the vacancy if it is filled by the shareholders. The act specifies that only the directors elected by that voting group are entitled to fill the vacancy if it is filled by directors.

DISSOLUTION

§ 23 — Court-Ordered Dissolution

The act eliminates the requirement that the Superior Court dissolve a corporation in a proceeding by a holder or holders of shares having voting power sufficient under the circumstances to dissolve the corporation pursuant to the certificate of incorporation. It also eliminates the requirement that the court dissolve a corporation if a shareholder or a director establishes certain facts in a lawsuit he or she brings. The act permits, instead of requires, the court to do so under similar but not identical circumstances.

Specifically, the act eliminates the requirement that the court dissolve a corporation in a proceeding by a shareholder or a director when it is established that the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock. Instead it permits, instead of requires, the court to dissolve a corporation if a suit by a shareholder, and not a director, establishes that in addition, irreparable injury to the corporation is

threatened or being suffered or the corporation's business and affairs can no longer be conducted to the advantage of the shareholders generally, because of the deadlock.

The act also eliminates the requirement that the court dissolve a corporation in a proceeding by a shareholder or a director when it is established that the shareholders are deadlocked in voting power for the election of directors and are unable at the next annual meeting to elect successors to directors whose terms would normally have expired when their successors were elected. The act authorizes, instead of requires, the court to do so in a proceeding by a shareholder, but not a director, if it is established that the shareholders are deadlocked in voting power and have failed, for at least two consecutive annual meeting dates, to elect successors to directors whose terms have expired.

The act eliminates the court's authority in certain circumstances and duty in other circumstances in a suit by a shareholder or director if on the date the proceeding is filed, the corporation has shares that are:

1. listed on the New York Stock Exchange, the American Stock Exchange, any exchange owned or operated by the NASDAQ Stock Market LLC, or listed or quoted on a system owned or operated by the National Association of Securities Dealers, Inc. or
2. not so listed or quoted, but held by at least 300 shareholders and the shares outstanding have a market value of at least \$20 million, excluding the value of shares held by the corporation's subsidiaries, senior executives, directors, and beneficial shareholders owning more than 10% of the shares.

§ 2 — *Court's Jurisdiction in Dissolution Proceedings*

By law, a court in a judicial proceeding brought to dissolve a corporation may appoint one or more receivers to wind up and liquidate, or one or more custodians to manage, the corporation's business and affairs. The act gives jurisdiction to a court appointing a receiver or custodian, instead of exclusive jurisdiction, over the corporation and all of its property, wherever located.

§ 22 — NOTICE TO SHAREHOLDERS

The act specifies that a corporation has delivered written notice or any other report or statement under any provision of the law, the certificate of incorporation, or the bylaws to all shareholders who share a common address if:

1. the corporation delivers one copy of the notice, report, or statement to the common address;
2. the corporation addresses the notice, report, or statement to those shareholders as a group, to each one individually, or in a form to which each of those shareholders has consented; and
3. each of those shareholders consents to delivery of a single copy of the information to the shareholders' common address.

The act permits any of the shareholders to revoke consent by delivering written notice of revocation to the corporation. If the notice is delivered, the corporation must begin providing individual notices, reports, or other statements to that shareholder within 30 days after delivery.

If a corporation sends written notice to shareholders who share a common address of its intent to send single copies, shareholders are deemed to have consented if they do not object by written notice to the corporation within 60 days.

§ 28 — MERGER

Under prior law, a domestic parent corporation that owned shares of a domestic or foreign subsidiary corporation that carried at least 90% of the voting power of each class and series of the subsidiary's outstanding shares that have voting power could merge the subsidiary into itself or into another such subsidiary, or merge itself into the subsidiary, unless:

1. the certificate of incorporation of any of the corporations provided otherwise, and
2. in the case of a foreign subsidiary, approval by the foreign subsidiary's board of directors or shareholders was required by the law under which the subsidiary is organized.

The act specifies that a domestic parent may do so without the approval of the board of directors or shareholders of the subsidiary.

§ 17 — EXPENSES

The act establishes a definition of "expenses" for the Business Corporation Act. It defines "expenses" as reasonable expenses of any kind that are incurred in connection with a matter, including reasonable attorney's fees. It uses this term instead of terms like "counsel fees," and "fees and expenses." This term is used in provisions involving derivative proceedings, appraisal rights cases, court-ordered inspection of corporate records by shareholders or directors, court proceedings to dissolve the corporation, and indemnification.

§ 30 — DELIVERY OF FINANCIAL STATEMENTS BY ELECTRONIC TRANSMISSION

By law, a corporation, except a corporation required to file financial reports with the banking or insurance commissioner or the Department of Public Utility Control, must furnish its shareholders with annual financial statements that include certain information.

Under prior law, corporations had to mail these statements to each shareholder within 120 days after the close of each fiscal year, and upon written request from a shareholder who was not mailed the statements, had to mail him or her the latest financial statements. The act requires corporations to deliver rather than mail this information.

It specifies that any delivery of financial statements by electronic transmission must be in a manner the shareholder authorizes. The act specifies that a public corporation may satisfy its requirements by delivering the specified financial statements, or otherwise making them available, in any manner permitted by applicable SEC rules and regulations.

BACKGROUND

Appraisal and Payment Rights

By law, a shareholder is entitled to have his or her shares appraised and to obtain payment of their fair value in the event of certain corporate actions (CGS §§ 33-818 & 33-831).

Open-End Management Investment Company

State law does not define an “open-end management company.” But, under federal law, “open-end company” means a management company that is offering for sale or has outstanding any redeemable security of which it is the issuer (15 USC § 80a-5). Apparently, it is a portfolio of securities professionally managed by the sponsoring management company or investment company, which issues shares to investors. The manager must create shares when money is invested and redeem shares as requested by shareholders.

Cumulative Voting

Cumulative voting is a voting process that helps strengthen the ability of minority shareholders to elect a director. It allows shareholders to cast all of their votes for a single nominee for the board of directors when the company has multiple openings on its board. In contrast, in “regular” or “statutory” voting, shareholders may not give more than one vote per share to any single

nominee. For example, if the election is for four directors and someone holds 500 shares (with one vote per share), under the regular method he or she could vote a maximum of 500 shares for any one candidate (giving the shareholder 2,000 votes total - 500 votes per each of the four candidates). With cumulative voting, the shareholder could choose to cast all 2,000 votes for one candidate, 1,000 each to two candidates, or otherwise divide his or her votes.

PA 09-57—SB 1028

Judiciary Committee

AN ACT CONFIRMING AND ADOPTING VOLUMES 1 TO 13, INCLUSIVE, OF THE GENERAL STATUTES, REVISED TO 2009, AND CONCERNING STATUTORY REFERENCES

SUMMARY: This act formally adopts, ratifies, confirms, and enacts the General Statutes revised to 2009.

It also specifies that when a statute refers to another statute, the reference includes any amendments to the referenced statute unless a contrary intent is clearly expressed.

EFFECTIVE DATE: Upon passage

PA 09-59—sSB 1089

Judiciary Committee

AN ACT CONCERNING AUTOMATIC EXTERNAL DEFIBRILLATORS

SUMMARY: This act provides immunity in a lawsuit for damages for acts arising out of a person’s or entity’s negligence in providing or maintaining an automatic external defibrillator (AED). Existing law already provides immunity for those rendering assistance.

The act specifies that immunity does not apply to gross, willful, or wanton negligence. Lastly, it makes technical changes.

EFFECTIVE DATE: October 1, 2009

BACKGROUND

Automatic External Defibrillators

An AED is a portable automatic device used to restore normal heart rhythm to people having heart attacks. It (1) contains internal decision-making electronics, microcomputers, or special software that allows it to interpret physiologic signals, make a medical diagnosis, and apply necessary therapy; (2) guides the user through the operations process; and (3)

does not require the user to exercise any discretion or judgment.

PA 09-62—sSB 358
Judiciary Committee

AN ACT PROHIBITING THE TRANSFER OF MACHINE GUNS TO MINORS

SUMMARY: This act prohibits people from selling, giving, or transferring machine guns to anyone under age 16, including temporarily transferring them to such minors for use in target shooting, at a firing or shooting range, or for any other purpose. The prohibition applies notwithstanding the state law authorizing the transfer, possession, and acquisition of machine guns in accordance with the National Firearms Act (NFA) provided they are duly registered with the Department of Public Safety (DPS).

A violation of the act carries a fine of up to \$1,000, imprisonment of five to 10 years, or both. The same penalty applies, under existing law, to possessing or using a machine gun for an offensive or aggressive purpose.

EFFECTIVE DATE: October 1, 2009

BACKGROUND

Federal Law

At the federal level, machine guns are regulated by the NFA (26 USC § 5801 *et seq.*) and 1968 Gun Control Act, as amended by the 1986 Firearms Owners' Protection Act (18 USC § 921 *et seq.*). Among other things, federal law (1) requires all machine guns, except antique firearms, not in the U.S. government's possession to be registered with the Bureau of Alcohol, Tobacco, Firearms and Explosives and (2) bars private individuals from transferring or acquiring machine guns except those lawfully possessed and registered before May 19, 1986.

State Law

Under Connecticut law, private citizens may own machine guns, provided they are duly registered pursuant to federal and state law. Failure to register a machine gun with DPS is presumed possession for an offensive or aggressive purpose.

PA 09-63—sSB 810
Judiciary Committee

AN ACT CONCERNING THE TENDER YEARS EXCEPTION TO THE HEARSAY EVIDENCE RULE

SUMMARY: This act conforms the statutory exception to Connecticut's hearsay rule for statements of young children about their sexual or physical abuse to the exception adopted by the Superior Court and included in Connecticut's Code of Evidence (§§ 8-10, Ct. Evidence Code). It does so by potentially expanding the children covered under this so-called "tender years exception" and limiting the people against whom the statement may be used.

Prior law covered children under age 13. The act covers children who were under age 13 at the time of the statement.

By law, courts must accept these statements as evidence in criminal or juvenile proceedings under certain circumstances. Under prior law, the exception could be used when the abuser was someone with authority or apparent authority over the child. The act provides that it may be used when the abuser is the child's parent or guardian or another person exercising comparable authority over him or her at the time of the offense.

Lastly, the act makes a technical change.

EFFECTIVE DATE: October 1, 2009

BACKGROUND

Hearsay Rule

"Hearsay" is a statement made out of court that is offered in court to establish the truth of the facts contained in the statement (§ 8-1, Ct. Evidence Code).

PA 09-68—SB 964
Judiciary Committee

AN ACT CONCERNING THE CONNECTICUT ANTITRUST ACT

SUMMARY: This act increases the maximum civil penalty that courts may impose on violators of the Connecticut antitrust act in cases the attorney general brings against (1) an individual, from \$25,000 to \$100,000, and (2) a corporation, limited liability company, partnership, or any other legal or commercial entity, from \$250,000 to \$1,000,000. The act imposes the same confidentiality requirements on documentary material and other information voluntarily revealed to the attorney general in an anti-trust investigation as

currently apply to material and information subpoenaed by the attorney general. The act specifies that “documentary material” includes information that is in written, recorded, or electronic form.

Finally, the act increases, from \$500 to \$2,000, the maximum civil penalty that a court may award for failing to comply with a subpoena, interrogatory, or other demand for documentary material made by the attorney general in connection with an antitrust violation investigation.

EFFECTIVE DATE: October 1, 2009 except the provision concerning documentary materials and other information becomes effective July 1, 2009.

DOCUMENTARY MATERIAL OR OTHER VOLUNTARILY FURNISHED INFORMATION

The act requires that the attorney general keep in his custody all documentary material or other information furnished voluntarily for suspected violations of the antitrust act. It makes the material and other information and the identity of the person furnishing the information unavailable to the public. The act requires that the material or other information must be returned to the person furnishing it when the attorney general ends his investigation or any related anti-trust action or proceeding is terminated.

BACKGROUND

Related Case

The State Supreme Court held that the scope of the protection provided by the confidentiality provision contained in existing law is not clear (*Brown and Brown Inc. v. Blumenthal*, 288 Conn. 646 (2008)).

PA 09-69—SB 1029

Judiciary Committee

AN ACT CONCERNING APPEALS BY WORKERS' COMPENSATION COMMISSIONERS OF DECISIONS OF THE JUDICIAL REVIEW COUNCIL

SUMMARY: This act authorizes workers' compensation commissioners to appeal a Judicial Review Council (JRC) decision to the Supreme Court under rules the Supreme Court adopts. By law, judges and family support magistrates can appeal JRC decisions in this manner.

EFFECTIVE DATE: Upon passage

BACKGROUND

Judicial Review Council

The JRC investigates complaints against judges, compensation commissioners, and family support magistrates. If it finds probable cause that an official violated certain standards of conduct, it holds a hearing. If the JRC finds the official guilty of the conduct, it can impose discipline.

The JRC also makes recommendations about the reappointment of judges, compensation commissioners, and family support magistrates and reports on complaints and investigations of these officials.

PA 09-79—sHB 6341

Judiciary Committee

AN CONCERNING COMPETENCY TO STAND TRIAL

SUMMARY: This act permits information sharing among health care providers treating or evaluating a criminal defendant who has been found, or is believed to be, not guilty due to a mental disease or defect. Prior law had no express authorization for sharing this information without the defendant's written consent.

The act allows the Department of Mental Health and Addiction Services to inform competency examiners of past treatment dates and locations without the examinee's consent. The examiners may then ask him or her for permission to obtain those records; if the examinee refuses, information about past treatment cannot be included in their report or used as evidence at the competency hearing. Under the act, limiting access to information for this purpose does not limit any other lawful release or use of this information.

In addition, the act specifies that the 15-day deadline for completing initial competency examinations refers to 15 business days. When a court orders a defendant to be treated to restore his or her competency, the act requires the examiners to give the court-ordered health care provider information they obtained in the course of their evaluation within 24 hours.

Finally, no later than five business days after a court determines that a defendant (1) will not become competent within the time that he or she can be detained or supervised or (2) has become competent, the person in charge of the treatment facility, or a designee, must give a copy of its progress report to the examiners that originally evaluated the defendant.

EFFECTIVE DATE: Upon passage

PA 09-83—HB 6640

Judiciary Committee

Finance, Revenue and Bonding Committee

AN ACT INCREASING THE PENALTY FOR FOREIGN CORPORATIONS AND OTHER ENTITIES THAT TRANSACT BUSINESS OR CONDUCT AFFAIRS IN THIS STATE WITHOUT AUTHORITY

SUMMARY: This act increases, from \$165 to \$300, the penalty that the secretary of the state can impose on a foreign business entity for each month or part of one that it conducts business in the state without the required certificate or registration to do so. This applies to foreign stock and non-stock corporations, limited partnerships, limited liability companies, registered limited liability partnerships, and statutory trusts. By law, the secretary cannot impose this penalty if the foreign business entity gets the required certificate within 90 days of starting to transact business in the state.

By law, these entities are also liable to the state for fees and taxes that would have been imposed had they applied for and received the required certificate, and all interest and penalties for failing to pay them, for each year or part of one that they transact business in the state without a certificate. The secretary can levy the penalties, and the attorney general can sue to recover them and to prohibit the entity from continuing to conduct business in the state.

EFFECTIVE DATE: October 1, 2009

PA 09-84—SB 707

Judiciary Committee

AN ACT CONCERNING PROBATION SUPERVISION FEES

SUMMARY: By law, a person sentenced to probation must pay the court a \$200 fee. This act provides that a person sentenced to a period of probation following a period of incarceration is not required to pay the fee until he or she is released from prison and begins probation.

EFFECTIVE DATE: October 1, 2009

PA 09-107—HB 6578 (VETOED)

Judiciary Committee

AN ACT CONCERNING THE PENALTY FOR A CAPITAL FELONY

SUMMARY: This act (1) eliminates the death penalty as a sentencing option for crimes committed starting on the act's effective date, (2) renames the crime of capital felony as murder with special circumstances, and (3) makes the penalty for this new crime life imprisonment without the possibility of release. Under prior law, the penalty for a capital felony was either the death penalty or life imprisonment without the possibility of release.

EFFECTIVE DATE: Upon passage. The provisions on murder with special circumstances apply to crimes committed on and after that date.

MURDER WITH SPECIAL CIRCUMSTANCES

The act makes a number of technical and conforming changes to apply most of the same rules that apply to capital felonies to murder with special circumstances, such as:

1. preserving biological evidence and records of evidence and judicial proceedings,
2. authorizing the court to allow the reading of a victim impact statement in court before imposing the sentence on the defendant,
3. choosing a jury or three-judge panel,
4. challenging potential jurors,
5. requiring testimony of at least two witnesses or their equivalent for a conviction, and
6. prohibiting medical or compassionate parole release.

BAIL

Under the Connecticut Constitution, a person is eligible for bail unless he or she is charged with a capital offense "where the proof is evident or the presumption great." Thus, most people charged with capital felonies are ineligible for bail. Because murder with special circumstances is not a capital offense, people charged with this crime would be eligible for bail under the constitution. The act makes them ineligible for bail when detained under a bench warrant or awaiting arraignment or trial. As with capital felonies under prior law, people convicted of murder with special circumstances would be ineligible for post-conviction bail while awaiting sentencing or appealing their conviction.

BACKGROUND

Capital Felony

A person commits a capital felony if he or she:

1. murders, while the victim was acting within the scope of his or her duties, a police officer, Division of Criminal Justice inspector, state marshal exercising statutory authority, judicial marshal performing duties, constable performing law enforcement duties, special policeman, conservation or special conservation officer appointed by the environmental protection commissioner, firefighter, or Department of Correction (DOC) employee or service provider acting within the scope of employment in a correctional facility (the perpetrator must be an inmate);
2. murders for pay or hires someone to murder;
3. murders and was previously convicted of intentional murder or murder while a felony was committed;
4. murders while sentenced to life imprisonment;
5. murders a kidnapped person and is the kidnapper;
6. murders while committing 1st degree sexual assault;
7. murders two or more people at the same time or in the course of a single transaction; or
8. murders a person under age 16.

Sentencing Hearing

A person convicted of a capital felony must be sentenced to either the death penalty or life imprisonment without the possibility of release. The jury, or the court if the defendant chooses, weighs mitigating and aggravating factors in a separate sentencing hearing to decide whether to impose the death penalty. The jury or court cannot impose the death penalty and must sentence the person to life imprisonment without the possibility of release if mitigating factors outweigh, or are of equal weight to, the aggravating factors or if any of five automatic bars to the death penalty exist. Otherwise, the person must be sentenced to death.

Aggravating Factors

By law, the only aggravating factors that the jury or court can consider are that the defendant:

1. committed the offense while committing or attempting to commit a felony, or while fleeing from the commission of or attempt to commit a felony, and had previously been convicted of the same felony;

2. had been convicted of at least two state or federal offenses prior to the offense, each of which was committed on different occasions, involved serious bodily injury, and had a maximum penalty of at least one year imprisonment;
3. committed the offense knowingly creating a risk of death to another person in addition to the victim of the offense;
4. committed the offense in an especially heinous, cruel, or depraved manner;
5. procured someone else to commit the offense by paying or promising to pay anything of pecuniary value;
6. committed the offense in return for payment or the expectation of payment;
7. committed the offense with an assault weapon; or
8. murdered one of the following people, while the victim was acting within the scope of duty, in order to (a) avoid arrest for or prevent detection of a criminal act, (b) hamper or prevent the victim from carrying out an act within the scope of official duties, or (c) retaliate against the victim for performing official duties: a police officer, Division of Criminal Justice inspector, state marshal exercising statutory authority, judicial marshal performing duties, constable performing law enforcement duties, special policeman, conservation or special conservation officer appointed by the environmental protection commissioner, firefighter, or DOC employee or service provider acting within the scope of employment in a correctional facility (the perpetrator must be an inmate).

Mitigating Factors

The jury or court must determine if a particular factor concerning the defendant's character, background, or history or the nature and circumstances of the crime is established by the evidence and whether that factor is mitigating, considering all the facts and circumstances of the case. Mitigating factors are not defenses or excuses for the capital felony of which the defendant was convicted, but are factors that, in fairness and mercy, tend either to extenuate or reduce the defendant's blame for the offense or otherwise provide a reason for a sentence less than death.

Bars to the Death Penalty

By law, five factors automatically bar the death penalty. A defendant cannot receive the death penalty if the court or jury determines that he or she:

1. was under age 18 at the time of the crime;
2. was mentally retarded at the time of the crime;
3. had a mental capacity or ability to conform his or her conduct to the requirements of law that was significantly impaired at the time of the crime (but not so impaired as to constitute a defense);
4. was guilty of a capital felony only as an accessory and had relatively minor participation; and
5. could not reasonably have foreseen that the conduct, in the course of committing the crime he or she was convicted of, would cause someone's death.

PA 09-114—sHB 6385

Judiciary Committee

Appropriations Committee

AN ACT CONCERNING PROBATE COURT REFORMS AND ESTABLISHING A PROBATE REDISTRICTING COMMISSION

SUMMARY: Effective January 5, 2011, this act eliminates the current method of compensating probate court judges, which is primarily based on the fees the court collects, and replaces it with a new system based on population and workload in which a judge's compensation will be paid directly from the Probate Court Administration Fund. The act establishes four classes or "bands" of probate courts based on the district's population and its annual weighted workload. The act sets a probate judge's salary for courts in each band ranging from a low of 45% of a Superior Court judge's salary to a high of 75%. The current salary of a Superior Court judge is \$146,780. The act requires that each probate court remit all fees, costs, and other income it receives to the state treasurer to be credited to the Probate Court Administration Fund.

The act requires that each probate judge elected for a term beginning on or after January 5, 2011, must be a member of the bar of the state of Connecticut. But this requirement does not apply to any judge who was in office on January 4, 2011, for the period the judge continues to serve on and after January 5, 2011, without a break in service.

The act requires the probate court administrator to establish a budget committee consisting of the probate court administrator and two probate judges appointed by the Probate Assembly, which must establish (1) a compensation plan for probate court employees, which includes employee benefits; (2) staffing levels for each probate court; and (3) a miscellaneous office budget for each court. The act requires probate courts to be open at least 40 hours a week instead of 20.

The act establishes a probate redistricting commission to develop a plan to consolidate probate court districts. Under the plan, there must be at least 44 districts and no more than 50. The plan must be presented to the General Assembly for implementing legislation and be approved by the governor under procedures and deadlines the act establishes. The commission must file a consolidation plan by September 15, 2009 except it may not submit a plan without the affirmative vote of at least seven commission members. The act allows the Connecticut Probate Assembly to submit a redistricting plan that meets the criteria the act establishes for the commission to consider. In developing it, the assembly may consider any voluntary consolidations towns have agreed to. The commission may consider any plan the assembly submits, but is not bound by it.

The act authorizes a probate court to refer certain matters, with the consent of the parties or their attorneys, to a probate magistrate or attorney probate referee, new positions created by the act.

The act makes numerous other changes relating to the (1) probate court administrator's authority over probate courts, (2) payment for health insurance for retired probate judges and employees, (3) eligibility of probate judges for health insurance and retirement benefits, (4) retirement incentives for judges of courts that are merged, (5) appeals to special assignment probate judges, and (6) reimbursement for indigency costs. It also makes technical and conforming changes.

EFFECTIVE DATE: From passage, except (1) October 1, 2009 for the provisions dealing with retirement incentives for probate judges of courts that are merged, the requirement that probate judges be licensed attorneys, the ability of probate magistrates and attorney probate referees to attend probate court assembly meetings or educational programs, and defects in the form of an appeal to Superior Court; (2) January 1, 2011 for those provisions dealing with transfers from the probate court administration fund to the probate court retirement fund and funding of probate courts from the Probate Court Administration Fund, probate court budgets, payment of premiums for medical and dental insurance for retired probate judges, referrals to special assignment probate judges, and employees, eligibility for retirement benefits, the requirement that each probate court remit all fees, costs, and other income to the probate court administration fund, hours of court operation, and reimbursement for indigency costs; and (3) January 5, 2011 for those dealing with eligibility for medical insurance plans for probate judges, compensation bands for probate court districts and judges, creation and appointment of probate magistrates and attorney probate referees, and temporary funding of probate courts.

§ 1 — PROBATE COURT ADMINISTRATOR'S AUTHORITY OVER PROBATE COURTS

The law authorizes the probate court administrator to issue and enforce regulations binding on probate courts concerning the following matters for the administration of the probate court system: (1) auditing, accounting, statistical, billing recording, filing, and other court procedures; (2) reassigning and transferring cases; (3) training court personnel and continuing education programs for probate judges and court personnel; and (4) enforcing provisions of the law dealing with the probate court administrator's powers and duties and the regulations issued pursuant to law, including, but not limited to, recovery of expenses associated with enforcement.

The act expands the probate court administrator's authority to include adopting regulations concerning:

1. training probate magistrates and attorney probate referees (positions the act creates);
2. remitting funds received by the probate courts under the act to the Probate Court Administration Fund;
3. administering the compensation plan the act establishes;
4. establishing criteria for staffing levels for the courts;
5. establishing criteria for developing and approving miscellaneous office budgets for the probate courts; and
6. expending funds from the Probate Court Administration Fund for these additional areas of authority.

§ 2 — PROBATE COURT ADMINISTRATION FUND, PROBATE COURT RETIREMENT FUND, AND THE GENERAL FUND

The law requires monthly transfers from the Probate Court Administration Fund to the Probate Court Retirement Fund to enable the retirement fund to meet its obligations until the Retirement Commission certifies that the retirement fund is on a sound actuarial basis. By July 1st annually, the Retirement Commission must certify to the state treasurer, on the basis of an actuarial determination, the amount to be transferred to the retirement fund to maintain the actuarial funding program adopted by the Retirement Commission.

By law, if the Retirement Commission certifies that the Probate Court Retirement Fund is no longer on a sound actuarial basis, transfers from the Probate Court Administration Fund to the retirement fund must be resumed until the Retirement Commission again certifies that the retirement fund is on a sound actuarial basis, at which time transfers from this fund to the General Fund resume.

The act requires the Retirement Commission to provide notice to the General Assembly and the governor when it certifies that the retirement fund is (1) not on a sound actuarial basis, and (2) is again on a sound actuarial basis and transfers from the Probate Court Administration Fund to the General Fund must be resumed.

Prior law required that, if any probate court received income that was insufficient to meet, on an ongoing basis, the reasonable and necessary financial needs of that court, including the salaries of the judge and the judge's staff, funds could be transferred from the Probate Court Administration Fund, which the probate court administrator determined to be reasonable and necessary for the proper administration of the court. Prior law established a process for probate court judges to request assistance and for the probate court administrator to provide financial assistance. The act instead requires that there be transferred from time to time from the Probate Court Administration Fund such budgeted amounts as are established in accordance with the act or such expenditures authorized by law for the proper administration of each court. The act requires that on June 30, 2011, and annually thereafter, any surplus funds in the Probate Court Administration Fund be transferred to the General Fund.

The act eliminates a provision in prior law that a judge's annual salary could not exceed the average annual salary of such judge for the three-year period immediately preceding the request for financial assistance or the product resulting from multiplying \$15 by the annual weighted-workload of the court, whichever is greater, but not to exceed a certain limit established by law. The act establishes a new salary structure for judges (see § 13).

§ 3 — PROBATE COURT BUDGETS

By law, by April 1 of each year, the probate court administrator must prepare a proposed budget for the next succeeding fiscal year beginning July 1, for the appropriate expenditures of funds from the Probate Court Administration Fund to carry out his or her statutory duties. The act requires that this proposed budget reflect all costs related to the Office of the Probate Court Administrator and the operation of the probate courts, including (1) compensation; (2) group hospitalization, and medical and surgical insurance plans; and (3) retirement benefits for probate judges and employees. The act specifies that expenditures in the proposed budget may not exceed anticipated available funds.

Under prior law, the probate court administrator could authorize expenditures from the Probate Court Administration Fund for emergency purposes as from time to time might be necessary if the aggregate amount

for any fiscal year did not exceed \$5,000. A report on each such expenditure had to be sent to the chief court administrator and the president judge of the Connecticut Probate Assembly within 10 days after the expenditure was made. The act (1) instead requires the report to the chief court administrator and the president judge if the expenditure for emergency purposes exceeds \$10,000 and (2) eliminates the \$5,000 limit.

§ 4 — FUNDING OF PROBATE COURTS AND SALARIES FOR PROBATE JUDGES UNTIL JANUARY 5, 2011

The act makes the existing provisions regarding the funding of probate courts only apply to the income the courts receive before January 5, 2011. Under these provisions:

1. the funding of the probate courts, including the compensation of judges, is derived from the statutory fees charged to the users of the court;
2. the net income, after payment of expenses, is applied to a statutory formula that determines the amount of the assessment the judge must pay into the Probate Court Administration Fund;
3. the judge keeps the balance as compensation (currently, compensation ranges from under \$10,000 to the maximum of \$110,085, and the maximum amount a probate judge may receive may not exceed 75% of the compensation of a Superior Court judge);
4. if any probate court receives income that is insufficient to meet the court's reasonable and necessary financial needs, including the salaries of the judge and the judge's staff, the probate court administrator must transfer from the probate court administration fund whatever he or she determines to be reasonable and necessary to properly administer that court; and
5. each judge asking for financial assistance must file with the probate court administrator a sworn statement showing the actual gross receipts and itemized expenses of the judge's court and the amount requested, together with an explanation.

§ 5 — COMPENSATION OF JUDGES WHO LEAVE OFFICE OR DIE WHILE IN OFFICE

By law, if a probate judge leaves office or dies while in office, the judge's successor must pay to such judge or the personal representative of a deceased judge an amount representing the accounts receivable for payments due the court as of the date of separation or death. Determination of the basis for such accounts receivable including computation for work in process

must be made in accordance with regulations issued by the probate court administrator.

By law, deductions may be made for costs to collect the amount due the court, and any expenses directly attributable to the outgoing judge's or deceased judge's term of office paid by the successor judge.

The act limits these requirements to any judge in office on or before January 4, 2011 and they do not apply to a judge who is first elected on or after January 5, 2011, or who resumes office after a break in service on or after January 5, 2011.

On and after January 5, 2011, any payments due a judge who leaves office or dies in office must be paid from the Probate Court Administration Fund.

§ 6 — GROUP HOSPITALIZATION AND MEDICAL AND SURGICAL INSURANCE AND DENTAL INSURANCE PLAN FOR THE PROBATE JUDGES AND EMPLOYEES RETIREMENT SYSTEM

By law, the comptroller, with the attorney general's and insurance commissioner's approval, must arrange and procure a group hospitalization and medical and surgical insurance and dental insurance plan for the probate judges and employee retirement system with coverage equal to that available to retired state employees and their spouses and surviving spouses, which retirees or their surviving spouses may elect to participate in.

Under prior law, the premium charged for the group hospitalization and medical and surgical portion of the coverage had to be paid from the retirement fund, which consisted of amounts transferred from the Probate Court Administration Fund and contributions from probate court employees and judges. The retirement fund paid 20% of the dental portion of the premium and the participant paid 80%. The act instead requires that (1) the premium charged for any such member and spouse or surviving spouse who elects to participate be paid from funds appropriated to the state comptroller, for Fringe Benefits, for Retired State Employees Health Service Cost, and (2) 20% of the premium charged for the group dental portion of such coverage be paid from these appropriated funds, and the remainder be paid by the participant.

The act also requires that on July 1, 2011, and monthly thereafter, the state treasurer must transfer from the General Fund to the comptroller the amount of premium due for the month as certified by the comptroller.

§ 7 — HOSPITALIZATION AND MEDICAL AND SURGICAL PLAN FOR PROBATE JUDGES

Under the act effective January 5, 2011, to be eligible to participate in the hospitalization and medical

and surgical plan for probate judges, a probate court judge must work as a probate judge at least 20 hours per week, on average, on a quarterly basis and certify to that fact on forms provided by and filed with the probate court administrator, on or before the fifteenth day of April, July, October, and January, for the preceding calendar quarter.

§ 8 — PROBATE COURT JUDGE AND EMPLOYEE RETIREMENT BENEFITS ELIGIBILITY

Under prior law, in order to be eligible for retirement benefits under the probate court retirement system, probate court employees and those who work under a contract of employment had to work more than 430 hours a year. There was no minimum requirement for probate court judges. The act instead requires that to be eligible:

1. employees who are first employed by a court, or perform work under an employment contract for a court, on or after January 1, 2011 must work at least 1,000 hours a year and
2. judges first elected for a term beginning on or after January 5, 2011, must work as a judge for at least 1,000 hours a year as determined in information the judge files with the probate court administrator under the act.

§ 9 — RETIREMENT INCENTIVES TO JUDGES OF COURTS THAT ARE MERGED

By law, any probate judge whose probate district is merged with another district and who has not been elected to a term which begins at the time of, or after the merger, may elect:

1. to receive four years of credited service,
2. to receive a reduction of his or her retirement age of not more than four years, or
3. any combination of credited service and reduction of retirement age that does not exceed four years in total.

The act limits this to judges whose courts are merged on or before January 5, 2011. Also, it permits a judge to elect to receive credited service or a reduction of retirement age at any time once the judge becomes eligible to retire and receive retirement benefits.

§ 10 — PROBATE COURT ADMINISTRATION FUND

The act requires each probate court to remit all fees, costs, and other income received by law to the state treasurer to be credited to the Probate Court Administration Fund. The act specifies that expenses paid by a town to provide court facilities are not remitted to the Probate Court Administration Fund.

§ 11 — PROBATE BUDGET COMMITTEE

The act requires the probate court administrator to establish a Probate Court Budget Committee consisting of the probate court administrator and two probate judges appointed by the Probate Assembly. The probate court administrator must serve as chairperson. The committee must establish by June 30, 2010, and annually thereafter, in accordance with the criteria established in regulations the probate court administrator issues:

1. a compensation plan, which includes employee benefits, for probate court employees;
2. staffing levels for each probate court; and
3. a miscellaneous office budget for each court.

The compensation plan, staffing levels, and office budgets must be established within the expenditures and anticipated available funds in the proposed budget established pursuant to the act.

The act requires that by June 30, 2010, and annually thereafter, the Probate Court Budget Committee report to the governor and the General Assembly, after consulting with the Office of the Chief Court Administrator and the secretary of the Office of Policy and Management, on the committee's efforts to reduce costs and any potential cost saving measures resulting from probate court mergers effective on or after June 9, 2009.

§ 12 — PROBATE DISTRICTS-COMPENSATION BANDS

The act establishes four classes or "bands" of probate courts. The classification is based on the district's population and its annual weighted workload. The act specifies that "population" means the annual population estimate by the Department of Public Health for each city or town as of October 1 of the immediately preceding calendar year. "Annual weighted-workload" means the annual weighted-workload for the immediately preceding fiscal year as defined by regulations the probate court administrator adopts pursuant to the act.

Band 1 Probate District

A "band 1 probate district" means a probate district that has a population of fewer than 40,000.

Band 2 Probate District

A "band 2 probate district" is a probate district with:

1. a population of at least 40,000 but fewer than 50,000 or

2. a population of fewer than 40,000 thousand with an annual weighted-workload of at least 3,000 but less than 4,100.

Band 3 Probate District

A “band 3 probate district” is a district with:

1. a population of at least 50,000 but fewer than 60,000 or
2. fewer than 50,000 with an annual weighted-workload of at least 4,100 but less than 4,900.

Band 4 Probate District

A “band 4 probate district” is a probate district with:

1. a population of 60,000 or more or
2. fewer than 60,000 people with an annual weighted-workload of at least 4,900.

§ 13 — COMPENSATION OF JUDGES

The act requires compensation of probate court judges to be determined by applying a certain percentage to the salary of a Superior Court judge. The percentages range from 45% for a band 1 probate district to 75% for a band 4 district. The percentages are specified in Table 1. The current salary of a Superior Court judge is \$146,780.

Table 1: Compensation of Probate Court Judges

BAND	PERCENTAGE OF SUPERIOR COURT JUDGE'S SALARY	PROBATE JUDGE'S SALARY UNDER THE ACT BASED ON CURRENT SUPERIOR COURT JUDGE'S SALARY
1	45%	\$66,051
2	55%	\$80,729
3	65%	\$95,407
4	75%	\$110,085

Minimum Compensation

Under the act, no probate judge in office on January 4, 2011, may, for the term of office beginning January 5, 2011, and ending January 6, 2015, receive compensation that is less than 80% of the average annual compensation for a probate judge for the three-year period from January 1, 2008, to December 31,

2010. This does not apply to a judge whose district results from a merger that becomes effective on January 5, 2011, or to a person first elected to serve as a judge for a term beginning on or after January 5, 2011.

Compensation for Partial Years in Office

The act requires that for any calendar year, the compensation of any judge who assumes office or ceases to hold office during that year must be determined by multiplying the judge’s annual compensation determined in accordance with the act by a fraction with the number of days served during the calendar year as the numerator and 365 as the denominator.

§ 14 — APPEALS TO SPECIAL ASSIGNMENT PROBATE JUDGES

The law allows anyone aggrieved by a probate court decision to appeal to the Superior Court. The act allows the aggrieved party to mail a copy of the complaint to the probate court that made the decision instead of serving a copy on the court.

The act allows the Superior Court to refer certain appeals from a probate court decision to a special assignment probate judge assigned by the probate court administrator for the purposes of such appeals. But the appeal must be heard by the Superior Court if any party files a demand in writing with the Superior Court that such appeal be heard by the Superior Court (see BACKGROUND). Any demand must be filed within 20 days after service of appeal.

The act requires that an appeal referred to a special assignment probate judge must proceed in accordance with the rules for referrals set forth in the rules of the judges of the Superior Court.

Matters that May Not be Referred to Special Assignment Probate Judge

The act specifies that appeals from the following matters may not be referred to a special assignment probate judge:

1. commitment of mentally ill children (CGS §§ 17a-75 to 17a-83);
2. placement of any person found to be mentally retarded with the Department of Developmental Services for placement in any appropriate setting (CGS § 17a-274);
3. commitment of people with psychiatric disabilities (CGS §§ 17a-495 to 17a-528);
4. procedures governing medication, treatment, psychosurgery, and shock therapy for people with psychiatric disabilities (CGS § 17a-543);

5. administration of medication to criminal defendants with psychiatric disabilities placed in the custody of the commissioner of mental health and addiction services (CGS § 17a-543a);
6. application for involuntary commitment due to alcohol or drug dependency (CGS §§ 17a-685 to 17a-688);
7. guardianship matters, termination of parental rights, adoptions, claims for paternity, emancipation, and voluntary admission to the Department of Children and Families of any child or youth who could benefit from any of the services offered by, administered by, or available to the department (CGS § 45a-8a);
8. conservators (CGS §§ 45a-644 to 45a-663);
9. guardians of people with mental retardation (CGS §§ 45a-668 to 45a-684);
10. sterilization (CGS §§ 45a-690 to 45a-700); and
11. any matter in a probate court heard on the record (CGS §§ 51-72 and 51-73).

§ 15 — REQUIREMENT THAT PROBATE JUDGES BE LICENSED ATTORNEYS

The act requires that each probate judge elected for a term that begins on or after January 5, 2011, must be a member of the bar of the state of Connecticut. But this requirement does not apply to any judge who was in office on January 4, 2011, for the period the judge continues to serve as a probate judge on and after January 5, 2011, without a break in service.

§ 16 — HOURS OF OPERATION

The act requires probate courts to be open at least 40 hours a week instead of 20 hours, Monday through Friday, excluding holidays, on a regular schedule between the hours of 8:00 a.m. and 5:00 p.m. By law, the judge may close a court temporarily because of bad weather, an emergency, or other good cause, and must immediately give notice of a temporary closing to the probate court administrator, with the reason for the closing and the date and time when the court will reopen.

§ 17 — REIMBURSEMENT FOR INDIGENCY COSTS

By law, if the court finds that an applicant is unable to pay required probate fees and costs, it must waive them.

Under prior law, any waived fee had to be reimbursed to the probate court from funds appropriated to the Judicial Branch. But if funds were not included in the Judicial Branches budget for such purposes, the

payment had to be made from the Probate Court Administration Fund pursuant to rules and regulations established by the probate court administrator. The act eliminates these reimbursement requirements.

§ 18 — COMMITTEE APPOINTMENTS REPLACED BY PROBATE MAGISTRATES AND ATTORNEY PROBATE REFEREES

Under prior law, in any matter pending in any probate court, the court could appoint a committee of disinterested people or a former probate judge to hear the matter. The former judge had to be selected from a panel of judges provided by the probate court administrator. If the court accepted the committee's findings, it had to issue a decree and if the court rejected the findings, it had to hear and determine the matter or appoint a different committee to hear the matter and report its findings.

The act eliminates this authority and instead authorizes a court to refer the matter, with the consent of the parties or their attorneys, to a probate magistrate or attorney probate referee assigned by the probate court administrator under the act. The act exempts involuntary patient, involuntary commitment, temporary custody, and involuntary representation matters from the court's authority to refer.

Under prior law, the committee had to hear the matter and report its findings within 30 days after the hearing to the court. The act instead requires the probate magistrate or attorney probate referee to hear the matter and file a report with the court on his or her findings of fact and conclusions within 60 days after the hearing ends.

The act allows the magistrate or referee to file an amendment to the report with the court before the court accepts, modifies, or rejects it. The probate clerk must provide a copy of the report or amendment to the parties and their attorneys when it is filed with the clerk.

Any party aggrieved by a finding of fact or a conclusion in a report or amendment to a report may file an objection with the court within 21 days after the date the report was filed.

The act requires the court to hold a hearing on the report and any amendment to the report or objection filed at least 21 days after the report is filed. The act requires the court to determine whether to accept, modify, or reject the report or any amendment to the report within 30 days after the hearing ends. The court may modify or reject a report or amendment if it finds that the probate magistrate or attorney probate referee has materially erred in his or her findings or conclusions or there are other sufficient reasons why the report or amendment should not be accepted.

If the court rejects the report and any amendment to it, the court may hear and determine the matter or, with

the consent of the parties or their attorneys, refer the matter to a different probate magistrate or attorney probate referee to hear the matter and report findings of fact and conclusions. If the court accepts or modifies the report or amendment, the court must issue a decree.

The act requires the court to give notice to the parties and their attorneys of the time and place of any hearing.

Under prior law, the committee had to be sworn to faithfully perform the duties of its appointment and it had all the powers conferred by law upon probate courts to compel the attendance of witnesses and punish contempt. The act instead requires that each probate magistrate and attorney probate referee be sworn to faithfully perform their duties and they have all the powers the law gives probate judges to compel witnesses to attend and punish contempt.

Under prior law, the committee's fees could not exceed \$250 a day and had to be set by the court and paid by the executor, administrator, trustee, conservator, guardian, or other party to the action, or by the court pursuant to regulations established by the probate court administrator. If a party was unable to pay the fees and filed an affidavit with the court demonstrating an inability to pay, the reasonable compensation of the committee had to be established by the probate court administrator from the Probate Court Administration Fund. The act eliminates these requirements and the limit.

§§ 19 & 20 — PROBATE MAGISTRATES AND ATTORNEY PROBATE REFEREES

Probate Magistrate — Qualifications

The act establishes the position of probate magistrate to hear matters referred under the act. It allows any former probate judge less than 70 years of age, other than a probate judge receiving a retirement allowance due to permanent and total disability, who is an elector in Connecticut to be eligible for nomination, appointment, and assignment as a probate magistrate.

Nomination and Appointment of Probate Magistrate

The act authorizes the probate court administrator to nominate former probate judges who meet these requirements to serve as probate magistrates, and requires him to submit a list of nominees to the Supreme Court's chief justice and update the list as necessary. The act authorizes the chief justice to appoint probate magistrates from this list for a term of three years and inform the probate court administrator of such appointments. The probate court administrator assigns probate magistrates from those appointed by the chief justice.

Compensation of Probate Magistrate

Each probate magistrate receives \$50 per hour up to \$250 for each day the probate magistrate is engaged as a probate magistrate, from the Probate Court Administration Fund, in addition to any retirement salary the probate magistrate is entitled to receive. The act specifies that service as a probate magistrate does not constitute credited service for purposes of health, retirement, or other benefits.

Services Magistrates Perform

The act authorizes probate magistrates to conduct hearings and prepare a report or amendment to a report in connection with any matter referred by a probate court judge.

Attorney Probate Referees

The act establishes the unpaid position of attorney probate referee for the purpose of hearing matters referred by probate court judges. The act makes anyone eligible for nomination, appointment, and assignment as an attorney probate referee who (1) has been licensed to practice law in Connecticut and in good standing for at least five years, (2) is an elector of Connecticut, and (3) is under 70 years of age. They must serve without compensation.

Nomination of Attorney Probate Referees

The act authorizes the probate court administrator to nominate individuals who meet these requirements. It also authorizes any probate court judge to recommend a qualified nominee to the probate court administrator, requires the probate court administrator to consider the recommendation before making a nomination, and specifies that he or she does not have to follow it. The act requires that the probate court administrator ensure geographic, racial, and ethnic diversity among individuals he or she nominates as attorney probate referee.

Appointment and Assignment of Attorney Probate Referees

The act requires the probate court administrator to provide a list of nominees to the Supreme Court's chief justice and update the list as necessary. The chief justice must make appointments from the list for a term of three years and inform the probate court administrator of the appointments. The probate court administrator must assign attorney probate referees.

*Reports to the Governor and General Assembly
Regarding Attorney Probate Referees*

By January 1, 2012, and annually thereafter, the probate court administrator must submit an annual report to the governor and the Judiciary Committee that includes:

1. the number of attorney probate referees nominated, appointed, and assigned during the prior calendar year and
2. an analysis of the geographic, racial, and ethnic diversity of attorney probate referees nominated, appointed, and assigned during the prior calendar year.

Continuing Education of Magistrate and Referees

The act requires each probate magistrate and attorney probate referee to complete continuing education programs the probate court administrator establishes by regulation.

Certain Restrictions Do Not Apply to Magistrate and Referees

The act specifies that the prohibition against probate judges appearing as attorney in any contested manner, and partners or associates of probate judges not practicing law in the judge's court do not apply solely because a person was nominated, appointed, or assigned as a probate magistrate or an attorney probate referee.

Probate Court Assembly—Magistrate and Referees

The act authorizes probate magistrates or attorney probate referees to attend any annual or special meeting of the Probate Assembly or any educational program of the assembly, but specifies that they have no vote in any decision of the assembly.

§ 21 — PROBATE REDISTRICTING COMMISSION

The act establishes a probate redistricting commission to develop a plan to consolidate probate court districts in accordance with the act's requirements.

The probate redistricting commission consists of the following members:

1. two each appointed by the speaker of the House of Representatives, the president pro tempore of the Senate, the minority leader of the House, and the minority leader of the Senate;
2. one each appointed by the majority leader of the House and the Senate;
3. two appointed by the Governor; and
4. the probate court administrator as a nonvoting, ex-officio member.

Any member of the probate redistricting commission appointed may be a (1) member of the General Assembly or (2) probate judge.

All appointments to the commission must be made within 30 days after the governor signs the act. Any vacancy must be filled by the appointing authority.

The probate court administrator must schedule the commission's first meeting within 45 days after the governor signs the act. There must be one chairperson selected by and from among the commission's voting members. The Office of the Probate Court Administrator must provide administrative support including clerical staff and supplies.

§ 22 — REDISTRICTING PLAN

Criteria

The act requires the probate redistricting commission to develop a probate court plan for consolidating the probate court districts. Under the plan, there must be at least 44 districts and no more than 50. In creating the plan, the act directs the commission to consider a requirement that no municipality may be included in more than one probate court district. It also directs the commission to consider a requirement that each district must have either:

1. at least 40,000 people according to the last annual population estimate by the Department of Public Health as of October 1, 2008, for each city or town or
2. an annual weighted-workload of 3,000, calculated under the act's provisions.

But the act allows the plan to establish probate court districts that do not meet either the population or workload requirement if the plan takes into consideration the following criteria:

1. the court's geographic accessibility to residents of the proposed district;
2. the availability of municipal facilities to house the probate court; and
3. communities of interest among municipalities sharing a proposed probate court district.

Finally, the act allows the commission to consider any other criteria it deems appropriate and necessary.

The plan must include recommended amendments to any statute necessary to implement it.

Connecticut Probate Assembly Plan

The act allows the Connecticut Probate Assembly to submit a plan for redistricting to the commission within 45 days after the governor signs the act as long as the plan meets the criteria the act establishes. In developing the plan, the assembly may consider any voluntary consolidations towns have agreed to. The commission may consider any plan the assembly

submits, but is not bound by it.

The redistricting commission must hold a public hearing on any plan the assembly submits and may hold a public hearing on any other subject it deems appropriate.

Deadline for Filing Plan

By September 15, 2009, the commission must file a consolidation plan with the House and Senate clerks except the commission may not submit a plan unless it has received the affirmative vote of at least seven commission members. The commission must file a copy of the plan with the governor when it files the plan with the clerks.

Procedure for Considering the Plan

When the report is filed with the clerks, the House speaker and the Senate president pro tempore must convene the General Assembly in special session for the sole purpose of considering and voting on the plan. Upon the request of the speaker and the president pro tempore, the secretary of the state must give notice of the special session by (1) mailing a copy of the call, by registered or certified mail, return receipt requested, to each House and Senate member at his or her address as it appears upon the records of the secretary between 10 to 15 days before the date of convening the session or (2) causing a copy of the call to be delivered to each member by a constable, state policeman, or indifferent person at least 24 hours before the time of convening it.

The act requires the General Assembly to convene to consider the plan within 20 days after the commission submits it to the clerks.

If the General Assembly fails to enact legislation to implement the plan within 30 days after it is filed with the House and Senate clerks or the Governor fails to approve the legislation, the commission must reconvene to develop a revised probate redistricting plan and file it with the House and Senate clerks within 30 days after the prior plan's failure.

Upon the filing of the revised plan, the House speaker and the Senate president pro tempore must convene the General Assembly within 20 days after it is filed with the clerks. If the House or Senate has adjourned the special session convened to consider the first plan, they must convene the General Assembly in special session in the same manner the act requires for the initial plan.

The revised probate redistricting plan must be considered and transmitted in the same way as the act requires for the initial plan.

Termination of the Commission

The probate redistricting commission must terminate on the date a redistricting plan is approved by the General Assembly and the governor, or by February 3, 2010, whichever is earlier.

§ 24 — DEFECTS IN THE FORM OF AN APPEAL TO SUPERIOR COURT

Under prior law, if there was a defect in the form of an appeal taken to the Superior Court from a probate court decision, the person who was appealing had to obtain from the probate court an amendment to the appeal correcting the defect, as long as the order for amendment was granted within 90 days after the date of the order, denial, or decree of the probate court from which the appeal was taken. The act eliminates this provision.

§ 25 — TEMPORARY FUNDING OF PROBATE COURTS

The act eliminates a law that allows the probate court administrator to advance temporary funding of the operation of a probate court from the Probate Court Administration Fund with the chief court administrator's approval.

BACKGROUND

Process for Adopting Probate Court Rules

By law, either the probate court administrator or the executive committee of the Connecticut Probate Assembly may propose regulations that the law authorizes the probate court administrator to adopt. Any regulation proposed by the probate court administrator must be submitted to the executive committee of the Connecticut Probate Assembly for approval. Any regulation proposed by the executive committee of the Connecticut Probate Assembly must be submitted to the probate court administrator for approval. If either the probate court administrator or the executive committee of the Connecticut Probate Assembly fails to approve a proposed regulation, it may be submitted to a panel of three Superior Court judges appointed by the chief justice of the Supreme Court. The panel must either approve or reject the proposed regulation (CGS § 45a-77(c)(1)).

The law also requires that any proposed new regulation and any change in an existing regulation be submitted to the Judiciary Committee for approval or disapproval in its entirety. If more than one proposed new regulation or change in an existing regulation is submitted at the same time, the committee must approve or disapprove all such proposed new regulations and

changes in existing regulations in their entirety (CGS § 45a-77(c)(2)).

Special Assignment Probate Judge

The law requires that special assignment probate judges be appointed by the chief justice of the Supreme Court, on nomination by the probate court administrator, from among the judges of probate. A nominee must have demonstrated the special skill, experience, or expertise necessary to serve as a special assignment probate judge. The law requires the probate court administrator to issue regulations to establish requirements concerning the responsibilities of special assignment probate judges and the number, geographic distribution, and expertise of such judges. A special assignment probate judge serves at the chief justice's pleasure (CGS § 45a-79b).

PA 09-138—HB 6576

Judiciary Committee

AN ACT CONCERNING LARCENY

SUMMARY: By law, a person can commit larceny in a number of different ways and the law provides six degrees of larceny crimes, with penalties varying in most instances based on the value of the property taken. This act doubles most, but not all, of the values of the property which must be taken to commit each of the six degrees of larceny crimes.

It also affects other statutes that refer to the larceny statutes for the penalties for taking property, including health insurance fraud (CGS § 53-443) and collecting fees for medical discount plan membership without providing promised benefits (CGS § 38a-479qq).

EFFECTIVE DATE: October 1, 2009

FIRST-DEGREE LARCENY

Under prior law, a person committed first-degree larceny by taking (1) property or service over \$10,000 or (2) a motor vehicle valued at over \$10,000. The act increases the minimum value of the property, service, or motor vehicle required to \$20,000.

By law, unchanged by the act, a person also commits first-degree larceny by taking (1) property or service of any value by extortion or (2) property over \$2,000 by defrauding a public community.

First-degree larceny is a class B felony (see Table on Penalties).

SECOND-DEGREE LARCENY

Under prior law, a person committed second-degree larceny by taking (1) property or service over \$5,000 or (2) a motor vehicle valued at over \$5,000. The act increases the minimum value of the property, service, or motor vehicle required to \$10,000.

By law, a person also commits second-degree larceny by taking property (1) of any nature or value from someone's person; (2) valued at \$2,000 or less by defrauding a public community; or (3) of any value by embezzlement, false pretenses, or false promise when the victim is age 60 or older, blind, or physically disabled.

Second-degree larceny is a class C felony.

THIRD-DEGREE LARCENY

Under prior law, a person committed third-degree larceny by taking (1) property or service over \$1,000 or (2) a motor vehicle valued at \$5,000 or less. The act increases the required minimum value of the property or service to \$2,000 and the maximum value of the motor vehicle to \$10,000.

By law, a person also commits third-degree larceny by taking (1) a public record or instrument from a public office or public servant or (2) a sample, microorganism, record, drawing, material, device, or substance related to a secret scientific or technical process, invention, or formula.

Third-degree larceny is a class D felony.

FOURTH-DEGREE LARCENY

The act increases the minimum value of property or service that must be taken to commit fourth-degree larceny from \$500 to \$1,000. Fourth-degree larceny is a class A misdemeanor.

FIFTH DEGREE LARCENY

The act increases the minimum value of property or service that must be taken to commit fifth-degree larceny from \$250 to \$500. Fifth-degree larceny is a class B misdemeanor.

SIXTH-DEGREE LARCENY

The act increases the maximum value of property or service that must be taken to commit sixth-degree larceny from \$250 to \$500. Sixth-degree larceny is a class C misdemeanor.

BACKGROUND

Related Act

Public Act 09-243 makes taking wire, cable, or other telecommunications service equipment and causing an interruption in emergency telecommunications service second-degree larceny regardless of the value of the property.

PA 09-139—sHB 6700 (VETOED)

Judiciary Committee

AN ACT CONCERNING THE APPOINTMENT OF FAMILY SUPPORT MAGISTRATES

SUMMARY: This act requires family support magistrate (FSM) appointments to be approved by the legislature. Prior law required the governor to appoint FSMs for three-year terms. Beginning January 1, 2010, the act instead requires that the governor nominate FSMs for four-year terms subject to the legislature's approval. FSMs whose terms have not expired as of December 31, 2009 continue to serve until (1) their terms expire and (2) their successors are appointed or their nomination fails. The governor retains the power to remove an FSM for cause before his or her term expires.

The act makes technical and conforming changes.

EFFECTIVE DATE: January 1, 2010

NOMINATIONS AND APPOINTMENTS

The act requires referral of the governor's nominees to the Judiciary Committee without debate, and the committee must report them to the legislature within 30 legislative days, but no later than seven legislative days before the General Assembly adjourns.

An appointment is approved if both chambers vote in the affirmative by concurrent resolution in a roll call vote. No resolution can contain more than one name. The governor must submit the name of a new nominee within five days after she gets notice that a nomination has failed.

Investigations

Private Investigators. Before any public hearing on an FSM nominee, the Judiciary Committee co-chairmen can hire someone to investigate the nominee's suitability to hold office. The investigator must report his or her findings to the committee; the report is not subject to public disclosure. The Legislative Management Committee sets the investigator's rate of compensation.

Judicial Review Council. By law, the Judicial Review Council submits its recommendations on whether an FSM should serve another term to the governor, including a report on any investigation it undertook concerning the nominee. The act also requires the council to share its recommendation and a report of its investigation with the Judiciary Committee, along with information about any complaint, the council's investigatory findings, and the complaint's disposition. This includes providing confidential information, at the committee chairmen's request, from complaints that result in admonishment, public censure, or suspension. Confidential information cannot be further disclosed.

Interim Appointments

The act prohibits the governor from making vacancy appointments when the legislature is not in session unless she submits the name of the proposed vacancy appointee to the Judiciary Committee. Either chairman can call a special meeting within 45 days to approve or disapprove the vacancy appointment by majority vote.

If the committee determines that it cannot complete its investigation within 45 days and act on the proposed vacancy appointment, it may extend the deadline by 15 days. In that case, it must notify the governor of the extension in writing.

The governor cannot give a nominee the oath of office until the committee approves the appointee but the committee's failure to act within the time limits is deemed approval.

BACKGROUND

Family Support Magistrates

The nine family support magistrates primarily hear and decide child support, visitation, alimony, and paternity cases.

Judicial Review Council

The council consists of judges, attorneys, and members of the public who investigate the conduct of judges, workers compensation commissioners, and FSMs. With respect to FSMs, the council has the authority to censure, suspend, or remove them from office for specified types of misconduct.

PA 09-152—sSB 1157

Judiciary Committee

Finance, Revenue and Bonding Committee

**AN ACT CONCERNING THE INTEREST
EARNED ON LAWYERS' CLIENTS' FUNDS
ACCOUNT PROGRAM AND THE TRANSFER OF
CERTAIN COURT FEES TO FUND SUCH
PROGRAM**

SUMMARY: This act increases certain court filing fees and requires the chief court administrator, or a designee, by the last day of January, April, July, and October to:

1. certify the amount of revenue received as a result of the act's fee increases and
2. transfer that amount to the organization administering the IOLTA (interest on lawyers' trust accounts) program to fund the delivery of legal services to the poor.

The act alters the participation requirements concerning clients' funds in IOLTA. Prior law allowed attorneys to deposit in interest-bearing IOLTA accounts clients' funds that were less than \$10,000 or expected to be held for 60 days or less. The act instead allows attorneys to deposit clients' funds in these accounts regardless of the amount or expected duration of the deposit unless the attorney determines in good faith that the client could earn more than it would cost to set up a separate interest-bearing account for the client. The act requires (1) attorneys to consider certain factors in making this determination and (2) specifies that attorneys who determine in good faith to deposit funds in IOLTA accounts after considering these factors cannot be disciplined for doing so.

By law, unchanged by this act, attorneys (1) must promptly turn funds over to their clients on request and (2) can choose to deposit a client's funds regardless of the amount or period for which they are expected to be held, in a separate interest-bearing account established for the client's benefit.

EFFECTIVE DATE: July 1, 2009.

INCREASED FILING FEES

The act increases the following court fees:

1. the jury fee in civil actions, from \$350 to \$425;
2. the filing fee for bringing a case in the Superior Court, from \$225 to \$300;
3. designation of a case as a complex litigation case, from \$250 to \$325;
4. application for a prejudgment remedy, from \$100 to \$175;
5. a motion to open, set aside, modify, or extend any Superior Court civil judgment, from \$70 to \$125 (small claims cases stay at \$25 and housing cases at \$35);

6. filing a motion to open or re-argue a judgment in any civil appeal rendered by the Supreme Court or Appellate Court or to reconsider any other civil matter decided in either court, from \$70 to \$125; and
7. application by a judgment creditor for a wage execution against a judgment debtor who fails to comply with an installment payment order, from \$35 to \$75.

**FACTORS TO BE CONSIDERED IN DECIDING
WHETHER TO PARTICIPATE IN IOLTA**

Under the act, lawyers must consider the following in determining whether to deposit a client's funds in an IOLTA account:

1. the amount of the funds to be deposited;
2. the expected duration of the deposit, including the likelihood of delay in resolving the relevant transaction, proceeding, or matter for which the funds are held;
3. the interest rates, dividends, or yields at eligible institutions where the funds are to be deposited;
4. the costs associated with establishing and administering interest-bearing accounts or other appropriate investments for the client's benefit, including service charges, minimum balance requirements, or fees;
5. the costs of the lawyer's or law firm's services for establishing and maintaining the account or other appropriate investments;
6. the costs of preparing any tax reports required for income earned on the funds; and
7. any other circumstances that affect the capability of the funds to earn income for the client in excess of the costs incurred to secure the income.

BACKGROUND

IOLTA

IOLTA is a method of raising money for charitable purposes, primarily for funding legal services for the poor. In Connecticut, interest earned on IOLTA accounts is managed by the Connecticut Bar Foundation, which distributes it to legal services providers and low-income law students who have applied for scholarships.

PA 09-158—sSB 1127

Judiciary Committee

Government Administration and Elections Committee

AN ACT CONCERNING CERTAIN STATE CONTRACTING NONDISCRIMINATION REQUIREMENTS

SUMMARY: By law, all state contracts and contracts of political subdivisions, other than municipalities, must contain anti-discrimination provisions that protect people based on race, color, religious creed, age, marital status, national origin, ancestry, sex, mental retardation, physical disability, or sexual orientation. This act defines “marital status” as being single, married under Connecticut law, widowed, separated, or divorced.

The act (1) exempts contracts among public sector parties from the requirement for the anti-discrimination provision, (2) expands the categories of protected people to include those with mental disabilities, and (3) establishes different supportive data that contractors must provide before entering a contract. Under the act, “mental disability” means one or more mental disorders, as defined in the latest edition of the American Psychiatric Association’s *Diagnostic and Statistical Manual of Mental Disorders*. The act defines “mental impairment,” as that term is used in the small business and minority enterprise program in the same way.

This means that a small contractor with at least one of these disorders that substantially limits one or more of his or her major life activities meets the definition of a minority enterprise. By law, state and quasi-public agencies and political subdivisions, other than municipalities, must set aside a percentage of the contracts they award for construction, goods, and services each year for small contractors and minority business enterprises.

EFFECTIVE DATE: Upon passage

ANTI-DISCRIMINATION PROVISION IN CONTRACTS

Contracts Requiring the Provision

Under prior law, all state contracts and contracts of political subdivisions, other than municipalities, had to contain anti-discrimination provisions. The act limits this requirement by exempting contracts between governmental or quasi-governmental entities. Specifically, the requirement does not apply to contracts in which the contractor is either (1) a political subdivision, including a municipality; (2) a quasi-public agency; (3) another state; (4) the federal government; (5) a foreign government; or (6) an agency of any of the above.

Categories of People Protected by the Provisions

The act requires that these contracts require contractors to agree not to (1) discriminate or permit anyone to discriminate against anyone with mental disabilities and (2) treat their employees differently because of a mental disability unless the disability prevents the person from performing a job.

Supportive Data

Under prior law, contractors had to provide their company’s anti-discrimination policy adopted by a resolution of its governing body before entering a contract with the state or a political subdivision. The act makes this requirement one option available to contractors with contracts valued at \$50,000 or more for any year of the contract. The other options are to (1) provide a policy adopted by a prior resolution that a duly authorized corporate officer certifies is still in effect and that the head of the contracting agency certifies complies with the law’s antidiscrimination agreement and warranty or (2) submit an affidavit signed under penalty of false statement by a corporate officer duly authorized to adopt company policy that certifies that the policy complies with the law’s antidiscrimination agreement and warranty and is effective on the date the affidavit is signed.

In establishing the \$50,000 threshold, the act eliminates a requirement for contractors with a contract below this threshold to provide their company’s antidiscrimination policy. It instead requires them to give the state or the political subdivision, as applicable, a written representation that complies with the nondiscrimination agreement and warranty.

BACKGROUND

Diagnostic and Statistical Manual of Mental Disorders

The manual (known as the “DSM-IV”) lists approximately 400 disorders of varying degrees of severity. It is the standard classification of mental disorders used by mental health professionals in the United States. It was substantially revised in 1994.

PA 09-162—HB 6343*Judiciary Committee***AN ACT CONCERNING TEMPORARY LEAVE ORDERS ISSUED BY THE PSYCHIATRIC SECURITY REVIEW BOARD**

SUMMARY: By law, the superintendent of Connecticut Valley Hospital and the Department of Developmental Services commissioner have the authority to request that the Psychiatric Security Review Board (PSRB) grant temporary leave to people in their respective custody who have been acquitted of crimes due to a mental disease or defect (“acquittee”). This act gives PSRB express authority to set conditions and order supervision during the leave.

The act also permits PSRB to designate a capable person or agency to supervise the acquittee during the leave. Prior to any designation, the board must notify the person or agency designee and give him or her an opportunity for a hearing before the board. Any designee must comply with the conditions the board sets in its order for temporary leave.

EFFECTIVE DATE: Upon passage

BACKGROUND*Psychiatric Security Review Board*

PSRB is a state agency to which the Superior Court commits people found not guilty of a crime by reason of mental disease or defect. PSRB must review the status of acquittees through an administrative hearing process and order the level of supervision and treatment for each acquittee necessary to protect the public.

PA 09-169—sSB 650*Judiciary Committee***AN ACT CONCERNING THE CREATION OF A TRUST FOR THE CARE OF AN ANIMAL**

SUMMARY: This act authorizes the creation of a testamentary or inter vivos trust to provide for the care of an animal or animals alive during the lifetime of the person who creates it. The trust must terminate when the last surviving animal dies. Under prior law, trusts for animals were simply honorary, because animal beneficiaries could not enforce them.

The act requires the trust to designate a trust protector to act on the animal’s behalf and gives the protector certain enforcement and oversight powers. The act requires the trustee to annually render an account to the trust protector for the trust, signed under penalty of false statement. It allows a probate court to

replace a trust protector for the same reasons it can currently replace a trustee (death, incapacity, refusal to serve, or resignation).

The act gives Superior Court jurisdiction over any trust created under the act. It also gives a probate court jurisdiction if the trustee is otherwise subject to its jurisdiction or the trust is an inter vivos trust and is, or could be subject to, its jurisdiction for an accounting by law.

The act requires that trust property may be applied only to its intended use, subject to proper trust expenses including trustee fees, except to the extent the Superior Court or a probate court having jurisdiction, upon application by the trustee or trust protector, determines that the value of the trust property exceeds the amount required for its intended use. The act establishes how trust property must be distributed if it exceeds the amount needed or the trust is terminated.

Finally, the act specifies that, except as the act otherwise provides, statutory provisions governing trust creation and administration apply to trusts created to provide for the care of an animal.

EFFECTIVE DATE: October 1, 2009

ENFORCEMENT

The act gives a trust protector the right to file a petition in the Superior Court or a probate court having jurisdiction to enforce the provisions of the trust, remove or replace any trustee, or require a trustee to render an account. The court may award costs and attorney’s fees to the trust protector, from the trust property, if the trust protector prevails on the petition and the court finds that filing the petition was necessary to fulfill the trust protector’s duty to act on behalf of the animal or animals provided for in the trust.

It also gives the trust protector the right to ask the attorney general to file a petition in court to enforce the trust’s provisions, remove or replace any trustee, or seek restitution from the trustee if the protector determines that the trustee has used trust property for personal use or has otherwise committed fraud. The act allows the attorney general to file the petition only if he or she determines that the circumstances warrant it.

DISTRIBUTION OF TRUST PROPERTY

The act requires that trust property not required for its intended use, including trust property remaining when a trust is terminated, must be distributed in the following order of priority:

1. as directed by the terms of the trust;
2. to the remainder beneficiaries identified in the trust instrument, under the same terms provided in the trust for the remainder interest;

3. to the settlor, if living;
4. pursuant to the residuary clause of the settlor's or testator's will; or
5. to the settlor's or testator's heirs in accordance with the laws governing descent and distribution.

BACKGROUND

Inter Vivos Trust

An inter vivos trust is established while the creator (called a settlor) is alive. The settlor can revoke it or change it during his or her lifetime.

Testamentary Trust

A testamentary trust is created by the terms of a will and places some assets from the dead person's estate in a trust to exist from the date of death until fully distributed.

Vacancies in the Office of Trustee

By law, a probate court with jurisdiction may appoint some suitable person to fill a vacancy caused by the trustee's death, incapacity, refusal to serve, or resignation (CGS § 45a-474).

Jurisdiction of Accounts of Fiduciaries

Probate courts have jurisdiction of the interim and final accounts of testamentary trustees and accounts of the actions of trustees of inter vivos trusts. By law, a trustee or a settlor of an inter vivos trust may ask the probate court to review the trustee's or attorney's actions under the trust. If the court finds that appointment of an auditor is necessary and in the best interests of the estate, the court upon its own motion may appoint one to be selected from a list provided by the probate court administrator to examine accounts over which the court has jurisdiction (CGS § 45-175).

PA 09-171—sSB 966

Judiciary Committee

Planning and Development Committee

Transportation Committee

AN ACT PROHIBITING BLOCKING THE BOX

SUMMARY: This act allows a municipality to adopt an ordinance designating intersections where a motor vehicle is prohibited from entering if the space on the opposite side of the intersection is too small to allow the vehicle to cross without obstructing the passage of other vehicles or pedestrians. This applies even if the traffic

light permits the motor vehicle to proceed. But it does not apply when entering an intersection to make a turn or to tractor-trailers.

The act requires the municipality to (1) post signs stating that blocking the intersection is prohibited and violators can be fined and (2) use white paint to mark the intersection's boundaries and the area within it with parallel diagonal lines, using lines at least one foot wide.

The act makes a violation an infraction (see Table on Penalties).

EFFECTIVE DATE: October 1, 2009

PA 09-178—SB 1099

Judiciary Committee

Labor and Public Employees Committee

AN ACT CONCERNING CERTAIN APPEAL PROCEDURES

SUMMARY: By law, a party can appeal a workers' compensation commissioner's decision to the Compensation Review Board. A party can then appeal the board's decision on a question of law to the Appellate Court. Under case law, the Appellate Court would not hear the appeal unless it was from a final judgment of the board.

This act allows a party to appeal the board's decision even if it is not considered a final decision under the provisions on appealing (1) administrative decisions under the Uniform Administrative Procedures Act or (2) from the Superior Court. Both of these provisions require appeals from a final decision or judgment unless a law provides otherwise.

EFFECTIVE DATE: Upon passage

BACKGROUND

Related Cases

Case law requires a final judgment from the Compensation Review Board before allowing an appeal to the Appellate Court. In *Cleveland v. U.S. Printing Ink, Inc.*, 218 Conn. 181 (1991), the state Supreme Court stated that under the practice and procedure of the Appellate Court, a party can appeal a final judgment of a court or judge. For a decision to be appealable from the board, it must have the same elements of finality as a final judgment rendered by a trial court.

In a recent case, the court again upheld its previous decisions requiring a final judgment before allowing an appeal to the Appellate Court. In *Hummel v. Marten Transport, Ltd.*, 282 Conn. 477 (2007), the workers' compensation commissioner ruled that the plaintiff was entitled to survivor's benefits but did not determine the

amount of benefits. The defendant appealed the decision to the Compensation Review Board, which affirmed the commissioner's finding. The defendant then appealed to the Appellate Court. Because the commissioner was still hearing matters related to benefits, the Appellate Court dismissed the appeal as it was not based on a final judgment. The Supreme Court upheld that decision based on its previous decisions.

When the board returns a case to a commissioner for further proceedings in connection with a challenged award, whether the decision is a final judgment depends on whether the further proceedings (1) are ministerial or (2) require independent judgment or discretion and taking additional evidence (*Hummel*).

Related Court Rules

The Judicial Branch's Rules provide that the practice and procedures for appeals of a Compensation Review Board decision to the Appellate Court are the same as for other appeals (P.B. § 76-1). The Rules that generally apply to appeals allow a party to appeal to the Appellate Court when there is a final judgment, unless the law provides otherwise (P.B. § 61-1).

Related Statute

By law, a party aggrieved by a decision of the Superior Court on a question of law arising at trial can appeal from the court's final judgment (CGS § 52-263).

PA 09-182—sHB 5883

Judiciary Committee

AN ACT CONCERNING THE UNLICENSED PRACTICE OF MASSAGE THERAPY

SUMMARY: This act makes it a class C misdemeanor (see Table on Penalties) for anyone to engage in the practice of massage therapy or use the title "massage therapist," "licensed massage therapist," "massage practitioner," "massagist," "masseur," or "masseur" without a license from the Department of Public Health. Prior law required the license, but did not specify a criminal penalty for violators.

EFFECTIVE DATE: October 1, 2009

PA 09-191—sHB 6025

Judiciary Committee

AN ACT CONCERNING THE PENALTY FOR ENGAGING A POLICE OFFICER IN PURSUIT AND ASSAULTING A PUBLIC TRANSIT EMPLOYEE

SUMMARY: This act increases the penalty, from a class D to a class C felony (see Table on Penalties), for someone who, in order to elude a police officer, increases his or her driving speed after an officer in a police vehicle signals him or her to stop by using an audible signal or flashing lights for a:

1. first offense that causes death or serious physical injury and
2. second offense.

By law, unchanged by the act, a first offense that does not cause death or serious physical injury is a class A misdemeanor.

By law, (1) a first offense carries a one year driver's license suspension and a subsequent offense carries a suspension of 18 months to two years and (2) a one year mandatory minimum sentence applies if the current and a prior offense caused death or serious physical injury.

The act makes assault of public transit personnel a class C felony, the same penalty as for assault of public safety and emergency medical personnel. A person commits assault of public transit personnel by assaulting a reasonably identifiable public transit employee who is performing his or her duties, with intent to prevent the employee from performing them, by doing any of the following to the employee:

1. causing injury;
2. throwing potentially damaging objects;
3. using tear gas, Mace, or a similar agent;
4. throwing paint, dye, or any other offensive substance; or
5. throwing bodily fluid, such as feces, blood, or saliva.

The act defines a public transit employee as someone (1) employed by the state, a political subdivision, or transit district or (2) who operates a vehicle or vessel for public rail, ferry, or fixed route bus service or has duties directly related to operating the vehicle or vessel under a contract with the transportation commissioner to provide transportation services.

Under other law, assaults are punishable, depending on the conduct, by penalties ranging from a class A misdemeanor to a class A felony.

EFFECTIVE DATE: October 1, 2009

PA 09-193—sHB 6339

Judiciary Committee

Finance, Revenue and Bonding Committee

Banks Committee

**AN ACT CONCERNING THE FORFEITURE OF
PROPERTY OBTAINED BY SECURITIES
FRAUD**

SUMMARY: This act extends the definition of racketeering activity under the Corrupt Organizations and Racketeering Activity Act (CORA) to include violations of the federal Currency and Foreign Transactions Reporting Act by broker-dealers and specifies that CORA applies to securities fraud and related offenses under the Uniform Securities Act. CORA provides for criminal penalties and property forfeiture (see BACKGROUND).

The act requires the chief state's attorney, in consultation with the attorney general, chief court administrator, and banking commissioner, to study the (1) establishment of a fund to hold money and proceeds of property forfeited under CORA for securities fraud and related offenses and (2) most appropriate way to administer the fund to provide restitution to victims. The chief state's attorney must report findings and recommendations to the Judiciary Committee by March 31, 2010.

EFFECTIVE DATE: October 1, 2009, except the provision on the study, which is effective upon passage.

BACKGROUND

CORA

CORA punishes racketeering activity. It subjects violators to (1) one to 20 years in prison, a fine of up to \$25,000, or both; (2) forfeiture of property acquired, maintained, or used in violation of CORA including profits, appreciated value, and sale proceeds; and (3) forfeiture of any interest, claim against property, or contractual right affording a source of influence over any enterprise the violator established, operated, controlled, conducted, or participated in.

On conviction, the court or jury determines whether property is subject to forfeiture. After hearing evidence, the court can authorize the chief state's attorney to seize property in the name of the state. If property the defendant owned before judgment of forfeiture was transferred to avoid forfeiture, the court can set aside the transfer. The court can make appropriate orders to protect the rights of innocent parties.

The court can order property to be converted to cash. The court can provide for the rights of an innocent party, government, or business that is superior to the state if they are known to the court or prosecutors. The

court can order property to be given to a state agency that can use it, order it sold or transferred to an innocent party, or order equitable relief.

The court can appoint a receiver to facilitate property disposition and act as a fiduciary of the state. The receiver must post a bond as ordered by the court, comply with court orders, file a final report on disposition of the property, and deposit net proceeds with the court. The court compensates the receiver from the proceeds.

Money forfeited to the state or the proceeds of forfeited property is deposited in the General Fund.

The chief state's attorney can compromise, remit, or mitigate a claim or potential claim.

At any time in a CORA prosecution when there is probable cause to believe a defendant has property that is subject to forfeiture, the court can (1) prohibit a defendant from transferring, depleting, or diminishing the property; (2) appoint a receiver for the property; or (3) permit the defendant to transfer the property on posting security. The court can also issue orders to protect innocent parties.

The state can file a CORA lien notice with town clerks and other officials of this or other states and the law specifies procedures regarding these liens (CGS § 53-393 et seq.).

Federal Currency and Foreign Transactions Reporting Act

This federal law requires financial institutions to keep records of cash purchases of negotiable instruments; file reports of cash transactions exceeding \$10,000; and report suspicious activity that might be money laundering, tax evasion, or other criminal activities (31 USC § 5311 et seq.).

PA 09-199—sSB 533

Judiciary Committee

Education Committee

Public Safety and Security Committee

**AN ACT CONCERNING NOTIFICATION OF
THE RELEASE OF A REGISTERED SEXUAL
OFFENDER INTO THE COMMUNITY**

SUMMARY: This act requires the Department of Public Safety to notify the superintendent of schools in the community where a sex offender registrant lives or plans to live whenever the registrant is released from prison. The notice must be by email and include the same registry information currently available to the public through the Internet. This information includes the registrant's name, address, date of birth, race, and general description. It also includes the crime he or she

committed that required registration and the date he or she was convicted, first registered, and last had the registration verified.

EFFECTIVE DATE: September 1, 2009

PA 09-201—sSB 1031

Judiciary Committee

Insurance and Real Estate Committee

AN ACT CONCERNING MURDER AND INHERITANCE

SUMMARY: This act expands the circumstances under which a person cannot inherit, receive part of the estate, or receive life insurance or annuity benefits from someone for whose death he or she was responsible.

By law, a murderer cannot inherit or receive part of the estate from (1) the victim or (2) another person if the homicide or death terminated an intermediate estate or hastened the time of enjoyment. This applies if the person is finally adjudged guilty as a principal or accessory of murder or capital felony in Connecticut or for a similar crime in another jurisdiction. The act also excludes someone (1) convicted as a principal or accessory of felony murder, arson murder, 1st degree manslaughter with or without a firearm, or a similar crime in another jurisdiction or (2) who would have been found guilty of one of these offenses under Connecticut law if he or she had survived, as determined by the Superior Court by a preponderance of the evidence in an action brought by an interested person.

The law prohibits a named beneficiary on an insurance policy or annuity from receiving any benefits if he or she intentionally caused the death of the person who is the subject of the policy or annuity. The law excludes someone if convicted of murder, capital felony, felony murder, arson murder, 1st degree manslaughter, or 1st degree manslaughter with a firearm. The act allows an interested party to bring an action in Superior Court to determine by a preponderance of the evidence that a beneficiary who predeceased the interested person would have been found guilty of one of these crimes.

The law already allowed the Superior Court to make a determination in the absence of a conviction based on the common law, including equity, that the person is not entitled to benefits. The act allows the Superior Court to make this determination only when there is no conviction or action brought by an interested party. For the Superior Court proceeding under this law, the person challenging entitlement has the burden of proof. The act applies this as well to proceedings brought by an interested party.

EFFECTIVE DATE: October 1, 2009

PA 09-212—SB 1100

Judiciary Committee

Public Health Committee

AN ACT CONCERNING MEDICAL FOUNDATIONS AND MEDICAL GROUP CLINIC CORPORATIONS

SUMMARY: This act authorizes any hospital or health system to organize and become a member of a medical foundation to practice medicine and provide health care services as a medical foundation through its employees or agents who are licensed physicians and through other providers the act defines. Under the act, a medical foundation is a nonprofit entity that may operate at whatever locations its members select.

The act (1) allows mergers and consolidations of medical foundations under certain circumstances, (2) allows corporations organized under certain other state laws to bring themselves under the acts provisions, (3) establishes certain requirements regarding what must appear in the foundation's name, and (4) makes certain conforming changes to other laws.

EFFECTIVE DATE: July 1, 2009

§ 1 — DEFINITIONS

Hospital

The act defines a “hospital” as a non-stock corporation organized under the current non-stock corporation law or any predecessor statute, or by special act, and licensed as a hospital under state law.

Health System

A “health system” under the act is a non-stock corporation organized under the current non-stock corporation law or any predecessor statute consisting of a parent corporation of one or more hospitals licensed under state law, and affiliated through governance, membership, or some other means.

Provider

A “provider” means a licensed physician, chiropractor, or a podiatrist.

§ 2 — MEDICAL FOUNDATIONS

Organization

The act authorizes any hospital or health system to organize and become a member of a medical foundation under the non-stock corporation law to practice medicine and provide health care services as a medical foundation through its employees or agents who are

licensed physicians and through other providers. The foundation must be governed by a board of directors consisting of an equal or greater number of providers than non-provider member employees, in addition to any other directors elected by the members. The act prohibits a medical foundation from operating for profit and authorizes it to operate at whatever locations its members designate.

Filing of Certificate of Incorporation and Amendments

The act requires any medical foundation organized on or after July 1, 2009, to file a copy of its certificate of incorporation and any amendments with the Office of Health Care Access (OHCA) within 10 business days after it files them with the secretary of the state pursuant to state law.

It requires any medical group clinic corporation formed under the Medical Group Clinic Corporation Law (CGS Chapter 594, revised to 1995, see BACKGROUND) that amends its certificate of incorporation under the act to file with OHCA a copy of its certificate of incorporation and any amendments that comply with the act's requirements, within 10 business days after it files them with the secretary of the state.

The act also requires that any medical foundation, regardless of when organized, file notice with OHCA and the secretary of the state of its liquidation, termination, dissolution, or cessation of operations within 10 business days after a vote by its board of directors or members to take such action.

Required Statement of Mission and Description of Services

Within 10 business days after receiving a written request from OHCA, a medical foundation must provide it with a (1) statement of its mission and a description of the services it provides and (2) description of any significant change in its services during the preceding year. The latter must be the same information reported on the medical foundation's most recently filed Internal Revenue Service (IRS) return of organization exempt from income tax form, or any replacement IRS form.

§ 3 — OTHER CORPORATIONS

The act specifies that it does not automatically apply to any corporation organized to practice medicine and provide health care services to the public under any other law specifically authorizing a corporation to provide such services that was valid when the corporation was organized. The act allows these corporations to bring themselves within the act's provisions by (1) amending their certificates of incorporation to be consistent with the act and (2) affirmatively stating in the amended certificate that the

members or shareholders, as the case may be, have elected to bring the corporation under the act's provisions. Any provider agreement with the Department of Social Services remains in effect regardless of any amendment to the corporation's certificate of incorporation.

The act specifies that a medical group clinic corporation formed under the Medical Group Clinic Corporation Law (CGS Chapter 594, revised to 1995), and in existence on September 30, 1995 and continuing to operate from September 30, 1995, until July 1, 2009, continues to be duly organized if it elects by July 10, 2010 to bring itself within the act's provisions in the manner the act prescribes.

§ 4 — POWERS AND LIMITATIONS OF MEDICAL FOUNDATIONS

The act prohibits a medical foundation organized under the act from engaging in any business other than the rendering of health care services for which it was specifically incorporated. The act specifies that it does not prohibit a medical foundation from investing its funds in real estate, mortgages, stocks, bonds or any other type of investments, or from owning real or personal property incidental to the rendering of professional services.

§ 5 — CORPORATE NAME

The act requires corporate names of a medical foundation organized under the act to contain the word "corporation" or the abbreviation "Inc." or "Corp." The corporate name must also (1) contain a word or words describing the professional service the corporation will render or (2) include a reference to the name of the member hospital or health system.

§ 6 — NON-STOCK CORPORATION LAW

The act specifies that the non-stock corporation law applies to a medical foundation organized under the act. But any of the act's provisions that conflict with the non-stock corporation law are controlling.

§§ 6 & 7 — MERGER AND CONSOLIDATION

The act allows a medical foundation organized under its provisions to consolidate or merge only with a:

1. medical foundation organized under the act;
2. medical group clinic corporation organized under CGS Chapter 594 that chooses to come within the act's provisions;
3. professional services corporation organized under CGS Chapter 594a (see BACKGROUND); and

4. limited liability company, partnership, or limited liability partnership organized under state law, if it is organized to render the same specific professional services.

The act allows a corporation organized under the professional service corporations law to merge with a medical foundation organized under the act, if it is organized to render the same professional service.

§ 8 — AFFILIATE UNDER CERTIFICATE OF NEED LAWS

The act specifies that the term “affiliate,” as used in the laws relating to the certificate of need laws, does not include a medical foundation organized under the act. The law defines the word “affiliate” as a person, entity, or organization controlling, controlled by, or under common control with another person, entity, or organization. In addition to other means of being controlled, a person is deemed controlled by another person if the other person, or one of the other person’s affiliates, officers, or management employees, acting in such capacity, acts as a general partner of a general or limited partnership or manager of a limited liability company.

BACKGROUND

Chapter 594: Medical Group Clinic Corporations

CGS Chapter 594 was repealed in 1995. This chapter authorized three or more licensed health care professionals to form a non-stock corporation to own, operate, and maintain a clinic to (1) study, diagnose, and treat illnesses and injuries by licensed persons and (2) promote medical, surgical, and scientific research and learning. The law specified that medical or surgical treatment, consultation, or advice could be given only by employees licensed to do so under state law.

The law allowed such corporations to operate for profit and to distribute their income to their members, directors, or officers in any way provided in the certificate of incorporation (CGS § 33-180, revised to 1995). It prohibited such corporations from operating without first having received a certificate of registration from the Connecticut Medical Examining Board (CGS § 33-181, revised to 1995).

Professional Corporation

A “professional corporation” means a corporation, organized under Chapter 594a for the sole purpose of rendering professional service and which has as its shareholders only individuals licensed or otherwise legally authorized to render the same professional service as the corporation.

It also means a corporation organized under this chapter for the sole purpose of rendering professional services by any of the following and has as its shareholders only individuals licensed or otherwise legally authorized to render one of the professional services for which the corporation was specifically incorporated:

1. members of two or more of the following professions: psychology, marital and family therapy, social work, nursing, professional counseling and psychiatry;
2. physicians specializing in ophthalmology and optometrists;
3. physicians and physician assistants or advanced practice registered nurses, or both; or
4. physicians and chiropractors (CGS § 33-182a(b)).

PA 09-213—sSB 1126

Judiciary Committee

Planning and Development Committee

AN ACT CONCERNING LAND RECORDS

SUMMARY: This act eliminates a town clerk’s duty to make a notation in the land records in connection with various documents recorded in the town’s land records, including liens, mortgages, and certain certificates and condominium related documents. Instead, it requires that the town clerk record a (1) discharge of lien, attachment, or other encumbrance or (2) certain certificates on the town’s land records (see BACKGROUND). It also makes several related and conforming technical changes.

EFFECTIVE DATE: October 1, 2009

§§ 1 & 2 — TAX LIENS

The act changes the method of discharging municipal tax liens that have been continued, but not foreclosed, for 15 years from the date a certificate of continuation was filed on the land records. Under prior law, the lien was discharged when the town clerk noted on the margin of the certificate that it had been discharged by operation of law, together with the date and the town clerk’s signature. The act instead requires the (1) tax collector, upon the request of any interested person, to file a discharge of lien in the office of the municipality’s town clerk and (2) town clerk to record a discharge of lien in the land records.

§ 3 — RECORDED CONDOMINIUM INSTRUMENTS

The act eliminates the requirement that town clerks make a marginal notation in the recorded original condominium instruments when the designation and agent for service of process named in the declaration is changed.

§ 4 — CONDOMINIUM OFFICERS OR MANAGING AGENT

By law, a condominium's unit owners' association must file each January in the town clerk's office of the municipality where the common interest community is located a certificate indicating the name and mailing address of the association's officer or managing agent from whom a resale certificate may be requested. It must also file a revised certificate within 30 days after any change in the officer's or agent's name or address. The act eliminates a requirement for town clerks to keep these certificates on file and make them available for inspection. It instead requires them to record such certificates in the land records.

§ 5 — INVALID MORTGAGES OR OTHER LIENS

By law, the court can render a judgment declaring a mortgage or other lien invalid as to certain real estate. The judgment must be recorded on the land records. The act eliminates the town clerk's obligation, upon the request of any interested person, to (1) endorse on the record of the mortgage or lien the words "discharged by judgment of the Superior Court" and (2) list the volume and page number in the land records where the judgment is recorded. Instead it requires the town clerk, on request, to record a discharge of the encumbrance in the land records.

§§ 6-8 — LIEN IN CONNECTION WITH BOND IN LIEU OF ATTACHMENT

By law, whenever a bond has been accepted in lieu of an attachment or in lieu of a previously accepted or ordered attachment bond, a notice of lien in favor of the attaching creditor and against the surety on the bond may be filed with the town clerk of the town in which the surety's real estate is located. The notice of lien constitutes a lien upon the real estate described in the notice. Such a lien on real estate is no longer effective after 15 years unless within that 15-year time period (1) a legal proceeding was initiated to collect on the bond and a judgment was obtained and (2) a judgment lien was recorded against the surety on the land records. All expired real estate liens are deemed dissolved and the real estate is free from any lien or encumbrance.

The act eliminates the requirement that the town clerk, upon the request of any interested person, endorse on the record of the notice of lien the words "discharged by operation of law." Instead, the act requires the clerk to discharge the lien by recording a discharge of lien in the land records.

If (1) the suit has been discharged or dismissed, (2) final judgment has been rendered against the plaintiff, or (3) for any reason the lien has no effect, the court clerk must, upon the request of any interested person, issue a certificate specifying the facts. The certificate may be filed in the town clerk's office. The act eliminates the requirement that the town clerk make a note about the certificate on the margin of the record where the lien is recorded and record it in a book kept for that purpose. Instead, it requires the town clerk to record the certificate in the land records.

§§ 9 & 10 — REAL ESTATE ATTACHMENTS

By law, when real estate has been attached in any proceeding where the law requires a certificate of attachment or a copy of the writ or proceeding to be filed in the town clerk's office, and for any reason the attachment is no longer effective, the plaintiff or the plaintiff's attorney, at the request of any person interested in the estate attached or in having the attachment lien removed, must file a certificate with the town clerk that the attachment is dissolved and the lien removed.

Under prior law, the certificate had to be recorded in a book kept for that purpose by the town clerk as a part of the land records. The act instead requires that the town clerk record the certificate in the land records.

By law, if an attachment on real estate has been made and the plaintiff has withdrawn the lawsuit, final judgment has been rendered against him or her, or if for any reason the attachment has become of no effect, the clerk of the court must, upon the request of any person interested, issue a certificate describing what has occurred. The certificates may be filed in the office of the town clerk. Under prior law, the town clerk had to make a note concerning the certificate on the margin of the record where the attachment is recorded. The act instead requires the town clerk to record the certificate in the land records.

§ 11 — REAL ESTATE ATTACHMENTS

By law, no attachment of real estate remains in effect as a lien for more than 15 years unless within that time the underlying legal action has ended and a judgment lien is filed against the real estate according to law. All real estate attachments that have expired are deemed dissolved and the real estate is deemed to be free from any lien or encumbrance by reason of the

attachment. Under prior law, the town clerk of the town in which the real estate was situated had to, upon the request of any interested person, endorse on the attachment record the words “discharged by operation of law.” Instead, the act requires the town clerk, upon the request of any interested person, to discharge the attachment lien by recording a discharge of lien in the land records.

§ 12 — DISCHARGE OF PURCHASER’S LIEN

Under prior law, the town clerk of the town in which a purchaser's lien was filed had to, upon request of any person having an interest in the real estate, note on the land records that the lien and, if applicable, the *lis pendens* or notice of foreclosure, was discharged by operation of law, if the purchaser's lien had expired due to the statute of limitations, and:

1. no *lis pendens* or notice of foreclosure of the lien had been filed with that town clerk or
2. if a *lis pendens* or notice of foreclosure was filed or recorded, then a certificate was filed with the town clerk, issued by the appropriate court clerk indicating the foreclosure action was no longer pending and that no judgment had been entered.

The act instead requires the town clerk, under the same circumstances specified above, to discharge the lien and, if applicable, the *lis pendens* notice or notice of foreclosure, by recording in the land records a discharge of lien and, if applicable, a discharge of *lis pendens* or notice of foreclosure (see BACKGROUND).

BACKGROUND

Electronic Recording of Land Records

By law, when any town clerk has recorded any instrument that the town clerk knows to be a release, partial release, or assignment of a mortgage or lien recorded on the town’s land records, he or she must make a notation on the first page where the mortgage or lien is recorded, stating the book and page where the release, partial release, or assignment is recorded. But a 2007 public act eliminates the requirement for a manual notation of the release, partial release, or assignment if the town clerk provides public access to an electronic indexing system that combines the grantor index and the grantee index of the town’s land records. That act also requires that by January 1, 2009, each town must provide public access to an electronic indexing system (CGS §§ 7-25a, and 7-29).

Purchaser’s Lien

A purchaser's lien is created for the amount of the deposit paid and stated in a real estate contract by the recording of the contract, or a notice of it, in the records of the town where the land is situated. The lien has priority over any other liens and encumbrances originating after the contract or notice is recorded. A purchaser's lien may be foreclosed in the same manner as a mortgage. Transfer of title of the land to the purchaser constitutes a release and discharge of the lien (CGS § 49-92a).

Lis Pendens

A *lis pendens* is a notice filed in the land records that advises that (1) a lawsuit is pending against the owner of the designated property, (2) it involves that property, and (3) it takes priority over any subsequent conveyance of it.

PA 09-215—HB 6248

Judiciary Committee

AN ACT CONCERNING THE TIME LIMIT FOR ENFORCING A STATE COURT JUDGMENT IN A FOREIGN JURISDICTION

SUMMARY: This act allows a party to file a motion to revive a judgment for money damages in Superior Court. The court can grant the motion if it finds that the time period to enforce the judgment has not expired (see BACKGROUND). The act prohibits an order to revive from extending the time period to enforce the judgment already set by law. The act applies only to judgments issued by Connecticut courts, including small claims cases.

EFFECTIVE DATE: October 1, 2009

BACKGROUND

Time Periods for Enforcing Judgments

By law:

1. a court cannot issue an execution to enforce a judgment for money damages more than 20 years after the judgment was entered (10 years for a small claims case) and
2. no action can be instituted based on a judgment more than 25 years after the judgment was entered (15 years for a small claims case).

But there is no time limit for a judgment for damages in a personal injury action based on sexual assault where the party at fault was convicted of 1st degree sexual assault or 1st degree aggravated sexual assault (CGS § 52-598).

PA 09-222—sHB 6642

Judiciary Committee

Insurance and Real Estate Committee

AN ACT CONCERNING SOLICITATION OF CLIENTS, PATIENTS OR CUSTOMERS

SUMMARY: This act makes it illegal for anyone to act as a “runner” by knowingly, and for financial gain, getting or attempting to get a patient, client, or customer for “providers.” It specifies that people can engage in certain activities without being considered “runners.” Providers are attorneys, health care professionals, legal or health care services business owners or operators, people pretending that they or their business or practice can provide such services, or an employee of or anyone acting on behalf of any of these people, who:

1. seek to obtain benefits under an insurance contract;
2. assert a claim against an insured or an insurance carrier for providing services to the client, patient, or customer; or
3. obtain benefits under or assert a claim against a state or federal health care benefits program or prescription drug assistance program.

The act also makes it a crime to solicit, direct, hire, or employ someone as a runner. The penalty for acting as, or hiring, a runner is imprisonment for up to one year, a fine of up to \$5,000, or both. The criminal penalties do not apply to the referral of individuals between (1) attorneys, (2) health care professionals, or (3) attorneys and health care professionals.

The act specifies that its prohibitions and penalties are in addition to, and cannot be interpreted to limit or restrict, the laws that (1) prohibit soliciting people to file lawsuits for damages, or soliciting cases for attorneys, or (2) limit communications by attorneys to prospective clients (see BACKGROUND).

EFFECTIVE DATE: October 1, 2009

RUNNER

The act specifies that a “runner” does not include an individual who:

1. procures or attempts to procure clients, patients, or customers for a provider through public media;

2. refers prospective clients, patients, or customers to a provider as otherwise authorized by law;
3. facilitates, presents, or speaks at a meeting, program, or seminar that is open to the public and at which information about a provider's services are discussed; or
4. is a bona fide employee of a provider who responds to an inquiry or request for information initiated by a prospective client, patient, or customer.

Under the act, “public media” means telephone directories, professional directories, newspapers and other periodicals, radio and television, billboards, mail, or electronically transmitted written communications that do not involve in-person contact with a specific prospective client, patient, or customer.

PROVIDER

Under the act a “provider” is:

1. an attorney;
2. a health care professional;
3. a person who owns or operates a business or entity that provides legal or health care services;
4. a person who, by his or her representations, creates a reasonable belief that he or she or his or her practice, business, or entity can provide legal or health care services; or
5. a person employed by or acting on behalf of any of these persons.

A health care professional includes any person licensed or who holds a permit for or as:

1. medicine and surgery,
2. chiropractic,
3. natureopathy,
4. podiatry,
5. athletic training,
6. physical therapists,
7. occupational therapists,
8. substance abuse counselors,
9. radiographer and radiologic technologist,
10. midwifery,
11. nursing,
12. dentistry,
13. dental hygienists,
14. optometry,
15. optician,
16. respiratory care practitioner,
17. psychologist,
18. marital and family therapist,
19. clinical social worker,
20. professional counselor,
21. veterinary medicine,
22. massage therapist,

23. dietitian and nutritionist,
24. acupuncturist,
25. paramedic,
26. embalmer and funeral director,
27. hearing instrument specialist, or
28. speech and language pathologist and audiology.

BACKGROUND

Related Law-Soliciting Persons to Sue for Damages

The law prohibits individuals not licensed as attorneys from soliciting, advising, requesting, or inducing another person to cause a lawsuit for damages to be instituted, if (1) he or she may, by agreement or otherwise, directly or indirectly, receive compensation from the person filing suit or his or her attorney or (2) the attorney's compensation for instituting or prosecuting the action depends upon the amount of the recovery. Violators are subject to a fine of up to \$100, imprisonment up to six months, or both (CGS § 51-86).

Related Law-Solicitation of Cases for Attorneys

The law makes it a crime for anyone to pay, remunerate, or reward:

1. any other person with something of value to solicit or obtain a cause of action or client for an attorney;
2. any other person with something of value for soliciting or bringing a cause of action or a client to an attorney;
3. a police officer, court officer, correctional institution officer or employee; physician or hospital employees; automobile repairman, tower or wreckers; funeral director; or any other person who induces any person to seek the services of an attorney; or
4. any other person as an inducement to bring a cause of action to, or to come to, an attorney or to seek his professional services.

The law also makes it a crime to employ an agent, runner, or other person to solicit or obtain a cause of action or a client for an attorney. Violators are subject to a fine of up to \$10,000 or imprisonment of up to three years or both. The law does not prohibit an attorney from engaging others for professional assistance or referring a case to another attorney (CGS § 51-87(a)).

The law also makes it a crime for anyone to knowingly receive or accept any payment, remuneration, or reward for (1) referring or bringing a cause of action or prospective client to an attorney or (2) inducing or influencing any other person to seek the professional advice or services of an attorney. Violators are subject to a fine of up to \$1,000, imprisonment for up to three years, or both. The law does not apply to an attorney referring causes of action or clients or other persons to another attorney (CGS § 51-87(b)).

Related Law-Limitations on Written Communications to Prospective Clients.

An attorney may not send, or knowingly permit to be sent, on behalf of his or her firm or other attorneys affiliated with his or her firm a written communication to a prospective client to obtain professional employment if:

1. the written communication concerns an action for personal injury or wrongful death or otherwise relates to an accident or disaster involving the person to whom the communication is addressed or a relative of that person, unless the accident or disaster occurred more than 40 days before the communication is mailed;
2. the written communication concerns a specific matter and the attorney knows or reasonably should know that the person to whom the communication is directed is represented by an attorney in the matter;
3. the attorney knows that the person does not want to receive such communications from him or her;
4. the communication involves coercion, duress, fraud, overreaching, harassment, intimidation, or undue influence;
5. the communication contains a false, fraudulent, misleading, deceptive, or unfair statement or claim; or
6. the attorney knows or reasonably should know that the physical, emotional, or mental state of the person makes it unlikely that the person would exercise reasonable judgment in employing an attorney.

The law also contains certain requirements concerning written communications to prospective clients known to be in need of legal services in a particular matter for the purpose of obtaining professional employment (CGS § 51-87a).

PA 09-223—HB 6684 (VETOED; OVERRIDDEN)
Judiciary Committee

**AN ACT ESTABLISHING A CORRECTIONAL
STAFF HEALTH AND SAFETY
SUBCOMMITTEE OF THE CRIMINAL JUSTICE
POLICY ADVISORY COMMISSION**

SUMMARY: This act requires the Criminal Justice Policy Advisory Commission to establish a subcommittee on correctional staff health and safety. It must be composed of the (1) commissioners of correction, public safety, and mental health and addiction services, or their designees; (2) eight people appointed one each by the chairpersons and ranking members of the Judiciary and Public Safety and Security committees; (3) three representatives of labor organizations representing correction officers, one appointed by each local chapter; and (4) one representative from each labor organization representing hazardous duty staff of the Department of Correction (DOC), appointed by each organization.

The act requires the subcommittee to review DOC's policies and procedures on staff health and safety. The review must include the manner in which:

1. inmate assaults are investigated, classified, and assigned points;
2. data on inmate assaults is collected and compiled; and
3. data on inmate assaults is reported to people and agencies outside the department.

The act requires the subcommittee to submit any recommendations it may have to the commission concerning revisions to policies and procedures.

EFFECTIVE DATE: October 1, 2009

BACKGROUND

Criminal Justice Policy Advisory Commission

Among other things, the commission (1) develops and recommends policies to prevent prison overcrowding, (2) examines the impact of statutes and administrative policies on overcrowding and recommends legislation, (3) gathers data and information on efforts to prevent overcrowding and makes it available to criminal justice agencies and legislators, (4) advises the Criminal Justice Policy and Planning Division (CJPPD) undersecretary on policies and procedures to promote more effective and cohesive criminal and juvenile justice systems and develop and implement the reentry strategy, and (5) assists the undersecretary in developing recommendations.

The commission consists of the CJPPD undersecretary; chief court administrator; correction, public safety, mental health and addiction services

commissioners; chief state's attorney; chief public defender; Board of Pardons and Paroles chairman; Court Support Services Division executive director; eight members appointed by the governor including a police chief, representatives of offender and victim services, and government and public members; the labor and social services commissioners, who can vote only on matters concerning employment and entitlement programs available to adult and juvenile offenders reentering the community; and the children and families and education commissioners, who can vote only on juvenile justice matters.

PA 09-225—sHB 6672
Judiciary Committee

**AN ACT CONCERNING AMENDMENTS TO THE
UNIFORM COMMON INTEREST OWNERSHIP
ACT**

This act makes numerous unrelated changes and additions to the Connecticut Common Interest Ownership Act (CIOA).

The act establishes definitions for several terms used in CIOA and amends several other definitions. It specifies that certain cost-sharing and use-sharing arrangements do not create a common interest community. It applies certain provisions of CIOA to common interest communities created before January 1, 1984.

The act makes changes concerning the powers and duties of unit owners associations. For example, it authorizes them to (1) adopt and amend special assessments, invest association funds, and institute, defend, or intervene in arbitration or mediation; (2) assign future income when borrowing funds without explicit authorization in the declaration; and (3) suspend certain rights and privileges a unit owner enjoys if the owner fails to pay common charges.

It significantly changes the laws regarding meetings of unit owners and of the executive board. It creates new open meeting requirements for all executive board meetings, other than executive sessions, and meetings of any other committees that can act for the association. It gives unit owners the right to participate in board meetings; have access to the same materials that are distributed at executive board meetings, with certain exceptions; and receive notice of board meetings. It allows the board to meet by telephone or video conferencing as long as a unit owner's right of notice and participation continues. It requires that a quorum be present for each executive board vote rather than only at the beginning of the board meeting. It establishes as a default rule that unit owners may vote by absentee ballot and by written or electronic ballot, unless the

declaration or bylaws provide otherwise. Thus it allows votes to be taken without a physical meeting of unit owners.

It makes several changes regarding insurance. For example, it requires (1) the association to carry fidelity insurance, (2) unit insurance coverage for common interest communities with units that have party walls, and (3) the insurance to cover improvements unless the executive board decides not to do so after giving unit owners notice and an opportunity to comment.

It extends the association's priority lien to include the association's reasonable attorney's fees and court costs. It establishes new limitations on the association's right to begin a foreclosure against unit owners. The act establishes more detailed requirements for retaining and sharing association records with unit owners. It requires that certain association records be withheld from inspection and copying and allows withholding certain other records.

The act creates certain requirements and procedures the executive board must follow to adopt rules and establishes certain requirements regarding the display of flags and political signs. It specifies how associations may provide notices to unit owners and makes notices the act requires effective when sent.

It authorizes unit owners present in person, by proxy, or by absentee ballot at any unit owners' meeting at which a quorum is present, to remove any elected executive board member or officer, with or without cause.

The act establishes revised rules and procedures for adopting budgets and provides for special assessments and emergency special assessments.

The act establishes certain requirements when an association wishes to institute a proceeding alleging a construction defect against a declarant or an employee, independent contractor, or other person directly or indirectly providing labor or materials to a declarant. It expands a declarant's liability for false or misleading statements in a public offering statement and requires disclosures of certain financial information in these statements.

The act requires dealers who offer a unit to a purchaser to deliver a public offering statement to the purchaser.

The act also makes numerous other changes to CIOA dealing with such things as electronic signatures, its scope and applicability, arrangements between associations and between an association and the owner of real estate that is not part of a common interest community, covenants to share costs or other obligations, the rule against perpetuities, leasehold common interest communities, common expenses in a planned communities, reallocation of interests after a unit is subdivided, easements for encroachment, declarant control of a master planned community's

association, the organization of a unit owners association, payments of surplus funds, assessments, express warranties, and conveying a cooperative unit.

Finally the act makes numerous technical and conforming changes

EFFECTIVE DATE: July 1, 2010, except upon passage for certain provisions that relate to amendments to a declaration, association of unit owners' powers and duties, and the conveyance of a cooperative unit.

§ 1 — DEFINITIONS

The act defines the terms "assessment," "bylaws," "record," and "rule." It amends the definitions of "common interest community," "person," and "special declarant rights."

Assessment

"Assessment" means the sum the association of unit owners attributes to a unit for common expenses and which is due to the association.

Bylaws

"Bylaws" means the instruments, however named, that contain the procedures for conducting the association's affairs regardless of the form in which the association is organized, including any amendments to the instruments.

Record

"Record," means information that is inscribed on a tangible medium or stored in an electronic or other medium and retrievable in perceivable form.

Rule

"Rule" means an association policy, guideline, restriction, procedure, or regulation, however denominated, that an association adopts pursuant to the act and (1) is not set forth in the declaration or bylaws and (2) governs the conduct of people or the use or appearance of property.

Common Interest Community

Prior law defined this term as real property described in a declaration with respect to which a person, by virtue of owning a unit, was obligated to pay for (1) real property taxes, (2) insurance premiums, (3) maintenance, or (4) improvement of any other real property other than that unit. The act specifies that such an arrangement is also a common interest community if the obligation is to pay for a share of services and expenses related to the common elements or any other

property other than the unit.

It also specifies that a common interest community does not include:

1. an arrangement between associations for two or more common interest communities to share the costs;
2. an arrangement between an association and the owner of real estate that is not part of a common interest community; or
3. a covenant that requires the owners of separately owned real estate parcels to share costs or other obligations associated with a party wall, driveway, well, or other similar use.

Person

The act amends the definition of “person” to include a public corporation and an instrumentality. It eliminates the provision in prior law that in the case of a land trust, “person” means the beneficiary of the trust rather than the trust or trustee.

Special Declarant Rights

The act expands the definition by including the right to (1) control any construction, design review, or aesthetic standards committee or process; (2) attend meetings of the unit owners and, except during an executive session, the executive board; or (3) have access to the records of the association to the same extent as a unit owner.

§ 2 — ELECTRONIC SIGNATURES

The act specifies that it, CIOA, and the portions of the act establishing new provisions in CIOA modify, limit, and supersede the federal Electronic Signatures in Global and National Commerce Act (15 USC § 7001, et seq.). The act specifies that neither CIOA nor its new provisions:

1. modify, limit, or supersede Section 101(c) of that act (15 USC § 7001(c)) or
2. authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 USC § 7003(b), see BACKGROUND).

§ 3 — SCOPE OF CIOA

By law, CIOA and all amendments to it apply to common interest communities created on or after January 1, 1984 and to any other common interest community subjected to it. The act specifies that common interest communities created before January 1, 1984 can subject themselves to amendments to CIOA by amending their declarations. Also, it specifies that an amendment to CIOA applies only to events and circumstances occurring on or after the amendment’s

effective date.

§ 4 — COMMON INTEREST COMMUNITIES RESTRICTED TO NONRESIDENTIAL USE

By law, a common interest community containing a conversion building that contains only units restricted to nonresidential use is not subject to CIOA unless its declaration provides otherwise. The law allows the declaration of such a common interest community to provide that all of CIOA applies or only those provisions that:

1. deal with separate title and taxation (CGS § 47-204),
2. prohibit zoning and other land use laws from preventing conversion of a building to common interest ownership (CGS § 47-205), and
3. establish certain rules in the case of eminent domain (CGS § 47-206).

The act creates a third option by allowing the declaration to provide that only Part I and Part II of CIOA apply. Part I of CIOA contains general and applicability provisions; Part II contains provisions dealing with the creation, alteration, and termination of common interest communities.

§ 5 — APPLICABILITY TO PRE-EXISTING COMMON INTEREST COMMUNITIES

Certain CIOA provisions automatically apply to common interest communities created in Connecticut before January 1, 1984, but only with respect to events and circumstances that occur after December 31, 1983 (CGS § 47-216). The acts makes the following additional CIOA provisions also automatically apply to these older common interest communities:

1. CGS § 47-221, which makes certain determinations regarding unit boundaries unless the declaration provides otherwise;
2. CGS § 47-236(b), which requires court challenges to the validity of an amendment the association adopts be brought within one year after the amendment is recorded;
3. CGS § 47-236(i), which specifies that if any provision in a declaration requires a security interest holder in a unit to consent as a condition of amending the declaration, the holder is deemed to have consented if the association does not receive a written refusal to consent within 45 days after it delivers notice of the proposed amendment or mails it by certified mail with return receipt (the association may rely on the last-recorded security interest in the chain of title in notifying the interest holder);

4. CGS § 47-237, as amended by the act, which concerns legal proceedings to terminate the common interest community if substantially all of the units have been destroyed or are uninhabitable;
5. CGS § 47-250, which deals with requirements for unit owner association meetings;
6. CGS § 47-255, which deals with selling or mortgaging common elements; and
7. CGS § 47-257, which deals with assessments against unit owners for damages they cause.

Prior law applied CIOA definitions to common interest communities not governed by CIOA “to the extent necessary in interpreting any of the provisions of CIOA that the law makes automatically apply to common interest communities established before CIOA became law.” The act instead makes this quoted language apply to each of the CIOA provisions that automatically apply instead of just to the definitions. It is not clear what effect, if any, this change makes.

§ 8 — ARRANGEMENTS BETWEEN ASSOCIATIONS AND WITH OTHER PROPERTY OWNERS

The act specifies that an arrangement between the associations for two or more common interest communities to share the costs of real estate taxes, insurance premiums, services, maintenance, improvements of real estate, or other activities does not create a separate common interest community.

It also specifies that such an arrangement between an association and the owner of real estate that is not part of a common interest community does not create a separate common interest community. But it requires that (1) assessments against the units in the common interest community required by the arrangement must be included in the common interest community’s periodic budget and (2) the arrangement must be disclosed in all public offering statements and resale certificates required by CIOA.

§ 9 — COVENANT TO SHARE COSTS OR OTHER OBLIGATIONS

The act specifies that a covenant that requires the owners of 12 or fewer separately owned real estate parcels to share costs or other obligations associated with a party wall, driveway, well, septic system, or other similar use does not create a common interest community unless the declaration otherwise provides.

§ 10 — RULE AGAINST PERPETUITIES

Under prior law, the rule against perpetuities did not apply to defeat any provision of the declaration, bylaws, rules, or regulations the association adopted.

The act eliminates regulations from this list. The act eliminates an association’s authority to adopt regulations (see below, § 20).

§ 11 — LEASEHOLD COMMON INTEREST COMMUNITIES

The act specifies that any lease whose expiration or termination may terminate the common interest community or reduce its size is not subject to the landlord and tenant laws.

§ 12 — COMMON EXPENSES IN A PLANNED COMMUNITY

The act requires that in a planned community created after January 1, 1984, the common expenses of the association and the votes in the association are allocated equally among the units unless the declaration provides for a different allocation permitted by CIOA.

§ 13 — SUBDIVISION OF A UNIT-METHOD OF REALLOCATING INTERESTS

By law, if the declaration explicitly allows it, a unit may be subdivided into two or more units and the association must prepare and record an amendment reflecting this change. Under prior law, the amendment had to reallocate the interests formerly allocated to the subdivided unit to the new units in any reasonable manner the owner of the subdivided unit prescribed. The act also allows it to be reallocated on any other basis the declaration requires.

§ 14 — EASEMENT FOR ACCESS AND USE OF COMMON ELEMENTS

Under prior law, subject to certain limitations, unit owners in a planned community had an easement (1) in the common elements to access their units and (2) to use the common elements and all real property that had to become common elements for all other purposes.

The act makes the easement to use the common elements for any other purpose than to access their unit subject to the planned community’s declaration and rules. It also restricts the right to (1) any appropriate purpose and (2) common elements that are not limited common elements. It expands the easement to use the common elements to unit owners in condominiums and cooperatives. (see BACKGROUND)

§§ 15 & 16 — AMENDMENTS TO DECLARATION

The acts makes certain changes relating to (1) exceptions to the unanimous consent requirement for unit owners and (2) amendments affecting the priority of a security owner’s interests effective upon passage

and apply to a common interest community created before, on, or after January 1, 1984.

Exception to the Unanimous Consent Requirement

The law requires unanimous consent of the unit owners for an amendment that would create or increase special declarant rights or the number of units, or change the boundaries of any unit or the allocated interests of a unit, except to the extent CIOA expressly permits or requires it. The act creates an exception to this unanimous consent requirement for the exercise of development rights. It specifies that these requirements and the exception apply to all common interest communities, not just those created on or after January 1, 1984.

Amendments Affecting the Priority of a Security Holder's Interest

Under prior law, if CIOA or the declaration of any common interest community required the consent of a person holding a security interest in a unit as a condition to the effectiveness of any amendment to the declaration, that consent was deemed granted if no written refusal to consent was received by the association within 45 days after the association delivered notice of the proposed amendment to the interest holder or mailed it to the holder by certified mail, return receipt requested. The act also applies this (1) if the requirement is contained in the association's bylaws, and (2) to common interest communities created before January 1, 1984. Also it specifies that the refusal must be in a record instead of in writing.

The act creates an exception to this provision by requiring actual consent in a record for an amendment that affects the priority of a holder's security interest or the ability of that holder to foreclose its security interest if the declaration requires that consent as a condition to the amendment's effectiveness. This exception does not apply to amendments affecting the priority of the association's lien or its ability to foreclose this lien.

Percentage of Votes Required to Amend Declaration

Under prior law, with certain exceptions, the declaration could be amended only by vote or agreement of owners of units to which at least 67% of the votes in the association were allocated, or any larger majority the declaration specified. The act specifies that (1) the declaration may establish a smaller percentage, but not less than a majority, and (2) that percentage may be for all amendments or just specific subjects of amendment. (The law continues to provide that the declaration may specify a smaller number only if all of the units are restricted exclusively to nonresidential use.)

The act allows a declaration to provide that all or specific subjects of amendment may be approved by the owners of units having more than a majority of a specified group of units that would be affected by the amendment, rather than all of the units in the common interest community.

By law, an amendment to the declaration may prohibit or materially restrict the permitted uses or occupancy of a unit or the number or other qualifications of people who may occupy units by vote or agreement of owners of units to which at least 80% of the votes in the association are allocated, or any larger percentage specified in the declaration. The act allows the declaration to permit an amendment to do so that is approved by a vote of unit owners with at least 80% of the votes of a specified group of units that the amendment would affect instead of by all the votes in the association. By law, an amendment must provide reasonable protection for a use or occupancy permitted at the time it was adopted.

Special Declarant Rights

By law, the time limits the declaration specifies for exercising reserved development rights may be extended, the number of units may be increased, and new development rights or other special declarant rights may be created by amendment if people entitled to cast at least 80% of the votes in the association, including 80% of the votes allocated to units not owned by the declarant, agree to that action. The amendment must identify the association or other persons who hold any new rights that are created.

The act extends this requirement to extending the time to exercise special declarant rights. (see BACKGROUND)

Notice of Proposed Amendment

Under prior law, written notice of the proposed amendment to the declaration had to be delivered to anyone holding development rights or security interests in those rights. The amendment was effective 30 days after it was recorded and notice was delivered unless any of the parties entitled to notice recorded a written objection within 30 days, in which case the amendment was void, or unless all of those entitled to notice consented in writing when the amendment was recorded. The act allows the notice, objection, and consent to be in a record, instead of in writing.

Procedure to Deem Approval

By law, if the declaration of a common interest community, whether created before or after January 1, 1984, contains a provision requiring that amendments relating to the use of units, the relocation of boundaries

between units and common elements, or the extension or creation of development rights may be adopted only by the vote or agreement of owners of units to which more than 80% of the votes in the association are allocated, such a proposed amendment is deemed approved under certain circumstances.

An amendment is deemed approved if:

1. (a) owners of units to which more than 80% of the votes in the association are allocated vote for or agree to the proposed amendment, (b) no unit owner votes against the proposed amendment, and (c) notice of the proposed amendment is delivered to the unit owners holding votes in the association that have not voted on or agreed to the proposed amendment and no written objection of the proposed amendment is received by the association within 30 days after the association delivers notice or
2. owners of units to which more than 80% of the votes in the association are allocated vote for or agree to the proposed amendment but at least one unit owner objects to the proposed amendment and, pursuant to an action brought by the association in Superior Court against all objecting unit owners, the court finds that the objecting owner or owners does not have a unique minority interest, different in kind from the interests of the other unit owners, that the voting requirement of the declaration was intended to protect.

The act expands this approval process to include any amendment, not just those specified above, except amendments that (1) create or increase special declarant rights, (2) increase the number of units, or (3) change the boundaries of any unit or the allocated interests of a unit, which require unanimous consent of the unit owners.

The act also applies this approval process to requirements contained in bylaws requiring the approval of 80% or more of votes for the adoption of amendments. It requires that any objection to the amendment be in a record instead of written.

§ 17 — TERMINATION OF A COMMON INTEREST COMMUNITY

Under prior law, other than eminent domain or foreclosure of an entire cooperative by a security instrument that has priority over the declaration, a common interest community could be terminated by the unit owners having at least 80% of the votes or any larger percentage the declaration specifies. The act also requires any other approvals the declaration requires for termination.

It creates an additional exception to the 80% or more voting requirement by authorizing the executive board or any other interested person to start an action in Superior Court seeking to terminate the common interest community if substantially all the units have been destroyed, abandoned, or are uninhabitable and the available methods the act specifies for giving notice of a unit owner's meeting to consider termination will not likely result in receipt of the notice.

The act authorizes the court, in such an action, to issue whatever orders it considers appropriate, including appointing a receiver. After a hearing, the court may terminate the common interest community or reduce its size and may issue any other order it considers to be in the best interest of the unit owners and persons holding an interest in the common interest community.

The law authorizes a declaration to specify a smaller percentage vote for termination, if all of the units are restricted exclusively to nonresidential uses. The act limits this smaller percentage to no less than a majority of the votes in the association.

§ 18 — DECLARANT CONTROL-MASTER PLANNED COMMUNITY

By law, the declaration for a common interest community may state that it is a master planned community if the declarant has reserved the development right to create at least 500 units that may be used for residential purposes and owns or controls more than 500 acres on which the units may be built.

Under the act, the period of declarant control of a master planned community's association terminates when the declarant voluntarily surrenders all rights to control the association's activities in a recorded instrument and after giving notice in a record to all unit owners.

§ 19 — ORGANIZATION OF UNIT OWNERS ASSOCIATIONS AND EXECUTIVE BOARDS

The law requires that a unit owners' association must be organized no later than the date the first unit in the common interest community is conveyed. The act requires the association to have an executive board.

§ 20 — ASSOCIATION POWERS AND DUTIES

These changes are effective from passage and applicable to common interest communities created before, on, or after January 1, 1984.

The act requires, instead of allows, the unit owner's association to adopt bylaws and budgets. It eliminates an association's authority to adopt regulations. It authorizes an association to adopt and amend special assessments; invest association funds; and institute, defend, or intervene in arbitration or mediation.

Prior law allowed an association to assign its rights to future income, including the right to receive common expense assessments, to the extent the declaration explicitly authorized it to do. The act instead allows it to do so without any authorization in the declaration as long as the common interest community complies with the act's requirements regarding disclosure and the unit owners' opportunity to submit comments.

The act also authorizes an association to suspend any right or privilege of a unit owner that fails to pay an assessment. But it specifies that an association may not:

1. deny a unit owner or other occupant access to the owner's unit or its limited common elements;
2. suspend a unit owner's right to vote or participate in association meetings;
3. prevent a unit owner from seeking election as a director or officer of the association; or
4. withhold services the association provides to a unit or a unit owner if this would endanger anyone's health, safety or property.

§ 21 — ASSOCIATION POWERS AND DUTIES

The act makes the following changes effective July 1, 2010.

By law, the declaration may not limit the association's power to deal with the declarant that are more restrictive than the limitations it imposes on the association's power to deal with other persons. The act prohibits a declaration from limiting the power of the association to institute litigation, arbitration, mediation, or administrative proceedings against any person, except the association must comply with the act's notice requirements, if applicable, before instituting any lawsuit or other proceeding in connection with construction defects.

The act specifies that these limitations on an association's authority do not apply to its authority to require, by regulation, that disputes between the executive board and unit owners or between two or more unit owners regarding the common interest community must be submitted to nonbinding alternative dispute resolution as described in the regulation as a prerequisite to beginning a judicial proceeding.

The act requires the executive board to promptly provide notice to the unit owners of any legal proceeding in which the association is a party other than a proceeding to enforce rules for recovering unpaid assessments or other sums due the association, or defending the association's lien on a unit in a foreclosure initiated by a third party.

Rules and Regulations that Affect the Use or Occupancy of Units

Unless otherwise permitted by the declaration or CIOA, prior law prohibited an association from adopting rules and regulations that affected the use or occupancy of units restricted to residential purposes that:

1. prevented any use of a unit which violates the declaration;
2. regulated any occupancy of a unit that violates the declaration or adversely affects the use and enjoyment of other units or the common elements by other unit owners; or
3. restricted the leasing of residential units to the extent those rules are reasonably designed to meet first mortgage underwriting requirements of institutional lenders who regularly purchase or insure first mortgages on units in common interest communities, and certain notice and recording requirements were met.

This act eliminates this authority but grants similar authority in § 34.

Enforcement Action

The act authorizes the association's executive board to determine whether to take enforcement action by exercising the association's power to impose sanctions or begin an action for a violation of the declaration, bylaws, and rules, including whether to compromise any claim for unpaid assessments or other claim made by or against it. But the act specifies that the executive board does not have a duty to take enforcement action if it determines that, under the facts and circumstances presented:

1. the association's legal position does not justify taking any or further enforcement action;
2. the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with law;
3. although a violation may exist or may have occurred, it is not so material as to be objectionable to a reasonable person or to justify expending the association's resources; or
4. it is not in the association's best interests to pursue an enforcement action.

The act specifies that the executive board's decision not to pursue enforcement under one set of circumstances does not prevent it from taking enforcement action under another set of circumstances, except that the executive board may not be arbitrary or capricious in taking enforcement action.

The act requires the board to establish a reasonable method for unit owners to communicate among themselves and with the board on association matters.

§ 22 — EXECUTIVE BOARD MEMBERS AND OFFICERS

The act specifies that executive board members and officers are subject to the state prohibitions against conflicts of interests governing directors of corporations. By law, association officers and executive board members must exercise the degree of care and loyalty required by a trustee. The act specifies that they owe this duty to the association and that it applies regardless of the form in which the association is organized.

By law, the board may fill vacancies in its membership for the unexpired portion of any term. The act instead authorizes the board to do so for the unexpired portion of the term or, if earlier, until the next regularly scheduled election of executive board members.

Election of Board Officers

Under prior law, the executive board elected board officers. The act instead requires this unless the declaration or bylaws provide for unit owners to elect officers.

Appointment of Specified Positions on Executive Board

The act authorizes a declaration to provide for:

1. the appointment of specified positions on the executive board by either a governmental subdivision or agency or federally tax exempt, nonstock charitable corporation, during or after the period of declarant control and
2. a method for filling vacancies in such specified positions, other than by election by the unit owners.

But after the period of declarant control, the act specifies that appointed members (1) may not comprise more than one-third of the board and (2) have no greater authority than any other board member.

§ 23 — TERMINATION OF CONTRACTS AND LEASES

By law, the unit owners' association, after the period of declarant control ends, may cancel a variety of contracts between the association and the declarant or other persons without penalty. The act adds maintenance and operations to the types of contracts that are subject to cancellation.

§ 24 — BYLAWS

The act requires that an association's bylaws:

1. contain any provision necessary to satisfy requirements in CIOA or the declaration concerning meetings, voting, quorums, and other association activities and
2. provide for any matter required by state law other than CIOA, which is not inconsistent with CIOA, to appear in the bylaws of organizations of the same type as the association.

By law, subject to the provisions of the declaration, the bylaws may provide for any other matters the association deems necessary and appropriate. The act specifies that these can include matters that could be adopted as rules. It makes this authority to adopt bylaws that provide for any other matters subject to CIOA.

§ 25 — MEETINGS

Association Meetings

By law, the association must meet at least once a year. The act requires that an association hold an annual meeting at a time, date, and place specified in the bylaws.

Under the act, if the association does not notify unit owners of a special meeting within 30 days after the requisite number or percentage of unit owners request the secretary to do so, the requesting members may directly notify all the unit owners of the meeting. The act specifies that only matters described in the meeting notice may be considered at a special meeting.

The act requires an association to notify unit owners of the time, date, and place of each annual and special unit owners meeting. As under prior law, the notice must be between 10 and 60 days before the meeting date.

Requirements for Board and Committee Meetings

The act requires unit owners be given a reasonable opportunity at any meeting to comment regarding any matter affecting the common interest community or the association. It permits the declaration or bylaws to allow meetings of unit owners to be conducted by telephone, video, or other conferencing process if this process satisfies the act's requirements concerning such types of meetings (see below).

The act imposes the following requirements for meetings of the executive board and association committees authorized to act for the association:

1. meetings must be open to the unit owners and their representatives except during executive sessions;

2. the executive board and committees may hold an executive session only during a regular or special meeting of the board or a committee;
 3. no final vote or action may be taken during an executive session;
 4. an executive session may be held only to:
 - a. consult with the association's attorney concerning legal matters;
 - b. discuss existing or potential litigation or mediation, arbitration, or administrative proceedings;
 - c. discuss labor or personnel matters;
 - d. discuss contracts, leases, and other commercial transactions to purchase or provide goods or services currently being negotiated, including the review of bids or proposals, if premature general knowledge of those matters would place the association at a disadvantage; or
 - e. prevent public knowledge of the matter to be discussed if the executive board or committee determines that public knowledge would violate anyone's privacy;
 5. a gathering of board members at which the board members do not conduct association business is not an executive board meeting;
 6. the board and its members may not use incidental or social gatherings of board members or any other method to evade the act's open meeting requirements;
 7. during and after the period of declarant control, the board must meet at least twice a year at the common interest community or at a place convenient to the community;
 8. after the period of declarant control ends, all other executive board meetings must be held at the common interest community or at a place convenient to the community unless the unit owners amend the bylaws to vary the location of those meetings;
 9. at each executive board meeting, the executive board must provide a reasonable opportunity for unit owners to comment regarding any matter affecting the common interest community and the association;
 10. unless the meeting is included in a schedule given to the unit owners or is called to deal with an emergency, the secretary or other officer specified in the bylaws must give notice of each executive board meeting to each board member and to the unit owners, and the notice must be at least 10 days before the meeting and state the time, date, place, and agenda;
 11. copies of any materials distributed to the executive board before the meeting must be made reasonably available to unit owners, except that the board need not make available copies of unapproved minutes or materials that are to be considered in executive session;
 12. unless the declaration or bylaws otherwise provide, the executive board may meet by telephone, video, or other conferencing process if (a) the meeting notice states the conferencing process to be used and informs unit owners how they may participate in the conference directly or by meeting at a central location or conference connection and (b) the process provides all unit owners the opportunity to hear or perceive the discussion and offer comments; and
 13. instead of meeting, the executive board may act by unanimous consent as documented in a record authenticated by all its members, and the secretary must promptly give notice to all unit owners of any action taken by unanimous consent.
- The act specifies that even if an executive board action does not comply with these requirements, it is valid unless a court sets it aside. The act requires a challenge to the validity of an executive board action for non-compliance to be brought within 60 days after the minutes of the meeting at which the action was taken are approved or the record of that action is distributed to unit owners, whichever is later.
- The act requires that association meetings be conducted according to the most recent addition of *Roberts' Rules of Order Newly Revised* unless:
1. the declaration, bylaws, or other law otherwise provides or
 2. two-thirds of the votes allocated to owners present at the meeting are cast to suspend those rules.

§ 26 — ASSOCIATION AND EXECUTIVE BOARD MEETING QUORUMS

Association Meetings

The act modifies quorum requirements for association meetings. Under the act, unless the bylaws provided otherwise, a quorum is present at any association meeting if persons entitled to cast 20% of the votes in the association, instead of 20% of the votes that may be cast for election of the executive board, are present in person or by proxy at the beginning of the meeting.

Executive Board Meetings

Under prior law, unless the bylaws specified a larger percentage, a quorum was deemed present throughout any meeting of the executive board if persons entitled to cast 50% of the votes on that board were present at the beginning of the meeting. Under the act, unless the bylaws specify a larger number, a quorum of is present for purposes of determining the validity of any action taken at an executive board meeting only if a majority of the votes on that board are present when a vote regarding that action is taken. If a quorum is present at that time, the affirmative vote of a majority of board members present is sufficient unless the declaration or bylaws require a greater percentage.

§ 27 — VOTING, PROXIES, AND BALLOTS

The act authorizes unit owners, unless prohibited or limited by the declaration or bylaws, to vote at a meeting in person; by proxy; or, when a vote is conducted without a meeting, by electronic or paper ballot. It specifies that, unless a greater number or fraction of the votes in the association is required by CIOA, other law, or the declaration, a majority of the votes cast is the decision of the unit owners.

The act defines “fraction or percentage,” with respect to the unit owners or the votes in the association, as the stated fraction or percentage of owners of units to which at least the stated percentage or fraction of all the votes in the association are allocated, unless the provisions of CIOA or this act provides that the “fraction or percentage” refers to a different group of unit owners or votes.

The law establishes certain rights concerning proxy voting:

1. votes allocated to a unit can be cast pursuant to a proxy duly executed by a unit owner;
2. if a unit is owned by more than one person, each unit owner may vote or register protest to the other owners of the unit voting through a duly executed proxy;
3. a unit owner may revoke a proxy only by actual notice of revocation to the person presiding over an association meeting;
4. a proxy is void if it is not dated or purports to be revocable without notice; and
5. a proxy terminates one year after its date, unless it specifies a shorter term.

In addition, the act specifies that a proxy may be either directional or not directional.

The act specifies that these rights apply unless the declaration or bylaws provide otherwise. It prohibits a person from casting votes representing more than 15% of the votes in the association pursuant to undirected proxies, unless the declaration or bylaws provide

otherwise.

Voting without a Meeting

The act allows an association to conduct a vote without a meeting, unless the declaration or bylaws prohibit or limit it. For voting without a meeting, the act requires:

1. the association to notify the unit owners that the vote will be taken by ballot;
2. the association to deliver a paper or electronic ballot to every unit owner entitled to vote; and
3. the ballot to state each proposed action or office to be filled and provide an opportunity to vote for or against the action or the candidate.

The act requires the association, when it delivers the ballots, to also:

1. indicate the number of responses needed to meet the quorum requirements;
2. state the percentage of votes necessary to approve each matter other than election of directors;
3. specify the time and date by which a ballot must be delivered to the association to be counted, which must be at least three days after the date the association delivers the ballot; and
4. describe the time, date, and manner by which unit owners wishing to deliver information to all unit owners regarding the subject of the vote may do so.

A ballot is not revoked after delivery to the association by death, disability, or attempted revocation unless the declaration or bylaws provide otherwise.

Approval by ballot is valid only if the number of votes cast by ballot equals or exceeds the quorum required to be present at a meeting authorizing the action.

Under prior law, no votes allocated to a unit owned by the association could be cast. The act instead requires that votes allocated to a unit owned by the association must be cast in any vote of the unit owners in the same proportion as the votes cast on the matter by other unit owners.

§ 28 — SELLING OR MORTGAGING COMMON ELEMENTS

The law allows the common elements of a condominium to be conveyed or subjected to a security interest free of the lien on the undivided interests in the common elements held by all the mortgagees of the units if 80% of the mortgagees consent to the sale or encumbrance. The act requires the consent to be in a record instead of in writing.

§ 29 — INSURANCE

The law allows the association to maintain, to the extent reasonably available, certain types of insurance policies. The act specifies that these policies may be subject to reasonable deductibles.

The act requires the association to carry fidelity insurance. This type of insurance protects the association from loss of money, securities, or inventories resulting from crime. Common fidelity insurance claims allege employee dishonesty, embezzlement, forgery, robbery, safe burglary, computer fraud, wire transfer fraud, counterfeiting, and similar criminal acts.

Prior law required associations also to insure units in buildings that were part of a cooperative or that contained units having horizontal boundaries described in the declaration, but it specified that the insurance did not have to include improvements the unit owners installed. The act instead requires associations to insure the units in any common interest community that contains either horizontal or vertical boundaries that comprise or are located within common walls between units. The act also requires that the insurance on such units include coverage for improvements unit owners installed unless the declaration limits the association's authority to do so or the executive board decides, after giving notice and an opportunity for unit owners to comment, not to insure them.

For common interest communities containing more than 12 units, the act requires that, unless the association insures all improvements and betterments, it must:

1. prepare and maintain a schedule of the standard fixtures, improvements, and betterments in the units, including any standard wall, floor, and ceiling coverings covered by the association's insurance policy;
2. provide the schedule at least annually to the unit owners to enable them to coordinate their homeowners insurance coverage with the association's insurance policy; and
3. include the schedule in the resale certificate required by law.

Under prior law, if the insurance the law required the association to carry was not reasonably available, the association had to promptly notify all unit owners by hand delivery or prepaid U.S. mail. The act instead requires the association to promptly notify unit owners by those means or by:

1. commercially reasonable delivery service to the mailing address of each unit;
2. electronic means, if the unit owner has given the association an electronic address; or
3. any other method reasonably calculated to provide notice to the unit owner.

By law, an insurance trustee or the association must hold any insurance proceeds in trust for the association, unit owners, and lien holders. The act requires that the proceeds must be disbursed first for the repair or replacement instead of the repair and restoration, of the damaged property.

The law requires an insurer that has issued an insurance policy the law requires an association to provide to issue certificates or memoranda of insurance to the association and, on request, to any unit owner or holder of a security interest. The act requires the request be made in a record instead of in writing.

The act also makes certain technical and conforming changes.

§ 30 — SURPLUS FUNDS

By law, unless otherwise provided in the declaration, any surplus funds of the association remaining after payment of, or provision for, common expenses and any prepayment of reserves must be paid to the unit owners in proportion to their common expense liabilities or credited to them to reduce their future common expense assessments. The act specifies that the surplus must be paid annually.

§ 31 — ASSESSMENTS

Under prior law, if any common expense was caused by the misconduct of any unit owner, the association could, after notice and hearing, assess that expense exclusively against the owner's unit. The act instead authorizes the association to assess the portion of the common expense above any insurance proceeds the association received, whether or not that portion results from the application of a deductible, against that owner's unit. The act expands this authority to include damages caused by:

1. the unit owner's gross negligence or failure to comply with a written maintenance standard the association adopts or
2. the willful misconduct, gross negligence, or failure to comply with a written maintenance standard of any unit owner's tenant or the owner's or tenant's guest or invitee.

§ 32 — LIENS FOR ASSESSMENTS

By law, the association has a priority lien on a unit for any assessment on it or fines imposed over first and second mortgages to the extent of six months of common charges. The act expands this to include reasonable attorneys' fees and costs and any other sum due the association under the declaration; CIOA; or an administrative, arbitration, mediation, or judicial decision.

Limitations on Foreclosure by an Association

The act prohibits an association from starting a foreclosure action or a lien on a unit unless:

1. the unit owner, when the action starts, owes at least an amount equal to two months of common expense assessments based on the periodic budget last adopted by the association;
2. the association had made a demand for payment in a record; and
3. the executive board votes to commence a foreclosure action specifically against that unit or has adopted a standard policy that provides for foreclosure against that unit.

The act requires that every aspect of a foreclosure, sale, or other disposition, including the method, advertising, time, date, place, and terms, must be commercially reasonable.

By law, the association at the request of a unit owner must furnish a statement in a recordable form stating the amount of unpaid assessments against the unit. The act requires that the request be made in a record, instead of in writing. Under the act, a lien for unpaid assessments is extinguished unless proceedings to enforce it are instituted within three, instead of two, years after the full amount of the assessment becomes due.

§ 33 — DISCLOSING ASSOCIATION RECORDS

The act establishes more detailed requirements for retaining and sharing association records with unit owners. Prior law required an association to keep financial records sufficiently detailed to enable the association to comply with CIOA's resale notice requirements. It also required the executive board and the association's managing agent to make reasonably available all accounting, financial, and other association books and records, including executive board minutes and voting records for any unit owner, or the owner's authorized agent, upon request, to examine and copy.

Required Records

The act requires an association to keep:

1. detailed records of receipts and expenditures affecting its operation and administration and other appropriate accounting records;
2. minutes of all meetings of its unit owners and executive board other than executive sessions and a record of all actions taken by (a) the unit owners or executive board without a meeting, and (b) a committee in place of the executive board on the association's behalf;
3. the names of unit owners in a form that permits preparation of a list of their names and the addresses at which the association

communicates with them, in alphabetical order showing the number of votes each owner is entitled to cast;

4. its original or restated organizational documents, if required by law other than CIOA, bylaws and all amendments to them, and all rules currently in effect;
5. all association financial statements and tax returns for the past three years;
6. the names and addresses of its current executive board members and officers;
7. its most recent annual report delivered to the secretary of the state, if any;
8. financial and other records sufficiently detailed to enable the association to comply with CIOA's resale disclosure requirements;
9. copies of current contracts to which it is a party;
10. records of executive board or committee actions to approve or deny any requests for design or architectural approval from unit owners; and
11. ballots, proxies, and other records related to voting by unit owners for one year after the action they relate to.

Examination and Copying

Subject to the exceptions specified below, the act makes all records an association retains available for examination and copying by unit owners or their authorized agents (1) during reasonable business hours or at a mutually convenient time and location and (2) upon five days' notice in a record reasonably identifying the specific records requested.

Protected Records

The act requires that association records be withheld from inspection and copying to the extent that they concern:

1. personnel, salary, and medical records relating to specific individuals, unless waived by those individuals, or
2. information the disclosure of which would violate any law other than CIOA (or §§ 8, 9, or 34 to 38 of the act).

The act allows association records to be withheld from inspection and copying to the extent that they concern:

1. contracts, leases, and other commercial transactions to purchase or provide goods or services, that are currently being negotiated;
2. existing or potential litigation or mediation, arbitration, or administrative proceedings;

3. existing or potential matters involving federal, state, or local administrative or other formal proceedings before a governmental tribunal for enforcement of the declaration, bylaws, or rules;
4. communications with the association's attorney that are otherwise protected by the attorney-client privilege or the attorney work-product doctrine;
5. records of an executive session of the executive board; or
6. individual unit files other than those of the requesting owner.

The act specifies that unit owners have the right to receive copies by photocopying or other means, including electronic transmission if available, upon request. But an association does not have to compile or synthesize information. Information the association provides may not be used for commercial purposes.

Fees

The act allows an association to charge a reasonable fee for providing copies of any records and supervising the unit owner's inspection.

§ 34 — RULES

The act requires the executive board, at least 10 days before adopting, amending, or repealing any rule, to give all unit owners, notice of:

1. its intention to adopt, amend, or repeal a rule and provide the text of the rule or the proposed change and
2. the date on which the executive board will act after considering comments from unit owners.

Following adoption, amendment, or repeal of a rule, the act requires the association to notify the unit owners of the action and provide a copy of any new or revised rule.

Subject to the declaration's provisions, the act authorizes an association to adopt rules to establish and enforce construction and design criteria and aesthetic standards. If an association adopts such rules, it must adopt procedures for enforcing those standards and approving construction applications, including a reasonable time within which it must act after an application is submitted and the consequences of its failure to act.

The act specifies that an association's internal business operating procedures do not have to be adopted as rules.

Flag Display and Election Signs

The act requires a rule regulating display of the United States flag to be consistent with federal law. It

bars the association from prohibiting display on a unit or a limited common element adjoining a unit of the Connecticut flag or signs regarding candidates for public or association office or ballot questions, but it allows the association to adopt rules governing the time, place, size, number, and manner of those displays.

Assembly

The act gives unit owners the right to assemble peacefully on the common elements to consider matters related to the common interest community, but it authorizes the association to adopt rules governing the time, place, and manner of those assemblies.

Behavior in Units

The act authorizes an association to adopt rules that affect the use of or behavior in units that may be used for residential purposes to:

1. implement a provision of the declaration,
2. regulate any behavior or occupancy that violates the declaration or adversely affects the use and enjoyment of other units or the common elements by other unit owners, or
3. restrict the leasing of residential units to the extent the rules are reasonably designed to meet underwriting requirements of institutional lenders that regularly make first mortgages on units or purchase such mortgages.

§ 35 — NOTICE TO UNIT OWNERS

The act requires an association to deliver any notice CIOA or the act requires to any mailing or electronic mail address a unit owner designates. It allows the association to also deliver notices by:

1. hand delivery to each unit owner;
2. hand delivery, United States mail postage paid, or commercially reasonable delivery service to the mailing address of each unit;
3. electronic means, if the unit owner has given the association an electronic address; or
4. any other method reasonably calculated to notify the unit owner.

The act specifies that

1. notices the act requires are effective when sent and
2. the ineffectiveness of a good faith effort to deliver notice by an authorized means does not invalidate action taken at or without a meeting.

§ 36 — REMOVAL OF OFFICERS AND DIRECTORS

Under prior law, notwithstanding any provision of the declaration or bylaws to the contrary, the unit

owners, by a two-thirds vote of all persons present and entitled to vote at any unit owners' association meeting at which a quorum was present, could remove any executive board member with or without cause, other than a member the declarant appointed.

The act instead authorizes unit owners present in person, by proxy, or by absentee ballot at any unit owners meeting at which a quorum is present, to remove any executive board member and any officer elected by the unit owners, with or without cause, by a majority of the votes cast. However, the act specifies that:

1. a member appointed by the declarant may not be removed by a unit owner vote during the period of declarant control;
2. a member appointed by persons other than the declarant during or after the period of declarant control may be removed only by the appointing party; and
3. the unit owners may not consider whether to remove a board member or officer elected by the unit owners at a unit owners meeting unless that subject was listed in the meeting's notice or in the notice of vote by ballot.

The act requires any member or officer considered for removal to be given a reasonable opportunity to speak before the vote is taken. If the vote is taken by ballot without a meeting, the act requires that the person being considered for removal be given a reasonable opportunity to deliver information to unit owners.

§ 37 — EXECUTIVE BOARD AND ASSOCIATION BUDGETS AND ASSESSMENTS

The act requires the executive board, at least annually, to adopt a proposed budget for the common interest community for consideration by the unit owners. By law, within 30 days after adopting a proposed budget, the executive board must provide to all the unit owners a summary of the budget. The act requires that this summary include any reserves and a statement of the basis on which any reserves are calculated and funded. Under prior law, the board had to set a date for a unit owner's meeting to consider ratification within 14 to 30 days after hand delivering or mailing the summary. The act instead requires the board to simultaneously set a unit owner's meeting date, or vote by ballot, within 10 to 60 days after providing the summary to the unit owners.

By law, unless at that meeting a majority of all unit owners or any larger number specified in the declaration rejects the budget, the budget is ratified, whether or not a quorum is present. If a proposed budget is rejected, the budget last ratified by the unit owners continues until unit owners ratify a subsequent budget.

Special Assessment

The act authorizes the executive board to propose a special assessment at any time. It requires that within 30 days after adopting a proposed special assessment, the executive board must provide to all unit owners a summary of the assessment. Unless the declaration or bylaws provide otherwise, if the special assessment, together with all other special and emergency assessments the board proposed in the same calendar year, do not exceed 15% of the association's last adopted budget for that calendar year, the special assessment is effective without unit owner approval. Otherwise, within 10 to 60 days after providing a summary, the board must set a date for the unit owners to decide whether to approve either at unit owner's meeting or by ballot without a meeting.

The assessment is approved unless at a meeting or in the balloting, a majority of all unit owners, or any larger number the declaration specifies, votes to reject it. The absence of a quorum at the meeting or participating in the vote by ballot does not affect the rejection or approval of the budget.

Emergency Special Assessments

The act allows a special assessment to become effective immediately if the executive board determines by a two-thirds vote that it is necessary to respond to an emergency and notice of the emergency assessment is provided promptly to all unit owners. The act requires that the board spend emergency assessment receipts only for the purposes described in its vote.

Loan Agreements

By law, notwithstanding any provision of the declaration or bylaws to the contrary, at least 14 days before entering into any loan agreement on the association's behalf, the executive board must:

1. disclose to all unit owners the loan's amount, terms, and estimated effect on any common expense assessment, and
2. afford the unit owners a reasonable opportunity to submit comments to the executive board regarding the loan.

The act requires the disclosure and comments to be in a record instead of in writing.

It also requires that, unless prohibited or otherwise limited in the declaration, if the executive board proposes to enter into a loan agreement on the association's behalf and to assign its right to future income as security for the loan then, owners of units to which at least a majority of the votes in the association are allocated, or any larger percentage stated in the declaration, must vote in favor of or agree to such assignment.

§ 38 — LITIGATION INVOLVING THE DECLARANT

The act applies the following requirements to an association's authority to institute and maintain a proceeding alleging a construction defect against a declarant or an employee, independent contractor or other person directly or indirectly providing labor or materials to a declarant. These apply whether the proceeding involves litigation, mediation, arbitration, or administrative action.

Under the first requirement, before the association institutes a proceeding, it must provide notice in a record of its claims to the declarant and those that the association seeks to hold liable for the claimed defects. The text of the notice may be in any form reasonably calculated to give notice of the general nature of the association's claims, including a list of the claimed defects. The act allows the notice to be delivered by any method of service and may be addressed to any person if the method of service used provides actual notice or would be sufficient to give notice.

The second requirement bars the association from instituting a proceeding against a person for at least 45-days after it sends notice of its claim. During this 45 day period, the declarant and any other person notified may give the association a plan to repair or otherwise remedy the construction defects described in the notice. The association may institute a proceeding only if it does not receive a timely remediation plan or does not accept the terms of any submitted plan.

If the association receives one or more timely remediation plans, the executive board must consider them promptly and notify the affirmed parties persons whether the plan is acceptable as presented, acceptable with stated conditions, or not accepted.

If the association accepts a remediation plan or if a person agrees to stated conditions to an otherwise acceptable plan, the parties must agree on a period for implementing the plan. The association may not institute a proceeding while the plan is being diligently implemented.

Any statute of limitation affecting the association's right of action against a declarant or other person is tolled during the initial 45-day period and any period in which a party has commenced and is diligently pursuing the remediation plan.

The act authorizes the association, after the 45-day period expires, whether or not the association agrees to any remediation plan, to institute a proceeding against a person to which notice was directed that (1) fails to submit a timely remediation plan, (2) submits an unacceptable plan, or (3) fails to diligently implement the plan. It also allows a unit owner to institute such a proceeding with respect to his or her unit and any limited common elements assigned to that unit,

regardless of any association action.

The act specifies that it does not preclude the association from making repairs necessary to mitigate damages or to correct any defect that poses a significant and immediate health or safety risk.

The act authorizes the executive board to determine whether and when it may institute a proceeding. It prohibits a declaration from requiring a vote by any number or percent of unit owners as a condition to institution of a proceeding.

The act specifies that it does not prevent an association from seeking equitable relief, a remedy in aid of arbitration, or a prejudgment remedy at any time without giving the notice the act requires or waiting 45 days after a notice was given.

Any limitations the act imposes on the association's authority to institute litigation do not apply if the time for terminating any period of declarant control occurs and:

1. the declarant has failed to relinquish control as required by law,
2. a majority of the executive board has not yet been elected by unit owners, and
3. the declarant has not yet delivered to the association all property of the unit owners and the association held by or controlled by the declarant, including certain documents and records required by law.

§ 39 — DUTY TO DELIVER A PUBLIC OFFERING STATEMENT

The law generally requires that a declarant, before offering any interest in a unit to the public, prepare a public offering statement (POS) conforming to the requirements of law. A declarant may transfer responsibility for preparing of all or a part of the POS to a successor declarant but must provide any information necessary to prepare it.

The law requires a declarant or successor declarant who offers a unit to a purchaser to deliver a POS in the manner required by law. The act imposes this same requirement on a dealer who offers a unit to a purchaser. The law defines a "dealer" as someone who owns either six or more units, or 50% or more of all the units, in a common interest community.

Prior law made a declarant or successor declarant liable to anyone claiming an interest in the common interest community for any portion of a POS that he or she prepared that contains (1) any false or misleading statement or (2) for any omission of a material fact. But prior law shielded a declarant from liability for false and misleading statements or omissions if he or she did not prepare any of the POS, unless he or she had actual knowledge of the statement or omission or, in the exercise of reasonable care, should have known of the

statement or omission. This act eliminates this shield and makes the declarant liable for any false misleading statements and omissions in a POS he or she delivers.

§ 40 — PUBLIC OFFERING STATEMENT— GENERAL PROVISIONS AND REQUIREMENTS

The act requires that a POS describe any arrangement between (1) the associations for two or more common interest communities to share certain costs and (2) an association and the owner of real estate that is not part of a common interest community to share certain costs as the act specifies.

§ 41 — RESALE CERTIFICATE

By law, a unit owner must provide a purchaser with a certificate containing specified information before selling the unit. This certificate is commonly referred to as a “resale certificate.”

Prior law required the certificate to include a statement of any unsatisfied judgments against the association and the existence of any pending suits in which the association was a defendant. The act instead requires the certificate to include the existence of any pending administrative proceedings and suits in which the association is a party, including foreclosures but excluding other collection matters.

The law also requires the certificate to include a statement of the insurance coverage provided for the benefit of unit owners. The act specifies that this statement include any schedule of standard fixtures, improvements and betterments in the units covered by the association’s insurance.

The act requires the certificate also to include:

1. a statement disclosing the number of units whose owners are at least 60 days’ delinquent in paying their common charges,
2. a statement disclosing the number of foreclosure actions the association has brought during the past 12 months and the number of such actions pending on a specified date within 60 days of the certificate’s date, and
3. any established maintenance standards the association has adopted.

Under prior law, the association had to furnish a certificate containing the information required by law within 10 business days after receiving a written request from a unit owner and payment of a fee the association established that reflected the actual printing, photocopying, and related costs, up to \$125. The act:

1. allows the request to be in a record instead of requiring it to be written,
2. eliminates the requirement that the fee reflect the association’s actual costs, and

3. authorizes the association to charge an additional fee of five cents a page for each document copy the association provides or a flat fee of \$10 for an electronic version.

§ 42 — EXPRESS WARRANTIES OF QUALITY

By law, any model or description of the physical characteristics of the common interest community, including plans and specifications of or for improvements, create an express warranty that the common interest community would substantially conform to the model or description. The act creates an exception if the model or description clearly discloses that it is only proposed or is subject to change.

§ 43 — CAUSE OF ACTION FOR VIOLATING CIOA

Under prior law, if a declarant or any other person subject to CIOA willfully failed to comply with any of its provisions or any provision of the declaration or bylaws, any person or class of persons adversely affected could sue for appropriate relief and relieve punitive damages. The act eliminates the court’s ability to award punitive damages and specifies that a declarant, unit owner’s association, unit owner, or any other person subject to CIOA can sue to enforce a right granted by CIOA, the declaration, or bylaws. The act authorizes the court to award reasonable costs instead of court costs.

By law, parties to a dispute arising under CIOA, the declaration, or the bylaws may agree to resolve the dispute by binding or nonbinding alternative dispute resolution. Prior law required that the agreement be in writing. The act instead requires that the agreement be in a record authenticated by the parties.

§ 44 — CONVEYANCE OF A UNIT IN A COOPERATIVE

By law, a conveyance of a unit owner’s interest in a cooperative created before or after January 1, 1984 is accomplished by delivering to the purchaser an instrument, executed in the same manner as a deed, conveying the seller’s interest in the unit. The act applies this also to a conveyance of a cooperative created on January 1, 1984.

BACKGROUND

Condominium

“Condominium” means a common interest community in which portions of the real property are designated for separate ownership and the remainder of the real property is designated for common ownership

solely by the owners of those portions. A common interest community is not a condominium unless the undivided interests in the common elements are vested in the unit owners.

Cooperative

“Cooperative” means a common interest community in which the real property is owned by an association, each of whose members is entitled by virtue of his or her ownership interest in the association to exclusive possession of a unit.

Planned Community

A “planned community” is a common interest community that is not a condominium or a cooperative. A condominium or cooperative may be part of a planned community.

Common Elements

“Common elements” means (1) in the case of a condominium or cooperative, all portions of the common interest community other than the unit and (2) in a planned community, any real property within it owned or leased by the association, other than a unit. It also means in all common interest communities, any other interests in real property for the benefit of unit owners that are subject to the declaration.

Special Declarant Rights

“Special declarant rights” means rights reserved for the benefit of a declarant to:

1. complete improvements indicated on surveys and plans filed with the declaration or, in a cooperative, to complete improvements described in the public offering statement;
2. exercise any development right;
3. maintain sales and management offices, signs advertising the common interest community, and models;
4. use easements through the common elements to make improvements within the common interest community or within real property that may be added to the common interest community;
5. make the common interest community subject to a master association;
6. merge or consolidate two common interest communities with the same form of ownership; or
7. appoint or remove any officer of the association or any master association or any executive board member during any period of declarant control.

Federal Electronic Signatures in Global and National Commerce Act, 15 USC § 7001, et seq.

Congress enacted the Electronic Signatures in Global and National Commerce Act in 2000 to facilitate the use of electronic records and signatures in interstate and foreign commerce by ensuring the validity and legal effect of contracts entered into electronically.

The act (15 U.S.C. § 7002), allows a state statute, regulation, or other rule of law to modify, limit, or supersede its provisions (§ 7001) only if the state action satisfies certain requirements and makes specific reference to the federal act.

15 USC § 7001(c) provides that if state law requires that information relating to a transaction in or affecting interstate or foreign commerce be provided or made available to a consumer in writing the use of an electronic record to provide or make such information available satisfies the requirement that information be in writing only under certain circumstances.

PA 09-242—SB 1110

*Judiciary Committee
Education Committee*

AN ACT CONCERNING SEXUAL ACTIVITY BETWEEN SCHOOL WORKERS AND STUDENTS AND INCLUDING SCHOOL SUPERINTENDENTS AS MANDATED REPORTERS OF CHILD ABUSE OR NEGLECT

SUMMARY: By law, school employees who have sexual intercourse with students who attend their schools commit 2nd degree sexual assault (statutory rape). This act makes this crime applicable to private contractors who have regular contact with students.

Second degree sexual assault involving a student under age 16 is a class B felony; if the student is age 16 or older, it a class C felony (see Table on Penalties). Those convicted of these crimes must register as sex offenders and comply with the law’s registration requirements for 10 years.

The act also makes school superintendents mandated child abuse and neglect reporters. By law, mandated reporters must contact the Department of Children and Families (DCF) when they reasonably believe that a child is a victim of abuse or neglect. Coaches, guidance counselors, social workers, teachers, and classroom paraprofessionals are already mandated reporters. Mandated reporters who do not report suspected abuse or neglect must attend a DCF-approved education and training program.

EFFECTIVE DATE: October 1, 2009

BACKGROUND

Related Act

Public Act 09-185 makes foster parents mandated reporters.

PA 09-243—SB 1128

Judiciary Committee

Energy and Technology Committee

Public Safety and Security Committee

AN ACT CONCERNING INTERRUPTION OF TELECOMMUNICATIONS SERVICE, SCRAP METAL PROCESSORS AND MOTOR VEHICLE RECYCLERS

SUMMARY: This act makes changes regarding theft of telecommunications equipment, scrap metal processors, and motor vehicle recyclers.

By law, taking property illegally is punishable by six degrees of larceny crimes, with penalties generally based on the amount of the property taken ranging from a class C misdemeanor to a class B felony (see Table on Penalties). The act generally increases the penalties for taking wire, cable, or other telecommunications service equipment and causing an interruption in emergency telecommunications service by making it 2nd degree larceny (a class C felony) regardless of the value of the property taken (see Table on Penalties). Under prior law, this conduct would have been punished as a class D felony or class A, B, or C misdemeanor, depending on the property's value.

The law imposes certain requirements on scrap metal processors when they receive wire that could be used in transmitting telecommunications or data. The act extends these requirements to (1) cable that could be used in transmitting telecommunications or data and (2) scrap equipment, wire, or cable that could be used in transmitting or distributing electricity by an electric distribution company. These requirements are:

1. segregating and holding the scrap for five days unless it is from (a) a registered business for demolishing buildings or (b) someone who already segregated the scrap as required by law and provides a written statement;
2. photographing the vehicle delivering the load, including its license plate, and the load of scrap; and
3. copying the vehicle's registration and recording a description of the material received and its source.

By law, violations of these provisions are a class C misdemeanor for a first violation, a class B misdemeanor for a second violation, and a class A

misdemeanor for a third or subsequent violation.

By law, after notice and a hearing, the Department of Motor Vehicles (DMV) can impose a civil penalty of up to \$2,000 on a person, firm, or corporation who operates a motor vehicle recycler business without a license. The act also allows DMV to impose this civil penalty on an unlicensed person, firm, or corporation who (1) uses the title "motor vehicle recycler" or (2) advertises or holds itself out as a motor vehicle recycler.
EFFECTIVE DATE: October 1, 2009

BACKGROUND

Motor Vehicle Recyclers

DMV licenses motor vehicle recyclers and the law places certain requirements on how they conduct their businesses. Violators of these provisions are subject to up to 30 days in prison, a fine of up to \$100, or both and each day in violation is a separate offense. DMV or a local authority can also sue to enjoin further operation of the business and to abate it as a public nuisance.

Related Act

Public Act 09-138 doubles most, but not all, of the values of the property which must be taken to commit each of the six degrees of larceny crimes.

PA 09-6—sHB 6193
Labor and Public Employees Committee

AN ACT CONCERNING THE LEGISLATIVE COMMISSIONERS' RECOMMENDATIONS FOR TECHNICAL REVISIONS TO THE LABOR STATUTES

SUMMARY: This act makes technical changes to state labor laws.
EFFECTIVE DATE: Upon passage

PA 09-25—HB 6462
Labor and Public Employees Committee

AN ACT CONCERNING CERTIFIED PAYROLLS

SUMMARY: This act requires contractors and subcontractors working on state and municipal construction projects to submit their certified payrolls to the contracting agency by first-class, postage-prepaid mail. Prior law required these employers to submit their payrolls, but did not specify how. By law, failure to file a certified payroll that meets the requirements set in the prevailing wage law for state and municipal projects is a class D felony (see Table on Penalties).
EFFECTIVE DATE: October 1, 2009

BACKGROUND

Prevailing Wage and Certified Payroll

By law, certified payrolls must include a statement signed by the employer indicating: (1) records are correct, (2) the wage rate paid to each covered employee is at least the prevailing wage rate, (3) the employer has complied with the prevailing wage law, (4) the employer is aware that knowingly filing a false certified payroll is a class D felony, and (5) several other requirements are met. Covered employees include each person performing the work of a mechanic, laborer, or worker.

PA 09-33—sHB 6190
Labor and Public Employees Committee
Government Administration and Elections Committee

AN ACT CONCERNING CONFIDENTIALITY OF CERTAIN EMPLOYER DATA

SUMMARY: The unemployment compensation act requires employers to provide the Labor Department with employee information that must be kept confidential from everyone but department employees.

There are exceptions to this under specific confidentiality agreements with regional workforce development boards as a part of their duties under the federal Workforce Investment Act.

This act permits the department to make such information available to a private entity under contract with the U.S. Department of Labor (U.S. DOL) to administer grants that benefit the state Labor Department. It requires the private entities to enter into the same confidentiality agreements that the law requires of the regional workforce development boards.
EFFECTIVE DATE: October 1, 2009

RELEASE OF CERTAIN EMPLOYMENT RECORDS

By law, employers must keep accurate employment records which contain information that the unemployment compensation administrator prescribes and must be available for his inspection. The department must keep confidential any information that would reveal the employee's or employer's identity.

The act allows the department to disclose the information to a private entity under contract with U.S. DOL if the private entity first enters into the same type of confidentiality agreement that state law requires of the workforce boards.

SAFEGUARDS TO PROTECT CONFIDENTIALITY

Under the act, each agreement must contain safeguards to protect the information's confidentiality. The safeguards must include:

1. a statement from the private entity of the purposes and specific use of the information along with a statement that it will only be used for these purposes;
2. a requirement that the entity store the information in a location that is physically secure from unauthorized access and, when the information is maintained electronically, in a way that prevents this access;
3. a requirement that the entity establish procedures to ensure that only authorized individuals have access to information stored in computers;
4. a requirement that the entity also enter into written agreements, which the department must approve, with its authorized agents extending the requisite safeguards contained in its agreement with the department;
5. a requirement that the entity instruct all people with access to the information about the legal sanctions and require each employee and agent authorized to review the disclosed information to acknowledge in writing that they have been advised of the sanctions;

6. a statement that re-disclosure of the information is prohibited unless the department approves it in writing;
7. a requirement that the entity dispose of the information, including copies the entity makes, after it has served its purpose either by returning it to the department or verifying that the information has been destroyed;
8. a statement that the entity must permit the department's representatives to conduct periodic audits, including on-site inspections, to review the entity's adherence to these provisions; and
9. a statement that the entity will reimburse the department for costs it incurs in making the information available and conducting the audits.

Under the act, an entity's employees or agents violating these provisions may be fined up to \$200, imprisoned for up to six months, or both. And they are banned from any further access to confidential information.

The law, which is unchanged by the act, allows the department to make disclosures to public employees in the performance of their duties and subjects violators to identical penalties.

PA 09-70—sSB 710

*Labor and Public Employees Committee
Public Safety and Security Committee*

**AN ACT CONCERNING UPDATES TO THE
FAMILY AND MEDICAL LEAVE ACT**

SUMMARY: This act permits an employee to take unpaid family and medical leave (FML) to care for an immediate family member or next of kin who is a current member of the U.S. military, National Guard, or the reserves with a serious illness or injury received in the line of duty. The employee may take up to 26 weeks of unpaid leave if the family member is:

1. undergoing medical treatment, recuperation, or therapy;
2. otherwise in outpatient status; or
3. on the temporary disability retired list for a serious injury or illness.

The act provides for 26 weeks of leave over a 12-month period under the private-sector FML law and 26 weeks of leave over a two-year period under the state-employee law. Under both private and state employee provisions, the employee's leave is permitted for a related armed forces member per serious injury or illness incurred in the line of duty. Under the private-sector law, the 12-month period begins on the first day of military caregiver leave.

The act incorporates the new military caregiver leave into existing provisions of FML laws for private sector and state employees regarding written certification of medical need, intermittent leave, and other items.

The act specifies that leave taken pursuant to private-sector FML does not run concurrently with a transfer to "light duty" work in lieu of regular work duties under the Workers' Compensation Act.

EFFECTIVE DATE: Upon passage

MILITARY CAREGIVER LEAVE

Eligibility and Definitions

The act sets conditions under which a spouse, son or daughter, parent, or next of kin may take unpaid military caregiver leave under state FML law. It allows them to do so if the immediate family member or next of kin is a member of the Army, Navy, Marine Corps, Coast Guard, and Air Force and any reserve component, including the Connecticut National Guard performing duty as provided under federal law (CGS § 27-103).

It also defines "son or daughter" as a biological, adopted, foster child, stepchild, legal ward, or a child for whom the eligible employee or armed forces member stood in loco parentis and who is any age.

It defines "next of kin" as the service member's nearest blood relative, other than his or her spouse, parent, or child, in the following order of priority:

1. blood relatives who have been granted legal custody of the service member by court decree or statutory provisions,
2. siblings,
3. grandparents,
4. aunts and uncles, and
5. first cousins.

If the service member has designated in writing another blood relative as his or her nearest blood relative for purposes of military caregiver leave, then the designated individual must be deemed the member's next of kin.

Job Protection for Military Leave Caregivers

As with employees taking leave under the existing family and medical leave laws, the act requires the employer to restore the military caregiver to his or her previous position or an equivalent one.

Conditions or Requirements for Military Caregiver Leave

Private-Sector FML Changes. Military caregivers are treated, for the most part, like other employees

taking unpaid leave under the existing private-sector FML. This means:

1. an eligible employee may elect or eligible employer may require the employee to substitute any accrued paid vacation leave, personal leave, or family leave for any part of the 26-week unpaid leave available to care for a service member;
2. when medical treatment is planned and foreseeable, the employee must make reasonable efforts to schedule treatment so as not to unduly disrupt the employer's operations;
3. when both spouses are eligible for leave and work for the same employer, the leave is limited to an aggregate of 26 weeks during any 12-month period;
4. the employer may require a certification issued from the service member's health care provider and the employee must provide this to the employer in a timely manner;
5. intermittent leave or leave on a reduced schedule is allowed and requires, as part of the certification, a statement that the employee's intermittent leave is necessary to care for the service member;
6. an employer may assign an employee on intermittent leave or reduced schedule to a job of equal pay and benefits that better accommodates the recurring periods of leave; and
7. the intermittent leave or leave on a reduced schedule certification must include the expected leave duration and the schedule of the intermittent leave or reduced schedule.

State Employee FML Changes. The following provisions are part of the existing state employee FML and the act makes them part of the state employee military caregiver leave. It:

1. requires prior written certification for the leave from the service member's physician, including the probable leave duration, and
2. requires the employee taking leave, before leave begins, to sign a statement of the employee's intent to return to work.

BACKGROUND

Interaction with Federal FML Law

Under federal law, if an employee meets the qualifications of both the state and the federal FML acts, the employer is obligated to provide the more generous of the two benefits.

The National Defense Authorization Act for FY 2008 (Public Law 110-181) amended the federal FML

act to allow eligible employees to take up to 26 weeks of job-protected leave in a single 12-month period to care for a covered service member with a serious injury or ailment. This law covers both the private and public sectors.

PA 09-88—sHB 5519

*Labor and Public Employees Committee
Insurance and Real Estate Committee
Planning and Development Committee*

AN ACT CONCERNING WORKERS' COMPENSATION PREMIUMS AND VOLUNTEER AMBULANCE COMPANIES

SUMMARY: This act requires the state-licensed workers' compensation risk rating organization to file with the insurance commissioner, by October 1, 2009, a method of computing workers' compensation premiums for volunteer staff of municipal or volunteer ambulance services that does not base the premium primarily on the number of ambulances the service owns. The premium instead must be based primarily on ambulance usage as determined by the estimated annual number of service call responses. The new premium calculation applies to workers' compensation policies issued or renewed on or after October 1, 2009.

The act defines a municipal or volunteer ambulance service as a volunteer organization or municipality that the public health commissioner licenses to transport patients.

EFFECTIVE DATE: Upon passage

BACKGROUND

NCCI

The National Council on Compensation Insurance (NCCI) is the private, state-licensed workers' compensation insurance rating organization that provides the state with advisory risk rating and actuary information. The insurance commissioner adopts annual risk rating and loss cost estimates from NCCI and insurance carriers use this information to develop workers' compensation premium rates for the voluntary market. The commissioner also adopts NCCI rate recommendations to establish premiums for the assigned risk plan market (a.k.a. "risk pool").

PA 09-101—HB 6185

*Labor and Public Employees Committee
Judiciary Committee*

AN ACT CONCERNING PENALTIES FOR VIOLATIONS OF CERTAIN PERSONNEL FILES STATUTES AND EQUAL PAY FOR EQUAL WORK

SUMMARY: This act makes several changes to the labor law banning employers from discriminating based on gender in the compensation paid to employees.

By law, the labor commissioner, an employee, or a group of employees can initiate claims in civil court regarding alleged pay discrimination for work performed under similar conditions by two or more employees that requires equal skill, effort, and responsibility. The court can award back pay in these claims. The act allows a court to award compensatory and punitive damages. In employee or employee group claims, the act allows the employee or employee group to ask the court for legal and equitable relief (in addition to the other remedies), but the commissioner does not have this option.

The act also eliminates the commissioner's ability to seek reasonable attorneys' fees and costs as was permitted under prior law. By law, and unchanged by the act, an employee or employee group can seek attorneys' fees and costs.

The act also:

1. limits bona fide defenses that employers may assert,
2. extends the deadline for making a gender wage claim from one to two years following a violation,
3. specifies that gender does not have to be the sole factor in the discrimination for gender wage discrimination to occur,
4. expands the whistleblower protections to include those who testify or assist in a gender wage proceeding, and
5. repeals the \$200 fine for each wage discrimination violation or for retaliatory action against an employee bringing a gender wage complaint.

In addition to the labor law banning gender wage discrimination, the Connecticut human rights statute prohibits discrimination more broadly, not just based on gender. Federal antidiscrimination law also protects employees from gender wage discrimination as well as many other forms of discrimination. In certain ways, the act's changes to the labor law make it easier to bring a claim under that law than under state human rights laws or federal law.

This act also subjects any employer, officer, agent, or other person who violates the provisions of the

Personnel Files Act to a \$300 civil penalty for each violation. The Labor Department imposes the penalty and can ask the attorney general to initiate civil action to recover any unpaid penalties.

By law, when the attorney general helps recover penalties from violations of (1) Chapter 557 (employment regulation regarding minors, people with disabilities, apprentices, family and medical leave, certain employee rights, and other employment issues); (2) Chapter 558 (various wage laws); and (3) the law against workers' compensation insurance fraud, the money is credited to the Labor Department to use to enforce the laws that generated the penalties. The act authorizes personnel file penalties to be used to support enforcement of the personnel file law or any of the other laws previously mentioned.

EFFECTIVE DATE: October 1, 2009

ENFORCEMENT AND LEGAL REMEDY

By law, the labor commissioner may agree to take an employee's complaint of unfair wages or may investigate on her own initiative. The law authorizes the commissioner, or her representative, to enter workplaces to inspect payrolls, investigate employee work and operations, question employees, and take reasonably necessary action to determine compliance with the law.

By law, an employee or group of employees may initiate a court action or ask the commissioner to initiate court action. The employee or group of employees can pursue court action if the commissioner declines to do so.

Under prior law, a finding of a violation required a court to order the employer to pay back wages and costs and reasonable attorneys' fees. The act gives the court the discretion to order remedies and has a broader scope of possible remedies. Table 1 shows the changes in possible remedies the court may award in gender wage discrimination cases.

Table 1. Possible Court Ordered Remedies

<i>Prior Law</i>	<i>Act</i>	
Claim by commissioner or employee	Claim by commissioner	Claim by employee
<ul style="list-style-type: none"> • back wages (difference between what the employee was paid and the top pay of others doing same work) • costs and reasonable attorneys' fees 	<ul style="list-style-type: none"> • back wages (same meaning as prior law) • compensatory damages • punitive damages, if the violation is found to be intentional or committed with reckless indifference 	<ul style="list-style-type: none"> • back wages (same meaning as prior law) • compensatory damages • punitive damages, if the violation is found to be intentional or committed with reckless indifference

Prior Law	Act
	<ul style="list-style-type: none"> • costs and reasonable attorneys' fees • legal and equitable relief the court deems proper

Prior law also imposed a fine on each employer of \$200 for each violation. The act repeals the fine.

COMPLAINTS AND LIMITED EMPLOYER DEFENSES

The act establishes a complaint threshold that, if met, limits an employer's legitimate defenses and when the defense can be used. If an employee can demonstrate that his or her employer discriminates based on gender in wages paid to employees at the employer's business for equal work performed under similar conditions that requires equal skill, effort, and responsibility, then the employer must show the pay differential was due to a:

1. seniority system;
2. merit system;
3. system that measures earnings by quantity or quality of production; or
4. differential system based upon a bona fide factor other than sex, such as education, training, or experience.

The act specifies that the bona fide factors are valid only if the employer shows the system is (1) not based on or derived from a sex-based differential in compensation and (2) job-related and consistent with business necessity. Furthermore, the defense is not valid if the employee shows that an alternative compensation practice exists that would serve the same business purpose without producing such a pay differential and that the employer has refused to adopt such an alternative.

Prior law only permitted length of service or a merit system as legitimate factors in wage determinations and did not limit when such systems could be used in wage determinations.

Prior law prohibited gender as the sole basis for gender wage discrimination. The act removes the requirement that gender be the sole reason. This means that if gender can be one factor, the discrimination is considered a violation.

EXTENDED TIME TO FILE A CLAIM

The act extends, from one to two years, the time to file a complaint following any violation or act that constitutes a continuing violation, such as each time wages or other benefits are paid. Complaints can be filed within three years if the violation is intentional or committed with reckless indifference.

WHEN DISCRIMINATION OCCURS

Under the act, discrimination occurs when:

1. a discriminatory compensation decision or practice is adopted,
2. an individual becomes subject to a discriminatory decision or practice, or
3. an individual is affected by the application of a discriminatory decision or practice.

Under the act, each time wages or other compensation are paid constitutes a new violation.

EXPANDED WHISTLEBLOWER PROTECTION

Under prior law, it was a violation to discriminate against an employee who filed a complaint or took other action regarding gender wage discrimination. The act specifies and expands the whistleblower protection to prohibit an employer from discharging, expelling, or otherwise discriminating against a person for (1) opposing a discriminatory compensation practice, (2) filing a complaint about one, or (3) assisting any proceeding regarding one. This covers employees who do not file a complaint, but who assist in the investigation regarding one.

The act eliminates the \$200 fine for whistleblower violations, but expands potential court awards for such violations to include compensatory and punitive damages.

OTHER APPLICABLE STATE AND FEDERAL ANTIDISCRIMINATION LAW

In certain ways, the act's changes to the labor law make it easier to bring a claim under it than under state human rights laws or the federal antidiscrimination law. (The state human rights law includes a provision that its prohibition on discriminatory employment practices does not void or supersede the labor law prohibiting gender wage discrimination (CGS § 46a-62).)

Under the act and prior labor law, there is no minimum size of employer that triggers labor law coverage. The state human rights law covers employers with three or more employees and the federal law covers employers with 15 or more employees.

The act gives employees two years from the date of a violation to file a claim. It specifies a continuing violation occurs each time wages, benefits, or other compensation that results from a discriminatory decision or practice is paid. (This matches the language in a new federal law, the Lilly Ledbetter Fair Pay Act of 2009, see BACKGROUND.) Under this act a decision to pay employees differently based on gender is still a violation even if it were made years ago, because each new paycheck based on that decision is a continuing violation. The state human rights law generally requires

a complaint be filed within 180 days of the alleged discrimination. But the relevant regulations permit a complaint to be deemed valid if filed within 180 days of the date the complainant knew or reasonably should have known the alleged discrimination occurred (Conn. Agencies Regs. § 46a-54-34a).

The act prohibits gender wage discrimination at an employer's business, which is a broader term than that used in the federal law. The federal Equal Pay Act, which Ledbetter amended, prohibits discrimination in the same work establishment (see BACKGROUND). For some employers with worksites at different locations, the term "establishment" limits the scope of the federal law. In other words, the federal law might not cover a pay differential at different worksites, but the state law would apply.

BACKGROUND

Equal Pay Act of 1963

The federal Equal Pay Act of 1963, as amended, requires that men and women be given equal pay for equal work in the same establishment. The jobs need not be identical, but must be substantially equal in skill, effort, and responsibility and performed under similar conditions. The U.S. Equal Employment Opportunity Commission enforces the law.

Lilly Ledbetter Fair Pay Act of 2009

This law amends the Equal Pay Act of 1963 to specify that an unlawful employment practice occurs when a (1) discriminatory compensation decision or other practice is adopted; (2) a worker becomes subject to the decision or practice; or (3) a worker is affected by the application of such a decision or practice; including each time wages, benefits, or other compensation is paid. The law is Congress's response to a U.S. Supreme Court ruling finding that Lilly Ledbetter's complaint against Goodyear Tire & Rubber Co. was time-barred because she did not file it within 180 days of the time Goodyear first paid her less than her male peers (*Ledbetter v. Goodyear Tire & Rubber Co.*, 550 U.S. 618 (2007)). She only discovered the discrimination after years of unequal pay.

Personnel Files Act

This state law imposes certain requirements on employers who keep employee personnel and medical records. The law requires the employee's written consent, in most cases, before an employer can disclose individually identifiable information other than the employee's dates of employment, job title, and wage or salary.

The employer must also allow an employee access to personnel files and, in the case of medical files, allow access by a physician chosen or approved by the employee. The employers must maintain both types of files for a certain period after a worker stops working for the employer and must abide by other statutory requirements.

PA 09-106—sHB 6186

Labor and Public Employees Committee

AN ACT PROTECTING THE INTEGRITY OF CONN-OSHA INVESTIGATIONS

SUMMARY: By law, a state or local public employee who notifies the labor commissioner of a potential occupational safety and health violation or situation with an imminent threat of danger of physical harm may ask to have his or her name removed from any record published, released, or made available regarding the potential violation or danger. This act gives the same right to an employee whose name is not part of the original complaint notice, but who at any time provides information to the commissioner regarding the potential violation or danger.

Under the state Occupational Safety and Health Act (OSHA), once the commissioner receives such a notice she may enter the workplace for an inspection without advance notice. Also, she may compile, analyze, and publish, in either summary or detail form, all reports of information obtained under this provision.

By law, the commissioner must adopt regulations necessary to carry out her responsibilities under the state OSHA. Under the act, the provision regarding the right of an employee not named in the original complaint to remain anonymous must be included in the regulations. Also, the act specifies the regulations must be in accordance with state OSHA and the Uniform Administrative Procedure Act (UAPA).

EFFECTIVE DATE: October 1, 2009

BACKGROUND

UAPA

The UAPA requires agencies to publish notice of intent to adopt a regulation. These agencies must also give prior notice to each legislative committee of cognizance of the proposed regulation. Agencies must send these committees copies of the regulations and their fiscal notes. The regulations are deemed valid as long as at least one committee is notified and receives copies of the regulation and fiscal note.

Two approvals are required before a regulation may become effective. The attorney general must approve it for “legal sufficiency,” meaning it does not conflict with the law and has been prepared in compliance with the UAPA. Within 180 days of publishing the notice of intent, an agency must submit the regulation to the Legislative Regulation Review Committee. That bipartisan committee must review all proposed regulations. After the committee approves a regulation, the agency files two certified copies with the Office of the Secretary of the State for publication.

PA 09-183—sHB 6502 (VETOED; OVERRIDDEN)

*Labor and Public Employees Committee
Appropriations Committee*

AN ACT CONCERNING THE STANDARD WAGE FOR CERTAIN CONNECTICUT WORKERS

SUMMARY: This act creates a new method for determining the hourly wage and benefits for employees under the standard wage law, which governs compensation for employees of private contractors who do building and property maintenance, property management, and food service work in state buildings. Under the act, such employees hired after July 1, 2009 will receive the same hourly wages and benefits as employees working under a union agreement covering the same type of work for the largest number of hourly nonsupervisory employees as long as the agreement covers at least 500 employees in Hartford County. Those already working for standard wage employers on or before July 1, 2009 will be paid an hourly wage based on the prior standard wage law, but after July 1, 2009 their benefits will be the same as those working under the Hartford County union agreement for the same type of work. The act thus creates two tiers for hourly pay while keeping all employees at the same level of benefits.

The act ties the state pay and benefits for standard wage workers to those provided under a private-sector union contract that meets the act’s criteria. (At least one union contract meets the criteria; see BACKGROUND.) If there is no private-sector contract that meets the act’s criteria, then the prior law’s standard wage rate applies.

The act requires a new contractor that takes over an existing building service to keep the employees from the predecessor contract for at least 90 days after the date it begins service under the successor contract and permits the contractor to fire them only for cause. This provision does not apply to employees who (1) worked fewer than 15 hours a week or (2) were employed at the worksite for less than 60 days.

If an employee performs satisfactorily during the 90-day period, the successor contractor must offer him or her continued employment for the contract’s duration under the terms and conditions of the successor contractor or as required by law.

The job protection provision regarding a new contractor taking over from a predecessor contractor does not apply if the new contractor employs people with disabilities or disadvantaged people working in the janitorial work pilot program and the contract has no more than four full-time workers (see BACKGROUND).

EFFECTIVE DATE: July 1, 2009

DETERMINING WAGES AND BENEFITS FOR STANDARD WAGE WORKERS

Definitions

Under the act, “prevailing rate of wages” means the hourly wages paid for work performed in Hartford under the union contract covering the largest number of hourly nonsupervisory employees employed in Hartford County in each classification the labor commissioner establishes, as long as the union contract covers at least 500 employees. By law, the commissioner must base the classifications and hourly wages on occupation codes and titles in the federal Register of Wage Determinations under the Service Contract Act (41 USC § 351, *et seq.*).

The act defines “prevailing rate of benefits” as the total hourly cost to the employer for work performed in Hartford under a union contract that establishes the prevailing rate of wages for providing health, welfare, and retirement benefits, including benefits for:

1. medical, surgical, or hospital care;
2. disability or death;
3. unemployment;
4. pension;
5. vacation, holiday, and personal leave;
6. training; and
7. legal services.

These benefits may include payments made directly to employees, payments to purchase insurance, and payments or contributions paid or payable by the employer on behalf of each employee to any employee benefits fund.

The act defines “employee benefit fund” as any trust fund established by (1) one or more employers and one or more unions or (2) one or more other third-parties not affiliated with the employers to provide, whether through the purchase of insurance or annuity contracts or other means, benefits under an employee health, welfare, or retirement plan. The definition excludes funds whose trustee or trustees are subject to supervision by the banking commissioner of this or any

other state, the U.S. comptroller of the currency, or the Federal Reserve Board. This description meets the federal Taft-Hartley Act standard for an employee benefit fund.

Job Classifications

The act requires the labor commissioner to (1) reclassify as a janitor anyone hired prior to July 1, 2009 as a grounds maintenance laborer or laborer and (2) classify anyone hired after July 1, 2009 performing the duty of a grounds maintenance laborer, laborer, or janitor as a light cleaner, heavy cleaner, furniture handler, or window cleaner, as appropriate.

Employees' Pay Determined Two Ways

The new wages and benefits affect standard wage contract workers hired after July 1, 2009. Employees already working for standard wage employers on or before that date are paid an hourly wage based on the prior standard wage law, but after July 1, 2009 their benefits will be the same as those under a Hartford County union contract for the same type of work.

Under the act, if there is no private-sector union contract for at least 500 employees in Hartford County doing the same work, then the wage rate determined under the prior standard wage law applies. Under the standard wage law, the commissioner sets the hourly rate for all job classes based on the rates in the Federal Register of Wage Determinations, plus a 30% surcharge for the cost of health and retirement benefits. The employer either provides benefits equal to the 30% surcharge or pays the employees the additional 30%.

BACKGROUND

Standard Wage Law

This law requires contractors that provide the state or its agents with (1) building cleaning or maintenance or (2) food, property, or equipment services to pay their employees at least the standard wage rates. It also (1) prescribes how contracting agents inform potential bidders of standard wage rates to be met in preparing a contract proposal; (2) requires covered employers to maintain records of each employee's wages, hours, and classification and to make these records available to the contracting agent; (3) establishes penalties for filing a false certified payroll and fines for failing to pay the required rate; and (4) authorizes the Labor Department to investigate complaints and enforce the law.

Local 32BJ Contract

Local 32BJ of the Service Employees International Union has a four-year contract (January 1, 2008 to December 31, 2011) with the Hartford Area Cleaning Contractors Association to provide building and janitorial services to a number of office buildings in greater Hartford. The local has more than 500 members.

Janitorial Work Pilot Program

Public Act 06-129 established a four-year janitorial work pilot program to create and expand janitorial work job opportunities for people with a disability or a disadvantage. The program must consist of four projects for janitorial work and create a minimum of 60 full-time jobs or 60 full-time equivalents at standard wages for employees with disabilities or disadvantages.

PA 09-80—sHB 6463

*Planning and Development Committee
Appropriations Committee*

AN ACT CONCERNING MEMBERSHIP ON REGIONAL PLANNING AGENCIES

SUMMARY: This act increases the membership of regional planning agencies' (RPAs) boards, which consist entirely of municipal representatives. RPAs operate in five of the state's 15 planning regions. Under prior law, each municipality belonging to an RPA was entitled to at least two board representatives. The act increases that number to three by making each municipality's chief elected official (CEO) or his or her designee a board member. As under prior law, municipalities with over 25,000 people are entitled to one additional representative for each additional 50,000 people or fraction thereof. They may elect or appoint their respective representatives.

The act similarly increases the number of board representatives for cities and boroughs located within a town. The law entitles a city or borough to a representative if at least half of the town's total population resides there and its boundaries are not coterminous with those of the town. Prior law entitled the town and the city or borough to one representative each. The act entitles the city or borough to an additional representative and allows one of these representatives to be its CEO or his or her designee. The act also increases the town's representatives to two, but it allows, rather than requires, one of these to be the town's CEO or his or her designee.

The act does not change the rule entitling the town or the city or borough to an additional representative. The rule applies if their combined population exceeds 25,000. In this case, either of these jurisdictions is entitled to an additional representative for each additional 50,000 people, depending whether they reside inside or outside the city or borough.

RPAs operate in five of the state's 15 planning regions. They are Central Connecticut RPA, Connecticut River Estuary RPA, Greater Bridgeport RPA, Midstate RPA, and Southwestern Connecticut RPA.

EFFECTIVE DATE: October 1, 2009

PA 09-87—sSB 922 (VETOED; OVERRIDDEN)

*Planning and Development Committee
Government Administration and Elections Committee*

AN ACT CONCERNING AFFIRMATIVE ACTION AND CONTRACTING PROCEDURES FOR THE METROPOLITAN DISTRICT OF HARTFORD COUNTY

SUMMARY: This act requires the Metropolitan District Commission (MDC) to comply with state policies governing hiring and promoting people and procuring goods and services. The MDC is a nonprofit municipal corporation operating largely under its own policies and procedures. The act requires MDC to comply with the same affirmative action laws that apply to state agencies, departments, boards, and commissions (i.e., agencies).

Under these laws, the attorney general or his designee must represent state agencies in discrimination complaints filed with the Connecticut Commission on Human Rights and Opportunities (CHRO) or the federal Equal Employment Opportunity Commission (EEOC). The act prohibits him or his designee from representing MDC in a discrimination complaint before these commissions.

The act also requires the State Contracting Standards Board (SCSB) to adopt regulations MDC must follow to procure goods and services. In doing so, it must consider the circumstances and factors that set MDC apart from state agencies.

EFFECTIVE DATE: October 1, 2009, except for the authorization for the SCSB to adopt regulations governing MDC procurement, which takes effect January 1, 2010.

AFFIRMATIVE ACTION

The law requires state agencies to develop and implement annual affirmative action plans covering all aspects of personnel and administration. The act requires MDC to comply with this law.

Consequently, MDC must prepare an annual affirmative action plan in cooperation with the CHRO and according to its regulations. CHRO has up to 90 days to approve or disapprove the plan. If it disapproves the plan, MDC must submit another plan within six months and continue doing so until CHRO approves it. CHRO must monitor MDC's compliance with the plan and report its findings to the governor and the legislature by April 1 annually.

MDC must also comply with various administrative and procedural requirements. It must designate a full- or part-time affirmative officer responsible for mitigating discriminative behavior, investigating complaints about such behavior, and reporting to the agency head any findings and recommendations after completing the investigation. The officer must complete training provided by CHRO or the Permanent Commission on the Status of Women.

The MDC must also comply with the law's procedures for addressing discrimination complaints made by or against the agency head, a board or commission member, or the affirmative action officer. In these cases, the officer must refer the complaint to CHRO for review. If appropriate, CHRO must refer the complaint to the Department of Administrative Services.

The act prohibits the attorney general or his designee from representing the MDC before CHRO or EEOC regarding a discrimination complaint. The opposite is true with respect to other agencies. The law requires the attorney general or his designee to represent these agencies before CHRO and EEOC regarding a discrimination complaint and specifically bans their affirmative action officers from doing so.

PROCUREMENT

The act requires SCSB to adopt regulations governing the way MDC procures goods and services. In doing so, SCSB generally must apply the laws governing the way state agencies procure goods and services, but consider the circumstances and factors unique to MDC. Those laws:

1. require the administrative services commissioner to establish a system for requisitioning supplies, materials, equipment, and contractual services;
2. specify the methods for awarding contracts under a competitive bidding process;
3. require contracts to include provisions allowing agencies to inspect contractors' and subcontractors' work sites and audit their books and records;
4. require contracting agencies and bidders to notify the attorney general when they suspect bidders are colluding or engaging in other anticompetitive practices;
5. allow contracting agencies to request information needed to determine if bid amounts or costs are reasonable;
6. set conditions under which the SCSB can disqualify contractors, bidders, or businesses responding to a request for proposals (i.e., proposer) from bidding on, applying for, or participating as a contractor or subcontractor

- under state contracts;
7. set conditions under which state agencies can suspend contractors, bidders, and proposers for up to six months from bidding on, applying for, or performing work as a contractor or subcontractor under a state contract;
8. provide procedures for appealing agency suspensions and contesting contracting processes or selections;
9. require SCSB to cancel or revise bid solicitation or proposed awards violating state law; and
10. require SCSB to adopt regulations establishing procurement policies and procedures and specify the criteria they must meet.

BACKGROUND

MDC

MDC is a nonprofit municipal corporation providing water and sewer service in the Hartford area. It operates primarily under a 1929 special act charter and answers to a 29-member commission consisting mostly of municipal representatives. The charter allows MDC to:

1. create, maintain, improve, and operate a water system;
2. impound water in and outside of the district's territorial limits;
3. transport water and sell it at retail;
4. build, maintain, and improve sewers and sanitary systems and sewage disposal plants;
5. build, maintain, and improve public highways;
6. collect and dispose of garbage and refuse;
7. build, maintain, improve, and operate hydroelectric dams in and outside the district;
8. transmit and distribute the power produced by these dams to electric utilities or municipalities;
9. establish and maintain active recreational and educational facilities, including a golf course managed on a for-profit basis (although these powers apply only to non-reservoir lands in Glastonbury and Manchester);
10. take property by eminent domain;
11. enter into interlocal agreements with municipalities; and
12. exercise a variety of financial powers, including assessing and collecting taxes, borrowing money and pledging the district's credit, issuing bonds, and assessing benefits and damages in the layout of any public improvement.

SCSB

Public Act 07-1, September Special Session established the SCSB as an independent executive branch agency authorized to adopt procurement regulations and review, monitor, and audit state procurement processes. The governor and legislative leaders appoint its 14 members.

The board can exercise any procurement-related right, power, duty, and authority vested in or exercised by any state contracting agency. It must oversee procurement practices and train and oversee agencies' procurement and contracting officers. It must audit contracting agencies at least once every three years and may review, terminate, or recommend terminating a contract or procurement agreement for cause.

PA 09-89—HB 5536

Planning and Development Committee

AN ACT CONCERNING INTEREST ON CHARGES FOR SEWER SYSTEM EXPANSION

SUMMARY: This act allows a water pollution control authority (WPCA) to assess, in substantially equal installment payments over a period of up to 30 years, the cost of a sewer system whose acquisition, construction, or expansion is financed from the municipality's general reserves. It also allows the municipality to charge a reasonable rate of interest on such assessments. It requires the WPCA to have the town clerk where the assessed property is located place a certificate on the land records indicating the assessment.

By law, these provisions apply to the acquisition and construction of systems financed by municipal bonds. The act explicitly extends these provisions to systems expanded through bonding.

By law, a certificate must be filed on the land records of property subject to sewer assessments. Under prior law, the town clerk had to cancel or remove the certificate within seven days after the last installment was paid or the total assessment was paid off. The act instead requires the tax collector to prepare a release of certificate and record the release on the land record under these circumstances.

EFFECTIVE DATE: October 1, 2009

PA 09-92—HB 5873

Planning and Development Committee

AN ACT CONCERNING THE AUTHORITY OF PLANNING COMMISSIONS TO APPROVE MUNICIPAL ROAD IMPROVEMENTS

SUMMARY: This act specifies the type of infrastructure project a municipality may implement without first requesting the planning commission's (or combined planning and zoning commission's) recommendations. By law, a municipal agency or legislative body cannot start a proposed infrastructure or public works project without seeking the commission's recommendations. But the law also exempts them from having to do so when maintaining or repairing existing property or public ways. The act extends this exemption to road resurfacing projects.

EFFECTIVE DATE: July 1, 2009

BACKGROUND

Planning Commission Review of Municipal Projects

The law requires municipal agencies and legislative bodies to submit proposed infrastructure and public works projects to the planning commission for recommendations. This requirement also applies to real estate transactions for specific purposes, such as abandoning roads, public buildings, or other municipal property. It also applies to improvements made to existing property, including bridges, terminals, and public buildings.

The municipality may implement these actions if the commission approves them or submits no recommendations within 35 days after receiving the project proposal. The municipality may still implement the project if the commission disapproves the proposal, but a two-thirds vote of the municipality's legislative body must approve it.

PA 09-165—sHB 6466

*Planning and Development Committee
Government Administration and Elections Committee
Appropriations Committee*

AN ACT CONCERNING PROJECTS OF REGIONAL SIGNIFICANCE

SUMMARY: This act requires each regional planning organization (RPO) to establish a voluntary process for applicants to state or local agencies, departments, or commissions to request a pre-application review of proposed projects of regional significance. There are

three types of RPOs: regional councils of governments, regional councils of elected officials, and regional planning agencies. Under the act, a project of regional significance is an open air theater, shopping center, or other development to be built by a private developer that is planned to create more than (1) 500,000 square feet of indoor commercial or industrial space, (2) 250 housing units in a one-to-three-story building, or (3) 1,000 parking spaces.

The act requires the RPO process to determine the components of the review. These components must include a procedure to assure that all relevant municipalities and regional and state agencies provide the applicant with (1) preliminary comment on the project, in a form determined by the agency; (2) summaries of each agency's review process; and (3) an opportunity for the applicant to discuss the project with representatives of each relevant municipality or state agency at a meeting convened by the RPO. At least one representative from each relevant municipality and each state agency, department, or commission must participate in the project's a review at the RPO's request at a meeting convened for this purpose. This requirement applies if the RPO notifies each agency, department, or commission of the meeting at least three weeks in advance. An RPO cannot convene more than one meeting for a particular project in any quarter of a calendar year. The act does not prevent two or more RPOs from convening joint meetings to carry out the act.

The results or information obtained from the pre-application review cannot be appealed under any provision of the statutes and are not binding on the applicant or any authority, commission, department, agency, or other official having jurisdiction to review the proposed project.

The RPO must prepare a report of the agencies' comments reviewing the proposal and give a copy of the report to the applicant and each reviewing agency.

EFFECTIVE DATE: October 1, 2009

PA 09-173—HB 5875

Planning and Development Committee

Environment Committee

Finance, Revenue and Bonding Committee

AN ACT AUTHORIZING SPECIAL DISTRICTS TO MAINTAIN WATER QUALITY IN LAKES, STATE LAND WHERE HUNTING IS PERMITTED, THE ESTABLISHMENT OF A MARINE WATERS FISHING LICENSE AND THE TAKING OF SHELLFISH IN WESTPORT

SUMMARY: This act:

1. creates a recreational saltwater (marine sport)

fishing license and fees, extends requirements similar to those for inland (freshwater) fishing, and adds marine licensing exceptions;

2. sets a baseline for the amount of state land available for hunting;
3. limits the use of marine sport fishing and hunting license fees to fish and game preservation and related activities; and
4. increases the fine, from \$25 to \$75, and eliminates prison as a potential penalty, for illegally taking shellfish from the shores, beaches, and flats at "Saugatuck Shores" in Westport.

The act also expands the purposes for which residents may establish special taxing districts to include maintaining the water quality of a lake located solely in one town. The law allows residents to establish districts providing a wide range of public services and infrastructure, including collecting trash and constructing and maintaining drains and sewers. Under the act, residents must comply with the special district statutes when establishing, organizing, and operating a district for lake maintenance. Once established, the act allows the district to apportion assessment for this purpose equally among property owners.

The act makes technical and conforming changes.

EFFECTIVE DATE: Upon passage, except for provisions concerning (1) marine fishing licenses, which are effective June 15, 2009, and (2) special water quality districts, which are effective October 1, 2009.

MARINE SPORT FISHING LICENSE

The act establishes, with certain exceptions, a marine sport fishing license for anyone over age 16 who takes, attempts to take, or assists in taking any fish or bait species in the marine district by any method or who lands marine fish and bait species in the state, regardless of where the fish or bait species are taken (e.g., anadromous fish species, such as striped bass, swim from saltwater to freshwater to spawn). The law requires a recreational license for inland (freshwater) fishing and a commercial license for commercial fishing in the marine district.

Under the act, the marine sport license fee is \$10 for residents and \$15 for nonresidents. The Department of Environmental Protection (DEP) commissioner may issue people age 65 and older who have been state residents for at least one year an annual marine waters fishing license for free. The act requires town clerks to keep a \$1 recording fee for each marine waters fishing license they issue.

Exceptions

The act creates several exceptions to the marine sport fishing license requirement. The following people do not have to have a license:

1. people rowing a boat or operating the motor of a boat from which other people are taking or attempting to take fish;
2. anyone fishing as a passenger on a registered party, charter, or head boat operating solely in the marine district; and
3. state residents participating in a fishing derby that the DEP commissioner authorized in writing if, (a) no fees are charged for the derby, (b) it lasts one day or less, and (c) it is sponsored by a nonprofit civic service organization. These organizations are limited to one derby in any calendar year.

Additionally, the DEP commissioner may designate one day in each calendar year when no license is required for sport fishing in the marine district.

Reciprocity

By law, Massachusetts, Rhode Island, and New York residents may fish for free in certain Connecticut waters without a nonresident license, if their state allows the same (reciprocal) privilege for Connecticut citizens. The act specifies that this law refers to inland waters that lie both in Connecticut and the reciprocating state. It also creates a reciprocal arrangement for such licenses should Maine, Massachusetts, New Hampshire, New York, or Rhode Island enact reciprocal laws or regulations for marine water fishing licenses. Under the act, as under current law, residents of other states are subject to other applicable federal or state fishing laws under any reciprocal agreements.

The act also allows any nonresident who resides in the other New England states or New York to obtain this marine license for the same fee or fees as a Connecticut resident if he or she is a resident of a state that has a reciprocal provision that extends the same privilege to Connecticut residents.

STATE LAND AVAILABLE FOR HUNTING

The act prohibits the DEP commissioner from reducing the amount of state land in one location where hunting is permitted without providing for an equal amount of land elsewhere in the state (i.e., no net loss of state land where hunting is permitted). The act establishes a baseline of state land where hunting is permitted as not less than the percentage of such land as of July 1, 2008. (It is not clear how, in certain instances, DEP would know that hunting areas had been lost. For example, new construction on private land bordering

state land where hunting is permitted would prohibit hunting in the vicinity.)

USE OF HUNTING AND MARINE FISHING LICENSE FEES

The act prohibits diverting hunting license fees for any purpose other than implementing the DEP's charge to protect, propagate, preserve, and investigate fish and game and its administration. It extends to fees from the marine sport fishing license the law's requirement that the DEP commissioner use fishing license fees only for the protection, propagation, preservation, and investigation of fish and game and administration of the department's related functions.

PA 09-181—sHB 5254

*Planning and Development Committee
Environment Committee*

AN ACT CONCERNING EXTENDING THE TIME OF EXPIRATION OF CERTAIN LAND USE PERMITS

SUMMARY: This act gives developers more time to complete an ongoing project without seeking reapproval. When a planning and zoning commission or an inland wetlands agency approves a project, it must set an expiration date. Consequently, a developer must complete the project before that date or resubmit it to the commission for approval. The expiration date must fall within the timeframes the law specifies. The timeframes vary depending on the commission and the nature of the project.

The act extends the timeframes for projects commissions approved between July 1, 2006 and July 1, 2009. Under prior law, the timeframes ranged from within two to five years for projects in wetlands to 10 years for large-scale residential and commercial projects. In some cases, prior law allowed commissions to extend the timeframes for up to 10 years from a project's approval date.

The act's timeframes apply to all projects except large-scale residential and commercial projects approved based on a site plan, which is a tool used to determine if a proposed project conforms to the zoning regulations. The new timeframes range from six to 11 years after a project's approval date. In some cases, the act allows zoning and planning commissions to extend a six-year timeframe to 11 years after the project's approval. Its extensions do not apply for large-scale housing and business development projects approved based on site plan. The act also allows wetlands agencies to extend a permit's expiration date for up to 11 years.

EFFECTIVE DATE: Upon passage

PROJECT COMPLETION DEADLINES

The act extends the initial and extended expiration deadlines that apply to subdivisions, wetlands permits, and relatively small-scale site plans that were approved between July 1, 2006 and July 1, 2009, inclusive. Table 1 highlights this change.

Table 1: Deadlines and Extensions under Prior Law and the Act for Projects Approved between July 1, 2006 and July 1, 2009

<i>Deadlines</i>		
<i>Land Use Approval</i>	<i>Prior Law</i>	<i>Act</i>
Residential site plans for projects with 400 or more units	Within 10 years after approval (CGS § 8-3(j))	No change
Business site plans for projects with at least 400,000 square feet	Between five and 10 years after approval (CGS § 8-3(j))	No change
Other site plans	Within five years of approval (CGS § 8-3(i))	Not less than six years after approval
Subdivisions plans for 400 or more dwelling units	Within 10 years of approval (CGS § 8-26g)	11 years after approval
Other subdivisions	Within five years of approval (CGS § 8-26c(a))	Within six years of approval
Wetlands permits for site plans and subdivisions	Permit expires five years after approval (CGS § 22a-42a(d)(2))	Permits expire within six years of approval
Other wetlands	Permit expires between two and five years after approval permits (CGS § 22a-42a(d)(2))	
<i>Extensions</i>		
<i>Land Use Approval</i>	<i>Prior Law</i>	<i>Act</i>
Residential site plans for projects with 400 or more units	No extensions (CGS § 8-3(j))	No change
Business site plans for projects with at least 400,000 square feet	Up to 10 years from approval if the initial deadline was less than 10 years (CGS § 8-3(j))	No change
Other site plans	Up to 10 years from approval (CGS § 8-3(i))	Up to 11 years from approval
Subdivision plans for 400 or more dwelling units	No extensions (CGS § 8-6g)	No change
Other subdivisions	Up to 10 years from approval (CGS § 8-26c(b))	Up to 11 years from approval
Wetlands permits for site plans and subdivisions	Permit expiration date may be extended up to 10 years from approval (CGS § 22a-42a(d)(2))	Permit expiration date may be extended up to 11 years from approval
Other wetlands permits		

PA 09-190—sHB 5861

Planning and Development Committee

Environment Committee

Appropriations Committee

AN ACT CONCERNING THE PROCESSING OF MUNICIPAL APPLICATIONS FOR STATE PERMITS

SUMMARY: This act requires the environmental protection, public health, and transportation commissioners and the State Traffic Commission, within 60 days after receiving a formal petition, application, or request for a permit from a municipality, to conduct a preliminary review solely to determine if it is acceptable for filing. The official must conduct the review within available appropriations and notify the municipality of the results of the review. The act does not preclude the officials from requesting additional information after sending this notice. It takes priority over laws requiring other procedures.

EFFECTIVE DATE: October 1, 2009

PA 09-196—sHB 6041

Planning and Development Committee

Appropriations Committee

AN ACT CONCERNING MUNICIPAL ASSESSMENTS AND ASSESSMENT APPEALS

SUMMARY: This act changes several laws governing the way towns assess property taxes and hear assessment appeals. It makes it easier for tax assessors to appraise large, income-producing property based on comparable sales and allows them to request net income and expense data annually, not just after a property is built or improved or during a townwide revaluation.

The act raises the ceiling above which boards of assessment appeals may refuse to hear appeals regarding specific types of property. It also allows property owners denied a hearing to appeal directly to the Superior Court.

In deciding any appeal, the board may increase or decrease a property's assessment. The act freezes the board's changes until the town's next scheduled revaluation, unless the assessor must change the assessment for specified reasons. If an assessor changes the assessment for other reasons, he or she must state the reasons in writing to the board and attach them to the property's card record.

The act similarly requires the assessor to record the reasons for changing a valuation that was initially made by an appraisal company hired to conduct a townwide revaluation. The assessor must record the reasons in the property's record card.

The act changes the effective date of PA 09-60, which allows municipalities to delay their next revaluation or the next step in the phase-in of an existing revaluation. That act took effect July 1, 2009 and applied to assessment years beginning October 1, 2008. This act makes the effective date upon passage and applies its changes to assessment years beginning on or after October 1, 2008.

Lastly, the act eliminates the 13-member working group established in 2006 to recommend improvements to the revaluation process.

EFFECTIVE DATE: Upon passage, except that the changes concerning assessment appeals and the valuation of income-producing property take effect October 1, 2009, the latter applying to assessment years beginning on or after it.

VALUING INCOME PRODUCING PROPERTIES

§ 2 — *Valuation Method*

Assessors generally determine the fair market value of large apartments (i.e., seven or more units), leased facilities, and other income-producing property based on recent sales of comparable property in the town. But this may not be possible if there are few or no comparable properties in the town or few or no comparable sales. In these cases, assessors must determine value based on a property's capacity to generate rental income. Prior law required them to do so based on as many of the following methods as were applicable:

1. replacement cost less depreciation, plus the market value of the land;
2. gross income multiplier method used for similar property; and
3. capitalization of income based on market rent for similar property.

The act changes the mix of methods assessors must use to determine the value of income producing property. It requires them to use the comparable sales method in all cases without prohibiting them from using recent sales data for comparable property in other towns.

The act also eliminates the gross income multiplier method as a valuation option, but it is already part of the capitalization of income method (see **BACKGROUND**). It requires assessors to use comparable sales and the other two methods any time they revalue property, not just during a townwide revaluation.

§ 3 — *Disclosing Rental Income and Expense Data*

The act changes the rules for providing annual net income and operating expense data. By law, assessors may require a property owner to submit this data when determining the value of his or her property, which

assessors usually do after a property is built or improved or during a periodic townwide revaluation. In such cases, the property owner must submit the income and expense data by June 1 annually on a form the assessors must provide. Assessors record the value they derive from the data on the municipality's grand list for the subsequent October 1.

The act explicitly allows assessors to request the income and expense data annually, not just after a property is built or improved or during a townwide revaluation. But it also requires them to provide the data forms no later than 45 days before the June 1 submission deadline. The act allows assessors to extend that deadline for up to 30 days for good cause, but only if the property owner requests an extension by May 1. It requires assessors or their designees to audit the data the property owner submits.

The law imposes a penalty on the owner for failing to submit income and operating expense data or submitting incomplete or false data with the intent to defraud. The penalty is a 10% increase in the property's assessment for that assessment year. The act allows assessors to waive this penalty if the taxpayer who was required to submit the data no longer owns the property on the subsequent October 1. Assessors or appeals boards may do this if the municipality adopted an implementing ordinance.

RECORDING THE REASONS FOR CHANGING A VALUATION

§ 4 — *After a Revaluation*

By law, assessors are responsible for determining property values even when they hire an appraisal company to do so on their behalf. In these cases, they may change the company's valuation. If an assessor does so, the act requires him or her to document the reasons for changing the valuation and append them to the property's card (i.e., the document on which the assessor records the property's address, physical characteristics, value, and other relevant data). The record also includes the criteria, guidelines, and similar material used to determine value and a list of property sales by neighborhood.

By law, the record, including the assessors' reasons for changing a valuation, must be available for public inspection no later than the date the assessors mailed the notices informing owners about the new valuations. The comparable sales data used to determine those valuations must remain available for public inspection for at least 12 months after the revaluation's effective date.

§ 1 — *On Appeal*

The law allows boards of assessment appeals to change the assessor's valuation of a property, but only if the owner appeals the property's gross assessment (i.e., 70% of the property's fair market value without reductions for tax exemptions). If two or more people own the property, each person may appeal his or her portion of the assessment.

If the board increases or decreases the property's gross assessment, the act freezes that new value until the next time the municipality revalues property. (Municipalities revalue at least once every five.)

The act allows the assessor to change the board's assessment to comply with a court order, correct an error, or reflect a change in the property's physical characteristics (e.g., addition of a new room, demolition of an existing room, or damage caused by a storm). The assessor may change the assessment for other reasons before the next revaluation, but the act requires him or her to explain to the board in writing the reasons for doing so and append them to the property's record card.

§ 1 — ASSESSMENT APPEALS

The act raises the ceiling above which the board of assessment appeals may refuse to hear appeals regarding specific types of property. Under prior law, the board could do so for commercial, industrial, utility, or apartment property assessed at over \$500,000. The act raises the ceiling to \$1 million. By law, all property owners may appeal their annual October 1 assessment. Those that wish to do so must file their appeals in February, and the board must hold hearings in March.

If the board refuses to hear a property owner's appeal, the act allows the owner to appeal directly to the Superior Court.

BACKGROUND

Methods for Assessing Income-Producing Property

Gross Income Multiplier Method. This method determines value based on the subject property's monthly rental income and the sale price of a comparable property. It requires an assessor to divide the sale price of a comparable property by its monthly net income. He or she must then determine the value of the subject property by multiplying the result by its monthly income.

For example, assume the subject property generates \$2,500 per month in net income. An assessor can determine its value based on the sale price and monthly net income of a comparable property. Assume that the comparable property sold for \$200,000 and generated \$2,000 in monthly net income. The assessor divides the sales price by the monthly income to calculate the gross

income multiplier (i.e., $\$200,000/\$2,000=100$.) He or she then determines the subject property's value by multiplying the gross income multiplier (100) by the subject property's monthly income (\$2,500) to determine the property's value (i.e., $\$100 \times \$2,500=\$250,000$).

Income Capitalization Method. The income capitalization method looks at similar factors to determine value. It focuses on the ratio between the net income a property expects to produce and its original sale price or current market value. Using the above example, the assessor would calculate the value of the subject property by determining the capitalization rate of the comparable property (i.e., $\$2,000/\$200,000=.01$). The assessor then determines the subject property's value by dividing the comparable property's capitalization rate by its monthly net income (i.e., $\$2,500/.01=\$250,000$).

Revaluation Working Group

This 13-member group consisted of assessors, business representatives, and public officials responsible for recommending improvements to the revaluation process. It had to submit its findings and recommendations to the Finance, Revenue and Bonding Committee by January 1, 2007, and by law, terminated on that date or the date it submitted the report. The group submitted that report in January 2009.

PA 09-202—sSB 1033 (VETOED)

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

AN ACT ESTABLISHING A TAX CREDIT FOR GREEN BUILDINGS

SUMMARY: This act establishes a tax credit for taxpayers who build buildings that meet certain energy and environmental standards ("green buildings"). The credits can be taken against the corporation business, insurance company, air carriers, railroad company, utility company, and income taxes. The act limits the credit for all projects to \$25 million dollars.

The act specifies the projects and their costs that are eligible for the credit. It entitles eligible projects to a base credit that increases with the project's rating. It allows additional credits for mixed-use projects and those located in certain areas. Taxpayers can claim only 25% of the credit in any tax year and may carry remainder forward for up to five years. The credits are transferrable and assignable.

The act requires the Office of Policy and Management (OPM) secretary, in consultation with the revenue services commissioner, to adopt credit regulations, by January 1, 2011. It requires the secretary to establish a uniform application fee of up to \$10,000 to cover all direct costs of administering the tax credit program. It allows the secretary to hire a private consultant or outside firm to administer and review applications for the program.

The act requires the secretary, in consultation with the commissioner, to report to the governor and Planning and Development and Finance, Revenue and Bonding committees by July 1, 2013 on (1) the number of taxpayers applying for the credits, (2) the amount of credits granted, (3) the geographical distribution of the granted credits, and (4) any other information deemed appropriate. A preliminary draft report must be submitted to the governor and the committees by July 1, 2012.

EFFECTIVE DATE: July 1, 2009, with the credits applying to income years starting on or after January 1, 2012.

ELIGIBLE PROJECTS AND ALLOWABLE COSTS

Under the act, an eligible project is a real estate development located in the state that is designed to meet or exceed the applicable Leadership in Energy and Environmental Design (LEED) Green Building Rating System gold certification or equivalent standard as determined by the environmental protection commissioner. To be eligible, the project must have energy use of no more than (1) 70% of the energy use permitted by the State Building Code for new construction or (2) 80% of the energy use permitted by the state energy code for building renovation or rehabilitation. In addition, the project must use equipment and appliances that meet Energy Star standards, if applicable, for such things as refrigerators, dishwashers, and washing machines. If a development consists of more than one building, only the buildings that meet these standards are eligible for the credit. The credits apply to newly constructed buildings that receive a certificate of occupancy on or after January 1, 2010.

To count towards the credit, a development cost must be chargeable to the project's capital account. These allowable costs include, among others:

1. construction or rehabilitation costs;
2. commissioning costs;
3. architectural and engineering fees that can be allocated to construction or rehabilitation, including energy modeling;
4. site costs, such as temporary electric wiring, scaffolding, demolition costs, and fencing and security facilities; and

5. costs of carpeting, partitions, walls and wall coverings, ceilings, lighting, plumbing, electrical wiring, mechanical, heating, cooling, and ventilation.

The purchase of land, any remediation costs, and the cost of telephone systems or computers are not allowable costs. The act caps allowable costs at \$250 per square foot for new construction and \$150 (presumably per square foot) for building renovation or rehabilitation.

BASE AND SUPPLEMENTAL CREDITS

The LEED rating system has four levels; certified, silver, gold, and platinum, with a building's rating depending on its number of "green" features.

Under the act, the base credit for new construction or major renovation of a building (but not other site improvements) that receives a gold rating under LEED is 8% of allowable costs; for buildings that receive a platinum rating, the credit is 10.5%. For core and shell or commercial interior projects, the credit is 5% of allowable costs for a gold rating and 7% of allowable costs for a platinum rating. In all cases, the credit is the same for the equivalent rating under an alternative rating system, as determined by the environmental protection commissioner.

In addition, a project receives a credit of 0.5% of its allowable costs if it:

1. is a mixed use development, i.e., one consisting of one or more buildings that includes residential use and in which up to 75% of the interior square footage has at least one of the following uses: (a) commercial use; (b) office use; (c) retail use; or (d) any other nonresidential use that the OPM secretary determines does not pose a public health threat or nuisance to nearby residential areas;
2. is located in an enterprise zone or brownfield, as defined by statute;
3. does not require a sewer line extension of more than one-eighth mile; or
4. is located within one-quarter mile of a public bus service or within one-half mile of adequate rail, light rail, streetcar, or ferry service. (In the case of multi-building projects, at least one of the buildings must meet this criterion.)

ISSUING AND CLAIMING

Credit Vouchers

The OPM secretary must issue an initial credit voucher if he determines that the applicant is likely, within a reasonable time, to place in service property that would be eligible for a credit. The vouchers must

state (1) the first taxable year for which the credit may be claimed; (2) the maximum amount of credit allowable; and (3) an expiration date by which such property must be placed in service, which the secretary may extend at his discretion. The vouchers must reserve the credit allowable for the applicant named in the application until the expiration date. The secretary may extend the reservation at his discretion. The secretary may not issue initial credit vouchers for more than \$25 million in the aggregate.

Eligibility Certificate

The taxpayer must obtain an eligibility certificate for each taxable year for which he or she claims a credit. The taxpayer must obtain this certificate from an architect or professional engineer who is licensed in Connecticut and accredited through the LEED Accredited Professional Program or program the environmental protection commissioner determines to be equivalent. The document must certify, under the architect's or engineer's seal, that the building, base building, or tenant space for which the credit is claimed meets or exceeds the applicable LEED gold certification (or other certification the commissioner considers equivalent) that was in effect when the building was certified. The certification must include the specific findings upon which it is based and state that the architect or engineer is accredited through the accredited professional program.

Claiming Credits

To claim the credit, the applicant must file with the revenue services commissioner (1) the initial credit voucher, (2) the eligibility certificate, and (3) an application to claim the credit. The applicant must send a copy of the documents to the OPM secretary. Taxpayers can only claim 25% of the credit in any tax year and may carry forward the remainder for up to five years.

TRANSFERRING OF CREDITS

Under the act, credits may be assigned or otherwise transferred. A project owner may transfer a credit to a pass-through partner in return for a lump sum payment. (This approach can be used if the project owner is a nonprofit, among other situations.)

Any subsequent successor in interest to the property that is eligible for a credit may claim it if the deed transferring the property assigns the successor this right, unless the deed specifies that the seller retains the right to claim the credit. Any subsequent tenant of a building for which a credit was granted may claim it for whatever the period after the termination of the previous

tenancy that the credit would have been allowable to the previous tenant.

BACKGROUND

LEED Rating System

The U.S. Green Building Council has established rating systems for a variety of developments. There are separate rating systems for new, and major renovations of, commercial, institutional, and government buildings; commercial building interiors; the core and shell of commercial buildings, which covers such elements as the building envelope and heating, ventilation, and air conditioning systems; retail establishments; and health care facilities. LEED addresses a building's performance in five areas: sustainable site development, water savings, energy efficiency, material selection, and indoor environmental quality. Participating buildings can be rated as certified, silver, gold, or platinum.

PA 09-221—sHB 6584

Planning and Development Committee

Commerce Committee

Environment Committee

AN ACT ESTABLISHING CONNECTICUT HERITAGE AREAS

SUMMARY: This act authorizes state entities to take certain actions in "Connecticut Heritage Areas." It defines these areas as places the legislature identified as having significant historic, recreational, cultural, natural, and scenic resources forming an important part of the state's heritage.

The act requires state agencies, departments, boards, and commissions to consider these areas when developing their planning documents and processes. It specifically requires the Office of Policy and Management to consider how to protect and conserve them when revising the five-year State Plan of Conservation and Development (Plan of C&D) after October 1, 2009. The act allows state entities to collaborate with those managing the areas on environmental protection, heritage resource preservation, recreation, tourism, trail development, and similar projects.

Lastly, the act recognizes the Quinebaug and Shetucket Rivers Valley National Heritage Corridor and the Upper Housatonic Valley National Heritage Area as Connecticut Heritage Areas.

EFFECTIVE DATE: Upon passage

BACKGROUND

Related Act

Among other things, PA 09-230 postpones, from March 1, 2009 to March 1, 2011, the deadline for revising the Plan of C&D.

PA 09-226—sSB 383

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

AN ACT EXEMPTING REGIONAL PLANNING ORGANIZATIONS FROM PAYMENT OF LOCAL PROPERTY TAXES

SUMMARY: This act exempts real property owned by or held in trust for a regional planning organization (RPO) from the property tax, so long as (1) the property is used to advance the organization’s official duties and (2) the municipality where the property is located approves the exemption. By law, the three types of RPOs are regional councils of governments, regional councils of elected officials, and regional planning agencies.

EFFECTIVE DATE: October 1, 2009, and applicable to assessment years commencing on or after October 1, 2009.

PA 09-230—sHB 6467

*Planning and Development Committee
Appropriations Committee*

AN ACT CONCERNING SMART GROWTH AND THE STATE PLAN OF CONSERVATION AND DEVELOPMENT POLICIES PLAN

SUMMARY: The law requires the state, regions, and municipalities to prepare periodic plans for balancing the need to conserve and develop land. This act postpones, from March 1, 2009 to March 1, 2011, the deadline for revising the five-year State Plan of Conservation and Development (State Plan of C&D), which the Office of Policy and Management (OPM) prepares. In doing so, it resets the schedule for revising the plan and pushes back the deadline for recommending priority-funding areas. The act also requires the plan’s next two revisions to be consistent with the state’s plan for reducing greenhouse gas emissions.

Municipalities must prepare 10-year plans of conservation and development. Prior law disqualified those that failed to update their plans from discretionary

state funds until they did so or the OPM secretary waived this provision. The act suspends the provision until the next time the state adopts its revised Plan of C&D, which, under the act, must happen by July 1, 2012.

Lastly, the act requires the Continuing Legislative Committee on State Planning and Development to study how OPM: (1) prepares the State Plan of C&D and incorporates specified smart growth principles in it, (2) applies the plan and these principles to state agency actions, and (3) integrates the plan with municipal and regional plans of C&D. The committee must consult with specified groups and report its findings and recommendations to the legislature by February 1, 2010. **EFFECTIVE DATE:** Upon passage, except for the change concerning municipal plans of development, which takes effect July 1, 2010.

STATE PLAN OF C&D

New Timeframes for Revising

The State Plan of C&D sets policies for locating large-scale, state-funded capitol projects. By postponing the deadline for revising the plan, the act resets the time period for the next plan from 2010-2015 to 2012-2017. The plan’s policy guidelines aim to preserve farms, forests, and open space by locating large-scale, state funded development projects in places where roads, sewers, and other supporting infrastructure already exist.

By pushing back the deadline for completing the next revision, the act also pushes back OPM’s deadline for recommending priority funding areas (places where the state can fund growth-related projects). PA 05-205 required OPM to submit its recommendations to the Continuing Committee along with the revised plan for 2010-2015. By law, the committee must submit its priority funding areas recommendations to the legislature, along with the revised plan, for approval.

The act also resets the statutory schedule for revising the plan. The table below compares the schedule under the prior law and the act.

<i>Action</i>	<i>Prior Law</i>	<i>Act</i>
Submit draft of revised plan to Continuing Committee	September 1, 2008	September 1, 2010
Make further revisions	Between December 1, 2008 and March 1, 2009	Between December 1, 2010 and March 1, 2011
Publish and disseminate plan	No later than March 1, 2009	March 1, 2011
Conduct hearings	Not later than five months after publication (July 31, 2009)	Not later than five months after publication (July 31,

<i>Action</i>	<i>Prior Law</i>	<i>Act</i>
		2011)
Submit final draft to Continuing Committee	No later than three months after the hearings (October 31, 2009)	By December 1, 2011 for the 2012-2017 plan (subsequent plans must be submitted no later than three months after the hearing)

Consistency with Climate Change Action Plan

By law, the State Plan of C&D must promote specific policy goals, including reducing carbon dioxide emissions in the state. The act specifies that this goal must be consistent with the Connecticut Climate Change Action Plan. It also eliminates the requirement that OPM, together with the Department of Environmental Protection, report every three years on the net amount of carbon dioxide annually emitted in Connecticut.

PLANNING STUDY

Consultation

In studying how the state prepares and applies the State Plan of C&D, the act requires the 10-member Continuing Committee to consult with municipalities, regional planning organizations, state agencies, the public, and other stakeholders.

Smart Growth Principles

The act requires the Continuing Committee to determine how OPM incorporates smart growth principles in the plan and how state agencies apply them. It bases the principles on its definition of “smart growth,” that is economic, social, and environmental development that:

1. simultaneously promotes economic competitiveness and preserves natural resources and
2. allows state, regional, and municipal officials and the communities and constituents they serve to collaboratively plan, make decisions, and evaluate policies.

The development must use financial or other incentives to promote competitiveness and preserve resources.

The principles must be in the form of standards and objectives that can help policy makers act and decide in ways that support and encourage smart growth. The standards and criteria may include:

1. integrating planning to coordinate state, regional, and local tax, transportation, housing, environmental, and economic development

2. reducing the extent to which municipalities depend on the property tax and compete for new growth by delivering services regionally;
3. redeveloping existing infrastructure and resources, including brownfields and historic places;
4. providing rail, public transit, bikeways, walking, and other transportation alternatives to automobile travel while reducing energy consumption;
5. developing or preserving housing affordable to households with different incomes (a) near transportation and employment centers or (b) where such housing is compatible with smart growth;
6. concentrating mixed use, mixed income development near transit nodes and civic, employment, or cultural centers; and
7. conserving and protecting natural resources by preserving open space, water resources, farmland, environmentally sensitive areas, and historic property and furthering energy efficiency.

BACKGROUND

Connecticut Climate Change Action Plan

The Governor’s Steering Committee on Climate Change prepared this plan and made specific recommendations for reducing greenhouse gas emissions. The plan recommends (1) supporting landfill-to-gas energy projects to capture and use methane as a fuel and (2) increasing recycling and source reduction. It set a goal of reducing non-farm fertilizer use by 7.5% in 2010 and 15% in 2020. The plan also recommends:

1. setting minimum efficiency levels for appliances;
2. encouraging consumers to replace old appliances with newer, more efficient ones; and
3. identifying measures to reduce gases with high global warming potential.

Continuing Legislative Committee on State Planning and Development

By law, this 10-member committee must set broad goals and objectives for the state’s physical and economic development and send them to the OPM secretary. It also must review and approve the State Plan of C&D each time the secretary changes or revises it (CGS § 4-60d).

The committee is chaired by the Senate and House chairpersons of the Planning and Development Committee. The other members are appointed by the legislative leaders. The Senate president pro tempore and the House speaker appoint two members each; the Senate and House majority and minority leaders each appoint one member.

PA 09-231—sHB 6585

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

AN ACT CONCERNING REGIONALISM

SUMMARY: This act allows the chief elected officials of two or more municipalities that belong to the same federal economic development district to enter into mutual agreements to (1) promote regional economic development and (2) share the real and personal property tax revenue from new economic development. The agreement must (1) provide that the municipalities not compete for new economic development and (2) specify the types of projects subject to the agreement. The municipalities must send a copy of the agreement to the Office of Policy and Management (OPM) secretary who must determine, within 30 days, whether it is consistent with the act’s requirements. The secretary must send a copy of this determination to the Revenue Services Department (DRS) commissioner and to each municipality.

The act requires regional councils of elected officials to identify opportunities and obstacles to interlocal agreements that promote regional cooperation and promote agreements permitted under the act.

EFFECTIVE DATE: October 1, 2009.

MUNICIPAL AGREEMENTS

Under the act, municipalities must negotiate an agreement that provides for:

1. identification of areas for (a) new economic development, (b) open space and natural resource preservation, and (c) transit oriented development, including housing;
2. capital improvements, including the shared use of buildings and other capital assets;
3. regional energy consumption, including strategies for cooperative energy use and development of distributive (on-site) generation and sustainable energy projects; and
4. promotion and sharing of arts and cultural assets.

The agreement must also include terms providing for at least three municipal and three educational cooperative programs. These can cover such areas as:

1. collective bargaining,
2. purchasing cooperatives,
3. health care pooling with each other or the state,
4. regional shared school curriculum and special education services through regional education service centers, and
5. any other mutually agreed upon initiatives.

Each party to the agreement must participate in at least one municipal cooperative and one educational cooperative program. The act explicitly states that the parties do not have to participate in all of these cooperative programs. The agreement must contain all provisions on which the municipalities agree.

The mill rate used to determine the amount of taxes imposed on the new economic development must be the mill rate of the municipality where the development is located. This municipality must maintain a separate list describing these properties.

The agreement must establish procedures for its amendment and termination and withdrawal of members. It must provide an opportunity for public participation. The legislative body of each participating municipality must adopt a resolution approving the agreement. The legislative body is the council, commission, board, town meeting, or other body that has or exercises general legislative powers and functions in a municipality. A municipality is a town, city, or borough; consolidated town; and city or consolidated town and borough.

The participating municipalities must send a copy of the agreement to the OPM secretary. Within 30 days after receiving it, the secretary must make a written determination as to whether it is consistent with the act’s requirements. The secretary must send a copy of this determination to each participating municipality and the DRS commissioner.

BACKGROUND

Federal Regional Economic Development Districts

Federal law allows entities to designate districts, establish organizations to plan and implement strategies to develop them, and qualify for economic development funds. It specifies the criteria the U.S. Department of Commerce (DOC) must use to approve a proposed district. DOC may approve a district if it:

1. contains at least one economically distressed area,
2. encompasses a sufficiently large area and have enough people and resources to foster economic development of more than one economically distressed area, and
3. has a DOC-approved comprehensive economic development strategy approved by a majority of the counties in the proposed district and the

state or states within which the district is located.

An area is economically distressed if (1) its per capita income is 80% or less of the national average, (2) its unemployment rate for the most recent 24-month period exceeded the nation's by at least 1%, or (3) the DOC secretary finds that it faces or will face special needs arising from severe unemployment or short- or long-term economic changes (13 CFR § 302.1).

PA 09-236—sSB 379

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

AN ACT ESTABLISHING A LAND VALUE TAXATION PILOT PROGRAM

SUMMARY: This act establishes a pilot program under which a municipality may prepare a plan to tax land at a higher rate than buildings (i.e., “land value tax”). A municipality qualifies for the pilot if it meets the act’s criteria and applies to the Office of Policy and Management (OPM) secretary for approval. It must prepare the plan according to the act’s criteria and submit it to the legislature by December 31, 2009. Neither the act nor the law authorizes the municipality to implement the land value tax.

EFFECTIVE DATE: Upon passage

LAND VALUE TAX

By law, municipalities must tax land and any improvements made to the land (e.g., buildings) at the same rate. The act allows a municipality to prepare a plan for taxing land at a higher rate than buildings. The plan must divide taxable property into two classes: (1) land or land exclusive of buildings and (2) buildings on the land. It must set a different tax rate for each class, with a higher rate on land or land exclusive of buildings.

The act specifically requires the plan to apply the land value tax only to taxable property. (By law, municipalities may only tax property the statutes do not exempt from property taxes.)

It also prohibits the plan from applying the differential tax rate to state-owned property and private hospitals and colleges. The law exempts this property from property taxes but requires the state to reimburse municipalities for a portion of the revenue loss, which a municipality calculates based on the property’s value and the municipality’s tax rate.

ELIGIBILITY CRITERIA

The act allows OPM to choose only one municipality for the pilot. A municipality qualifies for the pilot if it is a state-designated distressed municipality with up to 26,000 people and has a city manager and city council form of government. (New London is the only municipality that meets these criteria.)

APPLICATION PROCESS

A municipality must apply to the OPM secretary for approval to prepare the plan for implementing the land value tax. The secretary must specify the application procedure and any other criteria besides those the act establishes. He may select an eligible municipality if its legislative body approved the application. If the application is in order, he must send the municipality’s chief executive officer a notice of selection.

PLAN REQUIREMENTS

The municipality may begin preparing the plan after the secretary approves its application. Its chief executive officer must appoint a committee consisting of relevant taxpayers and stakeholders to prepare the plan. In preparing the plan, the committee plan must:

1. specify the process for implementing the separate tax rates on land and buildings,
2. designate the geographic areas where the municipality will impose these rates, and
3. identify the legal and administrative issues affecting the plan’s implementation.

The committee must submit the completed plan to the municipality’s chief executive officer, tax assessor and tax collector for review and comment. It must also submit the plan to the municipality’s legislative body for approval. The municipality must then submit the plan to the Planning and Development and Finance, Revenue and Bonding committees on or before December 31, 2009.

PA 09-149—sHB 6320

*Program Review and Investigations Committee
Public Health Committee*

**AN ACT IMPLEMENTING THE
RECOMMENDATIONS OF THE LEGISLATIVE
PROGRAM REVIEW AND INVESTIGATIONS
COMMITTEE CONCERNING SUBSTANCE
ABUSE TREATMENT FOR ADULTS**

SUMMARY: This act (1) establishes specific topics, including benchmarks for state-operated programs, the Department of Mental Health and Addiction Services' (DMHAS) state substance abuse plan must address; (2) requires DMHAS to consult with various groups in developing the plan; and (3) requires DMHAS to report on progress in achieving those benchmarks.

It also requires the Public Health Department (DPH), by January 1, 2011, to implement dual licensure for behavioral health care providers that provide both mental health and substance abuse services. It must do this by amending its substance abuse treatment regulations in consultation with DMHAS. DPH licenses several types of institutions (e.g., freestanding mental health and substance abuse treatment facilities and psychiatric hospitals) and individual professionals (e.g., psychologists and clinical social workers) that might provide both of these services.

EFFECTIVE DATE: July 1, 2009, for the plan changes; October 1, 2009, for reports on plan outcomes; and upon passage, for the DPH regulatory requirement.

STATE SUBSTANCE ABUSE PLAN

Plan Development

The law requires DMHAS to develop a state plan for preventing, treating, and reducing alcohol and drug abuse. Prior law required DMHAS to update the plan's statewide, long-term planning goals and objectives every year. The act requires it to develop the plan by July 1, 2010 and then update it every three years.

In developing this plan, DMHAS must solicit and consider recommendations from subregional substance abuse planning and action councils. The act requires DMHAS also to consult with:

1. the Connecticut Alcohol and Drug Policy Council (CADPC);
2. the Criminal Justice Policy Advisory Commission;
3. DMHAS clients and their families, including those in the criminal justice system;
4. treatment providers; and
5. other parties with interests in substance abuse disorders.

DMHAS must submit the final draft of the plan to CADPC for its review and comment.

Plan Contents

The act requires the plan to contain mission and vision statements and goals for providing treatment and recovery support services to adults with substance abuse disorders. It requires the plan to outline the action steps, timeframes, and resources needed to meet specific goals. At a minimum, the plan must address:

1. access to service, both before and after admission to treatment;
2. comprehensive assessments for anyone asking for treatment, including people with both substance abuse and mental health problems (i.e., co-occurring disorders);
3. treatment service quality and promotion of research- and evidence-based best practices;
4. an appropriate array of treatment and recovery services and a sustained continuum of care;
5. outcome measures for specific services in the overall system of care;
6. DMHAS policies and guidelines concerning recovery-oriented care; and
7. the community reentry strategy the Office of Policy and Management's (OPM) Criminal Justice Policy and Planning Division developed for the substance abuse treatment and recovery services inmates need.

The act requires the plan to define measures and set benchmarks for the overall treatment system and each state-operated program. These must include:

1. the time required to receive services either from state agencies or the private providers they fund;
2. the percentage of clients who should receive treatment for 90 days or more;
3. treatment rates for people who ask for treatment;
4. rates at which people are connected to the appropriate level of care; and
5. treatment completion and success rates as measured by outcomes related to substance use, employment, housing, and involvement with the criminal justice system.

Reporting Plan Results

The law requires DMHAS to report to the legislature, OPM, and CADPC every two years on various aspects of the substance abuse treatment system.

This report must include the effectiveness of services based on outcome measures. The act requires the report also to include the progress made in achieving the statewide plan's goals and benchmarks.

PA 09-166—HB 6476

*Program Review and Investigations Committee
Government Administration and Elections Committee
Human Services Committee*

AN ACT CONCERNING A PROGRAM REVIEW AND INVESTIGATIONS COMMITTEE PILOT PROGRAM UTILIZING RESULTS-BASED ACCOUNTABILITY

SUMMARY: This act requires the Program Review and Investigations (PRI) Committee to assess selected human services programs using results-based accountability (RBA) methods. The entities operating these programs must cooperate with the committee and provide the information it needs to assess the programs. The committee must report to the Appropriations Committee about the program by January 15, 2010.

The act delays, for two years, PRI's review of agencies and programs the sunset law terminates on specified dates. The termination happens after the review unless the legislature reestablishes the programs. EFFECTIVE DATE: Upon passage

RESULTS-BASED ACCOUNTABILITY PILOT

The act requires PRI to assess human services programs on a pilot basis using RBA methods. In selecting the programs, PRI must consult with the Human Services Committee and the Appropriations subcommittee for Human Services.

In implementing the pilot, PRI must apply the act's definition of RBA. RBA is a way to plan and budget funds for a program and measure its performance. It does these things by focusing on the extent to which the programs help produce the quality of life the state desires for its citizens. It identifies the performance measures and indicators showing the progress the state is making toward achieving that goal. It also identifies other programs and partners contributing to that end.

The entities running the programs must cooperate with PRI in its assessment. They must provide any books, records, and documents the committee needs to assess the programs' effectiveness.

PRI must report to the Appropriations Committee about the pilot program by January 15, 2010. The report must recommend whether to modify or terminate the programs and evaluate the effectiveness of the RBA pilot. In evaluating the pilot, PRI must recommend if it should be continued, expanded, or modified.

SUNSET REVIEW

The sunset law automatically terminates 78 licensing, regulatory, and other state agencies and programs on set dates unless the legislature reestablishes them. But PRI must first review the public need for each entity according to specified criteria and recommend to the legislature whether the entity should be abolished, reestablished, modified, or consolidated. The act delays for two years the entities' termination date as follows:

<i>Prior Termination Date</i>	<i>Termination Date Under the Act</i>
July 1, 2010	July 1, 2012
July 1, 2011	July 1, 2013
July 1, 2012	July 1, 2014
July 1, 2013	July 1, 2015
July 1, 2014	July 1, 2016

BACKGROUND

Related Act

Public Act 09-234 removes the Department of Economic and Community Development (DECD) from the sunset law. Under prior law, DECD was scheduled to terminate on July 1, 2013 unless the legislature reestablished it.

PA 09-11—sHB 6537
Public Health Committee

AN ACT CONCERNING THE LEGISLATIVE COMMISSIONERS' RECOMMENDATIONS FOR TECHNICAL REVISIONS TO THE PUBLIC HEALTH STATUTES

SUMMARY: This act makes technical changes to public health-related statutes.
EFFECTIVE DATE: October 1, 2009

PA 09-16—HB 6599
Public Health Committee
Judiciary Committee

AN ACT CONCERNING PATIENT SAFETY

SUMMARY: This act permits only licensed or certified ambulance and rescue services to transport patients on stretchers in motor vehicles. The Public Health Department licenses commercial ambulance and rescue services and issues certificates to volunteer and municipal ambulance services. By law, anyone who willfully violates an emergency medical services law can be fined up to \$250, imprisoned for up to three months, or both.

The act requires any ambulance used to transport patients between hospitals to meet state regulatory requirements for basic ambulance service, including those concerning medically necessary supplies and services. These regulations require, among other things, one medical response technician and one emergency medical technician in the ambulance, the latter of whom must attend the patient at all times.

The act permits a licensed registered nurse, advanced practice registered nurse, physician assistant, or respiratory care practitioner to supplement the ambulance transport if he or she has current training and certification (1) in pediatric or adult advance life support or (2) from the American Academy of Pediatrics' neonatal resuscitation program, as appropriate and based on the patient's condition.

EFFECTIVE DATE: Upon passage for interhospital transport; October 1, 2009 for stretcher transport.

PA 09-20—HB 6263
Public Health Committee

AN ACT REQUIRING THE ADMINISTRATION OF A SCREENING TEST FOR CYSTIC FIBROSIS TO NEWBORN INFANTS

SUMMARY: This act requires all health care

institutions caring for newborn infants to test them for cystic fibrosis, unless, as allowed by law, their parents object on religious grounds. It requires the testing to be done as soon as is medically appropriate.

Under the act, the cystic fibrosis test is in addition to, but separate from, the Public Health Department's newborn screening program for genetic diseases and metabolic disorders. That program, in addition to the initial screening test, directs parents of identified infants to appropriate counseling and treatment.

EFFECTIVE DATE: October 1, 2009

BACKGROUND

Cystic Fibrosis

Cystic fibrosis is an inherited disorder that occurs in one in every 3,500 live births. It causes the body to produce abnormally thick secretions that clog the lungs, causing infections; obstruct the pancreas, preventing enzymes from breaking down food in the intestines; and block the bile duct, leading to liver damage. Treatment can include digestive enzyme replacement, antibiotics, and careful monitoring.

Most Connecticut birthing hospitals offer newborn cystic fibrosis screening on a voluntary basis. John Dempsey and Yale-New Haven hospitals conduct the actual testing.

PA 09-21—sHB 6266
Public Health Committee

AN ACT CONCERNING THE PRACTICE OF ACUPUNCTURE

SUMMARY: This act provides title protection to licensed acupuncturists and to individuals certified to practice auricular acupuncture for alcohol and drug abuse treatment.

The act prohibits unlicensed individuals from using the title of "acupuncturist" or advertising acupuncture services. Also, such individuals may not use any letters, words, or insignia in connection with their names that indicates or implies that they are licensed acupuncturists.

The act also prohibits a person from representing himself or herself as certified to practice auricular acupuncture for treatment of alcohol and drug abuse unless certified to do so. A person may not use the term "acupuncture detoxification specialist," or the letters A.D.S. or any letters, words, or insignia indicating or implying that he or she is certified to practice auricular acupuncture for alcohol and drug abuse treatment unless certified under the law.

The act specifies that it should not be construed as preventing someone from providing care, or performing or advertising services within the scope of his or her license or as otherwise authorized by law.

EFFECTIVE DATE: October 1, 2009

BACKGROUND

Auricular Acupuncture

Auricular acupuncture is treatment by inserting needles at a specified combination of points on the surface of the outer ear to aid in the detoxification and rehabilitation of substance abusers.

In order to practice auricular acupuncture in the state, the law requires individuals to be certified by an organization approved by the Department of Public Health (DPH). The treatment must be done under the supervision of a licensed physician and in either (1) a private freestanding facility for the care or treatment of substance abusive or dependent persons, licensed by DPH, or (2) a setting operated by the Department of Mental Health and Addiction Services.

PA 09-37—sHB 6598

Public Health Committee

Judiciary Committee

AN ACT CONCERNING THE RELEASE OF BIOLOGIC MATERIAL FOR GENETIC TESTING

SUMMARY: This act allows, in limited circumstances, the testing of biologic material of a deceased person for purposes of determining paternity or diagnosing a life-threatening illness in a living individual. “Biologic material” means blood or other tissues suitable for DNA analysis.

The act allows the Office of the Chief Medical Examiner to release biologic material of the deceased person to a licensed clinical laboratory for such testing after obtaining written consent from the deceased person’s next of kin. It defines “next of kin” as the deceased person’s spouse, parent, adult child, adult sibling, or grandparent.

The act allows an interested person to petition the Superior Court for the judicial district in which the death occurred for an order for release of biologic material in any case where the next of kin does not give written consent. After due consideration of the equities involved, the court can enter an order for release of the biologic material only to a licensed clinical laboratory. The laboratory may release the results of any analysis or testing to the petitioner, subject to applicable state and federal law. The petitioner must pay all reasonable

testing and analysis costs.

EFFECTIVE DATE: October 1, 2009

BACKGROUND

Clinical Laboratory

By law, a “clinical laboratory” is any facility or other area used for microbiological, serological, chemical, hematological, immunohematological, biophysical, cytological, pathological, or other examinations of human body fluids, secretions, excretions, or excised or exfoliated tissues, for the purpose of providing information for the diagnosis, prevention, or treatment of any human disease or impairment; the assessment of human health; or the presence of drugs, poisons, or other toxicological substances (CGS § 19a-30).

The Department of Public Health licenses clinical laboratories.

PA 09-58—sSB 781

Public Health Committee

AN ACT CONCERNING THERAPEUTIC CONTACT LENSES

SUMMARY: This act allows licensed (1) optometrists authorized to practice advanced optometric care to acquire, prescribe, dispense, and charge for contact lenses containing ocular agents-T and (2) prescribing physicians and surgeons to dispense and sell contact lenses that contain a drug. (It appears that “drug,” in this context, is not limited to ocular-agents-T.) “Physician,” under the act, does not include a homeopathic physician.

The act specifies that optometrists, physicians, and surgeons dispensing or selling contact lenses containing ocular agents-T or drugs do not have to meet requirements of existing law on packaging and labeling of drug containers.

EFFECTIVE DATE: October 1, 2009

BACKGROUND

Advanced Optometric Care

The law recognizes a category of optometric practice known as “advanced optometric care.” It allows optometrists to perform a broader range of activities, including nonsurgical treatment of glaucoma patients. They must meet additional educational and testing requirements and be able to use certain drugs for diagnostic and therapeutic purposes in order to practice advanced optometric care. There is no separate Department of Public Health license for advanced

optometric care.

As of January 1, 2005, the law requires an individual applying for initial licensure as an optometrist to meet the requirements to practice advanced optometric care.

Ocular Agents-T

“Ocular agents-T” are (1) topically administered ophthalmic agents and orally administered antibiotics, antihistamines, and antiviral agents used for treating or alleviating the effects of eye disease or abnormal conditions of the eye or eyelid, excluding the lacrimal drainage system and glands (tears) and structures behind the iris, but including the treatment of iritis, and (2) orally administered analgesic agents for alleviating pain caused by these diseases or conditions.

The study can also include the commissioner’s recommendations for addressing identified service gaps and lack of access to services. It must be submitted annually by June 30 to the Public Health and Human Services committees.

Under prior law, OHCA had to examine existing delivery systems and (1) recommend procedural improvements to health care facilities and institutions and legislation to the public health commissioner and (2) annually report to the legislature and governor findings and recommendations for improving efficiency, lowering costs, coordinating facility use and services, and expanding health care availability.

The act also eliminates requirements that OHCA (1) consult with the Public Health Department (DPH) in conducting the utilization study and (2) evaluate the study as part of developing its health care facilities plan.

PA 09-77—sHB 6264

Public Health Committee

AN ACT CONCERNING STATE-WIDE HEALTH CARE FACILITY PLANNING

SUMMARY: This act revises the way the Office of Health Care Access (OHCA) (1) conducts health care facility utilization studies and (2) develops a state health care facilities plan. It specifies the elements OHCA must examine in each document. It requires OHCA to study utilization annually and update the facilities plan every five years.

EFFECTIVE DATE: July 1, 2009

HEALTH CARE FACILITY UTILIZATION STUDY

The act requires OHCA to conduct its statewide health care facility utilization study annually, rather than on a “continuing” basis (the latest study contains FY 07 data). The act adds new factors OHCA must, at a minimum, assess and eliminates old ones. Under the act, OHCA must assess:

1. the current availability and use of care in acute care and specialty hospitals, emergency rooms, outpatient surgical centers, clinics, and primary care facilities (the act does not define clinic or primary care, which could include federally qualified health centers, school-based health centers, and private providers’ offices);
2. geographic areas and subpopulations that may be underserved or have limited access to specific types of services; and
3. other factors the OHCA commissioner deems pertinent.

STATE HEALTH CARE FACILITIES PLAN

The law requires OHCA to create and maintain a statewide health care facilities plan. OHCA must consider this plan and DPH’s state health plan in making certificate of need decisions. The act requires OHCA to update the existing plan (OHCA has never written a plan) by July 1, 2012 and every five years thereafter. It also requires OHCA to consult with any state agency the commissioner deems appropriate.

Under the act, the plan may:

1. assess the availability of care in acute care and specialty hospitals, emergency rooms, outpatient surgical centers, clinics, and primary care sites (the act does not define clinic or primary care);
2. evaluate the unmet needs of people the OHCA commissioner determines are at risk or vulnerable;
3. project future demand for health care services and the effect technology may have on the demand, capacity, or need for services; and
4. recommend expansion, reduction, or modification of health care facilities.

In developing the plan, OHCA (1) must consider recommendations from any advisory bodies the commissioner establishes and (2) may use recommendations from authoritative organizations that promote best practices or evidence-based research. It must consult with hospital representatives to develop a process that encourages hospitals to incorporate the plan into their long-range planning. Finally, OHCA must help appropriate state agencies communicate about innovations or changes that may affect future health planning.

The act eliminates the requirement for OHCA, in creating the facilities plan, to:

1. determine the availability of acute, long-term, and home health care in public and private institutions and community-based diagnostic and treatment facilities;
2. determine the scope of these services; and
3. anticipate future needs for these services and facilities.

PA 09-85—sSB 756

Public Health Committee

Human Services Committee

AN ACT CONCERNING A DEPARTMENT OF CHILDREN AND FAMILIES CHILD ABUSE AND NEGLECT REGISTRY CHECK FOR APPLICANTS OF EMPLOYMENT WITH THE DEPARTMENT OF DEVELOPMENTAL SERVICES OR THE DEPARTMENT'S PROVIDERS

SUMMARY: This act permits the Department of Developmental Services (DDS) commissioner to require anyone applying for a job with the department or a provider it licenses or funds to submit to a check of the Department of Children and Families' child abuse and neglect registry. Existing law also requires anyone applying for a job in a DDS program that provides direct services to clients to submit to a state criminal history background check, and DDS policy requires private providers to establish written policies requiring such checks for their job applicants.

EFFECTIVE DATE: October 1, 2009

PA 09-94—sSB 981

Public Health Committee

Education Committee

Appropriations Committee

AN ACT CONCERNING THE AVAILABILITY OF AUTOMATIC EXTERNAL DEFIBRILLATORS IN SCHOOLS

SUMMARY: This act requires a school board to have at each school in its jurisdiction, if funding is available, (1) an automatic external defibrillator (AED) and (2) school staff trained in its use and in cardiopulmonary resuscitation (CPR). The act allows school boards to accept donated AEDs under certain conditions. It also allows boards to accept gifts, donations, and grants for AED acquisition and staff training costs.

It also requires each school to develop emergency action response plans for the appropriate use of school personnel to respond to individuals experiencing sudden cardiac arrest or similar life-threatening emergencies.

EFFECTIVE DATE: July 1, 2009

AEDS IN SCHOOLS

Beginning July 1, 2010, the act requires each local and regional board of education to have at each school under its jurisdiction (1) an AED and (2) school personnel trained in AED operation and CPR. The AED and trained personnel must be available during (1) the school's normal operational hours, (2) school-sponsored athletic events and practices on school grounds, and (3) school-sponsored events not taking place during normal school hours.

Funding

Under the act, a board of education does not have to comply with these provisions if state, federal, or private funding is not available for AED purchasing and school personnel training.

The act allows a board to accept an AED donation if the AED meets U.S. Food and Drug Administration standards and is in compliance with the manufacturer's maintenance schedule. A board may accept gifts, grants, and donations, including in-kind donations, designated for an AED purchase and the costs of (1) inspecting and maintaining the device and (2) training staff in its use.

EMERGENCY ACTION RESPONSE PLANS

By July 1, 2010, each school must develop an emergency action response plan on how school personnel should respond to individuals experiencing sudden cardiac arrest or similar life-threatening emergency while on school grounds. Also by that date, each school with an athletic department or organized athletic program must develop an emergency action response plan addressing appropriate school personnel response to the same circumstances while attending or participating in an athletic event or practice on school grounds.

BACKGROUND

Automatic External Defibrillators

An AED is a portable automatic device used to restore normal heart rhythm to people having heart attacks. It consists of a small computer (microprocessor), electrodes, and electrical circuitry. If the heart is in ventricular fibrillation, i.e., beating

abnormally, the microprocessor recommends a defibrillating shock to restore a regular rhythm. The shock is delivered through adhesive electrode pads.

Related Act

Public Act 09-59 provides immunity in a lawsuit for damages for acts arising out of a person's or entity's negligence in providing or maintaining an AED. The immunity does not apply to gross, willful, or wanton negligence.

PA 09-95—sSB 1079

Public Health Committee

AN ACT CONCERNING THE CONNECTICUT HEALTH INFORMATION NETWORK

SUMMARY: This act allows state agencies participating in the Connecticut Health Information Network (CHIN) to disclose personally identifiable information in their databases to the CHIN administrator and its subcontractors for (1) network development and verification and (2) data integration and aggregation to allow for responses to network inquiries. Such disclosure is subject to federal restrictions on disclosure or redisclosure of such information. The CHIN administrator and CHIN subcontractors must not disclose personally identifiable information.

The act prohibits state agencies participating in CHIN from disclosing information to CHIN if it would violate federal law, including the 1996 federal Health Insurance Portability and Accountability Act (HIPAA) and the 1974 Family Educational Rights and Privacy Act and associated regulations.

EFFECTIVE DATE: October 1, 2009

BACKGROUND

CHIN

State law (CGS § 19a-25e) authorizes the Department of Public Health (DPH) and the UConn Health Center (UCHC), within available appropriations, to develop a CHIN plan. This plan is to integrate state health and social services data within and across the UCHC, the Office of Health Care Access (OHCA), DPH, and the Developmental Services (DDS), and Children and Families (DCF) departments. Data from other state agencies may be integrated into the network as funding and federal law permit. The CHIN must securely integrate this data consistent with state and federal laws.

The law requires DPH and UCHC's Center for Public Health and Health Policy to collaborate with the Department of Information Technology, DDS, DCF, and OHCA in developing the CHIN plan. The plan must:

1. include research in and describe existing health and human services data;
2. inventory the various health and human services data aggregation initiatives currently underway;
3. include a framework and options for implementing the CHIN, including ways to use the network to get aggregate data on the state's key health indicators;
4. identify and comply with confidentiality, security, and privacy standards; and
5. include a detailed cost estimate for implementation and potential funding sources.

PA 09-125—HB 5635

Public Health Committee

AN ACT CONCERNING ULTRASOUND PROCEDURES FOR MEDICAL AND DIAGNOSTIC PURPOSES

SUMMARY: This act prohibits anyone from performing an obstetrical ultrasound procedure unless it is (1) for a medical or diagnostic purpose and (2) ordered by a licensed health care provider acting within the scope of his or her practice.

EFFECTIVE DATE: July 1, 2009

BACKGROUND

Obstetrical Ultrasound

Ultrasound imaging, also called ultrasound scanning or sonography, involves exposing part of the body to high-frequency sound waves to produce pictures of the inside of the body. Ultrasound exams do not use ionizing radiation (as used in X-rays). Because ultrasound images are captured as they actually occur, they can show the structure and movement of the body's internal organs, as well as blood flowing through blood vessels.

Obstetrical ultrasound provides pictures of an embryo or fetus within a woman's uterus. During an obstetrical ultrasound, the examiner may evaluate blood flow in the umbilical cord or may, in some cases, assess blood flow in the fetus or placenta. Obstetrical ultrasound is a useful clinical test to:

1. establish the presence of a living embryo or fetus,
2. estimate the age of the pregnancy,
3. diagnose congenital abnormalities of the fetus,
4. evaluate the position of the fetus and placenta,
5. determine if there are multiple pregnancies,
6. determine the amount of amniotic fluid around the baby,
7. check for opening or shortening of the cervix or mouth of the womb, and
8. assess fetal growth and well-being.

PA 09-128—sHB 6200

Public Health Committee

AN ACT CONCERNING THE USE OF LONG-TERM ANTIBIOTICS FOR THE TREATMENT OF LYME DISEASE

SUMMARY: Beginning July 1, 2009, this act allows a licensed physician to prescribe, administer, or dispense long-term antibiotic therapy to a patient for a therapeutic purpose that eliminates the infection or controls the patient's symptoms if (1) a clinical diagnosis is made that the patient has Lyme disease or has symptoms consistent with such a diagnosis and (2) the physician documents the diagnosis and treatment in the patient's medical record.

Also beginning July 1, 2009, the act prohibits (1) the Department of Public Health from initiating disciplinary action against a physician and (2) the Connecticut Medical Examining Board from taking disciplinary action solely because the physician prescribed, administered, or dispensed long-term antibiotic therapy to a patient clinically diagnosed with Lyme disease. The physician must document the clinical diagnosis and treatment in the patient's record.

The act specifies that, subject to the limits on discipline of physicians treating Lyme disease established by the act, it does not limit the ability of the Connecticut Medical Examining Board to take disciplinary action for other reasons against physicians, including entering into a consent order, for violations of existing law concerning their practice of medicine.

EFFECTIVE DATE: July 1, 2009

LYME DISEASES DIAGNOSIS AND TREATMENT

The act defines "Lyme disease" as the clinical diagnosis, by a state-licensed physician, of the presence in a patient of signs or symptoms compatible with acute infection with *borrelia burgdorferi*; with late stage or persistent or chronic infection with *borrelia burgdorferi*, or complications related to such an infection; or such other strains of *borrelia* that,

beginning July 1, 2009, are recognized by the federal Centers for Disease Control and Prevention (CDC) as a cause of Lyme disease.

Lyme disease also includes an infection that meets the surveillance criteria of CDC, and other acute and chronic manifestations of such an infection as determined by a physician according to a clinical diagnosis based on medical history and physical examination alone, or in conjunction with testing that provides supportive data for the diagnosis.

"Long-term antibiotic therapy" means administering oral, intramuscular, or intravenous antibiotics, singly or in combination, for periods exceeding four weeks.

BACKGROUND

Borrelia Burgdorferi

This is the bacterium that causes Lyme disease. The bacterium belongs to a small group of bacteria, called spirochetes, whose appearance resembles a coiled spring.

PA 09-129—sHB 6328

Public Health Committee

General Law Committee

Public Safety and Security Committee

AN ACT CONCERNING CUSTOMER ACCESS TO RESTROOMS IN RETAIL ESTABLISHMENTS

SUMMARY: This act provides access to employee restrooms in retail establishments to individuals with certain medical conditions. Specifically, a retail establishment with an employee restroom that typically is not open to the public must allow a customer to use the restroom during normal business hours if the restroom is maintained in a reasonably safe manner and all of the following conditions are met:

1. the customer presents written evidence from a licensed health care provider (physician, physician assistant, advanced practice registered nurse) that documents that the customer suffers from an "eligible medical condition" (such conditions are Crohn's disease, ulcerative colitis, inflammatory bowel disease, irritable bowel syndrome, celiac disease, or a medical condition requiring use of an ostomy device);
2. a public restroom is not immediately available to the customer;

3. at least three employees are working in the establishment at the time of the restroom access request; and
4. the employee restroom is located in an area of the establishment that does not present an obvious risk to the health or safety of the customer or an obvious security risk to the establishment.

The act also (1) provides protection from liability for retail establishments and employees under certain conditions, (2) does not require an establishment to make physical changes to the employee restroom to accomplish the act's purposes, and (3) makes violation of the act's requirements an infraction (see Table on Penalties).

RETAIL ESTABLISHMENT, CUSTOMERS, AND RESTROOMS

The act defines a "retail establishment" as a place of business open to the general public for the sale of goods or services. A "customer" is a person lawfully on the retail establishment's premises. A "restroom" means a room with a toilet.

LIABILITY PROTECTION

Under the act, a retail establishment or its employees are not liable for any acts or omissions in providing customer access to an employee restroom if the acts or omissions: (1) do not constitute gross, willful, or wanton negligence by the establishment or employee; (2) occurred in an area of the establishment not otherwise accessible to customers; and (3) resulted in injury or death to a customer or individual other than the employee accompanying the customer to the restroom.

PA 09-133—HB 6391

Public Health Committee

AN ACT CONCERNING REVISIONS TO THE HIV TESTING CONSENT LAW

SUMMARY: This act revises the law on consent for HIV-related testing. Specifically, it:

1. eliminates the requirement for separate, written or oral consent for HIV testing and instead allows general consent for the performance of medical procedures or tests to suffice;
2. reaffirms that HIV testing is voluntary and that the patient can choose not to be tested;
3. eliminates a prior requirement for extensive pre-test counseling for all HIV tests;

4. adds a requirement that an HIV test subject, when he or she receives a test result, be informed about medical services and local or community-based HIV/AIDS support services agencies; and
5. provides that a medical practitioner cannot be held liable for ordering an HIV test under general consent provisions.

EFFECTIVE DATE: July 1, 2009

GENERAL CONSENT FOR HIV TESTING

The act specifies that a person who gives general consent for medical procedures and tests is not required to also sign or be presented with a specific informed consent form relating to procedures or tests to determine HIV infection or antibodies to HIV. "General consent," under the act, includes instruction to the patient that (1) as part of the medical procedures or tests, the patient may be tested for HIV and (2) such testing is voluntary and the patient can choose not to be tested for HIV or antibodies to HIV.

Under the act, general consent that includes HIV-related testing must be given without undue inducement or any form of compulsion, fraud, deceit, duress, or other constraint or coercion. (Under prior law, this requirement applied to specific consent for HIV testing.) The medical record must document a patient's refusal of an HIV-related test.

PRE-TEST INFORMATION AND COUNSELING

Under prior law, informed consent to an HIV-related test had to include a statement to the individual that included (1) an explanation of the test, including the meaning of results and the benefits of early diagnosis and medical intervention; (2) acknowledgement that consent was not a precondition to receiving care but refusal to consent may affect the provider's ability to diagnose and treat; (3) an explanation of the procedures to be followed, including that the test was voluntary, and a statement advising of the availability of anonymous testing; and (4) an explanation of the protections given confidential HIV-related information.

Also under prior law, before obtaining informed consent, the person ordering the test had to explain AIDS and HIV-related illness and provide information about behaviors posing a risk for transmitting HIV infection.

The act eliminates these existing provisions of law governing HIV-specific informed consent.

POST-TEST RESULT COUNSELING

Prior law required the person ordering an HIV-related test to provide the test subject or his or her authorized representative with counseling information

when giving the test results. The act instead specifies that such counseling initiatives are required as needed and also adds counseling about available medical services and local or community-based HIV/AIDS support services agencies.

By law, if provided, such counseling or referrals must also address: (1) coping with the emotional consequences of learning the test result; (2) discrimination the test result disclosure could cause; (3) behavior changes to prevent transmitting or contracting HIV infection; (4) information about available treatments; (5) working towards involving a minor's parents or guardian in decisions about medical treatment; and (6) the need of the test subject to notify his or her partners and, as appropriate, provide assistance or referrals for assistance in notifying partners.

BACKGROUND

CDC HIV Testing Guidelines and Recommendations

In 2006, the federal Centers for Disease Control and Prevention (CDC) revised its HIV testing guidelines by recommending that separate written consent for HIV testing not be required for patients in all health care settings. Instead, general consent for medical care should be considered sufficient to encompass consent for HIV testing, according to the CDC.

PA 09-142—SB 789

Public Health Committee

Human Services Committee

Government Administration and Elections Committee

AN ACT CONCERNING THE SHARING OF INFORMATION BETWEEN THE DEPARTMENT OF CHILDREN AND FAMILIES AND THE DEPARTMENT OF DEVELOPMENTAL SERVICES

SUMMARY: This act allows limited disclosure of Department of Children and Families (DCF) records to the Department of Developmental Services (DDS) without the consent of the person named in the records. In order for DDS to determine a child's eligibility for its Voluntary Services Program (the child must already be a DDS client), assist the child's enrollment in the program, and plan services for the child, the act allows DCF to disclose a written summary of any child abuse or neglect investigation it conducted. DDS must notify parents and guardians when they apply to enroll a child in the program that it may obtain these records from DCF without their consent.

By law, DCF can disclose records, whether it or someone else created them, without consent, in a variety of other situations. As with these disclosures, before releasing a record under the act, DCF must determine disclosure is in a person's best interest and that the records are not privileged or confidential under state or federal law.

EFFECTIVE DATE: Upon passage

PA 09-145—SB 754

Public Health Committee

Judiciary Committee

AN ACT CONCERNING TECHNICAL CHANGES TO THE STATUTES REGARDING PERSONS WITH PSYCHIATRIC DISABILITIES AND PERSONS WITH SUBSTANCE USE DISORDERS

SUMMARY: This act makes several minor changes in the laws governing Department of Mental Health and Addiction Services (DMHAS) operations. It:

1. repeals separate statutory authority for the superintendent of Blue Hills Hospital to regulate traffic on that facility's grounds;
2. allows the DMHAS commissioner to permit private physicians and psychiatrists to treat patients at DMHAS facilities, instead of requiring him to adopt regulations to permit such treatment; and
3. updates obsolete language describing patients, facilities and facility police, psychiatric conditions, substance abuse, and social workers.

EFFECTIVE DATE: October 1, 2009

TRAFFIC REGULATIONS

The law authorizes all DMHAS facility directors to regulate traffic on their facilities' grounds (CGS § 17a-465). This act repeals separate statutory authority for the superintendent of Blue Hills Hospital to regulate traffic on that facility's grounds. It extends to all DMHAS police the immunity against criminal and civil liability for enforcing traffic regulations prior law gave to police at Blue Hills Hospital. Repealing the specific Blue Hills Hospital statute effectively eliminates:

1. the immunity prior law gave that hospital's staff from confidentiality violations for reporting traffic violations;
2. the penalty for falsely reporting traffic violations at the hospital, which was up to one year in prison, a fine of up to \$1,000, or both; and

3. the requirement that court records of traffic cases be sealed and available only to the respondent unless the court permits disclosure.

The law does not specifically extend these traffic-related immunities or penalties to other DMHAS facilities, but another statute immunizes state employees against civil liability for damage or injury caused in the scope of their employment or by the discharge of their duties as long as it is not wanton, reckless, or malicious (CGS § 4-165).

COMMITMENT REVIEW

The act eliminates the ability of the DMHAS and Department of Children and Families (DCF) commissioners and any interested person to ask the court that committed an adult or juvenile to a “humane institution” to revoke or modify the commitment. The law continues to allow them to do this for people committed to a state psychiatric hospital, and the act specifies they may do this for children committed to child-care facilities. The law the act affects does not define a humane institution, but a statute that concerns medical assistance payments defines it as a state psychiatric hospital, community mental health center, treatment facility for children or adolescents, or any facility or program administered by DMHAS, DCF, or the Department of Developmental Services (CGS § 17b-222).

PA 09-148—sHB 6600 (VETOED; OVERRIDDEN)

Public Health Committee

Human Services Committee

Labor and Public Employees Committee

Insurance and Real Estate Committee

AN ACT CONCERNING THE ESTABLISHMENT OF THE SUSTINET PLAN

SUMMARY: This act establishes a nine-member SustiNet Health Partnership board of directors that must make legislative recommendations, by January 1, 2011, on the details and implementation of the “SustiNet Plan,” a self-insured health care delivery plan. The act specifies that these recommendations must address:

1. establishment of a public authority or other entity with the power to contract with insurers and health care providers, develop health care infrastructure (“medical homes”), set reimbursement rates, create advisory committees, and encourage the use of health information technology;
2. provisions for the phased-in offering of the SustiNet Plan to state employees and retirees, HUSKY A and B beneficiaries, people without

employer sponsored insurance (ESI), people with unaffordable ESI, small and large employers, and others;

3. guidelines for development of a model benefits package; and
4. public outreach and methods of identifying uninsured citizens.

The board must establish a number of separate committees to address and make recommendations concerning health information technology, medical homes, clinical care and safety guidelines, and preventive care and improved health outcomes. The act also establishes an independent information clearinghouse to provide employers, consumers, and the general public with information about SustiNet and private health care plans.

Finally, the act creates task forces addressing obesity, tobacco usage, and the health care workforce.

EFFECTIVE DATE: July 1, 2009, except that the sections on identifying uninsured adults and children (§§ 14 and 15) and Medicaid and public education outreach (§ 13) take effect July 1, 2011, and the three task forces (§§ 16-18) take effect upon passage.

§ 1 — DEFINITIONS

The act defines the “SustiNet Plan” as a self-insured health care delivery plan designed to ensure that its enrollees receive high-quality health care coverage without unnecessary costs. “Public authority” means a public authority or other entity recommended by the SustiNet Health Partnership board of directors.

“Standard benefits package” means a set of covered benefits, as determined by the public authority, with out-of-pocket cost-sharing limits and provider network rules, subject to the same coverage and utilization review mandates that apply to small group health insurance sold in the state. It includes, but is not limited to:

1. coverage of medical home services; inpatient and outpatient hospital care; generic and name-brand prescription drugs; laboratory and x-ray services; durable medical equipment; speech, physical, and occupational therapy; home health care; vision care; family planning; emergency transportation; hospice; prosthetics; podiatry; short-term rehabilitation; identification and treatment of developmental delays from birth through age three; and evidence-based wellness programs;
2. a per-individual and per-family deductible that excludes drugs and preventive care;
3. preventive care with no copayment;
4. prescription drug coverage, with copayments;
5. office visits for other than preventive care, with copayments;

6. mental and behavioral health services coverage, including tobacco cessation, substance abuse treatment, and obesity prevention and treatment (these services must have parity with coverage for physical health services); and
7. dental coverage comparable to that provided by large employers in the Northeast.

A “small employer” is a person, firm, corporation, limited liability company, partnership, or association actively engaged in business or self-employed for at least three consecutive months, which, on at least 50% of its working days during the preceding 12 months, employed up to 50 people, the majority of whom worked in the state.

§ 2 — THE SUSTINET HEALTH PARTNERSHIP BOARD OF DIRECTORS

Board Members

The act establishes the Sustinet Health Partnership board of directors consisting of nine members as follows:

1. the state comptroller;
2. the healthcare advocate;
3. a representative of the nursing or allied health professions, appointed by the governor;
4. a primary care physician, appointed by the Senate president pro tempore;
5. a representative of organized labor, appointed by the House speaker;
6. an individual with expertise in providing employee health benefit plans for small businesses, appointed by the Senate majority leader;
7. an individual with expertise in health economics or policy, appointed by the House majority leader;
8. an individual with expertise in health information technology, appointed by the Senate minority leader; and
9. an individual with expertise in actuarial sciences or insurance underwriting, appointed by the House minority leader.

The comptroller and healthcare advocate serve as board chairpersons.

Initial appointments must be made by July 15, 2009. If an appointing authority fails to appoint a member by July 31, 2009, the Senate president pro tempore and the House speaker jointly make that appointment. A quorum is five members.

Board members’ terms are staggered. The initial term for the governor’s appointee is two years. For those appointed by the House and Senate majority leaders, the term is four years. For the House and Senate

minority leaders’ appointments, the term is three years. And the term is five years for the appointments of the House speaker and Senate president pro tempore. After the initial term, board members serve five-year terms.

Within the 30 days before a term expires, the appointing authority can reappoint a current member or appoint a new one. Board members can be removed by their appointing authority for misfeasance, malfeasance, or willful neglect of duty.

The act specifies that any individual serving on the board is subject to existing law on filing a statement of financial interests.

It specifies that the board is not a state department, institution, or agency.

§ 3 — DUTIES OF THE SUSTINET BOARD OF DIRECTORS

Designing the Sustinet Plan

The Sustinet Health Partnership board of directors must design and establish procedures to implement the “Sustinet Plan,” which must be designed to:

1. improve the health of state residents;
2. improve the quality of health care and access to health care;
3. provide health insurance coverage to Connecticut residents who would otherwise be uninsured;
4. increase the range of health care insurance coverage options available to residents and employers;
5. slow the short- and long-term growth of per capita health care spending; and
6. implement reforms to the health care delivery system that will apply to all Sustinet Plan members. But any reforms to health care coverage provided to state employees, retirees, and their dependents must be subject to applicable collective bargaining agreements.

By January 1, 2011, the board must submit its design and implementation procedures in recommended legislation to the Appropriations and the Finance, Revenue and Bonding committees.

Designing the Public Authority

The board must offer recommendations to the General Assembly on the governance structure of the entity that is best suited to oversee and implement the Sustinet Plan. These recommendations may include, but are not limited to, the establishment of a public authority authorized to:

1. adopt guidelines, policies, and regulations necessary to implement the act’s provisions related to Sustinet;

2. contract with insurers or other entities for administrative purposes, such as claims processing and provider credentialing, taking into account their capacity and willingness to (a) offer networks of participating providers both within and outside the state and (b) help finance the administrative costs involved in the establishment and initial operation of the Sustinet Plan, and reimbursing them using per capita fees or other methods that do not create incentives to deny care;
 3. solicit bids from individual providers and provider organizations to provide all Sustinet Plan members with timely access to high-quality care throughout the state and, in appropriate cases, outside the state;
 4. establish appropriate deductibles, standard benefit packages, and out-of-pocket cost-sharing levels for different providers that may vary based on quality, cost, provider agreement to refrain from balance billing Sustinet Plan members, and other factors relevant to patient care and financial sustainability;
 5. commission surveys of consumers, employers, and providers on issues related to health care and health care coverage;
 6. negotiate on behalf of Sustinet Plan providers to obtain discounted prices for vaccines and other health care goods and services;
 7. contract for such professional services as financial and other consultants, actuaries, bond counsel, underwriters, technical specialists, attorneys, accountants, medical professionals, bio-ethicists, and others as the board deems necessary;
 8. purchase reinsurance or stop-loss coverage, set aside reserves, or take other prudent steps to avoid excess exposure to risk in administering a self-insured plan;
 9. enter into interagency agreements for performance of Sustinet Plan duties that may be implemented more efficiently or effectively by a state agency;
 10. set payment methods for licensed health care providers that reflect evolving research and experience both within the state and elsewhere, promote patient health, prevent unnecessary spending, and ensure sufficient compensation to cover the reasonable cost of furnishing necessary care;
 11. appoint advisory committees to successfully implement the Sustinet Plan, further the objectives of the authority, and secure necessary input from various experts and stakeholder groups;
 12. establish and maintain an Internet web site that provides for timely posting of all public notices issued by the authority or the board and such other information either deems relevant in educating the public about the Sustinet Plan;
 13. evaluate the implementation of an individual mandate together with guaranteed issue, elimination of preexisting condition exclusions, and the implementation of auto-enrollment;
 14. raise funds from public and private sources outside of the state budget to contribute toward support of its mission and operations;
 15. make optimum use of opportunities created by the federal government for securing new and increased federal funding, including increased reimbursement revenues;
 16. if the federal government enacts national health care reform, submit preliminary recommendations for implementing the Sustinet Plan to the General Assembly, not later than 60 days after federal enactment; and
 17. study the feasibility of funding premium subsidies for individuals with incomes between 300% and 400% of the federal poverty level (FPL).
- The act specifies that all state and municipal agencies, departments, boards, commissions, and councils must fully cooperate with the board in carrying out these purposes.

§ 4 — SUSTINET PLAN

The board of directors must develop the procedures and guidelines for the Sustinet Plan, which must comport with these Institute of Medicine (IOM) principles:

1. health care coverage should be universal, continuous, and affordable to individuals and families;
2. the health insurance strategy should be affordable and sustainable for society; and
3. health care coverage should enhance health and well-being by promoting access to high-quality care that is effective, efficient, safe, timely, patient-centered, and equitable.

The board must identify all potential funding sources that may be used to establish and administer the Sustinet Plan. It must recommend that the public authority establish action plans with measurable objectives in such areas as:

1. effective management of chronic illness,
2. preventive care,
3. reducing racial and ethnic disparities in health care and health outcomes, and
4. reducing the number of uninsured state residents.

The board must include recommendations that the authority monitor the progress made toward achieving these objectives and modify the action plans as necessary.

§§ 1 & 5 — HEALTH INFORMATION TECHNOLOGY

The act delineates how electronic health records will be established for Sustinet members and how participating providers may gain access to hardware and approved software for interoperable electronic medical records. For these purposes, the act defines:

1. “electronic medical record” as a record of a person’s medical treatment created by a licensed health care provider and stored in an interoperable and accessible digital format;
2. “electronic health record” as an electronic record of health-related information on an individual that conforms to nationally recognized interoperability standards and that can be created, managed, and consulted by authorized clinicians and staff across multiple health care organizations;
3. “subscribing provider” as a licensed health care provider that (a) either is a participating provider in the Sustinet plan or provides services in the state and (b) agrees to pay a proportionate share of the cost of health care technology goods and services, consistent with board-adopted guidelines; and
4. “approved software” as electronic medical records software approved by the board after receiving recommendations from the information technology committee the act establishes.

Information Technology Committee and Plan Development

The board must establish an information technology committee to make a plan for developing, acquiring, financing, leasing, or purchasing fully interoperable electronic medical records software and hardware packages for subscribing providers. The plan must include the development of a periodic payment system that allows these providers to acquire approved software and hardware and receive other support services for implementing electronic medical records.

Software and Hardware Options and Availability

The committee must make recommendations on (1) providing approved software to subscribing providers and participating providers (the act does not define this term), consistent with the act’s capital acquisition,

technical support, reduced-cost digitization of existing records, and software updating and transition procedures and (2) developing and implementing procedures to ensure that individual providers and hospitals have access to hardware and approved software for interoperable electronic medical records and establishment of electronic health records for Sustinet Plan members.

The information technology committee must consult with technology specialists, physicians, nurses, hospitals, and other health care providers to identify potential software and hardware options that meet the needs of all types of health care practices. Any electronic medical records package the committee recommends for possible purchase must interact with other pertinent modules, including practice management, patient scheduling, claims submission, billing, and tracking of laboratory orders and prescriptions.

A package must also include:

1. automated patient reminders concerning upcoming appointments;
2. recommended preventive care reminders;
3. automated provision of test results to patients when appropriate;
4. decision support, including notice of recommended services not yet received by a patient;
5. notice of potentially duplicative tests and other services;
6. notice of potential drug interactions and past adverse drug reactions to similar medications;
7. notice of possible violation of patient wishes for end-of-life care; and
8. notice of services provided inconsistently with care guidelines.

The committee must make recommendations on procuring and developing approved software. These recommendations may include that any approved software be able to gather information to help the board assess health outcomes and track the accomplishment of clinical care objectives. The board must ensure that Sustinet Plan providers who use approved software can electronically transmit to, and receive information from, all laboratories and pharmacies participating in the plan, without the need to construct interfaces other than those constructed by the authority.

The committee must make recommendations on selection of public vendors to provide reduced-cost, high-quality digitization of paper medical records for use with approved software. The vendors must be bonded, supervised, and covered entities under the federal Health Insurance Portability and Accountability Act, that is, subject to the act’s privacy requirements.

System Integration

The information technology committee must make recommendations on a system for integrating information from subscribing providers' electronic medical records systems into a single electronic health record for each Sustinet Plan member. This integrated record must be updated in real time and accessible to any participating or subscribing provider serving the member.

The act requires all recommendations on electronic health and medical records to be developed in a manner consistent with board-approved guidelines for safeguarding privacy and data security and with state and federal laws, including any recommendations of the U.S. Government Accountability Office. These guidelines must include recommended remedies and sanctions in cases where guidelines are not followed. The remedies can include termination from the network or reimbursement denial or reduction.

The committee must recommend methods to coordinate the development and implementation of electronic medical health records in concert with the Department of Public Health (DPH) and other state agencies to ensure efficiency and compatibility. It must determine appropriate financing options, including financing through the Connecticut Health and Educational Facilities Authority.

Condition of Participation in Sustinet

Under the act, the committee must recommend that use of board-approved or compatible electronic medical records become a condition of provider participation in the Sustinet plan by July 1, 2015, with possible time extensions or exemptions made for providers who would face hardship in meeting the deadline and whose participation in Sustinet is necessary to assure geographic access to care. It authorizes the board to provide additional support to these providers. (But it is not clear what kind of support the board can provide.)

The act includes specific incentives to help providers meet the goal of adopting electronic medical records by July 1, 2015. The committee must recommend the development and implementation of appropriate financial incentives for early subscriptions by participating providers, including discounted fees.

The committee must develop recommended methods to eliminate or minimize transition costs for providers, who, before January 1, 2011, implemented comprehensive electronic medical or health records systems. These can include technical assistance in transitioning to new software and development of modules to help existing software connect to the integrated system.

The committee must make recommendations that subscribing providers share systemic cost savings achieved by implementing electronic medical and health records. The amount of savings the board shares with a provider is limited to the amount of net financial loss the provider experienced during the first five years of the implementation process using board-approved software. But a provider that lost money because it failed to use the authority's technical support and services cannot share in any cost savings.

The committee must also make recommendations on the use of electronic health records to encourage the provision of medical home functions (see below). Electronic health records must generate automatic notices to medical homes that (1) report when an enrolled member receives services outside the medical home, (2) describe member compliance or noncompliance with provider instructions, and (3) identify the expiration of refillable prescriptions.

§ 6 — MEDICAL HOMES

Medical Home Advisory Committee

The board must establish a medical home advisory committee composed of physicians, nurses, consumer representatives, and other qualified individuals chosen by the board. The committee must develop recommended internal procedures and proposed regulations for the administration of medical homes serving Sustinet Plan members. The committee must forward its recommendations to the board.

Medical Home Functions

Committee recommendations must include that (1) the board define medical home functions on an ongoing basis, incorporating evolving research on delivery of health care services and (2) if provider infrastructure limits prevent all Sustinet Plan members from enrolling in a medical home, then enrollment be implemented in phases with priority given to members where cost savings appear most likely, including members with chronic health conditions.

The committee, subject to revision by the board, must make recommendations that initial medical home functions include the following:

1. assisting members to safeguard and improve their own health by:
 - a. advising members with chronic health conditions on how to monitor and manage their conditions;
 - b. working with members to set and accomplish goals related to exercise, nutrition, and tobacco use, among other behaviors;

- c. implementing best practices to ensure members understand and can follow medical instructions; and
 - d. providing translation services and culturally competent communication strategies;
2. care coordination that includes:
 - a. managing transitions between home and hospital;
 - b. monitoring to ensure members receive all recommended primary and preventive care services;
 - c. providing basic mental health care, including screening for depression, with referral for those who require more help;
 - d. addressing workplace, home, school, and community stress;
 - e. referring to nonmedical services such as housing, nutrition, domestic violence programs, and support groups; and
 - f. ensuring information about members with complex health conditions is shared among multiple providers and that the providers follow a single integrated treatment plan; and
 3. providing 24-hour access by telephone, secure email, or quickly scheduled office appointments in order to reduce the need for hospital emergency room visits.

The committee may develop quality and safety standards for medical home functions that are not covered by existing professional standards. These may include care coordination and member education.

The committee must recommend to the board that the public authority assist in developing community-based resources to enhance medical home functions, including:

1. making loans available on favorable terms to help develop necessary health care infrastructure, including community-based providers of medical home and preventive care services;
2. offering reduced-price consultants to help providers restructure their practices and offices to function more effectively and efficiently in response to changes in health care insurance coverage and service delivery attributable to SustiNet implementation; and
3. offering continuing medical education courses for physicians, nurses, and other clinicians, including training in culturally competent delivery of health care services.

Health Care Providers Who Can Serve as Medical Homes

The committee must make recommendations on entities that can be a medical home. These include that (1) a licensed health care provider who is authorized to provide all core medical home functions prescribed by the board can serve as a medical home and (2) a group practice or community health center serving as a medical home must identify, for each member, a lead provider with primary responsibility for the member's care. In appropriate cases, as determined by the board, (1) a specialist may serve as a medical home and (2) a patient's medical home may temporarily be with a health care provider who is overseeing the patient's care for the duration of a temporary medical condition, including pregnancy.

The committee must make recommendations on the medical home provider's responsibilities. These include that (1) each medical home provider be given a list of all medical home functions and (2) if a provider does not wish to perform certain non-core medical home functions in his or her office, the provider must arrange for other qualified entities or individuals to perform these functions in a way that integrates them into the medical home's clinical practice.

These other entities or individuals must be certified by the board based on the quality, safety, and efficiency of the service they provide. At the medical home provider's request, the board must make all arrangements required for a qualified entity or individual to perform any medical home function (not just non-core functions) the core provider does not assume.

Reimbursement

The committee must make recommendations concerning payment for medical home functions. These must include that (1) all medical home functions are reimbursable under the SustiNet Plan; (2) in setting payment levels for those functions that are not normally reimbursed by commercial insurers, payment cover the full cost of services; and (3) rate-setting mechanisms can include using Medicare rate-setting methods or a monthly case management fee.

The committee must make recommendations that specialty referrals include prior consultation between the specialist and the medical home to determine whether the referral is medically necessary. If so, the consultation must identify any tests or procedures that must be done or arranged by the medical home before the specialty visit to promote economic efficiencies. The act requires the SustiNet Plan to reimburse the medical home and specialist for time spent on consultations.

§ 7 — HEALTH CARE PROVIDER COMMITTEE; CLINICAL CARE AND SAFETY GUIDELINES

The act requires the board to establish a health care provider committee to develop clinical care and safety guidelines for use by SustiNet providers. The committee must choose from existing nationally and internationally recognized care guidelines. It must continually assess the quality of evidence, the relevant costs, and the risks and benefits of treatments. It must forward its recommendations to the board. The committee must have provider and consumer members.

Under the act, the committee must recommend that participating SustiNet providers receive confidential reports comparing their practice patterns with their peers. These reports must include opportunities for continuing education.

The committee must make recommendations on quality of care standards for particular medical conditions. Such standards may reflect outcomes over the entire care cycle for each health care condition, adjusted for patient risk and general consistency of care with approved guidelines and other factors. The committee must recommend that providers who meet or exceed the standards for a particular condition be publicly recognized and made known to SustiNet members, including those who have been diagnosed with that particular medical condition.

The committee must recommend procedures requiring hospitals and their staffs, physicians, nurse practitioners, and other participating providers to periodically conduct quality of care reviews and develop quality of care improvement plans. Such reviews must identify potential problems manifesting as adverse events or events that could have resulted in negative patient outcomes. As appropriate, they must incorporate confidential consultation with peers and colleagues, opportunities for continuing medical education, and other interventions and supports to improve performance. To the maximum extent permissible, the reviews must incorporate existing peer review mechanisms. The committee's recommendations must include that any review conducted be subject to the law's protections concerning peer review (CGS § 19a-17b).

The board, in consultation with the committee, must develop safety standards for implementation in hospitals. The board must establish procedures to monitor and impose sanctions to ensure compliance with the standards. It may also establish performance incentives to encourage hospitals to exceed the standards.

The committee must make recommendations on providing participating providers with information about prescription drugs, medical devices, and other goods and services. This information can address

emerging trends involving the use of goods and services that the authority judges are less than optimally cost effective. The committee must make recommendations on providing free samples of generic or other prescription drugs to participating providers. And the committee must recommend policies and procedures to encourage participating providers to furnish SustiNet members with appropriate evidence-based health care.

§ 8 — PREVENTIVE HEALTH CARE AND COMMUNITY-BASED PREVENTIVE HEALTH INFRASTRUCTURE

The act requires the board of directors to establish a preventive health care committee that uses evolving medical research to make recommendations to improve health outcomes for members (presumably SustiNet members) in areas involving nutrition, physical exercise, sleep, and the prevention and cessation of use of tobacco and other addictive substances, taking into account programs already underway in the state. The committee must include providers, consumers, and others chosen by the board. These recommendations may be targeted to special member populations that are most likely to benefit from them. They can include behavioral components and financial incentives for participants. Beginning July 1, 2010, the committee must annually submit its recommendations to the board.

The board must recommend that the SustiNet plans sold to employers or individuals cover community-based preventive care services that can be administered safely in community settings. These services must include immunizations, simple tests, and health care screenings, and the board must recommend that they be provided in workplaces, schools, or other community locations. The board must recommend that community-based preventive care providers must (1) use the patient's electronic health record to confirm that a service has not been provided before and is not contraindicated and (2) furnish test results or documentation of the service to the patient's medical home or primary care provider.

§ 9 — ENROLLMENT OF VARIOUS GROUPS IN SUSTINET

Nonstate Public Employers; State Employees, Retirees and Dependents; Nonprofits; and Small Businesses

The board may develop recommendations that ensure that, beginning July 1, 2012, nonstate public employers and employees of nonprofit organizations and small businesses are offered the benefits of the SustiNet Plan. The act defines "nonstate public employer" as a municipality or other political subdivision of the state, including a board of education,

quasi-public agency, or public library. The board may develop recommendations that permit the comptroller to offer the Sustinet Plan benefits to state employees, retirees, and their dependents (the act does not specify a date for doing this). No changes in state employee health care plan benefits can be implemented unless they are negotiated and agreed to by the state and the State Employee Bargaining Agent Coalition committee (SEBAC) through the collective bargaining process.

HUSKY PLAN Part A and B Beneficiaries

The board must develop recommendations to ensure that the HUSKY Plan Part A and Part B, Medicaid, and State-Administered General Assistance (SAGA) programs participate in the Sustinet Plan. These recommendations must also ensure that HUSKY Plan Part A or B benefits are extended, to the extent permitted by federal law, to adults with income up to 300% of FPL.

Those Not Offered Employer-Sponsored Insurance

The act requires the board to make recommendations to ensure that state residents not offered employer-sponsored insurance (ESI) and who do not qualify for HUSKY Part A or B, Medicaid, or SAGA can enroll in Sustinet beginning July 1, 2012. These recommendations must ensure that premium variation based on member characteristics does not exceed, in total amount or in consideration of individual health risk, the variation state law permits for a small employer carrier.

Those Offered Unaffordable or Inadequate ESI

The board must make recommendations to provide an option for enrollment in Sustinet to state residents whose household income is 400% of FPL or less who are offered ESI. The board may make recommendations for establishing (1) a procedure for those eligible individuals to enroll in Sustinet and (2) a way to collect payments from employers whose employees would have received ESI, but instead enroll in Sustinet.

§ 10 — OFFERING SUSTINET TO EMPLOYERS THROUGH EXISTING CHANNELS

The act requires the board to make recommendations concerning:

1. use of various ways to sell Sustinet to employers, including public and private purchasing pools, agents, and brokers;
2. offering employers multi-year contracts that have predictable premiums;
3. policies and procedures to ensure that

employers can easily and conveniently purchase Sustinet plan coverage for their workers and dependents, including participation requirements, timing of enrollment, open enrollment, enrollment length, and other matters the board deems appropriate;

4. policies and procedures to prevent adverse selection; (“adverse selection,” in this context, means purchase of Sustinet Plan coverage by employers with unusually high-cost employees and dependents under circumstances where premium payments do not fully cover the employer’s probable claims costs);
5. availability of Sustinet Plan coverage for small employers on and after July 1, 2012 with premiums based on member characteristics as permitted for small employer carriers;
6. availability of Sustinet plan coverage for larger employers with premiums to prevent adverse selection, taking into account past claims experience, changes in characteristics of covered employees and dependents since the most recent time period covered by claims data, and other board-approved factors; and
7. the availability of a standard benefits package that cannot be any less comprehensive than the model benefits packages established by the act (see § 12).

§ 11 — INFORMATION CLEARINGHOUSE

Under the act, the board must recommend the establishment of an independent information clearinghouse to provide employers, individual consumers, and the general public with information about the care covered by the Sustinet Plan and private health plans. The Office of the Healthcare Advocate (OHA) is responsible for establishing the clearinghouse and contracting with an independent research organization to operate it.

The clearinghouse must develop data specifications that show comprehensive information about quality of care, health outcomes for particular health conditions, access to care, patient satisfaction, adequacy of provider networks, and other performance and value information. OHA must develop the specifications in consultation with the board and private insurers.

The board must recommend that the Sustinet Plan and health insurers must submit data to the clearinghouse, the latter as a licensing condition. A self-insured group plan may provide data voluntarily, and dissemination of any information it provides is limited, based on negotiations between the clearinghouse and the plan.

The clearinghouse must not disseminate information that identifies individual patients or providers. To the extent possible, it must also adjust outcomes based on patient risk levels.

The clearinghouse must collect data based on each plan's provision of services over continuous 12-month periods. It must make all information public, subject to the limitations described above, no later than August 1, 2013, and update it annually each August.

§ 12 — MODEL BENEFITS PACKAGES

The act requires OHA, within available appropriations, to develop model benefit packages that contribute the greatest possible amount of health benefit for enrollees, based on evolving medical and scientific evidence, for the premium cost typical of private ESI in the Northeast. By December 1, 2010, and then biennially, the office must report to the board on the updated model benefit packages.

After receiving these models, the board may modify the standard benefit package if it determines an adjustment would either yield better health outcomes for the same expenditure of funds or provide additional health benefits or reduced cost-sharing for particular groups that justify an increase in net costs. Any modification of the standard benefit package by the board must comply with statutory coverage mandates and utilization review requirements.

OHA must recommend guidelines for an incentive system to recognize employers who provide employees with benefits that are equivalent to or better than the model benefit packages.

By December 1, 2012, OHA must report on these guidelines and recommendations to the board; the governor; and the Public Health, Labor and Public Employees, and Appropriations committees.

§ 13 — PUBLIC EDUCATION AND OUTREACH CAMPAIGNS

The act requires the board to develop recommendations for education and outreach campaigns to inform the public of Sustinet's availability and encourage enrollment. These campaigns must use community-based organizations to reach underserved populations. They must be based on evidence of the cost and effectiveness of similar efforts in this state and elsewhere. The board must continuously evaluate their effectiveness and change strategy as needed.

§ 14 — IDENTIFICATION OF THE UNINSURED

The board, in collaboration with state and municipal agencies, must, within available appropriations, develop and implement

recommendations to identify uninsured individuals. Such recommendations may include:

1. the Department of Revenue Services modifying state income tax forms to ask taxpayers to identify existing health coverage for each household member;
2. the Department of Labor modifying its unemployment insurance claims forms to ask about applicants' and their dependents' health insurance status; and
3. hospitals, community health centers, and other health care providers identifying uninsured individuals who seek health care and transmitting such information to the board.

§ 15 — IDENTIFYING UNINSURED CHILDREN

The act directs the social services and education commissioners to consult with the board in their existing obligation to jointly establish procedures for sharing data from the National School Lunch Program to identify income-eligible children for enrollment in HUSKY A and B. And it permits these procedures to cover enrollment in the Sustinet Plan.

§ 16 — OBESITY TASK FORCE

The act creates a task force to study childhood and adult obesity. It must examine evidence-based strategies for preventing and reducing obesity and develop a comprehensive plan that will result in a reduction in obesity.

The task force includes the following members:

1. a representative of a consumer group with expertise in childhood and adult obesity, appointed by the House speaker;
2. two academic experts in childhood and adult obesity, one each appointed by the Senate president pro tempore and the governor;
3. two representatives of the business community with expertise in the subject, one each appointed by the House majority and minority leaders; and
4. two health care practitioners with expertise on the topic, one each appointed by the Senate majority and minority leaders.

The legislative appointees may be members of the General Assembly.

The commissioners of public health, social services, and economic and community development, and a representative of the Sustinet board are ex-officio, non-voting members. Appointments must be made within 30 days after the act's passage. Vacancies are filled by the appointing authority. The members appointed by the House speaker and the Senate president pro tempore serve as chairpersons. The first

meeting must be held within 30 days after the act's passage. The Public Health Committee staff serves as the task force's administrative staff.

By July 1, 2010, the task force must report to the Public Health, Human Services, and Appropriations committees and the SustiNet board. The task force terminates when the report is submitted or January 1, 2011, whichever is later.

§ 17 — TOBACCO USE TASK FORCE

The act establishes a task force to study tobacco use by children and adults. It must examine evidence-based strategies for preventing and reducing tobacco use and develop a comprehensive plan to reduce tobacco use. Its members are as follows:

1. a representative of a consumer group with expertise in tobacco use by children and adults, appointed by the House speaker;
2. two academic experts in the field, one each appointed by the Senate president pro tempore and the governor;
3. two representatives of the business community with expertise on the topic, one each appointed by the House majority and minority leaders; and
4. two health care practitioners with expertise in the field, one each appointed by the Senate majority and minority leaders.

These task force members may be legislators, except for the governor's appointee.

The commissioners of public health, social services, and economic and community development, and a representative of the SustiNet board are ex-officio, non-voting members. Appointments must be made, vacancies filled, and meetings held as described for the obesity task force. The chairpersons are the members appointed by the House speaker and the Senate president pro tempore.

By July 1, 2010, the task force must report to the Public Health, Human Services, and Appropriations committees. It terminates when it submits the report or January 1, 2011, whichever is later. The Public Health Committee staff serves as administrative staff.

§ 18 — HEALTH CARE WORKFORCE TASK FORCE

The act establishes a task force to study the state's health care workforce. It must develop a comprehensive plan for preventing and remedying statewide, regional, and local shortages of necessary medical personnel. Its members are as follows:

1. a representative of a consumer group with expertise in health care, appointed by the House speaker;

2. one academic expert on the health care workforce, appointed by the Senate president pro tempore;
3. one academic expert in health care, appointed by the governor;
4. two representatives of the business community with expertise in health care, one each appointed by the House majority and minority leaders; and
5. two health care practitioners, one each appointed by the Senate majority and minority leaders.

The commissioners of public health, social services, and economic and community development, the president of UConn, the chancellors of the Connecticut State University System and the regional Community-Technical Colleges, and a representative of the SustiNet board are ex-officio, non-voting members. Members, except for the governor's appointee, can be legislators. Appointments must be made, vacancies filled, and meetings held as described above for the previous two task forces. The chairpersons are the members appointed by the House speaker and the Senate president pro tempore.

The Public Health Committee staff serves as administrative staff for the task force. The task force must report by July 1, 2010 to the Public Health, Human Services, and Appropriations committees. The task force terminates as described above.

PA 09-155—sSB 755

Public Health Committee
Education Committee

AN ACT CONCERNING THE USE OF ASTHMATIC INHALERS AND EPINEPHRINE AUTO-INJECTORS WHILE AT SCHOOL

SUMMARY: This act requires, rather than allows, the State Education Department (SDE) to adopt regulations governing medication administration by school personnel and student self-medication. It specifies that the latter must address students using asthmatic inhalers and epipens. It adds licensed athletic trainers employed by a school board to those personnel permitted to administer medication to students under the general supervision of a school nurse.

Finally, the act requires school boards to make their plans for managing students with life-threatening food allergies publicly available on the Internet or otherwise.

EFFECTIVE DATE: August 15, 2009

REGULATIONS ON STUDENTS' ASTHMA AND ALLERGIES

School boards do not have to allow medication administration by school personnel and students' self-medication, but if they do they must follow state regulations. The act requires, rather than permits, SDE to adopt such regulations. (The Public Health Code already contains such regulations (§§ 10-212a-1 to -7).) It requires the regulations on self-medication to include permitting a child diagnosed with asthma or allergies to possess an inhaler or epipen at school if a parent or guardian submits to the school nurse authorization to that effect signed by the parent or guardian and a health care provider who can prescribe medication.

Under existing law, the regulations must require a written order from a doctor, physician assistant, dentist, APRN, podiatrist, or optometrist and written authorization by a parent to authorize school personnel to administer a medication or a student to self-administer. The act adds physicians licensed in another state to this list of authorizing practitioners. Out-of-state dentists are already authorized.

MEDICATION ADMINISTRATION BY ATHLETIC TRAINERS

The act adds licensed athletic trainers employed by a school board to the list of school personnel who may administer medications to students under a school nurse's general supervision. By law, these personnel are immune from civil liability for any acts or omissions in administering medication, unless they constituted gross, willful, or wanton negligence.

LOCAL FOOD ALLERGY RESPONSE PLANS

The law requires school boards to develop and implement plans for managing students with life-threatening food allergies. The act requires them to make their plans available on the board's or each school's website, or, if such websites do not exist, by some other means they select. It also requires boards to provide notice about the plans along with the written statement about pesticide applications they must, by law, provide parents and guardians. School superintendents must attest annually to SDE that their districts are implementing these plans.

PA 09-157—sSB 1080 (VETOED)

Public Health Committee

Planning and Development Committee

AN ACT CONCERNING ACCESS TO HEALTH AND NUTRITIONAL INFORMATION IN RESTAURANTS

SUMMARY: This act requires chain restaurants to disclose on their standard printed menus or menu boards total calorie counts for standard menu items. The Department of Public Health (DPH) must adopt regulations incorporating the calorie information requirements into regularly scheduled inspections of such food service establishments.

EFFECTIVE DATE: July 1, 2009, except that the provision on authorized agents' inspections takes effect July 1, 2010.

CHAIN RESTAURANT DISCLOSURE OF CALORIES IN STANDARD MENU ITEMS

By July 1, 2010, the act requires each chain restaurant in the state to make available to consumers the total number of calories for each standard menu item as that item is usually prepared and offered for sale by the restaurant. The act defines "chain restaurant" as a restaurant that is part of a group of 15 or more restaurant locations nationally; doing business under the same trade name; and offering predominantly the same type of meals, foods, or menu, regardless of the type of ownership of the individual restaurants. "Restaurants" do not include grocery stores, movie theaters, itinerant food vendors, or catering food establishments.

A "standard printed menu" is a printed list or menu or a pictorial display of food or beverage items offered for sale by the restaurant. It does not include printed or pictorial materials used for promotional or marketing purposes.

A "standard menu item" is a food or beverage item, or combination, listed or displayed on a standard printed menu, menu board, or food item tag, offered for sale by a chain restaurant for at least 90 days a year. It does not include a customized order, alcoholic beverages, packaged foods subject to federal regulatory requirements, condiments, and other food items placed on tables or counters for general use without charge. A "customized order" is any variation of a standard menu item requested by a customer.

Standard Printed Menu

Each chain restaurant using a standard printed menu:

1. must list the total number of calories next to each standard menu item in a size and typeface similar to other information included on the standard printed menu about such item and
2. may include on the menu a disclaimer that the total number of calories may vary across servings of standard menu items, based on special orders or slight variations in overall serving size or ingredient quantity.

Use of a Menu Board

Under the act, each chain restaurant using a menu board or similar sign to list its food or beverage items:

1. must list the total number of calories next to the item in a size and typeface similar to other information included on the menu board or sign about the item and
2. may include on the board or sign a disclaimer concerning variations in the total number of calories based on special orders or slight variations in serving size or ingredient quantity.

Food Item Tags

The act requires that if a food item is displayed for sale in a chain restaurant with a food item tag, the tag must include the total number of calories for the item, in a font size and format no less prominent than the font size identifying the food item. A “food item tag” is a label or tag identifying a food item displayed for sale by a chain restaurant.

Varieties and Flavors of Standard Menu Items

For standard menu items that come in different flavors and varieties the chain restaurant must list on standard printed menus and menu boards the range of total calories for such menu items showing the minimum and maximum calorie totals for all flavors and varieties of such items for each size. But the range of total calories does not have to be included on standard printed menus and menu boards if the total number of calories is included on the food item tag for each flavor and variety. This applies, but is not limited, to beverages, ice cream, pizza, and doughnuts.

Salad Bar, Buffet Line, Cafeteria Service, or Other Self-Serve Arrangement

The act does not require a chain restaurant providing a salad bar, buffet line, cafeteria service, or similar self-serve arrangement to list calorie totals for such items on a standard printed menu, menu board, or similar sign listing food and beverage for sale. But the restaurant must include a food item tag for each item, close to where the item is offered for sale. The tag must list the recommended serving size and the total number of calories per serving. It must be in a font size and format no less prominent than that identifying the food item.

Food Items Intended to Serve More than One Person

The act requires that for any standard menu item, other than one displayed with a food item tag, intended to serve more than one person, the standard printed menu or board must include the number of people intended to be served by the menu item and the total number of calories per individual serving. If the standard menu item is listed or pictured as a single menu item or prepared as a combination of two or more standard items, the total calorie number must be based on all possible combinations for the item. It must include the minimum and maximum number of calories for each item. If there is only one possible total calorie number for the combination, then that must be disclosed.

“Reasonable Means” in Determining Calorie Totals

The act requires chain restaurants to use reasonable means to determine the total number of calories for each standard menu item. “Reasonable means” is defined as any reasonable means recognized by the federal Food and Drug Administration to determine nutritional information and calorie total information for a standard menu item as it is usually prepared and offered for sale. This includes the use of nutrient databases and laboratory analyses.

The act specifies that it must not be construed to preclude a chain restaurant from voluntarily providing supplemental nutritional information.

Municipal Laws or Ordinances

The act specifies that its provisions on chain restaurant calorie disclosure supersede and preempt any municipal laws or ordinances concerning the content of a standard printed menu, menu board, or food item tag at a chain restaurant with respect to calories, nutritional and health information that is effective before, on, or after July 1, 2010.

Local Zoning

Under the act, if a chain restaurant must increase the size of a menu board or similar sign to comply with the act's provisions, the board or sign is not subject to local zoning regulations unless it exceeds by 25% or more the existing size of the menu board or sign.

INSPECTIONS AND REGULATIONS

The act requires each authorized agent who inspects a chain restaurant to evaluate the restaurant's compliance with the act's provisions when performing his or her regularly scheduled inspection. An "authorized agent" is an individual certified by the DPH commissioner to inspect food service establishments and enforce the Public Health Code provisions concerning their sanitation under the supervision or authority of a local health director.

As part of the evaluation, the authorized agent may request that the franchisors or corporate owners of chain restaurants provide documentation of the accuracy of the listed calorie totals. But they are not required to provide any documentation containing trade secrets or proprietary information. The act specifies that the authorized agent is not responsible for verifying the accuracy of the listed calorie totals.

The act requires the DPH commissioner, by July 1, 2010, to adopt regulations incorporating inspection and enforcement procedures addressing the requirements for calorie information into regularly scheduled food service establishment inspections.

PA 09-206—sSB 1048*Public Health Committee**Judiciary Committee**Human Services Committee**Government Administration and Elections Committee**Insurance and Real Estate Committee***AN ACT CONCERNING HEALTH CARE COST CONTROL INITIATIVES**

SUMMARY: This act requires the Social Services (DSS) and Administrative Services (DAS) commissioners and the comptroller, in consultation with the Public Health (DPH) and Insurance commissioners, to develop a plan concerning the bulk purchasing of pharmaceuticals. Specifically, the plan must implement and maintain a prescription drug purchasing program and procedures to aggregate or negotiate pharmaceutical purchases for HUSKY Part B, State Administered General Assistance, Charter Oak Plan and ConnPACE recipients, Department of Correction inmates, and people eligible for insurance under the state employees

and municipal employee health insurance plans. (PA 09-232, § 28, eliminates the insurance commissioner's consultative role in developing the plan.)

The plan must include the state joining an existing multistate Medicaid pharmaceutical purchasing pool. It must determine whether it is feasible to subject some or all of the programs listed above to the preferred drug lists adopted by DSS for its various programs.

The act requires DSS to submit the plan to the Public Health and Human Services committees by December 31, 2009. The plan must include (1) an implementation timetable, (2) anticipated costs or savings, (3) a timetable for achieving any savings, and (4) legislative recommendations.

The act also prohibits (1) hospitals and outpatient surgical facilities from seeking payment for costs associated with certain hospital-acquired conditions and (2) specified health care practitioners from charging for certain imaging services.

EFFECTIVE DATE: July 1, 2009 for the bulk purchasing provisions; October 1, 2009 for the imaging service provision; and January 1, 2010 for the provision on hospitals and outpatient surgical facility billing for hospital-acquired conditions.

PAYMENT FOR HOSPITAL-ACQUIRED INFECTIONS

The act prohibits hospitals and outpatient surgical facilities from seeking payment for any increased costs they incur as a direct result of a hospital-acquired condition identified as nonpayable by Medicare according to federal law (see **BACKGROUND**). This applies regardless of the patient's insurance status or sources of payment (including self-pay), except as otherwise provided by federal law or PA 09-2, § 8.

That state law requires the DSS commissioner to amend the Medicaid state plan to indicate that the approved inpatient hospital rates it pays for Medicaid-eligible patients are not applicable to hospital-acquired conditions that the Medicare program identifies as "nonpayable" (also referred to as "never events") in accordance with a 2005 federal law to ensure that hospitals are not paid for these conditions.

Under this act, "hospital" means an acute care hospital subject to the federal inpatient prospective payment system. An "outpatient surgical facility" is an entity, individual, firm, partnership, corporation, limited liability company, or association, other than a hospital, providing surgical services or diagnostic procedures for human health conditions that include use of moderate or deep sedation, moderate or deep analgesia, or general anesthesia, as these levels are defined by the American Society of Anesthesiologists or by another professional or accrediting entity recognized by DPH.

IMAGING SERVICES

The act prohibits specified health care providers from charging patients, insurers, or other responsible third-party payors for performing the “technical components” of CAT scans, PET scans, and MRIs if they, or someone under their direct supervision, did not actually perform the service. The prohibition applies to physicians, chiropractors, podiatrists, naturopaths, and optometrists.

Under the act, radiological facilities and imaging centers must directly bill the patient or third party payor for their services. They cannot bill the practitioner who requested the service.

BACKGROUND

Hospital-Acquired Conditions

The federal Deficit Reduction Act of 2005 required the federal Medicare agency, beginning October 1, 2008, to limit payments to hospitals for preventable medical errors that result in serious consequences for patients. Since then, the Medicare program has identified selected costly or common conditions that it considers to be reasonably preventable by following evidence-based guidelines. Medicare will not pay a hospital for any increased costs it incurs as a result of one of these events occurring (i.e., treating a condition that was not present when the patient was admitted to the hospital). Medicare continues to pay for the physician and other covered items or services needed to treat the hospital-acquired condition.

The following conditions have been identified:

1. object inadvertently left in after surgery;
2. air embolism;
3. blood incompatibility;
4. catheter-associated urinary tract infection;
5. pressure ulcer;
6. vascular catheter-associated infection;
7. surgical site infection (chest infection) after coronary artery bypass graft surgery;
8. certain types of falls and traumas;
9. surgical site infections following certain elective procedures, including certain orthopedic surgeries and bariatric surgery for obesity;
10. certain manifestations of poor control of blood sugar levels; and
11. deep vein thrombosis or pulmonary embolism following total knee replacement and hip replacement procedures.

PA 09-220—sHB 6539

Public Health Committee

Energy and Technology Committee

AN ACT CONCERNING ENVIRONMENTAL HEALTH

SUMMARY: This act requires exclusive service area providers (ESAPs) to confirm in writing that they (1) have received the applications for public water supply certificates of need and public convenience submitted to the Public Health (DPH) and Public Utility Control (DPUC) departments and (2) are prepared to assume responsibility for the system. It requires the departments, when deciding whether to issue a certificate, to consider whether the system’s owner has the financial, managerial, and technical resources to operate it efficiently and reliably and provide continuous, adequate service to consumers.

It requires water company supply plans to include a brief summary of the company’s underground infrastructure replacement practices. It lengthens, to between six and nine years from between three to five years, the time between required plan revisions, in most cases.

The act extends the time for DPH to establish and define discharge categories for certain alternative on-site sewage treatment systems.

Finally, it updates DPH’s responsibilities concerning safe levels of radon and amends the duties of school boards concerning radon inspection and evaluation.

EFFECTIVE DATE: October 1, 2009

CERTIFICATES OF NEED AND PUBLIC NECESSITY

By law, anyone who owns, operates, maintains, or manages a water system that supplies 15 or more service connections or 25 or more people for at least 60 days a year is a water company. This definition can apply to residential communities, professional offices, and youth camps, for example, as well as municipal water utilities. Any water company that wants to construct or expand a water supply system that serves 25 or more residents must obtain a certificate of need and public necessity from the DPH and DPUC. Once a system is constructed, the ESAP must own and operate it.

Under prior law, a water company’s application for a certificate had to include its plans and its agreement with the ESAP detailing the terms and conditions for the construction or expansion. The act specifies that this is necessary only when an ESAP has been determined. It also requires that, when an ESAP has been determined, the applicant submit its signed ownership agreement

with the ESAP.

The act also requires ESAPs to confirm in writing that they (1) have received the applications for public water supply certificates of public convenience and necessity submitted to the DPH and DPUC and (2) are prepared to assume responsibility for the system subject to the terms and conditions of the ownership agreement. The ESAP's written confirmation must be on forms prescribed by the departments.

Finally, it requires the departments, when deciding whether to issue a certificate, to consider whether the person that will own the system (the ESAP or the water company, if no ESAP is determined) has the financial, managerial, and technical resources to operate the system efficiently and reliably and provide continuous, adequate service to the system's consumers. The same requirement already applies to applicants for certificates of need and public necessity for systems serving 25 or more people, but not 25 or more residents.

WATER SUPPLY PLAN REVISIONS

By law, water companies supplying water to 1,000 or more people or 250 or more consumers (and any other water companies at DPH's request) must file a water supply plan that, among other elements, analyzes future needs, assesses alternative supply sources, recommends new system development, and evaluates water source protection. The act adds a new element that plans must include: a brief summary of the company's underground infrastructure replacement practices. These may include current and future infrastructure needs, methods for identifying and ranking rehabilitation and replacement projects, and funding needs.

Once approved, prior law required these plans to be revised every three to five years or as DPH or the water company determined. The act instead requires a revision every six to nine years after the date of the most recently approved plan. But, if a water company fails to meet public drinking water supply and quantity obligations, it must file plan revisions six years after the date of the most recently approved plan, unless DPH requests otherwise. Beginning October 1, 2009, the act requires that, upon approval of a water supply plan, any subsequent revisions must at least have updates to the elements described above that have changed since the date of the most recently approved plan, unless DPH has not otherwise requested an entire water supply plan submission.

ALTERNATIVE ON-SITE SEWAGE SYSTEMS

The law required the DPH commissioner, by December 31, 2008, to establish and define discharge categories for alternative on-site sewage treatment systems that have a daily capacity of 5,000 gallons or less. The law gave the DPH commissioner jurisdiction over these systems once he had done so and required him to establish minimum requirements for the systems. The act extends the time for the commissioner to establish and define these discharge categories by removing the deadline.

RADON

Prior law required DPH to adopt regulations establishing safe levels of radon in potable water. The act instead requires DPH to adopt regulations concerning radon in drinking water consistent with federal drinking water regulations.

The law required DPH to adopt regulations establishing acceptable levels of radon in ambient air and drinking water in schools. The act instead requires DPH to adopt regulations establishing radon measurement requirements and procedures for evaluating radon in indoor air and reducing elevated radon gas levels when detected in public schools.

Before January 1, 2008, and every five years afterward, the law required local and regional boards of education to provide for a uniform inspection and evaluation program for the indoor air quality for every school building constructed, extended, renovated, or replaced on or after January 1, 2003. Among other things, the program had to include a review, inspection, or evaluation of radon levels in the air and water. Under the act, only radon levels in the air must be inspected and evaluated.

BACKGROUND

Designating ESAPs

Water Utility Control Committees convened by DPH designate exclusive service areas, which are the approved by the DPH commissioner. An exclusive service area is an area where public water is supplied by one system. Currently, four committees have been convened covering about 110 towns, mostly in central and southeastern portions of the state and the Housatonic region.

PA 09-232—sHB 6678
Public Health Committee
Judiciary Committee

**AN ACT CONCERNING REVISIONS TO
 DEPARTMENT OF PUBLIC HEALTH
 LICENSING STATUTES**

SUMMARY: This act makes numerous substantive and minor changes to laws governing Department of Public Health (DPH) programs and health professional licensing. The DPH program changes relate to funeral home practices and death records, the Connecticut Tumor Registry, mass gatherings, home health agency inspection schedules, water company lands and geothermal wells, health information technology, emergency medical services, and day care licensing. The professional licensing changes affect physicians, physician assistants, nursing home administrators, dental hygienists, physical therapists, veterinarians, barbers and cosmeticians, audiologists, speech and language pathologists, and radiographers.

The act makes changes in the Office of Health Care Access certificate of need program. It requires (1) certain health care practitioners to inform pregnant women about umbilical cord blood and cord blood banks, (2) direct billing for pathology services, and (3) the University of Connecticut Health Center to establish a program that provides evidence-based outreach and education to prescribers about the therapeutic and cost-effective use of prescription drugs. It (1) allows towns to buy abandoned cemeteries, (2) expands the types of incidents of child abuse and neglect that the Department of Children and Families (DCF) must report to DPH when they involve certain DPH-licensed facilities, and (3) limits where people can get a marriage license to the town where the wedding will occur. And it makes minor changes in several laws and repeals others.

EFFECTIVE DATE: October 1, 2009, except as noted below.

§§ 1 & 13 — FUNERAL HOME PRACTICES

The law requires funeral directors to wash or embalm a body before transporting it from the place where the death occurred. The act makes an exception when the person who assumes custody of the body for burial purposes determines that doing this is contrary to the deceased's religious beliefs or customs. The law still requires funeral directors to wash, embalm, or wrap a body as soon as practicable after it arrives at the funeral home if the person died from a disease that must be reported to DPH (CGS § 19a-91(c)).

The act requires placing any body entombed in a crypt or mausoleum in a zinc-lined or plastic container (made of acrylonitrile butadiene styrene (ABS)) or, if

the cemetery permits, a non-rusting or ABS sheeting tray.

It extends, to six from three years, the period:

1. after death that funeral homes must keep their records related to funeral services, prepaid funeral contracts, and escrow accounts;
2. after a body's final disposition that funeral homes must keep copies of permits, certificates, and written agreements about disposition, including the final bill; and
3. after last distributing price lists to consumers that funeral homes must keep copies of them.

**§ 2 — PENALTIES FOR NURSING HOME
 ADMINISTRATORS**

The act adds another circumstance for which DPH can take action against a nursing home administrator—violating any state or federal law governing the administrator's practice in a nursing home. DPH can already take action against a licensee who is found guilty of a felony under this state's, another state's, or federal law. Sanctions include censure or reprimand, suspending or revoking the administrator's license, and civil penalties up to \$25,000.

§ 3 — MEDICAL RESIDENTS' PERMITS

Medical residents and interns must get a DPH permit to participate in their programs. Under the act, the person's ability to practice medicine under the permit automatically ends when the internship or residency ends or he or she leaves the program. Anyone who continues to perform medicine is subject to DPH sanctions.

§ 4 — DENTAL HYGIENISTS

The act permits dental hygienists with two years of experience to practice independently (i.e., without a dentist's general supervision) in programs offered or sponsored by the Women, Infants, and Children (WIC) program. Hygienists with this experience can already practice independently in community health centers, group homes, schools, public preschools, and Head Start programs.

EFFECTIVE DATE: July 1, 2009

§§ 5 & 6 — MASS GATHERING LICENSE

The act lowers the attendance and durational thresholds, from 3,000 to 2,000 people and from 18 to 12 consecutive hours, that trigger the requirement for an event organizer to obtain a mass event license from the local police chief or first selectman. It also reduces, from 30 to 15 days before the event, the deadline for applying to the town for a permit to hold the event.

§ 7 — CONNECTICUT TUMOR REGISTRY

The act updates the law governing the Connecticut Tumor Registry. Existing regulations (1) require all hospitals and clinical laboratories to report to DPH, by June 30 annually, laboratory data, diagnosis, medical and occupational history, treatment, and lifetime follow-up information for anyone newly diagnosed with cancer and (2) subject any entity that does not report to license suspension or revocation.

The act requires the registry to include reports of all tumors and conditions that are diagnosed or treated in the state for which DPH requires reports. It extends the reporting requirement to physicians, chiropractors, naturopaths, podiatrists, athletic trainers, physical and occupational therapists, alcohol and drug counselors, radiographers and radiologic technologists, midwives, nurses, nurse's aides, dentists, dental hygienists, optometrists, opticians, respiratory care practitioners, perfusionists, psychologists, marital and family therapists, clinical social workers, professional counselors, veterinarians, massage therapists, electrologists, hearing instrument specialists, speech and language pathologists, audiologists, paramedics, and emergency medical technicians.

It requires the reports to cover every occurrence of a reportable tumor and condition (DPH determines what must be reported) that was diagnosed or treated during the calendar year. The reports must include information from any health care provider's records; follow-up data; and demographic, diagnostic, treatment, and other medical information. They may include actual tissue samples and other information DPH prescribes. The act requires the DPH commissioner to develop a list of data that must be reported. Reports are due annually beginning July 1, 2010.

Any hospital, lab, or provider that fails to report within nine months of its first contact with a patient for diagnosis or treatment must be assessed a \$250 civil penalty for each business day after the DPH commissioner orders it to report. The act also imposes a civil penalty of up to \$500 for each tumor a provider fails to report. The commissioner may ask the attorney general to enforce both penalties.

The act requires all health care providers to give DPH access to their records to perform case finding or other quality improvement audits. It allows DPH to (1) contract for the storage, holding, and maintenance of tissue samples and (2) make reciprocal reporting agreements with other states' tumor registries to exchange tumor reports.

The act authorizes DPH to perform "registry services" for any hospital, lab, or provider that fails to comply with its reporting requirements. The act does not define this term, but it presumably includes reporting all required data. In such cases, the hospital,

lab, or provider must reimburse DPH for its expenses.

Under the act, DPH can assess reimbursements, expenses, or civil penalties only after it notifies the provider in writing and gives it an opportunity to respond. The provider must respond within 14 business days of receiving the notice and must give DPH any information it requests.

§§ 8, 12, 18, & 19 — DEATH-RELATED RECORDS

Subregistrars

The act requires local registrars of vital statistics to appoint at least two subregistrars who can issue needed permits when the registrar's office is closed; prior law did not set a minimum number. It allows subregistrars to issue cremation permits as well as removal, transit, and burial permits. Before authorizing a cremation permit, the act requires the subregistrar to receive and review a completed cremation certificate and permit. The act prohibits a funeral director, embalmer, or an employee of either, acting as a subregistrar, to issue a cremation permit to him or herself.

The act specifies that subregistrars must forward the death and cremation certificates upon which they issued permits to the registrar of the town where the death occurred, not the registrar that appointed them. It requires them to submit a cremation permit within seven days after receiving the cremation certificate, the same time currently required for submitting a death certificate. It also specifies that the chief, deputy chief, and associate medical examiners are considered subregistrars in any town where a death occurs only for issuing removal, transit, and burial permits (thus, not for issuing cremation permits).

Cemetery Sextons

The act specifies time frames and procedures for cemetery sextons to follow for transmitting removal, transit, and burial permits to registrars. If they record a permit on an electronic registry, they must do so within three days of the burial. The act requires them to send the completed and signed permit in paper format to the registrar of the town where the body is buried and a copy to the registrar of the town where the death occurred. A sexton in charge of reintering a disinterred body must (1) complete and return a disinterment permit to the registrar of the town where the body is buried and (2) send a copy of the registrar of the town where the death occurred. The act requires sextons to send all paper permit forms within the first week of the month following the burial or disinterment. It subjects sextons to a \$500 fine or imprisonment for up to five years for failure to follow these procedures.

The law requires sextons to report all interments, disinterments, and removals to the registrar of the town where the cemetery is located. Under the act, they can fulfill this requirement by recording removal, transit, and burial permits in an electronic registry. The act removes requirements that reports be on a DPH-prescribed form and that sextons (1) include in their monthly reports a separate statement about bodies that were temporarily stored in their cemeteries' receiving vaults before burial and (2) send a copy of the permits for such burials to the registrar of the town where the death occurred. It retains the existing fine of up to \$100 per day fine for failure to file these reports on time.

Disinterment

The act allows embalmers and funeral directors from other states that have reciprocal agreements with Connecticut to apply for a disinterment permit. It specifies that they and DPH-licensed funeral directors and embalmers and people acting under a court order, who are currently allowed to apply for such permits, can apply to either the registrar of the town where the body is buried or of the town where the death occurred.

The act also repeals and incorporates into its provisions two statutes governing disinterment and sexton reporting and makes related technical changes.

§ 9 — COMMISSION ON HEALTH EQUITY

The act adds eliminating gender-related health disparities to the Commission on Health Equity's charge and requires at least one of its eight public members to represent women. The top four legislative leaders each appoint two public members.

EFFECTIVE DATE: Upon passage

§§ 10 & 11 — VETERINARIAN CONTINUING EDUCATION

The act requires veterinarians to take at least 24 contact hours (a contact hour is 50 minutes) of continuing education every two years as a condition of license renewal and permits DPH to sanction a veterinarian who fails to comply. The requirement applies to license renewals occurring on or after July 1, 2011.

The continuing education must (1) be in an area of the veterinarian's practice and (2) reflect his or her professional needs. In-person and online courses offered by national and state veterinarian organizations, veterinary schools, and other professional organizations qualify as continuing education activities. A veterinarian applying for license renewal must (1) attest in writing to DPH that he or she satisfied the continuing education requirements and (2) keep records to that effect for at least three years after completion. The

veterinarian must submit these records to DPH with 45 days of its asking for them.

The requirements do not apply to veterinarians who (1) renew a license for the first time or (2) submit a notarized exemption application to DPH stating they do not practice actively. The act allows the DPH commissioner to waive the requirement or grant an extension for up to one year for a veterinarian who is ill or medically disabled. A doctor's note certifying the condition must accompany the veterinarian's waiver or extension application. Upon application, the commissioner can grant additional waivers and extensions if the condition continues.

A veterinarian whose license is voided for failure to renew must document successfully completing at least 12 contact hours of continuing education in the year immediately preceding the year he or she applies to reinstate the license.

EFFECTIVE DATE: July 1, 2009 for the continuing education requirements; October 1, 2009 for DPH's ability to sanction veterinarians who do not comply with them.

§ 14 — HOME HEALTH AGENCY INSPECTIONS

Under current law, DPH must conduct an unscheduled inspection of a home health agency before the agency's license can be renewed. Licenses are renewable every two years. Agencies that participate in Medicare must, under federal law, be inspected every three years; DPH also conducts these inspections.

The act exempts Medicare-certified home health agencies from the two-year inspection schedule, thus bringing inspections into line with the triennial federal schedule. But it retains the biennial licensing requirement, which means inspections and license renewals will no longer be aligned. (While the act appears to affect homemaker-home health aide agencies and homemaker-home health aide services, Medicare does not certify these.)

EFFECTIVE DATE: July 1, 2009

§ 15 — PUBLIC ASSISTANCE BENEFICIARIES' ESTATES

The act removes an obsolete reference to DPH-operated institutions from the law concerning the Administrative Services Department's ability to recoup funeral and certain other payments the state made on behalf of public assistance recipients who die with a small estate. DPH does not operate any institutions serving public assistance recipients.

§ 16 — PHYSICIAN CONTINUING MEDICAL EDUCATION

The act adds cultural competency to the list of continuing medical education topics physicians must take every two years. The requirement begins with license registration periods starting on and after October 1, 2010. The list currently covers infectious diseases, risk management, sexual assault, and domestic violence. Physicians must take at least 50 minutes (one contact hour) of education in each of these topics every two years.

§17 — PHYSICAL THERAPIST SCOPE OF PRACTICE

The act adds to physical therapists' scope of practice the use of "low-level light laser therapy" to accelerate tissue repair, decrease edema (swelling), or minimize or eliminate pain. It defines this therapy (also known as "cold laser" therapy) as having wave lengths ranging from 600 to 1,000 nanometers.

§ 20 — GEOTHERMAL WELLS

The act permits the DPH commissioner, with the concurrence of the environmental and consumer protection commissioners, to give a university located in a city whose population is between 100,000 and 150,000 a variance from state regulations to install standing column geothermal wells in a class GB groundwater zone (not fit for human consumption without treatment). The commissioners may require the wells to meet minimum safeguards that exceed existing regulatory requirements.

Before the variance may be granted, the school must submit information these agencies deem necessary to assure the public health and the environment are protected. The school must hire, at its expense, an independent expert to help the state agencies develop regulations for geothermal wells.

If, once it is operating, the public health or environmental protection commissioners determine the well is injuring public health or the environment, either may order it closed and abandoned according to regulatory requirements.

EFFECTIVE DATE: Upon passage

§ 21 — UMBILICAL CORD BLOOD

The act requires doctors and other health care providers who provide pregnancy-related care for women during their third trimester to provide the women with timely, relevant, and appropriate information about umbilical cord blood and cord blood banks. The information must be sufficient to allow women to make informed choices about banking or

donating their child's cord blood.
EFFECTIVE DATE: July 1, 2009

§§ 25-27, 29-38, & 71 — EMERGENCY MEDICAL SERVICES (EMS)

The act makes several minor and technical changes to the EMS laws. It renames several terms used in those laws to conform to newer national usages: (1) "emergency medical technician-intermediate" becomes "advanced emergency medical technician," (2) "medical response technician" becomes "emergency medical responder," and (3) "medical control" becomes "medical oversight."

It requires all emergency medical technicians (EMTs) to be recertified every three years; prior law required EMTs to be recertified every two years, except for those with six years of continuous service, who had to be recertified every three years. The act also increases, from 25 to 30 hours, the amount of refresher training EMTs must obtain to be recertified. It allows the DPH commissioner to prescribe alternative recertification requirements.

The act removes the (1) requirement for the DPH commissioner to establish minimum standards and adopt regulations concerning life saving equipment on EMS vehicles and (2) authority for him to issue regulations governing mandatory equipment for motorcycles used as rescue vehicles. Instead, it requires him to issue an annual list of minimum equipment requirements for ambulances and rescue vehicles that is based on national standards. The commissioner must distribute the list to all EMS organizations and sponsor-hospital medical directors and make it available to other interested parties. The act give EMS organizations one year from the date the list is issued to comply with it.

The act removes a provision in DPH's EMS certificate of need (CON) process that limits the primary service area responder (PSAR) that may be granted intervernor status to the PSAR in the town where the CON applicant operates or intends to operate. This codifies DPH's practice.

It specifies that the state medical director who serves on the EMS Advisory Board is DPH's EMS medical director.

EFFECTIVE DATE: January 1, 2010, except the CON provision is effective upon passage.

§ 28 — BULK PRESCRIPTION DRUG PURCHASING

The act amends a provision in PA 09-206 to eliminate the insurance commissioner's consultative role in developing a plan to implement a state prescription drug bulk purchasing program.

EFFECTIVE DATE: July 1, 2009

§§ 39 & 40 — CREMATORY SITING

The act prohibits local zoning regulations from permitting a crematory to be located within 500 feet of any residential structure or land zoned for residential purposes that is not owned by the crematory's owner. The prohibition applies to both human and large animal (defined as cattle, horses, sheep, goats, swine, and other livestock) crematories. It repeals the previous law governing local approval of crematory locations, which contained a similar prohibition on siting crematories after October 1, 1998.

§ 41 — SWINE BREEDING BARN SITING

The act permits a swine breeding barn that meets certain criteria to continue in use regardless of state law or regulations to the contrary. The barn must be (1) on property that has been used continuously as a farm for at least 50 years and (2) at least 200 feet from any inhabited house on the property other than the barn owner's house.

EFFECTIVE DATE: Upon passage

§§ 42, 103-104 — CHILD DAY CARE LICENSING

The act exempts Solar Youth, Inc. from day care licensing requirements. It requires Solar Youth to inform parents and guardians of any child it enrolls that its programs are not licensed to provide day care services. Solar Youth is a youth development and environmental education organization located in New Haven. PA 08-184 exempted it from licensing requirements until June 30, 2009.

When a licensee vacates a leased space that DPH has already approved for day care services, the act permits DPH to determine whether a subsequent applicant is eligible for a license once the landlord establishes to its satisfaction that the previous licensee has no legal right or interest in the premises.

The act requires DPH to offer an expedited review process when a municipal department or agency applies for a day care license.

EFFECTIVE DATE: Upon passage, except for the Solar Youth provision, which is effective July 1, 2009

§ 43 — FLU

The act specifies the type of flu that qualifies as an infectious disease for purposes of PA 09-76, which requires hospitals to notify emergency service organizations when a patient they have transported is found to have an infectious disease. Under that act, "pandemic flu" was termed an infectious disease; this act, instead, makes it "novel influenza A virus infections with pandemic potential," as defined by the Centers for Disease Control and Prevention.

§ 44 — MARITAL AND FAMILY THERAPISTS

The act allows people performing the 100 hours of supervised postgraduate clinical training required for licensure as a marital and family therapist to pay the therapist who supervises them. Current law bars them from directly compensating a supervisor.

§§ 45 & 46 — BARBERS AND COSMETICIANS

The act repeals the requirement that a barber, hairdresser, or cosmetician from another state or U.S. territory or commonwealth who is seeking licensure- or registration-by-endorsement here (i.e., without taking the Connecticut licensing exam) successfully complete an English proficiency test if the licensing exam he or she passed in the other jurisdiction was not in English.

EFFECTIVE DATE: July 1, 2009

§§ 47 & 48 — WATER COMPANY LAND LEASES

The law requires a water company to get a permit from DPH in order to sell, lease, assign, otherwise dispose of, or change the use of watershed lands. The act establishes conditions under which a company can obtain a permit to lease class I land.

It allows DPH to grant a permit under certain conditions for the lease of class I land associated with a groundwater source used for public drinking water to another water company that serves 1,000 or more people or 250 or more customers and maintains an approved water supply plan. The lessee water company must demonstrate that the lease will improve the existing public drinking water system's conditions and will not have a significant adverse effect on the public drinking water supply's purity and adequacy now or in the future. DPH may require the water company seeking the permit to convey an easement that protects the water supply source and submit the easement and any lease provisions that pertain to public water supply protection to the commissioner for approval.

Under existing law, these new lease conditions do not prevent a water company from leasing class I land or changing its use for (1) recreational purposes that do not require intense development or improvements for water supply purposes, (2) radio or telecommunications towers, or (3) leasing existing structures (CGS 25-32(f)).

EFFECTIVE DATE: Upon passage

§ 49 — X-RAY EQUIPMENT OPERATION

By law, only a DPH-licensed radiographer can operate x-ray equipment. The act specifies that operating such equipment includes energizing the beam, positioning the patient, and positioning or moving equipment in relation to the patient.

EFFECTIVE DATE: Upon passage

§§ 50 & 51 — FLUOROSCOPY BY PHYSICIAN ASSISTANTS

Beginning October 1, 2011, the act establishes training criteria that a physician assistant (PA) must meet in order to use fluoroscopy to guide diagnostic and treatment procedures and a mini C-arm in conjunction with it. A PA must complete 40 hours of training that includes radiation physics and biology, safety, and management applicable to fluoroscopy. At least 10 hours of the training must address radiation safety, and at least 15 hours must address radiation physics and biology. A PA must also pass a DPH-prescribed test. Documentation that a PA has met these requirements must be kept at the PA's worksite and be available to DPH upon request.

But the act permits a PA to perform fluoroscopy and use a mini C-arm before October 1, 2011 without this training by passing the DPH-prescribed exam. A PA who does not pass this test cannot use a fluoroscope or mini C-arm until he or she meets the act's training and test requirements.

The act specifies that the radiographer licensing laws should not be construed to prohibit a PA who is not a licensed radiographer from using a fluoroscope or a mini C-arm in conjunction with fluoroscopic procedures.

EFFECTIVE DATE: Upon passage

§ 52 — PRESCHOOL AND CHILD CARE FORM

Special Act 09-3 requires the social services, public health, and education commissioners to collaborate on developing and implementing, by January 1, 2010, a single form for preschool and child day care providers to report information needed for state funding. This act specifies the information needed: daily attendance records for children and staff, staff qualifications, and work schedules. It permits the social services commissioner to develop additional forms for each type of information and specifies that any form developed must be designed to facilitate the departments' collection of the required information. It eliminates the requirement that the commissioners collaboratively implement use of the form.

EFFECTIVE DATE: Upon passage

§§ 53-67, 78-82 — AUDIOLOGIST AND SPEECH AND LANGUAGE PATHOLOGIST LICENSURE

The act establishes separate licenses for audiologists and speech and language pathologists; these professions were previously subject to the same license requirements, which the act eliminates. It imposes continuing education requirements on both. It

permits, rather than requires, DPH to adopt regulations governing speech and language pathology; it is silent on audiologist regulations, which prior law required.

§§ 53-60 — Audiologist Licensure

The act maintains the existing definition of the practice of audiology, that is measuring, testing, and determining appropriate amplification related to hearing disorders, including fitting and selling hearing aids to modify communication disorders. It defines "audiologist" as anyone who practices audiology using any title or description of service that use the words audiology; audiologist; audiological; hearing clinician, therapy, therapist, or conservationist; industrial audiologist; or similar title or description.

The act requires anyone applying for an audiologist license who graduated on or after January 1, 2007 to have a doctorate in audiology from an accredited program; people who graduated before that date with only a master's degree can still obtain a license. It allows the Accreditation Commission for Audiology Education or any other organization the U.S. Department of Education recognizes to accredit audiology programs to accredit programs; currently only the Speech Language-Hearing Association can do this. It continues to permit licensure for someone who has completed an integrated educational program that, at the time of completion, satisfied the Speech Language-Hearing Association's requirements for clinical competence.

The act maintains the same supervised postgraduate work experience requirements for licensure candidates but adds the requirement that the supervised work consist of at least six sessions per month totaling at least four hours. Two of the sessions must provide a total of at least two hours of direct, on-site observation. It permits DPH to waive these requirements for a candidate who graduated with a PhD after January 1, 2007. It also continues to permit DPH to waive the licensing exam for audiologists (1) licensed in other states or U.S. territories with standards at least as rigorous as Connecticut's or (2) who hold a certificate in audiology from a national professional organization approved by the DPH commissioner.

The annual license fee continues to be \$100.

The act imposes continuing education requirements on audiologists beginning with licenses renewed on and after October 1, 2011. Audiologists must show they have earned at least 20 contact hours (50 minutes to an hour) in areas of their practice. Courses, workshops, conferences, professional journals, and in-person or on-line activities all qualify for continuing education credits if they are accepted or approved by national or state audiology associations or by related professional societies and organizations. Audiology-related graduate

courses also qualify if they are offered by an accredited college (it is not clear if the accreditation is by an audiology or speech-language body or by any college accrediting body). Licensees must keep records attesting to their compliance with these requirements for three years and submit them to DPH within 45 days of any request to do so.

These continuing education requirements do not apply to audiologists who (1) renew a license for the first time or (2) submit a notarized exemption application to DPH stating they do not practice actively. The act allows the DPH commissioner to waive the requirement or grant an extension for up to one year for an audiologist who is ill or medically disabled. A doctor's note certifying the condition must accompany the audiologist's waiver or extension application. Upon application, the commissioner can grant additional waivers and extensions if the condition continues.

An audiologist whose license is voided for failure to renew must document successfully completing at least 10 contact hours of continuing education in the year immediately preceding the year he or she applies to reinstate the license.

The act continues the existing exemptions from licensure for (1) graduate students and interns in their coursework and others working to meet the professional employment requirements for licensure, (2) qualified people from other states and countries working in Connecticut for limited periods, (3) nurses and others screening people for hearing loss, (4) hearing instrument specialists, and (5) people consulting or providing research findings and scientific information to accredited academic institutions or government agencies or lecturing to the public for a fee. It adds exemptions for:

1. anyone who holds a valid certificate (a) in occupational hearing conservation from the Council for Accreditation in Occupational Hearing Conservation or another organization recognized by DPH or (b) as a certified industrial audiometric technician or occupational hearing conservationist from a DPH-recognized organization, if his or her service is performed in cooperation with either a licensed audiologist or physician;
2. audiometric tests administered under federal occupational safety law by a state employee or a person engaged in a business in which such tests are reasonably required, if the person administering the tests does not perform any other functions for which an audiology license is required; or
3. another licensed or registered professional practicing his or her profession.

The act establishes actions for which the DPH commissioner can refuse to issue a license; suspend or revoke a license; or issue other sanctions against a license holder, including letters of reprimand and civil penalties. These actions are:

1. obtaining a license by fraud or material misrepresentation or engaging in fraud or material deception in the course of professional services or activities;
2. violating professional conduct guidelines or a code of ethics established by DPH regulations (the act does not authorize DPH to adopt regulations governing audiologists);
3. violating any provision of the audiology licensing statutes;
4. physical or mental illness or emotional disorder or loss of motor skill, including age-related deterioration;
5. abuse or excessive use of drugs or alcohol; or
6. illegal, incompetent, or negligent conduct in practicing audiology.

The act permits the DPH commissioner to order a licensee to submit to a reasonable examination if his or her physical or mental capacity to practice safely is the subject of an investigation. It allows him to ask the Hartford-New Britain Superior Court to enforce this order or any DPH sanction.

The act permits unlicensed audiologist assistants to perform services under the direct, on-site supervision of a licensed audiologist who must assume responsibility for the assistant's performance. It prohibits an assistant from:

1. interpreting obtained observations or data into diagnostic statements of clinical management or procedures;
2. determining case selection;
3. transmitting verbally or in writing clinical information, including data or impressions about client performance, behavior, or progress, to anyone other than the audiologist;
4. independently composing clinical reports, except for progress notes to be held in the patient's file;
5. referring a patient to other agencies; or
6. using any title not determined by the audiologist or that implies the individual is a licensed audiologist.

As under prior law, the act subjects anyone who violates any of the audiologist licensing laws, except failure to renew a license, to a fine of up to \$500, up to five years in prison, or both. It makes each instance of patient contact a separate offense.

§§ 61-67 — *Speech and Language Pathologist Licensure*

The act adds the following to speech and language pathologists' scope of practice: screening individuals for hearing loss or middle ear pathology using otoacoustic emissions screening; screening tympanometry; or conventional pure-tone air conduction methods, including otoscopic inspection. It defines a speech and language pathologist as someone who engages in the practice of speech and language pathology under any title or description of service that uses the words speech pathologist, pathology, therapist, therapy, correction, correctionist, or clinician; language pathologist or pathology; aphasiologist; aphasia therapist; voice therapy, therapist, or pathologist; phoniatrix; communication or communication disorder specialist; or any similar title or description of services.

It maintains the existing educational requirements for licensure but specifies that:

1. the statutory hours for required postgraduate experience (1,080 full-time or 1,440 part-time) are the minimum level and must be satisfactorily completed and
2. the experience must consist of (a) at least six supervised sessions each month, totaling at least four supervised hours and (b) at least two sessions of direct, on-site observation totaling at least two hours.

The act permits the DPH commissioner to waive the written licensing exam requirement for people licensed as speech and language pathologists in U.S. territories; he may already do this for people licensed in other states.

The act continues the existing exemptions from licensure for:

1. graduate students and interns in their coursework and others working to meet the professional employment requirements for licensure,
2. qualified people from other states and countries working in Connecticut for limited periods,
3. people consulting or providing research findings and scientific information, and
4. supervised support personnel who assist a licensed speech and language pathologist with routine tasks. It eliminates exemptions related to audiology.

The act establishes continuing education requirements for speech and language pathologists. Like audiologists, it requires 20 contact hours every two years, but it does not specify the duration of a contact hour. The requirements, exemptions, and waivers parallel those described above for audiologists, except the act specifies that the content of courses or workshops must be accepted by the American-Speech-

Language Hearing Association. National and regional speech-language groups, professional societies, state and local education agencies, hospitals and other health care institutions, and colleges can all offer continuing education.

§§ 68, 83-90 — *RADIOLOGIST ASSISTANTS*

The act takes two approaches to recognizing radiologist assistants. One is to carve out a "radiologist assistant" category within the existing radiographer licensing law; the other is to create, conditionally, a separate license for assistants.

§ 68 — *New Radiologist Assistant Category*

The act enables a licensed radiologic technologist (someone who operates x-ray equipment, also known as a radiographer) to perform more advanced radiologic procedures as a radiologist assistant. In addition to the existing licensing requirements, to be a radiologist assistant a radiologic technologist must:

1. have graduated from a radiologist assistant education program recognized by the American Registry of Radiologic Technologists and passed that group's radiologist assistant examination;
2. maintain a current Connecticut license in good standing as a radiologic technologist;
3. hold current certification in (a) advanced cardiac life support and (b) as a radiographer and a radiologist assistant from the American Registry of Radiologic Technologists; and
4. maintain professional liability insurance or other indemnity against liability for professional malpractice for at least \$500,000 for one person, per occurrence, with an aggregate of at least \$1.5 million.

Each radiologist assistant must have a clearly identified supervising radiologist who has final responsibility for patient care and the assistant's performance. A radiologist may concurrently supervise no more than two full-time radiologist assistants, or their part-time equivalent. An assistant can perform services only at the supervising radiologist's primary medical practice location or in a health care facility where the supervising radiologist holds staff privileges.

The act defines supervision to include the ability for direct communication between the radiologist and the assistant, active overview to assure the assistant is following directions, personal review of an assistant's practice at least weekly, and regular chart review. It defines "direct supervision" as a radiologist's presence in the office suite and immediate availability to furnish assistance and direction throughout the performance of the procedure.

A radiologist assistant who meets the above criteria may perform radiologic procedures delegated by and under the direct supervision of a supervising radiologist if:

1. the supervising radiologist is satisfied of the assistant's ability and competence;
2. the delegation is consistent with the patient's health and welfare and in keeping with sound medical practice;
3. the supervising radiologist assumes full control and responsibility for all procedures the assistant performs;
4. the procedures are performed under the oversight, control, and direction of the supervising radiologist; and
5. the supervising radiologist establishes written protocols for implementing the delegated procedures.

The act specifies certain procedures that must be performed while the supervising radiologist is in the same room (i.e., personal supervision). These are: (1) contrast media administration; (2) needle or catheter placement; (3) lumbar puncture under fluoroscopic guidance; (4) lumbar myelogram; (5) thoracic or cervical myelogram; (6) nontunneled venous central line placement, venous catheter placement for dialysis, and breast needle localization; and (7) ductogram. In addition, the act permits a supervising radiologist to determine other procedures that are appropriate to be performed under personal supervision.

The act prohibits an assistant from (1) interpreting images, (2) diagnosing, (3) prescribing medication or therapy, or (4) administering anesthesia.

The act specifies that it does not apply to students in a radiologist assistant program recognized by the American Registry of Radiologic Technologists who are performing activities and services that are part of the course of study.

EFFECTIVE DATE: October 1, 2009

§§ 83-90 — *Licensure*

Beginning July 1, 2011, the act creates a new license category for radiologist assistants, but only if DPH has appropriations available to implement it. The license and license renewal fee is \$150. The licensure criteria is the same as the "carve-out" criteria. The act prohibits anyone who is subject to pending disciplinary action or an unresolved complaint in Connecticut or elsewhere from obtaining a license.

The act permits DPH to take disciplinary action against, and impose the same penalties on, a radiologist assistant for the same reasons it can against most health professionals.

EFFECTIVE DATE: July 1, 2011, except for the provision making DPH the governing authority over

licensed radiologist assistants, which is effective July 1, 2009 but applicable only after July 1, 2011.

§ 69 — ABANDONED CEMETERIES

The act allows a municipality to acquire an abandoned cemetery, including ownership of any occupied or unoccupied lots or grave sites in it. Under the act, an abandoned cemetery is one:

1. where no burial has occurred during the previous 40 years and in which the lots or graves have not been maintained during the last 10 years except for maintenance by the municipality;
2. where no lots have been sold in the last 40 years and in which most lots or graves have not been maintained during the last 10 years except for maintenance by the municipality; or
3. where one burial has occurred in the past 40 years when a permit was issued after the burial, if the municipality where the cemetery is located fully complies with the act's notice requirements and sends the notice to the surviving owner.

The municipality may survey such a cemetery to ascertain its extent. It must use due diligence to identify any owners of the cemetery or any of its lots or grave sites. It must notify the owners of its intention to acquire the cemetery, and if it cannot locate them, it must publish notice of its intention in a newspaper having a general circulation in the municipality. The notice must be published for three successive weeks. It must give a basic description of the cemetery, by reference to the municipality's tax maps, and set a date and place where the municipality will hear objections to the acquisition.

Any owner who receives the notice may reassert his or her right of ownership over the cemetery, unoccupied or occupied lot, or grave site by sending a written objection to the municipality within 14 days after receiving the notice. Any owner who reasserts his or her rights must promptly comply with all municipal ordinances concerning the cemetery, lot, or grave site.

If the municipality receives no objection within 15 days after the last date the notice was published, title to the cemetery and any lots or graves vests in the municipality. The municipality must (1) record a confirmation of the vesting, including a basic description of the cemetery, on the municipality's land records; (2) maintain title to the cemetery, which it may not transfer; and (3) maintain the cemetery's characteristics and make no changes in the use of its land. The municipality may appoint a sexton for the cemetery and appropriate funds for its care, maintenance, and support.

EFFECTIVE DATE: Upon passage

§ 70 — SUNSHINE HOUSE PILOT PROGRAM

The act requires Sunshine House, beginning September 21, 2009, to establish a pilot program creating a freestanding “comfort care center” for terminally ill children and their families and sets criteria for its doing so. It permits the care provided in the pilot program to include: respite care; end-of-life care that includes whole child care in a child-centered, family-oriented, home-like setting for families who need such care outside their home; and whole family care that includes accommodation for parents, specialized support for siblings and others, and bereavement support.

The act requires the pilot program to obtain a certificate of need from the Office of Health Care Access before September 30, 2011 and a hospice license from DPH by September 30, 2014. If it fails to do either, the pilot program ends.

EFFECTIVE DATE: Upon passage

§ 72 — ANATOMIC PATHOLOGY

The act requires direct billing to the patient or insurer by a clinical laboratory performing anatomic pathology services. It prohibits any entity other than a physician, clinical laboratory, or a “referring clinical laboratory” from directly or indirectly charging, billing, or seeking payment for pathology services unless the physician or lab personally performed or directly supervised the service according to federal standards governing clinical labs. Patients and third-party payors are not required to reimburse providers for charges or claims that violate the act’s prohibitions.

The act allows clinical and referring labs to seek payment only from a patient, hospital, responsible insurer of a third-party payor, or a government agency or the agency’s public or private agent. It states that it is not to be construed to prohibit a clinical lab from billing a referring lab for specimens transferred for histologic (tissue) or cytologic (cell) processing or for consultations.

The act defines “referring clinical laboratory” as a lab that refers a patient specimen for consultation or anatomic pathology services. The definition excludes a physician’s or physician group’s lab that takes a patient specimen and does not perform the professional diagnostic component of the anatomic pathology services involved. It defines “anatomic pathology services” as the gross and microscopic examination and histologic and cytologic processing of human specimens, including histopathology or surgical pathology, cytopathology, hematology, subcellular or molecular pathology, or blood banking service performed by a pathologist.

EFFECTIVE DATE: July 1, 2009

§ 73 — MARRIAGE LICENSES

The act repeals a couple’s ability to obtain a marriage license in the town where either of the parties lives. Thus, under the act, only the clerk of the town where the marriage is to be performed can issue a marriage license.

§§ 74-77 — HEALTH INFORMATION TECHNOLOGY (HIT)

Public Act 07-2, JSS required DPH to contract for the development of a statewide HIT plan. This act requires DPH to submit the plan to the Public Health Committee by July 1, 2009. By law, the plan must include (1) standards and protocols for health information exchange; (2) standards to facilitate the development of a statewide, integrated electronic health information system for use by state-funded health care providers and institutions; and (3) pilot programs for health information exchange, including costs and funding sources. The act eliminates the requirement that DPH, beginning December 1, 2008, annually report to the Public Health, Human Services, Government Administration and Elections, and Appropriations committees on the plan’s status.

Lead Health Information Exchange Organization

Public Act 07-2, JSS designated the entity that received the DPH contract for the HIT plan as the state’s lead health information exchange organization between December 1, 2007 and June 30, 2009. This act designates DPH as the state’s lead health information exchange organization beginning July 1, 2009. It requires DPH to seek private and federal funds, including those available through the federal American Recovery and Reinvestment Act, for the initial development of a statewide health information exchange. DPH can use any private or federal funds it receives to establish HIT pilot programs and the grant programs described below.

DPH must (1) assist with implementation and periodic revisions of the HIT plan after its initial submittal, including implementing an integrated statewide infrastructure for sharing electronic health information among health care facilities, health care professionals, public and private payors, and patients and (2) develop privacy standards and protocols for sharing this information. These standards and protocols must be at least as stringent as the “standards for privacy of individually identifiable health information” established under the federal Health Insurance Portability and Accountability Act. They must require that individually identifiable health information be secure and access to it traceable by electronic audit trail.

Health Information Technology and Exchange Advisory Committee Membership

The act establishes a 12-member health information technology and exchange advisory committee. Members and their appointing authorities are as follows:

1. the lieutenant governor;
2. (a) a representative of a medical research organization, (b) an insurer or health plan representative, and (c) an attorney with experience in privacy, health data security, or patient rights, each appointed by the governor;
3. (a) one person with experience with a private sector health information exchange or HIT entity and (b) one with expertise in public health, each appointed by the Senate president pro tempore;
4. (a) a representative of hospitals, an integrated delivery network, or a hospital association and (b) one person with expertise with federally qualified health centers, each appointed by the House speaker;
5. a primary care physician whose practice uses electronic health records, appointed by the Senate majority leader;
6. a consumer or consumer advocate, appointed by the House majority leader;
7. a person with experience as a pharmacist or other health care provider that uses electronic health information exchange, appointed by the Senate minority leader; and
8. a large employer or business group representative, appointed by the House minority leader.

The commissioners of public health, social services, consumer protection, and health care access, the chief information officer (it is unclear to whom this refers), the Office of Policy and Management secretary, and the health care advocate, or their designees, are ex-officio, nonvoting committee members.

All initial appointments must be made by October 1, 2009. Members' terms are staggered. The initial term for the governor's appointees is four years, three years for the House speaker's and House majority leader's appointees, two years for the House and Senate minority leaders' appointees, and one year for the members appointed by the Senate president pro tempore and majority leader. Terms expire on September 30. The appointing authority must fill vacancies for the balance of an unexpired term. Other than an initial term, a committee member can serve for a four-year term, and no member can serve more than two terms. A member can be removed by the appropriate appointing authority for malfeasance, misfeasance, or willful neglect of duty. Any member failing to attend three consecutive meetings or 50% of all meetings in a calendar year is

deemed to have resigned.

Committee members select a member to serve as the committee chairperson. The first meeting must be held by November 1, 2009.

All committee members are deemed public officials and must adhere to the state code of ethics for public officials. The act specifies that it is not a conflict of interest for a trustee, director, partner, officer, stockholder, proprietor, counsel, or employee of any eligible institution, or any other individual with a financial interest in an eligible institution, to be on the committee. An "eligible institution" is a hospital, clinic, physician or other health care provider, laboratory, or public health agency that uses health information exchange or HIT.

Members may participate in committee affairs concerning review or consideration of grant applications, including their approval or disapproval. But no member can participate in any committee affairs concerning the review or consideration of any grant application filed by a member or an eligible institution in which the member has a financial interest or with whom the member engages in any business, employment, transaction, or professional activity.

Committee Duties

The committee must advise DPH on implementation of the HIT plan. It must develop, in consultation with DPH, (1) appropriate protocols for health information exchange and (2) electronic data standards to promote the development of a statewide, integrated electronic health information system for use by state-funded health care providers and institutions. These data standards must (1) include provisions on security, privacy, data content, structures and format, vocabulary, and transmission protocols, with the privacy standards consistent with the requirements specified above; (2) be compatible with any national data standards to allow for interstate interoperability; (3) permit the collection of health information in standard electronic format; and (4) be compatible with the requirements for an electronic health information system as described in law.

The committee must identify ways to improve and promote health information exchange in the state, including identifying public and private funding sources for HIT. Beginning November 1, 2009, the DPH commissioner must submit any proposed application for private or federal funds for development of health information exchange to the committee. The act requires the committee to advise the commissioner in writing, within 20 days after the committee receives this proposed application, of its comments and any recommended changes it believes the commissioner should consider in making decisions. It requires the

commissioner to offer at least one committee member the opportunity to participate on any review panel established to identify or apply for funds or make grants.

HIT Grant Program

The committee must advise the DPH commissioner on the development and implementation of an HIT grant program which may, within available appropriations, provide funds to eligible institutions to advance HIT and health information exchange in the state. DPH must, within available funds, provide administrative support to the committee and help it (1) develop the grant application, (2) review the applications, (3) prepare and execute any assistance or other agreements in connection with grant awards, and (4) perform other administrative duties as the commissioner deems necessary. The commissioner may, within available funds, contract for administrative support for the committee.

Reporting

Annually between February 1, 2010, and February 1, 2015, the DPH commissioner and the committee must report to the governor and General Assembly on (1) any private or federal funds received during the preceding quarter and if applicable, how the funds were spent; (2) the amount of grants awarded; (3) the grant recipients; and (4) the current status of health information exchange and HIT in the state.

EFFECTIVE DATE: Upon passage

§ 91 — ACADEMIC DETAILING PROGRAM

This act requires the University of Connecticut Health Center (UCHC), in consultation with the Yale School of Medicine, to develop, implement, and promote an evidence-based outreach and education program concerning the therapeutic and cost-effective use of prescription drugs. This type of program, known as “academic detailing,” is directed at licensed physicians, pharmacists, and other health care professionals authorized to prescribe and dispense prescription drugs.

The act requires the UCHC to consider whether the program can be developed in coordination with, or as part of, the Connecticut Area Health Education Program, which it administers.

The act specifies that physician participation in the academic detailing program qualifies for continuing education credit and requires the UCHC to develop the program so that it allows participating physicians to apply hours spent in the program towards their continuing education requirements.

It requires the UCHC to seek federal funds to administer the program. The UCHC may also seek funding from nongovernmental health access foundations. It is not required to develop, implement, and promote the program if total federal, state, and private funds are insufficient to pay for the program’s initial and ongoing expenses.

The program must:

1. arrange for licensed physicians, pharmacists, and nurses to personally conduct educational visits with prescribing practitioners, using evidence-based materials, methods from behavioral science and educational theory, and when appropriate, pharmaceutical industry data and outreach techniques;
2. inform prescribing practitioners about drug marketing designed to prevent competition with brand name drugs from generics or other evidence-based treatment options; and
3. provide outreach and education to physicians and other practitioners participating in Medicaid, HUSKY A and B, State Administered General Assistance, Charter Oak Health Plan, ConnPACE, the state employees’ health insurance plan, and Department of Correction inmate health services.

The act requires the UCHC, to the extent feasible, to use or incorporate in the program other independent educational resources or models proven effective in providing high quality, evidence-based, cost-effective information to prescribing practitioners on the effectiveness and safety of prescription drugs. These include the (1) Pennsylvania PACE Independent Drug Information Service, (2) Vermont Academic Detailing Program, and (3) the Oregon Drug Effectiveness Review Project.

EFFECTIVE DATE: July 1, 2011

§§ 92-97 — CERTIFICATE OF NEED

This act changes several aspects of the Office of Health Care Access’s (OHCA) Certificate of Need (CON) program.

Ownership and Control

Under current law, a health care institution or facility must submit a letter of intent to OHCA before transferring all or part of its ownership or control. OHCA then determines whether a CON review is needed. The act eliminates the requirement that an institution or facility notify OHCA whenever partial ownership or control is to be transferred. Instead, it defines a transfer of ownership or control to mean an action that affects or changes the governance or controlling body of the institution or facility. Transfers

include mergers, affiliations, or any sale or transfer of a facility's or institution's net assets. The law continues to require facilities and institutions to notify OHCA when they intend to (1) change the governing powers of the parent company's or an affiliate's board and (2) change or transfer the powers or control of an affiliate's governing or controlling body.

The law applies to hospitals, outpatient surgical facilities, imaging centers, and mental health facilities, among other institutions, and their parents, subsidiaries, affiliates, and joint ventures.

Exemptions and Waivers—Outpatient Facilities

The act exempts from CON review an acute care, children's, mental health, or chronic disease hospital's plan to provide services at an alternative location in its "primary service area." (The act does not define "primary service area;" in practice, a CON applicant providing these services on July 1, 2009 determines its primary service area.) The hospital must submit to OHCA information about the alternate location, the type of services it intends to provide there, and the reasons for providing them at an alternate location. The exemption applies to services like physical, speech, and occupational therapy; occupational injury and disease management; and "company-contracted services," (i.e., services the institution or facility obtains through contracting with a third party).

Exemptions and Waivers—Department of Children and Families (DCF) Programs

The act adds DCF-licensed or –funded programs to the list of entities that are exempt from CON review. By law, exempt facilities and institutions must register with OHCA by submitting all the information otherwise required for a letter of intent. They must do this 14 to 60 days before beginning the activity that would otherwise require review. They must also renew their exemption every two years.

Exemptions and Waivers—Cineangiography

The act exempts the acquisition of new cineangiography equipment from CON review. Cineangiography equipment is used to diagnose heart and vascular conditions by filming the passage of a contrast medium through blood vessels.

Exemptions and Waivers—Imaging Equipment Replacement

The act permits OHCA to waive CON review for certain institutions, facilities, and providers that want to replace imaging equipment. It applies to entities that received a CON exemption for the acquisition of the

original equipment under PA 05-93 (as amended by PA 06-28). To obtain the initial exemption, that act required an entity to (1) prove that it had acquired the equipment before July 1, 2005 for less than \$ 400,000 and had put it into operation before July 1, 2006 or (2) obtain a CON or a determination that one was not needed by July 1, 2005.

Psychiatric Residential Treatment Facilities

The act requires OHCA to review all proposals to establish a psychiatric residential treatment facility, change its ownership or control, or spend \$3 million or more in capital expenditures for such a facility. The review is required even for proposals from nonprofit facilities, institutions, and providers that contract with the state and from DCF-licensed or –funded programs, which, under current law and the act, OHCA can exempt from CON review under certain conditions. Under federal law, a psychiatric residential treatment facility is a facility, other than a hospital, that provides inpatient psychiatric services to people under age 21.

EFFECTIVE DATE: July 1, 2009, except for the provision concerning psychiatric residential treatment facilities, which is effective October 1, 2009.

§§ 98-102 — DCF ABUSE REPORTS TO DPH

This act expands the types of incidents of child abuse and neglect that DCF must report to DPH when they involve certain DPH-licensed facilities. It broadens DCF's reporting requirement to include (1) all records of reports of abuse and neglect, rather than all information on substantiated reports, and (2) incidents in youth camps, as well as day care facilities. It revises the information DPH maintains on its list of abuse and neglect at these facilities and the kind of information it can disclose from that list.

DCF Reports to DPH

The act revises the kind of information DCF must report to DPH about child abuse and neglect. Under prior law, when DCF substantiated that abuse or neglect occurred in a day care center, group day care home, or family day care home, it had to notify DPH of all information about the incident. The act, instead, requires DCF to provide all records concerning reports and investigations of suspected abuse or neglect, including records of any administrative hearings it holds, (1) occurring in one of these facilities or in a DPH-licensed youth camp or (2) involving a facility's license holder, any facility staff, or any household member of a family day care home, regardless of where the abuse or neglect occurred. The law governing DCF record confidentiality defines a record as information the department creates or obtains in connection with its child protection

activities or activities related to a child in its custody, including information in DCF's child abuse registry. Records DCF does not create can be disclosed only in limited circumstances (CGS § 17a-28).

The act supersedes existing laws that govern DCF reports about allegations of incidents in state-licensed facilities that care for children, such as day care facilities. These require DCF, before notifying the agency and providing investigative records, to (1) first investigate the allegations and find reasonable cause to believe abuse or neglect occurred and (2) exhaust or waive all administrative appeals available to the person suspected of the abuse, unless the alleged act meets certain criteria (CGS §§ 17a-101j(b) and 17a-101g(c)).

The act allows any child abuse or neglect record DCF provides to DPH to be used in an administrative hearing or court proceeding related to a facility's license. It requires these records to be kept confidential, except in a contested case (a proceeding in which an agency determines a party's rights, duties, or privileges) where the law allows parties to inspect and copy records. The records are not subject to disclosure under the Freedom of Information Act.

DPH Abuse and Neglect List

Prior law required DPH to keep a list of (1) complaints it substantiated about day care facilities during the prior three years and (2) the substantiated child abuse and neglect reports DCF sends it. The act, instead, requires DPH to keep a list of violations (presumably regulatory violations) it substantiates over that period concerning day care facilities and youth camps. As under prior law, DPH must disclose information on this list, with certain exceptions, upon request. Information identifying children or their family members continues to be confidential. But the act permits DPH to disclose information that identifies facility staff and employees and people who live in a family day care home. This information is confidential under current law.

The act allows DPH to include on this list, and disclose information about, specific DCF findings and notices of abuse and neglect. It can list and disclose:

1. substantiated findings that DCF includes on its child abuse and neglect registry of abuse or neglect occurring in a covered facility or being committed by the facility license holder, any facility staff member, or anyone living in a family day care home; and
2. DCF reports of suspected abuse or neglect at a facility that resulted in or involved (a) a child's death, (b) serious physical harm or the risk of serious physical injury or emotional harm to a child, (c) child sexual abuse, (d) a person's arrest for child abuse or neglect, or (e) DCF

petitioning to commit a child to its care or terminate a parent's rights to the child. If DCF subsequently informs DPH that its investigation did not substantiate this abuse or neglect or that its finding was reversed after an appeal, DPH must immediately remove the information from its list and stop disclosing the information.

Youth Camps

The act specifies that to be exempt from DPH youth camp licensure requirements, summer educational programs must be operated by a (1) public school or (2) private school that (a) is approved by the State Board of Education (SBE) or accredited by an SBE-approved agency and (b) files required attendance reports with the State Education Department.

The act permits DPH to issue a cease and desist order limiting a youth camp's license and halting a specific activity. It can do so if it determines a camper's or staff member's health, safety, or welfare requires immediate emergency action. As soon as it receives such an order, the camp must stop the activity and notify all parents and staff that the activity is halted until DPH dissolves the order. DPH must hold a hearing on the issue within 10 days of issuing the order.

§ 105— REPEALED STATUTES

The act repeals the requirement that any school-based health clinic located in or attached to a school building constructed on or after July 1, 2009 that shares a first floor exterior wall with the school building include an entrance separate from the school building entrance.

EFFECTIVE DATE: Upon passage

PA 09-7—HB 6322

Public Safety and Security Committee

AN ACT CONCERNING THE LEGISLATIVE COMMISSIONERS' RECOMMENDATIONS FOR TECHNICAL REVISIONS TO THE PUBLIC SAFETY STATUTES

SUMMARY: This act makes technical changes in various public safety statutes.

EFFECTIVE DATE: Upon passage

PA 09-27—SB 762

*Public Safety and Security Committee
Planning and Development Committee*

AN ACT CONCERNING MUTUAL AID OR MOBILE SUPPORT UNITS AND NUCLEAR SAFETY EMERGENCY PREPAREDNESS PROGRAM PLANS

SUMMARY: This act eliminates the state's duty to reimburse towns for (1) compensation and actual and necessary travel, subsistence, and maintenance expenses paid to members of a civil preparedness force while in training as members of a mobile support unit and (2) payments for employee death, disability, and injury incurred in the course of such training. It also extends state reimbursements to members of any unit that the Department of Emergency Management and Homeland Security (DEMHS) commissioner orders to emergency duty.

The act specifies that the reimbursements and certain rights, immunities, and powers afforded to first responders apply only when they are ordered to emergency duty by the governor or commissioner under CGS § 28-6.

By law, state or municipal employees engaged in officially authorized civil preparedness duties as members of civil preparedness units have the powers, duties, rights, privileges, and immunities and receive compensation incident to their employment. Other civil preparedness personnel have the same rights and immunities as state employees and are entitled to state compensation for their services.

The act also changes (1) from November 1 to May 1 annually, the deadline by which DEMHS must submit the nuclear safety emergency preparedness program plan to the Office of Policy and Management and (2) from December 1 to June 1 annually, the deadline by which the office must approve the plan.

EFFECTIVE DATE: October 1, 2009

PA 09-28—SB 787

*Public Safety and Security Committee
Government Administration and Elections Committee*

AN ACT CONCERNING THE INTERNATIONAL EMERGENCY MANAGEMENT ASSISTANCE COMPACT

SUMMARY: This act codifies the International Emergency Management Assistance Memorandum of Understanding, a compact authorized by Congress in PL 110-171. The compact provides a legal framework for the northeastern states, including Connecticut, and eastern Canadian provinces to help each other manage emergencies and disasters. It is similar to the Emergency Management Assistance Compact for states, which Connecticut adopted in 2000. Enactment of the act makes Connecticut a compact member.

Compact members (called party jurisdictions) agree to standard operating procedures for dealing with mutual aid requests and assistance, which may include the use of emergency forces by mutual agreement. Party jurisdictions that get aid are legally responsible for reimbursing jurisdictions that provide it, and out-of-state personnel who act in good faith, and not negligently or recklessly, are immune from liability for things they do or fail to do while rendering aid under the compact.

Connecticut's emergency management and homeland security commissioner is the state's compact representative. He must formulate plans and procedures to implement the compact.

The compact may be amended by agreement of the party jurisdictions. Any jurisdiction may withdraw from it by repealing its enacting statute.

EFFECTIVE DATE: July 1, 2009

PURPOSE OF THE COMPACT (ART. I)

The compact's purpose is to establish a mechanism to provide aid to compact members that ask for help to manage natural, technological, or man-made disasters "or civil emergency aspects of resources shortages." State, provincial, or local emergency management agencies may also plan and work together, if necessary, on emergency-related exercises, testing, or other training activities. This may include using equipment and personnel in simulated mutual aid emergency exercises during nonemergencies. Party jurisdictions may also agree to use emergency forces.

The compact may include (1) the following states: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont; (2) the following Canadian provinces: New Brunswick, Newfoundland, Nova Scotia, Prince Edward Island, and Quebec; and (3) other states and provinces that elect to participate.

GENERAL IMPLEMENTATION (ART. II)

Each party jurisdiction's emergency management head is responsible for formulating appropriate inter-jurisdictional mutual aid plans and procedures and recommending amendments to any statute, regulation, or ordinance necessary to implement the compact.

PARTY JURISDICTION RESPONSIBILITIES (ART. III)

Planning

Party jurisdictions must formulate procedural plans and programs for cooperating with each other and performing compact responsibilities. In doing so, they must, so far as practical:

1. review available analyses of jurisdiction hazards and, to the extent reasonably possible, determine potential emergencies that party jurisdictions might jointly suffer from natural disaster, technological hazard, man-made disaster, or "emergency aspects of resource shortage";
2. initiate a process to review party jurisdictions' emergency plans and develop a plan that will determine the mechanism for inter-jurisdictional cooperation;
3. develop inter-jurisdictional procedures to fill any identified gaps and resolve any identified inconsistencies or overlaps in new or existing plans;
4. help to warn communities adjacent to or crossing jurisdictional boundaries;
5. protect and ensure delivery of services; medicine; food and water; energy and fuel; and search and rescue, and critical lifeline equipment, services, and resources, to the extent authorized by law;
6. inventory and set procedures for inter-jurisdiction loans and delivery of resources, with procedures for reimbursement or debt forgiveness; and
7. provide, to the extent authorized by law, for temporary suspension of any law or ordinance that impedes the implementation of specified compact responsibilities.

Aid Requests

Authorized party jurisdiction representatives may request help from each other verbally or in writing, but they must confirm any verbal request in writing within 15 days after the request is made. Compact provisions apply only to requests made by and to such representatives.

Requests must state the:

1. emergency services required and the mission, such as fire, emergency medical, transportation, communications, public works and engineering, building inspection, planning and information, mass care, resource support, health and medical, or search and rescue;
2. amount and type of personnel, equipment, material, and supplies needed and a reasonable estimate of how long they will be needed; and
3. specific place and time for the assisting party to respond and a point of contact at the location.

Consultation Among Party Jurisdiction Officials

Emergency management officials make up the international emergency management group. They and other appropriate representatives from party jurisdictions must consult frequently and freely exchange information, plans, and resources on emergency capabilities, to the extent authorized by law.

DEPLOYMENT AND CONTROL OF EMERGENCY PERSONNEL (ART. IV)

Any party jurisdiction asked to provide mutual aid or conduct mutual aid training and exercises must try to respond as soon as possible. But it may recall or withhold resources it needs to reasonably protect itself.

Party jurisdictions must give responding jurisdictions' emergency personnel operating under the compact, and under the operational control of an officer of the requesting jurisdiction, the same powers, duties, rights, privileges, and immunities available to their own emergency services personnel performing emergency services.

Emergency forces are under the command and control of their regular leaders, but the emergency services authorities of the jurisdiction receiving assistance control responding states' organizational units. These "conditions" may be activated (1) as needed, by the jurisdiction receiving aid or (2) at the start of mutual aid exercises or training. The conditions continue as long as the training or exercises are in progress, emergency or disaster remains in effect, or other jurisdictions' loaned resources remain in the jurisdiction receiving aid, whichever is longest. Jurisdictions receiving aid are responsible for telling assisting jurisdictions when their services are no longer needed.

LICENSE AND PERMIT RECIPROCITY (ART. V)

People licensed, permitted, or certified in responding jurisdictions are qualified to render

emergency aid in their areas of expertise in party jurisdictions requesting assistance. But requesting jurisdictions, by executive order or otherwise, may set limitations and conditions on such people.

LIABILITIES (ART. VI)

Responding personnel are considered agents of the requesting jurisdiction for tort liability and immunity purposes. They cannot be held legally responsible for good faith acts or omissions while performing under the compact or using any equipment in connection with their duties. But they are not protected against lawsuits involving claims of willful misconduct, gross negligence, or recklessness.

SUPPLEMENTARY AGREEMENTS (ART. VII)

Party jurisdictions may enter supplementary agreements with each other or maintain existing ones. Such agreements may include provisions to (1) evacuate and receive injured and non-injured people and (2) exchange medical, fire, public utility, reconnaissance, welfare, transportation, and communications personnel, equipment, and supplies.

WORKERS' COMPENSATION AND DEATH BENEFITS (ART. VIII)

Connecticut is responsible for paying, in accordance with state law, any workers' compensation and death benefits to its personnel injured or killed while responding in another party jurisdiction. Other party jurisdictions must do the same for their emergency personnel injured or killed here.

REIMBURSEMENT (ART. IX)

Jurisdictions that get aid must, if requested, reimburse responding states for losses, damages, or expenses incurred in providing services or using equipment. Responding jurisdictions may choose to assume all costs, provide free services, or loan equipment. Jurisdictions may enter supplementary agreements for different cost allocations. Workers' compensation and death benefits are not reimbursable.

EVACUATION PLANS (ART. X)

Party jurisdictions must develop and maintain emergency evacuation plans to facilitate the movement and reception of evacuees into or across their jurisdictions, according to their capabilities and powers.

The jurisdiction from which the evacuees came must assume ultimate responsibility for supporting them and, when the disaster or emergency ends, for

repatriating them.

IMPLEMENTATION AND WITHDRAWAL (ART. XI)

The compact takes effect when two party jurisdictions adopt it. When it and any supplementary agreements are approved, party jurisdictions must deposit duly authenticated copies of them, in French and English, with all party jurisdictions.

A jurisdiction may withdraw from the compact by repealing its enacting statute. Withdrawal takes effect 30 days after the governor or premier sends written notice to the governors and premiers of the other party jurisdictions. Withdrawal does not affect obligations the jurisdiction assumed before withdrawing.

CONSTRUCTION AND SEVERABILITY (ART. XII)

The compact must be liberally construed to achieve its purposes. If any provision is found unconstitutional or inapplicable to anyone or circumstances, the other provisions must remain in effect.

CONSISTENCY OF LANGUAGE (ART. XIII)

The validity of the arrangements and agreements in the compact does not affect any insubstantial difference in form or language adopted by the various jurisdictions.

PA 09-34—sHB 6287

*Public Safety and Security Committee
Planning and Development Committee*

AN ACT AUTHORIZING CASH PRIZES FOR BLOWER BALL GAMES

SUMMARY: This act allows organizations authorized to conduct bazaars to award cash prizes of up to \$50 for "blower ball games." Under prior law, a bazaar permittee could award cash prizes only for fifty-fifty coupon games.

The act defines a "blower ball game" as a game of chance in which players wager on a color or number and winners are determined by the drawing of a colored or numbered ball from a mechanical ball blower that mixes Ping Pong balls with blown air.

EFFECTIVE DATE: Upon passage

BACKGROUND

Organizations Authorized to Conduct Bazaars and Raffles

The law allows the following to conduct, operate, or sponsor bazaars or raffles if the town where they are located has adopted the Bazaar and Raffle Act: veterans, religious, civic, fraternal, educational, and charitable organizations; volunteer fire companies; and political parties and their town committees. Raffles may also be promoted and conducted if sponsored by the town acting through a designated centennial, bicentennial, or other centennial celebration committee. To conduct a bazaar or raffle, an organization must have a local permit.

Only the sponsoring organization's qualified members age 18 or older may promote, operate, or work at bazaars and raffles. And people under age 16 may not sell or promote raffle tickets.

PA 09-35—sHB 6324

*Public Safety and Security Committee
Planning and Development Committee*

AN ACT CONCERNING THE INSPECTION OF ELEVATORS, THE AUTHORITY OF THE STATE AND LOCAL FIRE MARSHALS, THE REGULATION OF EXPLOSIVES AND OTHER TECHNICAL CHANGES

SUMMARY: This act makes various unrelated changes affecting demolition credentials, explosives, fire marshals, elevator inspection, and manufacturing premises. It requires people engaged in the demolition business to get a Department of Public Safety (DPS) license, instead of a registration. It subjects the license and licensees to the same standards that governed registration, except that license applicants must demonstrate competence by examination or other means. It also requires that license denial and revocation hearings be conducted in accordance with the Uniform Administrative Procedure Act.

EFFECTIVE DATE: October 1, 2009

EXPLOSIVES

The act allows the state fire marshal to approve variations, exemptions, or equivalent or alternative compliance with regard to certain regulations governing explosives if he determines that (1) strict compliance is unwarranted or would entail practical difficulty or unnecessary hardship and (2) the variation, exemption, or alternative compliance secures the public safety. The act applies to regulations governing the storage,

transportation, use, manufacture, sale, and procurement of explosives.

FIRE MARSHALS

By law, deputy fire marshals must serve under the direction of local fire marshals, fire inspectors, and other fire investigators when enforcing the State Fire Safety Code and pertinent statutes. The act conforms the law to practice by authorizing the deputy fire marshal or acting fire marshal to assume the authority granted to local fire marshals in cases where a local fire marshal has not been appointed.

By law, the appointing authority may appoint a certified deputy fire marshal to act as fire marshal for up to 180 days upon the death, disability, dismissal, retirement, or revocation of certification of the local fire marshal, and in the absence of an existing deputy fire marshal.

ELEVATOR INSPECTION

The act exempts all elevators located in private residences from the DPS 18-month inspection and two-year permit renewal requirements, irrespective of their size, capacity, speed, or rise. Prior law exempted "private residence elevators" as defined in regulations. The regulations define "private residence elevators" as any power passenger elevator of limited size, capacity, rise, and speed installed in a private residence or a "multiple dwelling."

Under existing law and the act, exempt elevators are inspected at the owner's request.

MANUFACTURING PREMISES AND THE FIRE SAFETY CODE

The act explicitly subjects manufacturing premises to the State Fire Safety Code. Public Act 08-65 implicitly subjected them to the code by authorizing local fire marshals to inspect them for code compliance.

PA 09-76—sSB 1010

*Public Safety and Security Committee
Public Health Committee*

AN ACT CONCERNING EXPOSURE TO INFECTIOUS DISEASES AND EMERGENCY RESPONDERS

SUMMARY: This act requires a hospital to timely notify an emergency service organization (ESO) when a patient the ESO attended, treated, assisted, handled, or transported to the hospital is diagnosed with infectious pulmonary tuberculosis. The act prohibits the hospital from revealing the patient's identity.

The act requires each ESO to designate an employee or volunteer to (1) receive the notice; (2) initiate notification requests in cases where an ESO member or volunteer reports possible exposure to an infectious disease, including TB; and (3) perform related functions with regard to infectious diseases. The act allows the designee, if unavailable, to name another employee or volunteer to perform these functions.

Under the act, “infectious diseases” include (1) infectious pulmonary TB; (2) hepatitis A, B, or C; (3) human immunodeficiency virus (“HIV”), including “AIDS;” (4) diphtheria; (5) pandemic flu; (6) methicillin-resistant staphylococcus aureus (MRSA); (7) hemorrhagic fevers; (8) meningitis or other meningococcal disease; (9) plague; and (10) rabies. The act applies when a person is exposed to these diseases through the skin or a mucous membrane to another person’s blood, semen, vaginal secretions, or certain body fluids found around the chest cavity, heart, abdomen, and spine, among other areas.

The act specifies that no cause of action for damages may arise against, or any civil penalty be imposed on, a hospital or designated officer who fails to comply with the duties specified in the act.

EFFECTIVE DATE: October 1, 2009

HOSPITAL NOTIFICATION

If a patient (alive or dead) treated, attended, assisted, handled, or transported to a hospital by ESO personnel is diagnosed with infectious pulmonary tuberculosis, the act requires the hospital to notify the ESO’s designated officer verbally, no later than 48 hours, and in writing, no later than 72 hours, after the diagnosis. The notice must include the diagnosis and the date when the patient was attended, treated, assisted, handled, or transported to the hospital because of an emergency. It must not include the patient’s identity.

If the patient dies at or before reaching the hospital, the hospital must, if it determines that the deceased had infectious pulmonary tuberculosis, notify the ESO’s designated officer no later than 48 hours after the determination.

Under the act, ESOs are the state and local police departments; paid or volunteer fire departments; municipal constabularies; ambulance companies; and public, private, or volunteer organizations that provide emergency transportation or treatment to patients. An “emergency services member” means any of the following, acting in an official capacity: police officer, appointed constable who performs criminal law enforcement duties, special police officer, member of a law enforcement unit who performs police duties, firefighter, emergency medical technician, ambulance driver, or paramedic.

DESIGNATED OFFICERS

The act requires each ESO to designate an employee or volunteer to:

1. receive notice of cases of possible exposure to infectious diseases,
2. investigate cases of possible exposure,
3. maintain hospital contact information,
4. request further information from hospitals, and
5. maintain pertinent records.

REQUESTS FOR HOSPITAL INFORMATION

An ESO member who believes that he or she may have been exposed to an infectious disease through contact with a patient he or she treated, assisted, attended, handled, or transported must report the possible exposure to the ESO’s designated officer.

The officer must immediately collect and evaluate the facts to determine if it is reasonable to believe that the member may have been exposed to an infectious disease. An officer who determines any such possible exposure must submit a written request to the hospital that received the patient, asking to be notified of the results of any test performed to determine if the patient had an infectious disease.

The request must include the:

1. officer’s name, address, and telephone number;
2. officer’s employer or, in the case of a volunteer ESO member, the entity for which the officer volunteers;
3. name and contact information of the ESO member who was possibly exposed to the infectious disease; and
4. date, time, location, and manner of exposure.

A request is valid for 10 days after it is made. The hospital must notify the officer who made the request if, after 10 days, no infectious disease test is performed, no diagnosis is made, or the test result is negative. The notice must not include the patient’s name.

HOSPITAL RESPONSE TO NOTIFICATION REQUESTS

A hospital that receives a written request for notification must notify the designated officer if the patient has, or tested positive for, an infectious disease. It must provide verbal notice, no later than 48 hours, and written notice, no later than three days, after receiving the request.

If the test is positive for an infectious disease, both the oral and written notice must include the name of the disease and the date when the ESO member attended, treated, assisted, handled, or transported the patient. It must not include the patient’s name.

If an officer requests information on a patient who died at or before reaching the hospital, the hospital must provide a copy of the request to the medical facility that determined the cause of the death.

PA 09-78—sHB 6286

*Public Safety and Security Committee
Judiciary Committee*

**AN ACT SHIELDING FIRE DEPARTMENTS
THAT INSTALL SMOKE AND CARBON
MONOXIDE DETECTORS FROM LIABILITY**

SUMMARY: This act exempts fire departments from liability for civil damages for personal injury, wrongful death, property damage, or other loss when they deliver or install smoke or carbon monoxide detectors or batteries for these devices at residential premises. The devices must be (1) new, (2) in compliance with all applicable current safety and manufacturing standards, (3) installed in accordance with the manufacturer's instructions, and (4) installed or delivered in the department's official capacity.

Under the act, a "fire department" includes any municipal, independent, or volunteer fire department; fire district; or independent fire company and members of these entities.

EFFECTIVE DATE: October 1, 2009

INSTALLATION OF DEVICES

The act applies to the delivery and installation of battery-operated or plug-in smoke detectors, carbon monoxide detectors, or combination smoke and carbon monoxide detectors. It does not apply to the alteration or installation of electrical wiring.

The act does not limit or otherwise affect the obligations and duties of anyone who owns or occupies premises where devices are being installed or delivered. It requires departments to keep the delivery and installation records for at least five years.

PA 09-86—SB 761

*Public Safety and Security Committee
Appropriations Committee*

**AN ACT CONCERNING AN ENHANCED 9-1-1
SERVICE DATABASE**

SUMMARY: This act allows subscriber information in the enhanced 9-1-1 (E 9-1-1) database to be used for enabling emergency notification systems (e.g., Reverse 9-1-1) in life-threatening emergencies. It defines an "emergency notification system" as a service that

notifies the public of emergencies. Under prior law, subscriber information could be used only in responding to emergency calls or investigating false or intentionally misleading reports of incidents requiring emergency service.

The act defines "subscriber information" as the name, address, and telephone number in the E 9-1-1 database of a telephone used to place a 9-1-1 call or in connection with an emergency notification system. It makes confidential and exempt from the Freedom of Information Act subscriber information provided for (1) enabling such systems and (2) the other purposes specified in existing law.

The act outlines procedures governing release and use of database information by database providers, the Office of State-wide Emergency Telecommunications (OSET), the Department of Emergency Management and Homeland Security (DEMHS), and public safety answering points (PSAP).

The act broadens liability protection for telecommunication companies. It also makes a minor change with regard to the number used to make a 9-1-1 call.

EFFECTIVE DATE: July 1, 2009

E 9-1-1- DATABASE

Subscriber Information

The act requires that, each month, the E 9-1-1 service database provider give OSET an electronic copy of the current subscriber information in the database. OSET must make this information available to DEMHS and to each PSAP under a memorandum of understanding (MOU). Each PSAP that has entered into a MOU must make the information available to any municipality within the PSAP's jurisdiction that requests it.

By October 1, 2009, the E 9-1-1 service database provider and OSET must enter into an agreement on the provision of the E 9-1-1 service database information, including paying the provider for compiling the information.

Liability Issues

By law, telephone companies and voice over Internet protocol (VOIP) service providers (e.g., Vonage) must forward the telephone number and street address from which a 9-1-1 call is made to a safety answering point. The act immunizes the companies and their agents from liability to anyone, not just the caller, for (1) releasing database information as required by the act and (2) failure of any equipment or procedure in connection with the emergency notification system.

BACKGROUND*E 9-1-1*

A 9-1-1 service allows users to reach a PSAP by dialing 9-1-1. The E 9-1-1 service has telephone network features that allow the PSAP personnel to automatically identify the user's telephone number and location in order to direct the appropriate emergency services to the scene.

Emergency Notification System

Emergency notification systems are used to provide pre-recorded emergency telephone messages to targeted areas or entire cities at a rate of hundreds or thousands of calls per minute. The system can be used to warn residents of severe weather, hazardous material spills, pandemics, or other emergencies.

PA 09-113—sSB 825

*Public Safety and Security Committee
Judiciary Committee*

AN ACT CONCERNING PAINTBALL SAFETY

SUMMARY: This act prohibits paintball facilities from allowing minors (anyone under age 18) to use paintball guns at the facilities unless the user has been instructed or certified in procedures for using paintball equipment safely.

The act requires minors using paintball guns on public or private property to wear eye protection that meets the American Society of Testing and Materials specification F1776-01. It allows law enforcement officials to issue verbal warnings to parents or guardians of minors who do not wear such eye protection. A minor's failure to wear approved eye protection is (1) not a violation or an offense and (2) not admissible in civil actions and does not constitute contributory negligence on the part of the minor or his or her parent.

EFFECTIVE DATE: October 1, 2009

INSTRUCTION ON PAINTBALL GUN USE

The instructions on safe use of paintball guns may include:

1. a short video presentation on proper safety equipment and procedures;
2. verbal instruction by the facility's staff; or
3. a short written or oral examination on safety measures, which involves explaining any incorrect responses to the participant.

After completing the instruction, the facility must issue a certificate of completion to the participant.

PA 09-131—sSB 760

*Public Safety and Security Committee
Education Committee
Planning and Development Committee*

AN ACT CONCERNING SCHOOL CRISIS RESPONSE DRILLS AND FIRE DRILLS

SUMMARY: This act requires, rather than allows, school boards, once every three months, to substitute crisis response drills for the monthly fire drills required in schools under their jurisdiction. It also requires the boards to conduct one of the fire drills no later than 30 days after the first day of each school year.

The act (1) requires the boards to develop the crisis response drill format in consultation with the appropriate local law enforcement agency and (2) allows an agency representative to supervise and participate in the drill.

EFFECTIVE DATE: October 1, 2009

PA 09-132—HB 6358

*Public Safety and Security Committee
Planning and Development Committee
Finance, Revenue and Bonding Committee*

AN ACT CONCERNING ADDITIONAL OFF-TRACK BETTING BRANCH FACILITIES

SUMMARY: This act increases the number of off-track betting (OTB) facilities that may operate as simulcasting facilities (i.e., televise OTB programs), from 10 to 12 of the 18 currently authorized OTB facilities, and requires that one be in Milford and the other in Putnam.

By law, the location of an OTB facility must be approved by the Division of Special Revenue (DSR) and the legislative body of the host town. The act requires them also to approve the addition of simulcasting to any existing OTB facility.

EFFECTIVE DATE: Upon passage

BACKGROUND*OTB Facilities*

By law, simulcasting facilities are OTB facilities authorized to (1) provide live television coverage of OTB programs and jai alai games and (2) have restaurants, concessions, and other amenities. Other OTB facilities have bench seating, public restrooms for

patrons, and monitors for OTB information.

Currently, the 10 simulcasting facilities are located in: Bridgeport, Bristol, East Haven, Hartford, New Britain, New Haven, Norwalk, Torrington, Waterbury, and Windsor Locks.

PA 09-137—HB 6541

Public Safety and Security Committee

AN ACT CONCERNING MUNICIPAL FIRE POLICE OFFICERS

SUMMARY: This act requires fire police officers directing traffic to wear at all times, not just after dark or in inclement weather, a traffic vest, orange or lime green raincoat, or other reflectorized orange or lime green outer clothing that meets national, state, and local safety standards. It (1) allows such officers to wear headgear that meets national, state, and local safety standards as an alternative to the currently required helmet or regulation fire-police dress uniform cap and (2) eliminates the requirement that the helmet be white.

By law, fire chiefs may, within available appropriations, appoint “such number of persons” as they deem necessary to be fire police officers. The act specifies that they may appoint fire department members as such. It allows a department’s fire police officers, while on duty with the department or another municipality’s department, to exercise their powers and carry out their duties in any town, not just an adjoining town, where the department is engaged in mutual assistance. Fire police officers direct traffic and perform other responsibilities at fire scenes.

EFFECTIVE DATE: October 1, 2009

PA 09-153—sSB 849

Public Safety and Security Committee

General Law Committee

Planning and Development Committee

AN ACT CONCERNING MUNICIPAL ENFORCEMENT OF OCCUPATIONAL LICENSURE LAWS AND DEFINING MILLWRIGHT WORK

SUMMARY: This act narrows the circumstances in which a municipality gets half the revenue from fines collected for certain occupational violations. It also codifies a local building official’s authority to notify the consumer protection commissioner of anyone working at a building construction site without the requisite permit or license.

The act seeks to clarify the distinction between “heating, piping and cooling work” and “plumbing and

piping work” on the one hand and “millwright work” on the other. Under the act, (1) “heating, piping and cooling work” includes the installation of tubing and piping mains and branch lines up to and including the closest valve to a machine or equipment used in manufacturing and (2) “plumbing and piping work” includes the installation, repair, replacement, alteration, or maintenance of tubing and piping mains and branch lines up to and including the closest valve to a machine or equipment used in manufacturing. Neither type of work includes “millwright work,” which the act defines as the installation, repair, replacement, maintenance, or alteration of power generation machinery or industrial machinery, including the related interconnection of piping and tubing used in manufacturing, but not the performance of any action requiring an occupational license.

EFFECTIVE DATE: July 1, 2009 for the provisions pertaining to occupational violations; October 1, 2009 for the other provisions.

FINES AND PENALTIES

By law, the consumer protection commissioner or appropriate occupational examining board may levy civil penalties on people who violate occupational licensing laws by working without the requisite license or certificate. The commissioner must remit to municipalities one-half of the amount he collects from penalties for violations initially reported by a municipal official. The act limits municipal remittances to fines collected in cases (1) reported by building officials, rather than all municipal officials, and (2) involving violations of chapter 393 at a building construction site. Under prior law, remittances also applied to violations of chapters 394 and 482.

BACKGROUND

Occupational Licensing and Examining Boards

State law establishes a licensing system for several trades overseen by different licensing boards, including the Examining Board for Heating, Cooling, and Sheet Metal 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. Each trade has different levels of expertise: apprentice, journeyman, and contractor. Workers must meet education, training, and experience requirements to qualify for each level. Boards may create limited licenses authorizing their holders to work in a specific area of a trade. They establish less extensive requirements for workers attempting to qualify for a limited license. The Department of Consumer Protection’s duties to the boards include

receiving complaints, carrying out investigations, and performing administrative tasks, such as issuing and renewing licenses.

PA 09-177—sSB 1009

Public Safety and Security Committee
Transportation Committee
Planning and Development Committee
Judiciary Committee

AN ACT CONCERNING TECHNICAL CHANGES TO TITLE 29 TO INCORPORATE THE STATE FIRE PREVENTION CODE

SUMMARY: This act makes numerous unrelated changes in various statutes affecting the fire safety and fire prevention codes, state building inspector, manufacturing establishments, explosives and fireworks, local fire marshals, and hazardous chemicals. Many are technical, conforming, and updating changes.

The act makes substantial changes in the penalties for certain fire safety violations by subjecting violators to existing penalties for violations of the Fire Prevention Code.

EFFECTIVE DATE: Various, see below.

§ 1 — REVIEW OF AGENCY REGULATIONS FOR CODE COMPLIANCE

The law requires the public safety commissioner to review state agency regulations and recommend amendments to eliminate any conflicts with the state building and fire safety codes. The act additionally requires the commissioner to recommend amendments to eliminate conflicts with the State Fire Prevention Code and explosive and fireworks regulations. And, as is already the case for the building and fire safety codes, an agency must initiate the process to amend or repeal conflicting regulations within 90 days after receiving the commissioner's recommendation, unless the modification would conflict with the agency's program requirements.

EFFECTIVE DATE: October 1, 2009

§ 2 — APPEALS OF STATE BUILDING INSPECTOR'S DECISIONS

The act extends, from 14 to 30 days, the deadline for appealing to the Codes and Standards Committee the state building inspector's decision to deny an application for a variation or exemption from, or equivalent or alternate compliance with, the State Building Code. It thus makes the deadline the same as for appeals of the State Fire Safety Code.

EFFECTIVE DATE: October 1, 2009

§ 3 — REGULATION OF FIRE ZONES

The act extends the authority to regulate fire zones to the Fire Prevention Code. Under the act, the code must require the establishment of fire zones. But municipalities also retain their authority, under existing law, to require such zones by ordinance.

The act requires the Fire Prevention Code, like the Fire Safety Code, to specify the reasonable minimum requirements for fire safety in new and existing buildings.

EFFECTIVE DATE: October 1, 2009

§ 4 — STATE FIRE MARSHAL OVERSIGHT OF BUILDING VACATION ORDERS

Prior law required local fire marshals or local police officers to notify the state fire marshal when they issue an order to vacate a building posing a risk of injury or death and the conditions cannot be corrected in four hours or less. The act requires them either to notify or submit a copy of the order to the state fire marshal. It specifies that the four-hour deadline begins when the order is made.

The act requires the state fire marshal to review the order and, after consulting with the local official, determine whether to uphold, modify, or reverse it. The state fire marshal may order any additional conditions he or she considers appropriate to protect people from injury.

EFFECTIVE DATE: October 1, 2009

§ 5 — NOTIFICATION OF FIRE HAZARDS

The act requires fire marshals to notify the proper state or federal occupational health and safety agency (i.e., the state or federal Occupational Safety and Health Administration), instead of the labor commissioner, if they determine that a manufacturing facility contains dangerous accumulations of rubbish or flammable material especially liable to cause a fire and endanger life or property.

EFFECTIVE DATE: October 1, 2009

§ 6 — DEFINITION OF MANUFACTURING ESTABLISHMENT

By law, employers who keep, use, store, or produce hazardous material in manufacturing establishments must notify the local fire marshal of its presence or elimination. The act adopts the meaning of "manufacturing establishment" designated in sectors 31 to 33 of the North American Industry Classification System (NAICS).

NAICS is a classification system that groups establishments into sectors based on the economic activities in which they are primarily engaged. Manufacturing is classified as sectors 31, 32, and 33. The activities in these sectors are “the mechanical, physical, or chemical transformation of material, substances, or components into new products.”

EFFECTIVE DATE: October 1, 2009

§§ 7, 8, 12, 14, 15, & 18 — REGULATIONS AND STATE FIRE PREVENTION CODE

The act repeals provisions that allow the commissioner, in adopting required regulations that address the following, to adopt the National Fire Protection Association standards, by reference:

1. installation of oil burners and related equipment (§ 7(a));
2. installation and operation of gas equipment and gas piping (§ 12(a));
3. safe storage, use, and transportation, or transmission of flammable or combustible liquids and liquefied petroleum gas (LPG) (propane) and liquefied natural gas (LNG) (§§ 8 & 14); and
4. safe storage, transportation, or transmission of hazardous chemicals (§ 15).

The act also eliminates a provision that allows the commissioner to be guided by national standards when adopting regulations for motor-propelled rockets. It requires that all the above regulations be incorporated in the State Fire Prevention Code.

The act eliminates municipal authority to enact ordinances and make rules and regulations equal to, additional to, or more stringent than the regulations pertaining to the installation of oil burners and equipment and the installation and operation of gas equipment and gas piping (§ 12(b) & 7(b)). Under prior law, the commissioner’s regulations did not apply to the installation and operation of gas equipment and piping and oil burners and related equipment in manufacturing premises and public service companies. The act subjects manufacturing premises to the regulations. It maintains the exemption for public service companies, which it refers to as electric, gas, or electric distribution companies, as the terms are defined in existing law (§§ 12(b) & 7(b)).

EFFECTIVE DATE: January 1, 2011

§§ 9, 10, & 25 — INSPECTION OF FLAMMABLE LIQUID TANKS AND VEHICLES

Prior law required local fire marshals, annually, to (1) inspect tanks used to store LPG, LNG, hazardous chemicals, or other flammable or combustible liquids, and cargo tank vehicles used to transport such chemicals

or liquids; (2) report any hazards found to the public safety commissioner; and (3) issue an inspection certificate to be kept in the vehicle at all times. It prohibited transporting flammable or combustible liquid in such vehicles until they had been inspected.

The act eliminates the mandatory vehicle inspections, allowing municipalities, instead, to require, by ordinance, inspection of such vehicles registered with the motor vehicles commissioner. It prohibits operation of any such vehicle without inspection, if required. The act also eliminates the mandatory (1) tank inspections and (2) hazard reports.

The act allows appeals of an ordinance or local fire marshals’ actions to the Superior Court in the district where the vehicle is registered. Under prior law, appeals of the regulations or the commissioner’s actions were made to the Superior Court where the plant or equipment was located. Under the law and the act, appeals may also go to the Hartford Superior Court.

EFFECTIVE DATE: January 1, 2011

§ 11 — PENALTIES

The act eliminates the penalties for violating regulations adopted under CGS § 29-320 concerning the safe storage, use, transportation or transmission of flammable or combustible liquids by pipeline.

EFFECTIVE DATE: January 1, 2011

§§ 13, 16 & 20-24 — DEFINITIONS

These provisions of the act make technical or conforming changes.

EFFECTIVE DATE: January 1, 2011

§§ 17 & 25 — BOND REQUIREMENT FOR EXPLOSIVES AND FIREWORKS DISPLAY

The act eliminates a requirement for anyone granted a permit for supervised fireworks display to file a \$1,000 bond with the municipality.

EFFECTIVE DATE: January 1, 2011

§ 19 — CITATIONS PAYABLE BY MAIL

The act allows anyone issued an unsafe building citation, which carries a fine up to \$250, by the state or local fire marshal to pay the fine by mail under an existing statute for paying citations, which includes an appeal process.

EFFECTIVE DATE: October 1, 2009

§§ 7, 12, & 25 — ELIMINATED PROVISIONS

Appeals

Public Act 08-65 added a general provision governing appeals of the Fire Prevention Code (CGS § 29-291d). The act makes technical changes by repealing the following appeal provisions pertaining to:

1. dry cleaning (CGS § 29-327);
2. LPG and LNG regulations (CGS § 29-334);
3. safe storage and transportation of hazardous chemicals (CGS § 29-340);
4. oil burners and related equipment (CGS § 29-317(d));
5. the installation and operation of gas equipment and piping (CGS § 29-329(d)); and
6. rocketry design, construction, testing, and certification, among other things (CGS § 29-369).

Waivers and Exemptions

Public Act 08-65 implemented a general provision governing the commissioner’s authority to grant waivers and exemptions from the Fire Prevention Code (CGS § 29-291b). The act makes technical changes by eliminating individual waiver provisions for the following:

1. installation of oil burners and related equipment (CGS § 29-317(c)),
2. flammable and combustible liquids (CGS § 29-321),
3. LPG and LNG (CGS § 29-333),
4. hazardous chemicals (CGS § 29-338),
5. installation and operation of gas equipment and piping (CGS § 29-329(c)), and
6. model rocketry (CGS § 29-368).

Violations and Penalties

The act repeals the individual penalty provisions for certain violations and instead subjects violators to the penalties provided under an existing statute for violations of the Fire Prevention Code (see CGS § 29-291c(e)). Table 1 shows the legal effect of this change.

Table 1: Penalty Provision Included in the Fire Prevention Statutes

<i>Eliminated Penalty Provision</i>	<i>Prior Penalty</i>	<i>Penalty Under the Act (CGA § 29-291c)</i>
Safe storage, use, and transportation of hazardous chemicals, or operation of uninspected cargo tank with hazardous chemicals (CGS § 29-341)	Up to \$500, up to six months in prison, or both for first offense; \$1,000 to \$2,000, up to six months in prison, or both for subsequent offense;	\$200 to \$1,000; up to six months, or both, and violator may be fined \$50 per day for each day of a continuing violation

<i>Eliminated Penalty Provision</i>	<i>Prior Penalty</i>	<i>Penalty Under the Act (CGA § 29-291c)</i>
	but up to \$10,000, up to 10 years in prison, or both if death or injury results from violation	
Safe storage and transportation, etc., of LPG and LNG (CGS § 29-335)	Up to \$500, up to six months in prison, or both for a first offense; \$500 to \$1,000, up to one year in prison, or both for any subsequent offense; but up to \$10,000, 10 years in prison, or both if death or injury results from violation	\$200 to \$1,000, up to six months in prison, or both, and violator may be fined \$50 per day for each day of a continuing violation
Rocketry regulations (CGS § 29-370)	Up to \$500, up to one year in prison, or both	\$200 to \$1,000, up to six months in prison, or both, and violator may be fined \$50 per day for each day of a continuing violation
Dry cleaning regulations (CGS § 29-328)	Up to \$200, up to 60 days in prison, or both	\$200 to \$1,000, up to six months in prison, or both, and violator may be fined \$50 per day for each day of a continuing violation
Regulations for installing oil burners and related equipment (CGS § 29-317(e))	Up to \$100, up to six months in prison, or both	\$200 to \$1,000, up to six months in prison, or both, and violator may be fined \$50 per day for each day of a continuing violation
Regulations for installing and operating gas equipment and piping (CGS § 29-329(e))	Up to \$100, up to six months in prison, or both	\$200 to \$1,000; up to six months in prison, or both, and violator may be fined \$50 per day for each day of a continuing violation

Other Repealed Provisions

The act repeals the following provisions, as of January 1, 2011 (see BACKGROUND):

1. the ban on the sale of fuel oil burners not approved by a nationally recognized testing laboratory acceptable to the state fire marshal (CGS § 29-316);
2. the requirement for the commissioner to adopt regulations providing reasonable safeguards against fire and explosions in dry cleaning businesses (CGS § 29-325); and
3. the requirement for local fire marshals to inspect dry cleaning establishments, which in practice, is part of fire marshals’ inspection schedule (CGS § 29-326).

EFFECTIVE DATE: January 1, 2011

BACKGROUND

State Fire Prevention Code and Repealed Provisions

Public Act 04-59 required the state fire marshal to adopt a Fire Prevention Code to (1) enhance the enforcement capabilities of local fire marshals and (2) prevent fire and other related emergencies. The State Fire Marshal's Office has indicated that some repealed provisions will be in the Fire Prevention Code, which it is in the process of adopting.

PA 09-192—sHB 6284

Public Safety and Security Committee

Environment Committee

Energy and Technology Committee

AN ACT CONCERNING GREEN BUILDING STANDARDS AND ENERGY EFFICIENCY REQUIREMENTS FOR COMMERCIAL AND RESIDENTIAL BUILDINGS

SUMMARY: This act delays the date when “green building” standards take effect and narrows their scope. It requires the state building inspector and Codes and Standards Committee to establish the threshold size for buildings subject to the standards. Under prior law, the standards applied to certain new construction costing \$5 million or more and renovations costing \$2 million or more.

The act delays and modifies the requirement that the state building inspector and Codes and Standards Committee revise the State Building Code with regard to energy efficiency standards. It increases the committee's membership, from 17 to 18, and requires that one member have expertise in energy efficiency matters.

EFFECTIVE DATE: Upon passage

GREEN BUILDING STANDARDS

Prior law required the inspector and committee to amend the State Building Code to require (1) buildings costing \$5 million or more and built after January 1, 2009 and (2) renovations costing \$2 million or more and started after January 1, 2010 to meet green building standards. The standards were (1) a silver rating under the Leadership in Energy and Environmental Design (LEED) rating system for new commercial construction and major renovation projects, (2) a two-globe rating under the Green Globes USA design program, or (3) an equivalent standard (see BACKGROUND). The requirements applied to private- and public-sector buildings, other than residential buildings with up to four units.

The act instead requires the building inspector and committee, in consultation with the public safety commissioner, on and after July 1, 2010, to revise the code with regard to green building standards. Specifically, it requires them to amend the code to require certain buildings of or over a specified minimum size that qualify as new construction or major alteration of a residential or nonresidential building to meet or exceed optimum cost-effective building construction standards for the thermal envelope or mechanical systems. The provisions must at least address indoor air quality, water conservation, and the building's lighting and electrical systems. They must reference nationally accepted green building rating systems, which, under the act, include the National Green Building Standard, as established by the National Association of Home Builders; as well as LEED and Green Globes or an equivalent rating system approved by the state building inspector and committee.

The act requires that the revision include a method for demonstrating compliance at the time of application for a certificate of occupancy. These include, among other things, private third-party certification or verification of compliance with the relevant portions of the rating systems, including the energy and environmental portions.

The act eliminates a requirement that the inspector and the committee waive the green building requirements if the Institute for Sustainable Energy finds that the cost of compliance significantly outweighs the benefits.

BUILDING CODE REVISION

Under prior law, the state building inspector and Codes and Standards Committee, on and after January 1, 2008, were required to revise the state building code to require that all buildings and building elements were designed to meet optimum cost-effective energy efficiency standards over the building's useful life. The revisions had to meet the American Society of Heating, Refrigerating and Air Conditioning Standard 90.1 for new construction.

The act limits the revisions to commercial and residential buildings, instead of all types of buildings. It also (1) eliminates the required ongoing revision of the code to incorporate energy efficiency standards and (2) delays adoption of the standards by requiring that the code incorporate the 2012 International Energy Conservation Code, no later than 18 months after its publication. It specifies that these provisions cannot be construed to impose any new requirement for renovation or construction of state buildings subject to green building standards under existing law (CGS § 16a-38k), regardless of whether the building has been granted an exemption.

BACKGROUND

LEED and Green Globes

Under LEED and Green Globes, a project's rating is based on the number of points it receives. Buildings can receive points for a wide range of characteristics, including energy efficiency, use of renewable energy, water conservation, indoor air quality, reuse of existing buildings and building material, and environmentally sensitive site design. Both systems rate buildings on a four-point scale.

PA 09-227—sSB 850

Public Safety and Security Committee

Education Committee

Planning and Development Committee

AN ACT CONCERNING SCHOOL INSPECTION REPORTS

SUMMARY: This act requires local fire marshals to submit written reports of every school building inspection they conduct to the local or regional education board. By law, the local fire marshal must inspect public service facilities, including public and private schools, at least annually and submit monthly reports to his or her appointing authority (i.e., board of fire commissioners or corresponding authority or the municipality's legislative body, board of selectmen, or warden, as appropriate).

EFFECTIVE DATE: October 1, 2009

PA 09-50—sHB 6648

*Transportation Committee
General Law Committee*

**AN ACT MAKING REVISIONS TO CHAPTER
739 OF THE GENERAL STATUTES WITH
RESPECT TO AUTOMOBILE
MANUFACTURERS, DISTRIBUTORS,
FRANCHISES AND DEALERSHIPS**

SUMMARY: This act revises portions of the law governing motor vehicle manufacturers, distributors, dealers, and the franchise agreements between them. It substantially revises provisions governing the way dealers are compensated for parts and labor in connection with pre-delivery preparation and warranty service. It also (1) revises provisions that govern compensation, termination, nonrenewal, or cancellation of a franchise agreement; (2) establishes new requirements when termination is due to discontinuation of a vehicle line-make; and (3) adds to the list of prohibited acts by manufacturers or distributors.

Finally, the act (1) prohibits any agreement between a manufacturer or distributor and a dealer, rather than only the franchise agreement or a waiver, from superseding the statutory provisions for notice and setting standards for determining when good cause exists for terminating, canceling, or not renewing a franchise agreement; (2) requires the franchise agreement to remain in full force if a franchisee has challenged the termination, cancellation, or non-renewal in court; and (3) allows the franchisee to retain all rights and remedies under the agreement, including the right to sell or transfer ownership interest, until a final court determination and any appeal of that decision. Prior law limited this latter requirement to not more than six months following the final court determination.

Public Act 09-187 keeps motor home manufacturers, distributors, and dealers under the laws as they existed before this act's passage (see BACKGROUND).

EFFECTIVE DATE: Upon passage

**PRE-DELIVERY PREPARATION AND
WARRANTY SERVICE**

Compensation Requirements

Prior law required a motor vehicle manufacturer or distributor to provide a dealer with a schedule of compensation to be paid to the dealer for parts and labor in connection with preparation and service, and the time allowance for the labor. The schedule had to include reasonable compensation for diagnostic work, as well as repair service and labor. The prior law also specified that the principal factor considered in what constitutes

reasonable compensation must be the prevailing wage rates paid by dealers in the community in which the dealer does business. Also, the hourly labor rate paid to a dealer for warranty service could not be less than the rate the dealer charges for like service to non-warranty customers, provided this rate is reasonable.

The act, instead, requires that compensation for parts and labor used in warranty service be fair and reasonable and establishes a specific set of statutory requirements for how this must be determined. It also eliminates the requirement for a specific compensation schedule for pre-delivery vehicle preparation, although dealer compensation is still required.

Rates for Parts

The act requires the dealer to establish the retail rate it customarily charges for parts by submitting to the manufacturer or distributor (1) 100 sequential non-warranty, customer-paid service repair orders that contain warranty-like parts or (2) 60 consecutive days of non-warranty, customer-paid service repair orders that contain warranty-like parts, whichever is less, covering repairs made no more than 180 days before the submission and declaring the average percentage markup. The average markup rates must be presumed as fair and reasonable, but the manufacturer or distributor may rebut the presumption within 30 days by reasonably substantiating that the rate is unfair and unreasonable in light of the practices of all other franchised dealers in the vicinity offering the same line-make vehicles.

The act requires the retail rate to go into effect 30 days after the declaration, subject to audit of the submitted repair orders by the franchisor and a rebuttal of the declared rate. If the rate is rebutted, the manufacturer or distributor must propose an adjustment of the average percentage markup based on the rebuttal within 30 days of the submission. If the dealer does not agree with the proposed markup, it may file a protest with the motor vehicle commissioner within 30 days of receiving the manufacturer's or distributor's proposal.

The commissioner must inform the manufacturer or distributor that a timely protest has been filed and that a hearing will be held. In the hearing, the manufacturer or distributor has the burden of proving that the dealer's declared rate was unfair and unreasonable and that the proposed adjustment is fair and reasonable pursuant to the law.

Rates for Labor

The act permits the dealer to establish the retail rate it customarily charges for labor by submitting to the manufacturer or distributor all non-warranty, customer-paid service repair orders covering repairs during the

month prior to the submission and dividing the total labor sales by the total number of labor hours that generated those sales. The average labor rate must be presumed fair and reasonable subject to the manufacturer's or distributor's right to rebut within 30 days. The rest of the process for resolving the rate is the same as described above for parts.

Exclusions from the Retail Rate Calculation

The act requires the following work to be excluded from the calculation of the retail rate customarily charged by the dealer for parts and labor:

1. repairs for manufacturer or distributor special events, specials, or promotional discounts for retail customer repairs;
2. parts sold at wholesale;
3. engine and transmission assemblies;
4. routine maintenance not covered under any retail customer warranty, such as fluids, filters, and belts not provided in the course of repairs;
5. nuts, bolts, fasteners, and similar items that do not have an individual part number;
6. tires; and
7. vehicle reconditioning.

Other Considerations

If a manufacturer or distributor furnishes a part or component to a dealer at no cost to use in performing repairs under a recall, campaign service action, or warranty repair, it must compensate the dealer in the same manner as warranty parts compensation under the act by giving the dealer the average markup on the cost as listed in its price schedule, less the cost for the part or component.

A manufacturer or distributor may not require a dealer to establish a customarily charged retail rate for parts or labor by an unduly burdensome or time-consuming method or by requiring information that is unduly burdensome or time-consuming to provide, including through part-by-part or transaction-by-transaction calculations. The act prohibits a dealer from declaring an average percentage markup or average labor rate more than twice in a calendar year.

A manufacturer or distributor may not otherwise recover its costs from dealers in Connecticut, including an increase in the wholesale price of a vehicle or an imposed surcharge solely intended to recover the cost of reimbursing a dealer for parts and labor pursuant to the act's requirements. However, a manufacturer or distributor is not prohibited from increasing prices for vehicles or parts in the normal course of business.

TERMINATION, CANCELLATION, OR NONRENEWAL OF AGREEMENTS

Compensation

The law establishes requirements for fair and reasonable dealer compensation upon termination, cancellation, or non-renewal of a franchise agreement. The act limits the application of these requirements to situations where the termination, cancellation, or non-renewal is initiated by the manufacturer, distributor, or dealer. The act also specifies that the compensation requirement does not apply in the event of a sale of the assets or stock of a dealership.

Compensation for Vehicle Inventory

Previously, when a franchise agreement was terminated, canceled, or not renewed, the dealer had to receive fair and reasonable compensation for several things, including the current and one prior model year vehicle inventory. The act modifies the provision with respect to non-current model year inventory to cover vehicles (1) from the prior model year, acquired within the 12 months preceding the termination; (2) with fewer than 300 miles registered on the odometer; (3) acquired from the manufacturer, distributor, or a same line-make dealer; and (4) acquired in the ordinary course of business. It also modifies the provision that the vehicles be unaltered to exempt the addition of customary manufacturer-approved accessories. As under prior law, they must be undamaged.

Also, the act limits compensation for trademark- or tradename-bearing signs only to those the manufacturer or distributor required. Previously, the law required compensation for signs they either required or recommended.

Rent

If a dealer leases space from someone other than the manufacturer or distributor or owns the dealership facilities, it must be compensated for a reasonable rent. Previously, reasonable rent had to be paid only to the extent that the dealership premises were recognized in the franchise and were (1) used solely for performance in accordance with the franchise and (2) not substantially more than that recommended by the manufacturer or distributor. The act expands the requirement to compensate a dealer with a facility used by more than one franchise to include that portion of the facility used by the franchise.

Previously, if the facility was either owned or leased by the dealer, the manufacturer or distributor could compensate the dealer by leasing the facility for two years. The act reduces this to one year.

The act limits applicability of the statutory requirements governing rent only to situations where the termination, cancellation, or non-renewal of an agreement is by the manufacturer, distributor, or dealer as it does for compensation for inventory.

Termination Due to Discontinuation of a Line-Make

The act establishes new requirements when termination, cancellation, or non-renewal of a franchise agreement is due to discontinuation of a line-make. In this case, in addition to all other compensation and repurchase requirements, the act requires a manufacturer or distributor to pay the fair market value of the goodwill of the franchise as of the date immediately preceding the manufacturer's announcement of the discontinuation. The dealer may request (1) immediate payment following the announcement in exchange for any further franchise rights, except payments owed the dealer in the ordinary course of business or (2) payment upon final termination, cancellation, or nonrenewal of the franchise. In either case, payment must be made within 90 days of the dealer's request.

Prohibited Acts by Manufacturer or Distributor

By law, a manufacturer or distributor is prohibited from performing certain acts. The act specifies that the terms, provisions, or conditions of any franchise or other agreement between a manufacturer or distributor cannot supersede the law's requirements.

The act prohibits a manufacturer or distributor from requiring a dealer to construct or make substantial alterations to its facilities unless the manufacturer or distributor can show that such requirements are reasonable and justifiable in light of current and reasonably foreseeable economic conditions, financial expectations, availability of additional vehicle allocation, and the dealer's market for vehicle sales.

In addition, the act prohibits a manufacturer or distributor from:

1. unreasonably preventing or refusing to approve the relocation of a dealership to another site within the dealership's relevant market area, including a refusal of a relocation of the dealership or for any franchise currently located at the proposed new location;
2. selling or offering to sell any new motor vehicle to a dealer at a lower actual price than that offered to any other franchised dealer of the same, similarly-equipped model, or to use any device, including sale promotion plans, funds, or financing to upgrade facilities, discounts, or programs that result in a lesser actual price, except for sales to a dealer for (a)

resale to a governmental unit or (b) donation or use by the dealer in a driver education or other special events program (The act prohibits this provision from being read to prevent the offering of sales incentives or discount programs, as long as they are reasonably and practically available to all Connecticut dealers on a proportionally equal basis.);

3. withholding directly, or through the loss of, any benefit made available to other same line-make dealers in Connecticut because of a dealer's refusal to engage in conduct or take action unrelated to the benefit; and
4. failing to begin the accrual of any express warranty for a new motor vehicle by the date of the original delivery to the consumer, provided if the warranty (a) is expressed in terms of time, such timeframe must begin on the original delivery date or (b) is expressed in terms of miles, the mileage, not exceeding 500 miles, must be the mileage on the vehicle's odometer on the original delivery date to the consumer.

With respect to dealership relocations, the act requires the dealer to provide written notice to the manufacturer or distributor that includes the address of the proposed new location and a reasonable site plan for the proposed facility. The manufacturer or distributor must grant or deny the dealer's request within 60 days of receiving this information. Failure to do so within the 60-day period is deemed consent to the relocation.

Finally, the act modifies the previous prohibition on a manufacturer or distributor failing to respond in writing within 60 days of a dealer's request for consent to the sale, transfer, or exchange of the franchise to a qualified buyer capable of being licensed as a dealer to specify that the 60-day period applies once the dealer provides all the information reasonably and customarily required by the manufacturer or distributor.

BACKGROUND

Related Act

Public Act 09-187 (§ 61) removes manufacturers, distributors, and dealers of motor homes from these revised laws and, instead, keeps them under the provisions of these laws as they existed on January 1, 2009, before any of the changes made by this act.

PA 09-97—HB 6076*Transportation Committee**Government Administration and Elections Committee***AN ACT CONCERNING THE PURCHASE OF LAND OPTIONS BY THE ROUTE 11 GREENWAY AUTHORITY COMMISSION**

SUMMARY: This act explicitly authorizes the Route 11 Greenway Authority Commission to enter into covenants or agreements with landowners to purchase options to acquire land or interests in land. The commission already has the authority to acquire or convey, by purchase or other means, any land or an interest in land within its jurisdiction.

EFFECTIVE DATE: July 1, 2009

BACKGROUND*Route 11 Greenway Authority Commission*

State law authorizes East Lyme, Montville, Salem, and Waterford to create, by ordinance, a Route 11 Greenway Authority Commission. By law, the commission may develop standards, with respect to the greenway, for (1) defining its initial boundaries; (2) planning its design, construction, maintenance, and management and that of an intermodal transportation access system; (3) identifying and prioritizing land that should be added to it; (4) recommending land use within it; and (5) acquiring land and securing conservation easements for it.

PA 09-120—sHB 5262*Transportation Committee**Judiciary Committee***AN ACT CONCERNING THE IMPOUNDMENT OF VEHICLES USED FOR ILLEGAL STREET RACING**

SUMMARY: By law, no one may operate a motor vehicle on a public highway for a wager, a race, or for the purpose of making a speed record. Violators are subject to a fine of \$75 to \$600, up to one year imprisonment, or both for a first offense and a \$100 to \$1,000 fine, up to one year imprisonment, or both for any subsequent offense. In addition to these penalties, this act permits the court to (1) order the motor vehicle the person used to be impounded for up to 30 days if it is registered to the offender or (2) if the vehicle is registered to someone else, fine the offender up to \$2,000 for a first offense and up to \$3,000 for any subsequent offense. The act makes an impounded

vehicle's owner responsible for all fees or costs resulting from the impoundment.

EFFECTIVE DATE: July 1, 2009

PA 09-121—HB 5894*Transportation Committee**Judiciary Committee***AN ACT ESTABLISHING A "MOVE OVER" LAW IN CONNECTICUT**

SUMMARY: This act requires a motorist approaching one or more stationary emergency vehicles located on the travel lane, breakdown lane, or shoulder of a highway with three or more travel lanes to (1) immediately slow to a reasonable speed below the posted speed limit and (2) if traveling in the lane adjacent to the location of the emergency vehicle, move over one lane, unless this would be unreasonable or unsafe.

For these requirements to apply, the emergency vehicle must have flashing lights activated. Under the act, an "emergency vehicle" includes a vehicle:

1. operated by a member of an emergency medical service organization responding to an emergency call;
2. operated by a fire department or by an officer of the department responding to a fire or other emergency;
3. operated by a sworn member of the State Police or an organized local police department;
4. that is a maintenance vehicle; or
5. that is a licensed wrecker.

A subsequent act broadened the provision as it applies to police officers to include other types of law enforcement officers such as Department of Motor Vehicle (DMV) inspectors and appointed constables who perform criminal law enforcement duties (see BACKGROUND).

A violation of these requirements is an infraction, unless the violation results in the injury or death of the emergency vehicle operator, in which case the fines are a maximum of \$2,500 and \$10,000 respectively.

EFFECTIVE DATE: October 1, 2009

BACKGROUND*Maintenance Vehicle*

A "maintenance vehicle" is defined by law as a vehicle the state or a municipality, a state bridge or parkway authority, or any public service company uses in maintaining public highways or bridges and facilities located within their limits (CGS § 14-1(46)).

Wrecker

A “wrecker” is defined by law as a vehicle registered, designed, equipped, and used by a DMV-licensed motor vehicle dealer or repairer for the purpose of towing or transporting wrecked or disabled motor vehicles for compensation or for related purposes, or a vehicle contracted for the consensual towing or transporting of one or more motor vehicles to or from a place of sale, purchase, salvage, or repair (CGS § 14-1(102)).

Related Act

A provision of PA 09-187 (§ 44) broadens the provision of this act covering vehicles operated by sworn members of the State Police or an organized local police department to include additional types of police officers such as (1) any member of a law enforcement unit who performs police duties, for example, DMV inspectors designated to enforce motor vehicle laws; (2) appointed constables who perform criminal law enforcement duties; and (3) certain special policemen appointed to enforce laws on state property, investigate public assistance fraud, and policemen for utility and transportation companies.

PA 09-154—sSB 735*Transportation Committee**Planning and Development Committee**Government Administration and Elections Committee**Appropriations Committee***AN ACT IMPROVING BICYCLE AND PEDESTRIAN ACCESS****SUMMARY:** This act:

1. requires, beginning October 1, 2010, a minimum of 1% of the total funds received in any fiscal year by the Department of Transportation (DOT) and any municipality for construction, restoration, rehabilitation, or relocation of any highway or street to be spent to provide facilities for “all users,” including bikeways and sidewalks with curb cuts or ramps;
2. establishes an 11-member Connecticut Bicycle and Pedestrian Advisory Board to report to the governor, transportation commissioner, and the Transportation Committee on actions, policies, and procedures that improve the bicycling and walking environment in Connecticut; and
3. requires the transportation commissioner to report, this year and next, to the Transportation Committee and the advisory board with a list

of transportation projects he has undertaken that contain bicycle and pedestrian access.

EFFECTIVE DATE: July 1, 2009

MANDATORY EXPENDITURES

The act requires a reasonable amount of any funds received by the DOT or any municipality for construction, restoration, rehabilitation, or relocation of roads to be spent for facilities for “all users,” including bikeways and sidewalks with curb cuts and ramps. Beginning October 1, 2010, this must be at least 1% of the total funds received in any fiscal year. The act also requires DOT and every municipality to take “future transit expansion plans” into account where appropriate. These provisions do not apply in the event of a state or municipal transportation emergency.

The act defines “funds” as any funds from the Special Transportation Fund, bond allocations, and any other source available for road construction, maintenance, and repair. This appears to include virtually any funds the state or municipalities appropriate or bond for roads. It includes federal funds and, in the case of municipalities, state town road aid grants and funding from the Local Capital Improvement Program (LoCIP). The act defines “user” as a motorist, transit user, pedestrian, or bicyclist.

The act requires accommodations for all users to be a routine part of the planning, design, construction, and operating activities of all highways in the state.

Provision of facilities for all users is not required if the DOT commissioner or a municipality’s legislative body determines with respect to a highway, road, or street that (1) non-motorized usage is prohibited; (2) there is no need; (3) the accommodation of all users would be an excessively expensive component of the total project cost; or (4) the accommodation of all users is inconsistent with the state’s or municipality’s construction, maintenance, and repair program. (A subsequent act makes the provision requiring routine accommodation for all users in planning, designing, constructing, and operating all highways subject to this same set of exceptional circumstances under which routine accommodation would not have to be made—see BACKGROUND).

ADVISORY BOARD*Membership*

The act establishes the Connecticut Bicycle and Pedestrian Advisory Board and places it within the DOT for administrative purposes only. Five members must be appointed by the governor with the other six members appointed, one each, by the House speaker, Senate president, House and Senate majority leaders, and

House and Senate minority leaders. All members must be state electors and have a background and interest in issues pertaining to walking and bicycling. One member must be at least age 60, and one member must represent each of the following constituencies:

1. an organization interested in promoting bicycling,
2. an organization interested in promoting walking,
3. an owner or manager of a business engaged in bicycle sales or repair,
4. visually-impaired persons,
5. mobility-impaired persons, and
6. transit workers.

The act does not specify which of the appointing authorities is responsible for appointing the members from the special constituencies.

Members serve four-year terms, except that, of the governor's initial five appointees, three must serve for two years and two for three years. Vacancies must be filled by the appointing authority for the unexpired term. All members must serve without compensation.

The members must select a chairperson, vice-chairperson, and secretary at the first meeting and annually thereafter. The board must meet at least once each calendar quarter and any other time the chairperson deems necessary or if a majority of members requests a meeting.

Duties and Responsibilities

The act specifies that the board's duties include (1) examining the need for bicycle and pedestrian transportation; (2) promoting programs and facilities for bicycles and pedestrians; and (3) advising appropriate state agencies on policies, programs, and facilities for bicycles and pedestrians. The board may also apply for and accept grants, gifts, and bequests from other states; federal and interstate agencies; independent authorities; and private firms, individuals, and foundations.

The act requires DOT to assist the board by making available DOT reports and records related to the board's responsibilities and, within available appropriations, printing and distributing its annual report, and mailing meeting notices.

Advisory Board Annual Report

By January 15, 2010, and annually thereafter, the board must submit a report to the governor, DOT commissioner, and the Transportation Committee. The report must include (1) progress made by state agencies in improving the environment for bicycling and walking in Connecticut, (2) recommendations for improving state policies and procedures related to bicycling and walking, and (3) actions taken by DOT in the preceding

year that affect the bicycle and walking environment.

DOT REPORT

By October 1, 2009, and again by October 1, 2010, the act requires the transportation commissioner to report to the Transportation Committee and advisory board with a list of state- or federally-funded projects that have been undertaken that contain bicycle and pedestrian access. The act explicitly includes any federally-funded projects under the Interstate Maintenance, National Highway Safety, Congestion Mitigation and Air Quality, and Transportation Enhancement programs, but does not exclude other federal transportation programs.

The list must include the project title, scope, funding source, description, cost of the bicycle or pedestrian component, and estimated completion time.

BACKGROUND

Related Act

Public Act 09-186 (§ 55) makes the provision of this act requiring routine accommodation for all users in planning, designing, constructing, and operating all highways subject to the same set of exceptional circumstances under which provision of such facilities would not have to be made.

PA 09-186—sHB 6649 (VETOED; OVERRIDDEN)

Transportation Committee

Government Administration and Elections Committee

Appropriations Committee

AN ACT CONCERNING THE PROGRAMS AND ACTIVITIES OF THE DEPARTMENT OF TRANSPORTATION

SUMMARY: The act makes numerous changes to laws governing the operations of the Department of Transportation (DOT). It:

1. authorizes the executive director of the State Traffic Commission to certify copies of documents and records (§ 1);
2. modifies the methods DOT must use to advertise for consultant services (§ 2);
3. permits DOT to sell property acquired for potential use as the Route 7 expressway between Danbury and Norwalk (§ 3);
4. prohibits DOT from starting any phase of the Stamford Transportation Center parking garage demolition project unless it makes alternative parking spaces available nearby (§ 4);

5. requires DOT to study the feasibility of providing commuter bus service to the Bridgeport train station (§ 5);
 6. requires DOT to provide to the Transportation Committee copies of any reports required under the American Recovery and Reinvestment Act (ARRA) (§ 6);
 7. prohibits a town from terminating, reorganizing, or modifying a port authority or port district without the DOT commissioner's written consent (§ 7);
 8. requires DOT to (a) develop a plan to implement zero-emission buses throughout the state and identify locations for hydrogen refueling stations and (b) analyze the potential impact of establishing electronic tolls in Connecticut (§§ 8 & 13);
 9. establishes a mediation process for a type of property sold by DOT because it is no longer necessary for highway purposes (§ 9);
 10. exempts certain types of wheelchair accessible taxi vehicles from DOT regulations on accessibility (§ 10);
 11. exempts wreckers towing vehicles in certain situations from maximum length and gross weight limits (§ 11);
 12. authorizes an East Lyme Boy Scout troop to conduct an annual Labor Day weekend coffee stop at the Waterford weigh station if certain conditions are met (§ 12);
 13. designates commemorative or memorial names for 17 road segments and 12 bridges, designates informational signs for eight destinations, and modifies or changes several other memorial names (§§ 14-52, 56-58);
 14. requires DOT to adopt regulations for designating "control cities" on interstate highways (§ 53); and
 15. amends a provision of PA 09-154 (§ 55).
- EFFECTIVE DATE: Various, see below.

§ 1 — STATE TRAFFIC COMMISSION— CERTIFICATION OF DOCUMENTS

The act authorizes the executive director of the State Traffic Commission to certify copies of any document or record pertaining to the commission's operations. Any such document or record the executive director attests is a true copy must be considered competent evidence of the facts it contains in any Connecticut court. The State Traffic Commission consists of the transportation, motor vehicles, and public safety commissioners.

EFFECTIVE DATE: Upon passage

§ 2 — DOT CONSULTANT SELECTION PROCESS

By law, only firms that are technically prequalified by DOT in a particular year for a particular service are eligible to respond to a DOT solicitation for those particular services (CGS § 13b-20e). The act conforms another law governing DOT notice to consultants to that law. It (1) requires the commissioner to notify all prequalified firms in the service category for which DOT is seeking assistance and (2) limits the current requirement that DOT publish a notice in various venues to situations where the prequalified list has fewer than five consulting firms or does not include the area of expertise DOT requires. Previously, this notice had to be published in appropriate professional magazines, professional newsletters, and newspapers. The act eliminates the requirement for posting notices in newspapers, and permits DOT to do so in on-line professional websites instead.

EFFECTIVE DATE: Upon passage

§ 3 — LAND ACQUIRED FOR ROUTE 7 EXPRESSWAY PROJECT

Prior law prohibited the DOT commissioner from selling, or using in any manner that is incompatible with transportation purposes, any existing right-of-way that was acquired for potential use as the Route 7 expressway from Danbury to Norwalk. The commissioner was also prohibited from selling or using incompatibly any property currently under his control in Danbury adjacent to Route 7 and south of Wooster Heights Road.

The act eliminates these prohibitions on sale or use of the acquired property. However, a subsequent act (PA 09-203) restores the second prohibition with respect to property in Danbury adjacent to Route 7 and south of Wooster Heights Road (see BACKGROUND).
EFFECTIVE DATE: July 1, 2009

§ 4 — STAMFORD TRANSPORTATION CENTER PARKING GARAGE

The act prohibits the transportation commissioner from beginning any phase of the project to demolish the Stamford Transportation Center parking garage unless DOT makes alternative parking spaces available near the center before the demolition begins. The number of spaces must equal or exceed the number that will be lost by each phase of the demolition project.

EFFECTIVE DATE: Upon passage

§ 5 — COMMUTER BUS SERVICE FEASIBILITY STUDY

The act requires the DOT, within existing budgetary resources, to study and determine the feasibility of providing commuter bus service from commuter parking lots to the Bridgeport train station via Route 8 and Housatonic Avenue. DOT must submit its findings and recommendations to the Transportation Committee by February 1, 2010.

EFFECTIVE DATE: Upon passage

§ 6 — REPORT ON ACTIONS CONCERNING THE AMERICAN RECOVERY AND REINVESTMENT ACT (ARRA)

The act requires the DOT to submit copies of reports required pursuant to the ARRA to the Transportation Committee.

EFFECTIVE DATE: Upon passage

§ 7 — TERMINATION, REORGANIZATION, OR MODIFICATION OF A PORT DISTRICT OR PORT AUTHORITY

The act requires a town to get the written consent of the transportation commissioner before it:

1. terminates or reorganizes a port district established by the town's legislative body pursuant to state law or a port authority appointed by the town's chief elected official pursuant to the law;
2. modifies the duties or powers of a port authority; or
3. modifies the property included in the port district.

EFFECTIVE DATE: Upon passage

§ 8 — ZERO-EMISSION BUS IMPLEMENTATION PLAN

The act requires DOT to consult with the Connecticut Center for Advanced Technology, Inc. to develop a plan to implement zero-emissions buses throughout the state. The plan must include the technological, facility, and financial arrangements needed for such a fleet conversion. It must also identify specific locations for hydrogen refueling stations along state highways or at locations that could potentially be used by state fleets or other public or private sector fleets.

The plan must be part of a larger collaborative effort between DOT and the center to identify strategies to expand the availability and use of hydrogen fuel and renewable energy resources within any corridor or around such a centralized fleet fueling location. The

plan must be completed within available appropriated funds designated for the purpose of studying or designing clean fuel or alternative fuel solutions.

The plan must be submitted to the Transportation, Environment, and Energy and Technology committees by December 31, 2010, subject to the availability of study funds from readily available and already appropriated funding sources.

The hydrogen refueling stations identified in the plan must provide fuel for zero-emissions vehicles at appropriate pressures and volumes the center identifies. The study must consider technologies for generating hydrogen that use products principally manufactured and assembled in Connecticut.

The plan must also examine appropriate available funding from the state and federal governments for purchasing zero-emissions buses and constructing any recommended hydrogen fueling facilities from funds designated for the purpose of encouraging clean fuel or alternative fuel use. Funding plans within the study must be provided in a way that encourages federal and private cost sharing.

EFFECTIVE DATE: October 1, 2009

§ 9 — MEDIATION OF LAND SALES

The act establishes a mediation process between DOT and certain owners of property it has acquired for highway purposes when the parties fail to negotiate a purchase as the law provides. By law, when the DOT determines that a residential property that had a single family dwelling on it when DOT acquired it is no longer necessary for highway purposes, DOT must first offer it for purchase by the former owner or owners at its appraised value. This right of first refusal applies for 25 years from the time of acquisition.

Under the act, someone is an "eligible owner" for purposes of the mediation process if the person (1) retained residency on the property for at least 10 years after DOT acquired the property, (2) was notified by DOT that the property is no longer necessary for highway purposes, and (3) failed to negotiate a purchase pursuant to the statutory requirements.

No later than January 1, 2010, the act requires the public works and environmental protection commissioners and the secretary of the Office of Policy and Management, in conjunction with the State Properties Review Board (SPRB), to serve as mediators. The officials may designate someone else to perform this function, but anyone serving as a mediator must have mediation training and experience in real estate transactions and valuation.

Notwithstanding the requirements of the law on such first refusal purchases, if the DOT commissioner and an eligible owner are unable to negotiate a purchase pursuant to the law, the eligible owner or the owner's

designee, on or after January 1, 2010, may submit a written request for mediation to the SPRB. When it receives such a request, the SPRB must (1) notify the DOT commissioner, or his designee, and (2) convene the mediators. The mediation must be limited to the value of the property and the purchase price. The costs of mediation must be shared equally by DOT and the eligible owner.

Once assigned by the SPRB, the designated mediator must contact the eligible owner and the DOT commissioner, or their designees, to schedule the mediation. The mediation must be completed within 90 days of the SPRB's receipt of the owner's request for mediation. Within 30 days after completing the mediation, the "mediators" must submit a written summary of the mediation agreement to the Transportation and Government Administrative and Elections committees for their approval. (This reference implies that more than one mediator is assigned the mediation, but the previous provision requires "a person" assigned as a mediator to contact the parties to schedule the mediation.) The committees must hold a joint meeting during a regular legislative session to approve or disapprove the agreement.

If the agreement is approved, the eligible owner has 15 days to sign a purchase agreement. If it is disapproved, or if a purchase agreement is not signed within the time limit, the state must dispose of the property according to law.

By law, when a first refusal offer is not accepted, DOT must next offer a parcel that meets local zoning requirements for residential or commercial use to other state agencies. A parcel that does not meet the requirements must next be offered to all abutting landowners according to DOT regulations. If the sale or transfer of the parcel results in an abutting owner's property becoming a nonconforming use under local zoning, DOT may sell or transfer the property without public bid or auction.

EFFECTIVE DATE: Upon passage

§ 10 — WHEELCHAIR ACCESSIBLE TAXICABS

The act permits any vehicle that (1) complies with the wheelchair accessibility requirements of the Americans with Disabilities Act and (2) meets Department of Motor Vehicles registration requirements to be used to provide taxicab service for people requiring wheelchair accessibility regardless of any DOT regulatory requirements on wheelchair accessibility that might otherwise apply.

EFFECTIVE DATE: October 1, 2009

§ 11 — WRECKERS

The act (1) modifies the current exception for wreckers from the maximum vehicle length law for certain types of towing operations and (2) establishes a second exception for wreckers from the state's maximum vehicle weight limits.

Towing that Exceeds State Length Limits

State law establishes maximum length, width, height, and weight requirements for vehicles using public highways. Vehicles exceeding these maximum dimensions may only be operated under a DOT over-dimension permit. Previously, a licensed wrecker could tow or haul a motor vehicle without regard to the overall length of the wrecker and the towed vehicle if the vehicle (1) was involved in an accident or became disabled and remained within the limits of the highway, or (2) was being removed by order of a traffic or law enforcement authority. The tow had to occur from the highway to the nearest license repair facility or the motor carrier's terminal where it could be properly repaired, but the distance could not exceed 25 miles.

The act (1) removes the restrictive circumstances on the purpose and destination of the tow, (2) applies the exception to both vehicles and combinations of vehicles, and (3) applies the exception to a "vehicle" rather than a "motor vehicle." (By law, a "vehicle" is any device suitable for the conveyance, drawing, or other transportation of persons or property, whether operated on wheels, runners, a cushion of air, or other means. This does not include devices propelled or drawn by a human owner or used exclusively on tracks.) Thus, for example, under the third change noted above, towers could make an over-length tow if only the trailer portion of a tractor-trailer was involved.

Towing that Exceeds State Weight Limits

If a wrecker has been issued an annual DOT permit, the act permits it to tow or haul a motor vehicle or combination of vehicles that exceeds the state maximum gross combination weight limits for that type of vehicle or combination if it (1) was involved in an accident, (2) became disabled and remains within the highway limits, or (3) is being removed pursuant to a law enforcement order. The tow must be made to the nearest repair facility or the carrier's terminal. Any wrecker that does not have an annual DOT permit may only make such a tow if it gets a DOT single trip permit.

EFFECTIVE DATE: Upon passage

§ 12 — BOY SCOUT LABOR DAY COFFEE STOP

The act authorizes Boy Scout Troop 24 of East Lyme to operate an annual Labor Day weekend coffee stop at the Waterford weigh station on I-95 southbound in accordance with any public health and safety standards established by the State Police, the DMV, and the DOT.

It permits the coffee stop to operate 24 hours per day for each day of the Labor Day weekend if adequate adult supervision is provided during all operational hours. The adult leaders of the scout troop must give the transportation commissioner a complete schedule of the hours of operation and a roster of the adult supervision to be provided each hour. The information must be submitted at least 30 days before Labor Day weekend annually.

The commissioner must review the schedule and roster to determine if adequate adult supervision is provided and, at his discretion, may require provision of additional supervision. If it is not provided, the commissioner may prohibit the troop's use of the Waterford facility.

EFFECTIVE DATE: Upon passage

§ 13 — DOT ANALYSIS OF IMPACTS OF ESTABLISHING ELECTRONIC TOLLS IN CONNECTICUT

The act requires DOT to analyze, with people it employs and within existing budgetary resources, the potential impact of establishing electronic tolls on Connecticut highways. The analysis must consider:

1. legal prohibitions or constraints, including liability issues and state and federal constitutional issues; and
2. financial issues, including potential revenue to be generated, potential funding lost or at risk, including federal funds, and any constraints on the revenue received from such tolls.

The transportation commissioner may consult with the attorney general in completing the analysis and must submit the results to the General Assembly by December 31, 2010.

EFFECTIVE DATE: Upon passage

§§ 14-52 & 56-58 — COMMEMORATIVE ROAD AND BRIDGE NAMES AND SPECIAL DIRECTION SIGNS FOR DESIGNATED DESTINATIONS

The act designates commemorative or memorial names for 17 road segments, and 12 bridges. It also directs DOT to post directional information signs on state highways for eight specific destinations. Finally, the act modifies two previous memorial bridge names, relocates another, and changes one memorial

designation from a highway to a bridge. The individual names and act sections are shown below.

<i>Act §</i>	<i>Location</i>	<i>Commemorative or Memorial Name</i>
Highways		
16	Route 130 in Stratford from Bridgeport line to Elm Street	"Rev. Dr. William O. Johnson Memorial Highway"
17	Route 309 in Simsbury from Sugar Loaf Cut to the Route 167 junction	"Sergeant Felix M. Del Greco, Jr. Memorial Highway"
18	From Bridge No. 3830 over Route 40 in North Haven to Route 5 (State Street)	"Amvets Post No. 9 Memorial Highway"
19	Route 364 in Southington from Route 120 to East Street	"Officer Timothy Foley Memorial Highway"
20	Route 66 in East Hampton	"Governor William A. O'Neill Memorial Highway"
21	Route 337 in New Haven from Myron Street to Beecher Place	"Julia 'Nana' Coppola Memorial Highway"
23	Route 22 in North Branford (Notch Hill Road) between Route 1 at the intersection of the Branford, Guilford, and North Branford town lines to Route 80 (Foxon Road)	"Beverly D. Tulli Memorial Highway"
24	Route 82 in Salem between Routes 85 and 11	"Officer H. David Cordell Memorial Highway"
26	Route 30 in Vernon from the Route 30/83 junction to the Tolland town line	"Captain Patrick Reeves Memorial Highway"
27	Route 4 in Farmington from Route 10 to the State Road 508 junction	"Colonel Everett H. Kandarian Memorial Highway"
34	Route 4 in Torrington between Routes 118 and 202	"Francis J. Oneglia Memorial Highway"
39	Route 33 in Westport from Route 136 to the Wilton/Ridgefield town line	"Fallen Heroes Highway"
46	Route 133 in Brookfield from the Route 7/202 intersection to Route 25	"Joseph Baker Memorial Highway"

<i>Act §</i>	<i>Location</i>	<i>Commemorative or Memorial Name</i>
47	Route 202 in Brookfield from the northbound exit of Route 7 north to the intersection of the Route 7 bypass	"Kenneth Keller Memorial Highway"
48	Route 133 in Brookfield from Route 25 to Bridge No. 1343	"Hon. B. Scott Santa Maria Memorial Highway"
49	Route 161 in East Lyme from Route 156 to the I-95 underpass	"Warrant Officer Corps Memorial Highway"
56	Route 116 in Ridgefield from North Street to Maple Shade Road	"Ridgefield Veterans Memorial Highway"
Bridges		
14	Bridge No. 431 on Route 4 over the Farmington River in Farmington	"Vincent DiPietro Memorial Bridge"
22	Bridges Nos. 608 and 609 on Route 8 over the Saugatuck River	"Trooper James Savage Memorial Bridge"
25	Bridge No. 1697 on Route 2 eastbound in Glastonbury over Route 94	"Marine Sgt. David Coullard Memorial Bridge"
32	Bridge No. 838 on Route 195 over I-84 in Tolland	"Gary M. Passaro Memorial Bridge"
33	Bridge No. 1432B on I-291 eastbound in South Windsor	"South Windsor Patriotic Commission Memorial Bridge"
35	Bridge No. 43 on I-95 over Route 1 in Darien	"Speaker R. E. Van Norstrand Memorial Bridge"
36	Bridge No. 443 on Route 5 over Route 190 in Enfield	"LTC Robert Albert 'Hitchcock' Burnham Memorial Bridge"
37	Bridge No. 4247 on High Street and the GTI Railroad over Route 72 in New Britain	"Captain Brian S. Letendre Memorial Bridge"
38	Bridge No. 3096 on I-91 over Route 80 in New Haven	"Officer Daniel P. Picagli Memorial Bridge"
43	Bridge No. 4180 on I-84 westbound over the Housatonic River in Southbury and Newtown	"Lt. Thomas F. Carney Memorial Bridge"
45	Bridge No. 3929 over Route 7 in Brookfield	"Petty Officer 1 st Class Dale Lewis Memorial Bridge"
57	The "overpass bridge" of I-95 in East Norwalk	"Donald F. Reid Memorial Bridge"
Location Information Signs		
28	I-91 at Exit 37 for the Antique Radio Museum	
29	I-95 at appropriate north and south bound locations for	

<i>Act §</i>	<i>Location</i>	<i>Commemorative or Memorial Name</i>
	the Connecticut River Museum in Essex	
30	Route 1 north and southbound and Route 156 southbound at the Route 1 intersection for the Veterans Memorial Green in Waterford	
31	I-84 at exit 15 east and west bound for the Connecticut Antiques Trail	
40	Route 3 in Rocky Hill at the corners of Brook Street and Cromwell Avenue for "Compass Point"	
41	I-91 northbound at Exit 48 in Enfield for "Our Lady of Mount Carmel Society"	
42	Route 8 southbound at Exit 37 for "Watertown Business Park"	
44	Route 9 directing traffic over the Arrigoni Bridge to "Brownstone Discovery Park"	
Corrections or Re-designations of Prior Memorial Names		
15	Changes the designation for the Route 411 bridge in Rocky Hill from the "John L. Levitow Memorial Bridge" to the "John L. Levitow, S/Sgt. U.S. Air Force and Medal of Honor Recipient Memorial Bridge"	
50 & 58	Repeals the designation of Route 102 from Route 35 to Route 7 in Ridgefield as the "Robert Mugford Memorial Highway" and designates Bridge No. 6065 on Route 7 in Norwalk over the Norwalk River as the "Robert Mugford Memorial Bridge"	
51	Changes the designation for the "Firefighter Patrick L. Brooks Memorial Bridge" from Bridge No. 3485 on I-84 in West Hartford over Woodruff Street to Bridge No. 1743 A & B on I-84 in West Hartford over SR 535/Ridgewood Road	
52	Changes the designation for the bridge on Route 2 in Norwich over the Yantic River from the "Thomas F. Sweeney Bridge" to the "Thomas F. Sweeney Memorial Bridge"	

EFFECTIVE DATE: Upon passage

§ 53 — REGULATIONS FOR DESIGNATING CONTROL CITIES

The act requires the transportation commissioner to adopt regulations for designating "control cities" in accordance with the standards of the American Association of State Highway and Transportation Officials (AASHTO).

Control Cities

Control cities are forward locations shown on highway signs on the Interstate Highway System. AASHTO periodically publishes a list of control cities for all Interstate routes. Control cities are locations determined by each state to be major destinations or population centers on or near the Interstate Highway System. Once control cities are designated, successive signs throughout the length of the route are expected to display only these cities until the destinations are

reached.

Under the AASHTO guidelines, states may submit requests for the addition of cities to the list of control cities to the AASHTO Highway Subcommittee on Traffic Engineering for consideration. The state's request should include a statement of the proposed addition or change, an illustration which would be helpful to understand the request, and any supporting data or information that would present justification for making the addition or change. A task force selected by the subcommittee reviews the submitted information and makes its recommendation to the subcommittee for a vote. Recommendations are presented to the AASHTO Standing Committee on Highways and its Board of Directors for approval.

AASHTO

AASHTO is a professional association consisting of state agencies with official highway and transportation responsibilities. Its primary mission is to advocate transportation-related policies, provide technical services to member states, and establish uniform guidelines and standards, many of which have been adopted as national standards.

EFFECTIVE DATE: July 1, 2009

§ 54 — TECHNICAL CHANGE TO DOT OVER-DIMENSION PERMIT AUTHORITY

The act makes a technical change to DOT's authority to issue permits for vehicles that do not conform to the maximum length, width, height, or weight limits to incorporate the changes made for wreckers in § 11 of the act.

EFFECTIVE DATE: Upon passage

§ 55 — AMENDMENT TO PA 09-154

The act modifies a provision of PA 09-154 which requires that accommodations for motorists, transit users, bicyclists, and pedestrians must be a routine part of the planning, design, construction, and operating activities of all highways in the state. It also requires, beginning October 1, 2010, that at least 1% of the total amount of the funds the state or a municipality has available for construction, maintenance, or repair of roads must be used for all users, including, specifically, bicyclists and pedestrians. Expenditure of the minimum set aside is subject to exception for certain reasons. This act makes the provision requiring routine accommodation for all users in planning, designing, constructing, and operating all highways subject to the same set of exceptional circumstances.

EFFECTIVE DATE: July 1, 2009

BACKGROUND

Related Act

Public Act 09-203 (§ 25) readopts the prohibition on the DOT commissioner selling or using in a transportation-incompatible way any property he controls in Danbury adjacent to Route 7 and south of Wooster Heights Road that was repealed by this act. Public Act 09-203 was vetoed.

PA 09-187—SB 1081

Transportation Committee

Public Safety and Security Committee

Judiciary Committee

Finance, Revenue and Bonding Committee

Appropriations Committee

Planning and Development Committee

AN ACT CONCERNING THE FUNCTIONS OF THE DEPARTMENT OF MOTOR VEHICLES

SUMMARY: This act makes numerous changes to many motor vehicle laws and Department of Motor Vehicles (DMV) operations. Some of the most significant changes include:

1. decreasing, from .08% to .04%, the presumptive level for determining if a driver of a commercial motor vehicle is operating with an elevated blood alcohol level (DUI) for both the criminal offense and the administrative suspension; (b) broadening the scope of the law that prohibits someone under age 21 from operating a motor vehicle on a highway with a blood-alcohol level of .02% or more to apply anywhere, including on private property, rather than just on a highway; and (c) making several other related changes to the DUI laws;
2. requiring the Department of Environmental Protection to (a) evaluate whether the motor vehicle emissions inspection program can remain in compliance with federal law if it was to be conducted solely by using on-board diagnostic systems of 1996 and newer vehicles and (b) advise the motor vehicle commissioner of the results of the evaluation before any new agreements for the program are made;
3. making several changes with respect to the issuing of handicapped parking credentials;
4. authorizing the operation of golf carts on local roads under certain circumstances;
5. authorizing special driving permits for higher educational purposes, in addition to employment;

6. establishing requirements and procedures for sale or disposal of motor vehicles left at self-storage facilities by defaulting renters;
7. establishing requirements and procedures for disposal of motorized personal property ordered removed by law enforcement officers; and
8. creating collegiate “commemorative” and “Share the Road” special license plates.

Because of the great number of separate initiatives contained in the act, the digest below is provided to identify the location in the act and subject matter of the various changes explained in the section-by-section analysis that follows.

<i>Act §</i>	<i>Subject Matter of Section</i>
§ 1	Technical Change
§ 2	Consent for Licensure of A Minor
§ 3	Dishonored Credit Card Transactions
§ 4	Driver's License Suspensions
§ 5	Suspension of Driving Privilege of Drivers Under Age 18
§ 6	Technical and Minor Changes Regarding Restoration of License or Driving Privileges
§§ 7- 8	Eight-Hour Safe Driving Practices Course
§ 9	Suspension of Eligibility to Obtain a Driver's License if Under Age 18 and Driving Without a License
§ 10	Delay of Vision Screening for License Renewal
§ 11	Incidental Movement of Certain Motor Vehicles
§ 12	Regulations on Vehicles Not Suitable for Registration
§ 13	Organ and Tissue Donation
§ 14	Speeding by Someone Under Age 18
§ 15	Dealer Qualification for On-Line Registration Program
§ 16	Repair Period under Motor Vehicle Emissions Inspection Program
§ 17	Fee for Late Renewal of Motor Vehicle Manufacturer's License
§ 18	Motor Vehicle Recycling Business Licenses
§ 19	Trailers and Semi-Trailers

<i>Act §</i>	<i>Subject Matter of Section</i>
§§ 20-21	Motor Carrier Regulation
§ 22	Technical Change Regarding DOT Permit Violations
§ 23	Motor Carrier Operating with Suspended or Revoked Registration
§ 24	Surrender of Dealer or Repairer Plates When Licensee Loses License or Goes Out of Business
§ 25	Transfer of Funds for Nursing License Plates
§ 26	License Status List
§ 27	Operation of Golf Carts on Local Roads
§ 28	Modified Antique, Rare, or Special Interest Motor Vehicles
§ 29	Property Tax Assessment Cap for Antique, Rare, or Special Interest Motor Vehicles
§§ 30-31	Composite Motor Vehicles
§ 32	Exemption for Safe Ride Programs
§ 33	Disposal of Motorized Personal Property
§ 34	Definition of Out-of-Service Order
§ 35	Restoration of Driving Privileges for Certain Third-Time DUI Offenders
§ 36	Special Driving Permits for Educational Purposes
§§ 37-38	Handicapped Parking Credentials
§§ 39-40	Stolen or Damaged Plate Fee Waiver
§ 41	Utility Trailer Definition
§ 42	Use of Ignition Interlock Devices on Motor Vehicles
§ 43	Auxiliary Power or Idle Reduction Technology Units
§ 44	Amendment to “Move Over” Law
§§ 45-46	Motor Vehicles and Self Storage Facilities
§ 47	Work Zone Safety Police Training
§ 48	Video Devices in Motor Vehicles
§ 49	Motor-Driven Cycles
§ 50	School Bus Driver Test Fee Waiver
§ 51	Second Knowledge Test For Driver's License

<i>Act §</i>	<i>Subject Matter of Section</i>
§ 52	Driver's License Examination Fee
§ 53	Used Motor Vehicle "As Is" Disclaimer Notice
§ 54	Definition of "Serious Traffic Violation" for Motor Carriers
§ 55	Evaluation of All On-Board Diagnostic Testing Emissions Inspection Program
§§ 56-57	Address Changes and Non-Driver Identity Cards
§§ 58-59	Special Interest Collegiate License Plates
§ 60	"Share The Road" Special License Plates
§ 61	Franchise Agreements Regarding Sale of Motor Homes
§§ 62-64	Drunk Driving Offenses and Administrative License Suspensions
§ 65	Devices Affecting License Plate Recognition
§ 66	Provision of Ignition Interlock Device Restriction in Electronic Driver Record
§ 67	Commercial Driver's Instruction Permits
§ 68	Repeal of DMV Study of Distractive Devices in Motor Vehicles
§ 69	Repeal of Requirements Regarding High-Mileage Vehicles

EFFECTIVE DATE: Various, see below

§ 1 — TECHNICAL CHANGE

This section makes a technical change to a statutory reference.

EFFECTIVE DATE: Upon passage

§ 2 — CONSENT FOR LICENSURE OF A MINOR

The act adds grandparents to the list of people who may provide "parental consent" for a 16- or 17-year-old to obtain a learner's permit and driver's license if the applicant's adult spouse, parent, foster parent, or guardian is deceased, incapable, outside the state, or otherwise unavailable to provide the consent.

EFFECTIVE DATE: Upon passage

§ 3 — DISHONORED CREDIT CARD TRANSACTIONS

The act permits the DMV commissioner to charge a fee for a credit or debit card payment of DMV fees that is rejected or dishonored in the same way he can for

returned or dishonored checks. He now charges \$35 for fees up to \$200, plus 15% of amounts that exceed \$200 and any protest fees and charges to cover collection costs.

EFFECTIVE DATE: July 1, 2009

§ 4 — DRIVER'S LICENSE SUSPENSIONS

The act explicitly authorizes the DMV commissioner to suspend the operating privilege of a nonresident for the same violations for which the law requires him to suspend the driver's license of a Connecticut resident.

The act also establishes a driver's license or operating privilege suspension of:

1. 30 to 90 days for a first violation of the law prohibiting operating a motor vehicle on a public highway for a wager, a race, or to make a speed record, and a minimum of 90 days for a subsequent violation; and
2. a minimum of one year for a second or subsequent violation for evading the responsibility to stop immediately, render any needed assistance, and provide identification when knowingly involved in an accident resulting in physical injury to another or damage to property. (By law, a first violation results in a suspension of at least 90 days.)

EFFECTIVE DATE: Upon passage

§ 5 — SUSPENSION OF DRIVING PRIVILEGE OF DRIVERS UNDER AGE 18

The act makes it explicit that if anyone under age 18 violates a law that requires a suspension of a driver's license, and the person has not yet received a license (for example, if he or she only holds a learner's permit), then the DMV commissioner may suspend the privilege to obtain a license instead.

EFFECTIVE DATE: October 1, 2009

§ 6 — TECHNICAL AND MINOR CHANGES REGARDING RESTORATION OF LICENSE OR DRIVING PRIVILEGES

The act makes a technical change in the law governing participation in the DMV substance abuse treatment program for drunk driving offenders. It also removes the prior 30-day limit within which someone who has been notified of the requirement to participate in a treatment program has to petition the commissioner to waive the requirement based on certain statutory criteria.

EFFECTIVE DATE: Upon passage

§§ 7 & 8 — EIGHT-HOUR SAFE DRIVING PRACTICES COURSE

By law, a driver's license applicant must complete an eight-hour safe driving practices training course before being issued a Connecticut driver's license unless he or she previously held a Connecticut driver's license or holds a valid license from another state, territory, or possession of the United States. The act (1) adds someone who holds a valid license from any foreign country with which the commissioner has an agreement for reciprocal recognition of driver training requirements to the exceptions and (2) authorizes the commissioner to adopt regulations establishing standards for DMV-licensed commercial driving schools to offer and conduct the required course. The act also makes a technical change to the law requiring DMV to adopt regulations on the content of the eight-hour course driving schools or driver education programs provide for anyone under age 18.

EFFECTIVE DATE: Upon passage

§ 9 — SUSPENSION OF ELIGIBILITY TO OBTAIN A DRIVER'S LICENSE IF UNDER AGE 18 AND DRIVING WITHOUT A LICENSE

Under the act, anyone under age 18 convicted of driving without having obtained a license is ineligible to receive a license for at least one year, presumably from the date of the conviction.

EFFECTIVE DATE: Upon passage

§ 10 — DELAY OF VISION SCREENING FOR LICENSE RENEWAL

The act postpones for two years, until July 1, 2011, the requirement that, beginning July 1, 2009, the DMV commissioner conduct a vision screening for drivers' license renewal applicants on every other license renewal. By law, in lieu of the DMV screening, an applicant may submit the results of a vision screening performed by a qualified licensed health care professional if it was conducted within the 12 months preceding renewal.

EFFECTIVE DATE: July 1, 2009

§ 11 — INCIDENTAL MOVEMENT OF CERTAIN MOTOR VEHICLES

The act permits anyone who holds a valid driver's license to road test or move a student transportation vehicle or activity vehicle without needing the appropriate license endorsement that would otherwise be required to drive such a vehicle. This exception already exists in the case of school buses, livery vehicles, and other types of vehicles requiring special license endorsements.

EFFECTIVE DATE: July 1, 2009

§ 12 — REGULATIONS ON VEHICLES NOT SUITABLE FOR REGISTRATION

By law, the DMV commissioner may refuse to register or issue a title for any motor vehicle or class of vehicles if he determines its characteristics make it unsafe for highway operation. The act authorizes the commissioner to adopt implementing regulations.

EFFECTIVE DATE: Upon passage

§ 13 — ORGAN AND TISSUE DONATION

Previously, the commissioner had to provide an opportunity for any driver's license or non-driver identification card applicant to complete an organ donation card. The act replaces the donor card process with an opportunity to register as an organ or tissue donor in the donor registry established by state law. If someone chooses to be included in the donor registry, the act requires the designation to be imprinted on the license or identity card.

EFFECTIVE DATE: Upon passage

§ 14 — SPEEDING BY SOMEONE UNDER AGE 18

The act makes a minor change to the speeding law to make it consistent with other laws that establish special penalties for anyone under age 18 who exceeds a posted speed limit by more than 20 miles per hour, instead of 20 miles per hour or more.

EFFECTIVE DATE: Upon passage

§ 15 — DEALER QUALIFICATION FOR ON-LINE REGISTRATION PROGRAM

The act reduces from 25 to 10 the number of monthly transactions a motor vehicle dealer must have in order to qualify for participation in DMV's on-line registration program.

EFFECTIVE DATE: July 1, 2009

§ 16 — REPAIR PERIOD UNDER MOTOR VEHICLE EMISSIONS INSPECTION PROGRAM

The act increases, from 30 to 60 days, the period someone whose vehicle has failed an emissions inspection has to get the vehicle repaired and re-inspected. The act also deletes an obsolete reference to the fee for annual inspections, which are no longer conducted under the current program.

EFFECTIVE DATE: July 1, 2009

§ 17 — FEE FOR LATE RENEWAL OF MOTOR VEHICLE MANUFACTURER'S LICENSE

The act (1) establishes a \$250 late fee for a motor vehicle manufacturer who fails to renew its license on time and (2) prohibits the commissioner from renewing a license if more than 45 days have passed since it expired.

EFFECTIVE DATE: July 1, 2009

§ 18 — MOTOR VEHICLE RECYCLING BUSINESS LICENSES

The act makes licenses for operating a motor vehicle recycling business valid for two years instead of one and correspondingly increases the renewal fee from \$350 to \$700.

EFFECTIVE DATE: July 1, 2009

§ 19 — TRAILERS AND SEMI-TRAILERS

The act makes a technical change to the laws governing brake equipment on trailers.

EFFECTIVE DATE: July 1, 2009

§§ 20 & 21 — MOTOR CARRIER REGULATION

The act makes numerous, mostly technical, changes to laws governing motor carrier operations to make them consistent with federal laws and regulations on motor carrier safety. In particular, the act makes the Connecticut law on maximum hours of on-duty service consistent with federal regulations and a recent change concerning drivers of utility service vehicles.

EFFECTIVE DATE: July 1, 2009

§ 22 — TECHNICAL CHANGE REGARDING DOT PERMIT VIOLATIONS

The act makes a technical change in the law establishing penalties for violating Department of Transportation (DOT) over-dimension permit requirements to include both motor vehicles and motor vehicle combinations.

EFFECTIVE DATE: July 1, 2009

§ 23 — MOTOR CARRIER OPERATING WITH SUSPENDED OR REVOKED REGISTRATION

The act prohibits a motor carrier from operating or knowingly permitting operation of any motor vehicle whose registration has been suspended or revoked by the commissioner or any federal agency acting pursuant to federal law. For a first offense, the act prescribes a fine of \$500 to \$1,000, imprisonment for up to 90 days, or both. The penalty for any subsequent violation is a fine of \$1,000 to \$2,000, imprisonment for up to one

year, or both.

EFFECTIVE DATE: October 1, 2009

§ 24 — SURRENDER OF DEALER OR REPAIRER PLATES WHEN LICENSEE LOSES LICENSE OR GOES OUT OF BUSINESS

The act requires a dealer or repairer who no longer holds a valid DMV license due to its (1) failure to renew the license, (2) surrender of the license, or (3) revocation by the commissioner to account for and immediately return all general distinguishing number plates (dealer or repairer plates) to a DMV inspector or other authorized DMV agent or employee. It requires all such plates to become void as of the date of license termination and prohibits using them to operate any motor vehicle.

Anyone who fails to return or surrender the plates or who, knowing that the plate is void, uses it to operate a vehicle is subject to a fine of up to \$100, up to 30 days imprisonment, or both.

EFFECTIVE DATE: October 1, 2009

§ 25 — TRANSFER OF FUNDS FOR NURSING LICENSE PLATES

The act requires the Office of Policy and Management secretary to distribute quarterly to the Connecticut Nurses Foundation funds in the account created for the special "Nursing" license plate. The plates were authorized in 2008 to express support for the nursing profession, raise awareness of the nursing shortage, and provide scholarships for nursing education and training.

EFFECTIVE DATE: Upon passage

§ 26 — LICENSE STATUS LIST

Prior law required the DMV commissioner to publish a list of those whose class B license or registration has been suspended. DMV currently maintains a system that provides companies electronic access to the list of people with suspended public service licenses that is updated periodically. The prior law was obsolete and the act eliminates it.

EFFECTIVE DATE: Upon passage

§ 27 — OPERATION OF GOLF CARTS ON LOCAL ROADS

The act authorizes any local traffic authority to permit the operation of golf carts, during daylight hours, on any road under its jurisdiction. A golf cart must be equipped with an operable horn meeting the requirements of state law and a flag positioned to assist other drivers to see it. The traffic authority must limit cart operation to roads with a posted speed limit of 25

miles per hour or less. The operator must carry a valid Connecticut driver's license when operating a cart. Violations of these requirements are infractions.

The act authorizes the DMV commissioner to establish insurance requirements for golf carts by regulation.

EFFECTIVE DATE: Upon passage

§ 28 — MODIFIED ANTIQUE, RARE, OR SPECIAL INTEREST MOTOR VEHICLES

By law, the DMV commissioner may issue special number plates to "antique, rare, or special interest motor vehicles." These vehicles are defined as vehicles that are 20 years old or older, being preserved because of historic interest, and have not been altered or modified from the original manufacturer's specifications.

The act permits the commissioner to also issue these plates to antique, rare, or special interest vehicles that have been modified. The law defines a "modified antique motor vehicle" as a vehicle that is 20 years old or older and has been modified for safe road use, including modifications to the drive train, suspension, braking system, and safety and comfort apparatus.

EFFECTIVE DATE: October 1, 2009

§ 29 — PROPERTY TAX ASSESSMENT CAP FOR ANTIQUE, RARE, OR SPECIAL INTEREST MOTOR VEHICLES

The law caps the assessed value of an antique, rare, or special interest motor vehicle for municipal property tax purposes at \$500. Under the act, the local tax assessor may require the owner of such a vehicle to provide reasonable documentation that the vehicle is an antique, rare, or special interest motor vehicle as defined in the law. However, if the vehicle has been issued the special license plate for such vehicles, the owner cannot be required to provide the additional documentation.

EFFECTIVE DATE: October 1, 2009

§§ 30 & 31 — COMPOSITE MOTOR VEHICLES

The act requires that, for purposes of registration and mandatory mechanical inspections required by law, the model year of a composite motor vehicle be determined as the model year that the body of the vehicle most closely resembles. The law defines a "composite motor vehicle" as one composed or assembled from several parts of other motor vehicles whose identification and body contours are so altered that it no longer bears the characteristics of any specific vehicle make. Any vehicle not assembled by a DMV-licensed manufacturer is considered a composite motor vehicle.

The act authorizes the commissioner to require inspection of any other motor vehicle that has not been made by a DMV-licensed motor vehicle manufacturer, for which he must charge an \$88 fee.

EFFECTIVE DATE: October 1, 2009

§ 32 — EXEMPTION FOR SAFE RIDE PROGRAMS

The act exempts the assigned drivers in a Safe Ride program sponsored by the American Red Cross, the Boy Scouts of America, or another national public service organization from the passenger restrictions for drivers under age 18 during their first year of licensure. Previously, they were exempt only from the 11:00 p.m. to 5:00 a.m. driving curfew.

EFFECTIVE DATE: Upon passage

§ 33 — DISPOSAL OF MOTORIZED PERSONAL PROPERTY

The act establishes a procedure for wreckers who tow or remove motorized personal property at the direction of a police officer to dispose of the property after certain requirements are met. It defines "motorized personal property" to include mini-motorcycles ("pocket bikes"), dirt bikes, snowmobiles, or other types of motorized personal property.

It requires the licensed wrecker who removes the property for the police officer to store it in a suitable place. The wrecker operator or licensee that owns the wrecker must give written notice by certified mail to the property owner within 48 hours of the removal, if the owner is known. The notice must specify that the property has been taken and where it is being stored. The entity that removed the property has a lien upon it for removal and storage charges. If the property owner does not claim it, or the owner is not known, the tower may sell or dispose of it after 30 days, subject to any statutory or regulatory requirements that apply to the sale or disposal of such property.

A first violation of these requirements is designated as an infraction with a fine of \$35 to \$50. The penalty for subsequent violations is a \$50 to \$100 fine, imprisonment for up to 30 days, or both.

EFFECTIVE DATE: October 1, 2009

§ 34 — DEFINITION OF OUT-OF-SERVICE ORDER

The act redefines an "out-of-service order" to follow more closely the requirements of federal motor carrier safety regulations. Previously, it was defined as a temporary prohibition against driving a commercial motor vehicle or any other vehicle subject to the federal safety regulations enforced by the motor vehicle commissioner. The act changes this to an order (1) a police officer, motor vehicle inspector, or an authorized Federal Motor Carrier Safety Administration (FMCSA)

official issues prohibiting the operation of a commercial motor vehicle or further operations by its driver or (2) FMCSA issues under federal law prohibiting a motor carrier from engaging in commercial motor vehicle operations. In effect, it expands the definition to explicitly cover drivers who have violated safety regulations and carriers found unfit to continue commercial operation—both of which are part of the federal regulations.

EFFECTIVE DATE: October 1, 2009

§ 35 — RESTORATION OF DRIVING PRIVILEGES FOR CERTAIN THIRD-TIME DUI OFFENDERS

The act permits those who have had their drivers' licenses permanently revoked for a third conviction for DUI before October 1, 1999 to use the same process for restoring their ability to drive after six years that is already afforded to those whose revocations occurred on or after October 1, 1999. Under this process, once at least six years has passed since the revocation, the person may request a DMV hearing to reverse or reduce the revocation. The person must provide satisfactory evidence that a reversal or reduction will not endanger public safety and must meet other requirements, such as successful completion of an alcohol education and treatment program. If granted relief, the person must, as a condition of driving, operate only vehicles equipped with an approved ignition interlock device from the date the relief is granted until 10 years have passed from the revocation date.

EFFECTIVE DATE: October 1, 2009

§ 36 — SPECIAL DRIVING PERMITS FOR EDUCATIONAL PURPOSES

By law, someone whose driver's license has been suspended, with some exceptions, may apply to DMV for a special driving permit that allows the person to drive to and from a work place or in connection with performing employment functions. The act expands the permit program to provide for driving to and from an accredited higher education institution in which the person is enrolled. It requires the applicant for an education driving permit to provide DMV with a schedule of the times and location of all classes or other required educational activities attended and requires the institution's registrar to attest to the schedule.

EFFECTIVE DATE: October 1, 2009

§§ 37 & 38 — HANDICAPPED PARKING CREDENTIALS

By law, anyone who is blind or who has disabilities that limit or impair the ability to walk as defined in federal regulations may apply for special license plates, a removable windshield placard, or both that grant

special parking privileges for the recipient. Display of these plates or a placard permits the holder to use specially designated parking spaces. Windshield placards are issued for both permanent and temporary disabilities. Placards and plates can also be issued to (1) the parent or guardian of a person under age 18 who qualifies for one and (2) any organization that meets DMV criteria and certifies to the commissioner's satisfaction that the vehicle for which the plate or placard is requested is primarily used to transport blind or disabled people.

This act establishes several new requirements with respect to the issuance and use of windshield placards and special plates. Specifically, it:

1. requires anyone issued a placard on or after January 1, 2010 to have either a driver's license or a DMV-issued non-driver photo identification card;
2. permits issuance of a placard to the parent or guardian of any blind or disabled person if that person cannot request or complete an application;
3. eliminates authority for physicians' assistants to certify disabilities qualifying for a placard or special plates, but it is unclear how it changes the certification authority of advance practice registered nurses (See COMMENT below);
4. authorizes the Board of Education and Services for the Blind to certify legal blindness for these purposes (previously only ophthalmologists and optometrists could certify a person was blind);
5. requires the commissioner to develop a procedure for renewing existing placards that may be implemented over a multi-year period;
6. requires placards to be returned to the commissioner when the recipient moves to another state or dies (special license plates must already be returned under these circumstances);
7. establishes a \$500 fine for using a placard or special license plate issued to a deceased person;
8. requires the commissioner to check periodically the Department of Public Health's state death registration and cancel any placard issued to someone identified as deceased;
9. prohibits anyone from being issued special handicapped license plates for more than two motor vehicles; and
10. requires the DMV commissioner to evaluate alternative enforcement methods and certain other issues related to the handicapped parking laws and submit recommendations to the Transportation Committee.

The act permits the commissioner to adopt regulations for issuing placards to people who, due to hardship, do not hold or cannot get a driver's license or non-driver identification card. It also requires him to maintain a record of each placard he issues to any such person.

DMV Study

The act requires the commissioner to conduct a study in consultation with members of local police departments. The study must:

1. review and evaluate alternative ways of enforcing the handicapped parking laws in areas not normally patrolled by local police, including private property open to public use;
2. develop recommendations, including any necessary legislation, authorizing local police departments to use ancillary staff for handicapped parking enforcement, including retired police officers and licensed private security companies; and
3. recommend increased fines and mandatory court appearances for violators.

The commissioner must submit his recommendations and proposals to the Transportation Committee by January 15, 2010.

COMMENT

Provision Regarding Disability Certification by Advanced Practice Registered Nurse

The act makes a change regarding disability certification by advanced practice registered nurses (APRN), but it is not clear if they are prohibited from making such certification. Previously, the law stated that application for a credential had to include certification from a physician, APRN, or physician's assistant. In the next provision it stated that in the case of people with disabilities, the application also had to include certification from a physician, APRN, or the DMV handicapped driver training unit that the disability meets the criteria established under federal regulations as a qualifying disability. The act removes the reference to APRNs in the first provision but not the second. Since these two certification references are essentially part of the same process, it is unclear how this provision affects APRNs.

EFFECTIVE DATE: Upon passage

§§ 39 & 40 — STOLEN OR DAMAGED PLATE FEE WAIVER

In 1997, the legislature permitted the motor vehicle commissioner to waive the \$20 fee for replacement license plates and the additional \$5 fee that must be

charged for any safety (reflectorized) license plates he issues whenever someone's license plates have been stolen or mutilated for the purpose of obtaining the registration validation sticker attached to the plate. A police report must be submitted for the fee waiver to apply. In 2008, the requirement that the police report indicate that the purpose of the plate theft or mutilation was to obtain the registration sticker was deleted from the safety plate fee waiver law, but not from the replacement plate fee law. The deletion reflected the fact that registration stickers are now windshield stickers and not fixed to the license plate.

The act (1) corrects the oversight in the replacement plate fee waiver to accommodate the change in sticker location and (2) eliminates the waiver authority for the \$5 safety plate fee.

EFFECTIVE DATE: October 1, 2009

§ 41 — UTILITY TRAILER DEFINITION

The act eliminates the restriction in the definition of a "utility trailer" that limited it to a manufacturer's gross vehicle weight rating of 10,000 pounds or less. Thus, it is defined as a trailer designed and used to transport personal property, materials, or equipment, whether or not permanently affixed to the trailer bed.

EFFECTIVE DATE: October 1, 2009

§ 42 — USE OF IGNITION INTERLOCK DEVICES ON MOTOR VEHICLES

The act makes a technical correction to the law regarding the use of ignition interlock devices on motor vehicles used by those convicted of certain alcohol-related driving crimes to reflect the fact that in 2008 the law was expanded to require the use of such devices following the mandatory license suspensions that result from convictions for 2nd degree assault with a motor vehicle and 2nd degree manslaughter with a motor vehicle, both of which involve driving a motor vehicle while under the influence of alcohol or drugs.

EFFECTIVE DATE: October 1, 2009

§ 43 — AUXILIARY POWER OR IDLE REDUCTION TECHNOLOGY UNITS

The act permits the owner of a commercial motor vehicle with an auxiliary power or idle reduction technology unit to apply to the DMV commissioner for a weight tolerance exemption from state gross, axle, tandem, and bridge formula weight limits. The exemption allows operation of the vehicle with a tolerance for the actual weight of the auxiliary power unit, up to a maximum of 400 pounds. The act defines an "auxiliary power unit or idle reduction technology unit" as an integrated system, other than the vehicle's engine, that provides heat, air conditioning, engine

warming, electric components, or power to do the work for the which the vehicle is designed.

To qualify for the weight exemption, the vehicle owner may be required to (1) produce a written certification of the unit's weight and (2) show by written certification or actual demonstration that it is fully functional at all times. The exemption may be granted by any official or law enforcement officer authorized to enforce the state's maximum motor vehicle weight laws.

EFFECTIVE DATE: October 1, 2009

§ 44 — AMENDMENT TO “MOVE OVER” LAW

The act expands a provision of PA 09-121 that requires a motorist approaching one or more stationary emergency vehicles on a travel lane, breakdown lane, or shoulder of a highway to immediately slow down and, if in the adjacent lane and it is safe to do so, move over one lane. One type of emergency vehicle covered by the act is a vehicle operated by a sworn member of the State Police or an organized local police department. This act broadens this provision to include additional types of police officers including (1) any member of a law enforcement unit who performs police duties, for example, DMV inspectors designated to enforce motor vehicle laws; (2) appointed constables who perform criminal law enforcement duties; and (3) certain special policemen appointed to enforce laws on state property, investigate public assistance fraud, and policemen for utility and transportation companies.

EFFECTIVE DATE: October 1, 2009

§§ 45 & 46 — MOTOR VEHICLES AND SELF STORAGE FACILITIES

By law, the owner of a self-service storage facility has a lien upon any personal property left in the facility by a renter who defaults on a rental agreement. The lien is for any rent, labor, or other valid charges in relation to the property; valid expenses incurred in its preservation; and reasonable costs for its sale or other disposition. The facility owner must follow certain specific procedures for, among other things, notifying the defaulting property owner, advertising the sale of the property, disposing of sale proceeds, and redeeming the property.

This act expands the meaning of personal property to explicitly include motor vehicles left in the facility by a defaulting renter and establishes specific notice requirements relative to such vehicles.

Specific Requirements for Motor Vehicles

The act requires the self-service storage facility owner to contact the DMV in a manner the commissioner prescribes to determine the existence and

identify of any lienholder and the name and address of the vehicle's owner. The facility owner must send a written notice to the commissioner stating the:

1. vehicle's vehicle identification number,
2. date it was left with the facility owner,
3. date of the facility occupant's default,
4. amount of the lien claimed,
5. vehicle's registration number if it has plates on it, and
6. vehicle owner's name and the name of the facility occupant who defaulted.

Any subsequent sale of the motor vehicle is void if the notice to the commissioner is not made. The facility owner must also enclose a \$5 fee with the notice. The commissioner must place the notice on file and make it available for public inspection.

Within 10 days of receiving information on any lienholder and vehicle owner from the DMV, the facility owner must send them written notice by postage paid registered or certified letter with return receipt. The notice must state that the vehicle is being held at the facility and has a lien attached to it.

The act requires the motor vehicle commissioner to adopt regulations that (1) specify the circumstances under which title to a vehicle abandoned at the facility may be transferred and (2) establish a procedure through which the facility owner may get title to the vehicle.

EFFECTIVE DATE: January 1, 2010

§ 47 — WORK ZONE SAFETY POLICE TRAINING

The act specifies that the State Police, the Police Officer Standards and Training Council, and each municipal police department “shall be encouraged” to provide in each basic or review police training program they conduct or administer training on highway work zone safety that covers, at least:

1. enforcement of criminal laws on highway worker endangerment;
2. techniques for handling unsafe driving incidents in a highway work zone;
3. risks associated with unsafe driving in a highway work zone;
4. safe traffic control practices, such as the proper location of officers and wearing high-visibility safety apparel; and
5. general guidelines, standards, and applications in the Manual on Uniform Traffic Control Devices, including training on the proper use of traffic control devices and signs and a one hour annual refresher on the guidelines, standards, and applications.

The act requires the Highway Work Zone Safety Advisory Council to develop and make available a program curriculum and recommend it to the various training entities. The act does not specify who must

encourage the training entities to provide the training, but the council would be one possibility.
EFFECTIVE DATE: October 1, 2009

§ 48 — VIDEO DEVICES IN MOTOR VEHICLES

The act broadens the exceptions to the prohibition on a television screen or other similar device that may be installed in a motor vehicle where it may be visible to the driver or interfere with the safe operation or control of the vehicle in any other way. Under prior law, devices meeting certain criteria that were installed by the motor vehicle manufacturer were exempt from this general prohibition.

The act (1) revises some of these exceptions and adds others and (2) eliminates the restriction that they must be installed by a vehicle manufacturer, thus permitting aftermarket installation and use of devices that qualify.

General Prohibition

Previously, a television screen or other similar device could not be installed or used anywhere in a motor vehicle where it might be visible to the driver or interfere with the vehicle's safe operation or control in any way. The act, instead, specifies that (1) such a device cannot display a moving image, other than text, and (2) to be prohibited, the device's image must be visible to someone who is actually operating the vehicle and using a seat belt.

Exceptions to the Prohibition

Previously, a device that was installed by the vehicle's manufacturer was exempt from the prohibition if it met one or more of the following: (1) it is a video display unit used for instrumentation purposes, (2) it is a closed video monitor used only for backing or parking, (3) it is a video display unit or device capable of operation only when the vehicle is stationary and is automatically disabled when the vehicle is in motion, or (4) the display or device is used to enhance or supplement the driver's view of the area immediately surrounding the vehicle to assist in low-speed maneuvering at not more than 10 miles per hour around obstructions.

The act eliminates the requirement that excepted devices be installed only by the vehicle's manufacturer, thus permitting them to be installed in the aftermarket. It also revises the exceptions as follows:

1. a closed video monitor used to assist the driver while backing, parking, maneuvering at a speed up to 12 miles per hour, or to monitor passengers seated behind the driver;
2. a video display unit or device capable of operation only when the vehicle is stationary

and is automatically disabled when the vehicle is in motion (unchanged by the act);

3. a video display or device that is used to enhance or supplement the operator's view of the roadway or to assist in object detection;
4. a video display unit used for control or instrumentation purposes (current law), to provide vehicle information, or to assist in the operation of navigation, traffic, road, and weather information functions; or
5. a video display or device installed in any emergency vehicle.

EFFECTIVE DATE: October 1, 2009

§ 49 — MOTOR-DRIVEN CYCLES

In 2008, the statutes were substantially rewritten to replace the laws governing bicycles with helper motors (i.e., "mopeds") with the concept of "motor-driven cycles." The reference to bicycles with helper motors in the motor vehicle definition was not changed at the time. The act makes this technical correction.

EFFECTIVE DATE: October 1, 2009

§ 50 — SCHOOL BUS DRIVER TEST FEE WAIVER

The act requires the DMV commissioner to waive the fees for a learner's permit (\$10), knowledge test (\$16), and skills test (\$30) for applicants for a commercial driver's license if the applicant is getting a license with an "S" endorsement for driving a school bus. In practice, the DMV has not collected the fees from those applicants since a 1990 law required a fee waiver when applicants provided evidence of current employment as a school bus driver or acceptance for employment as such. The law was modified in 1997 to change the basis of the waiver to application for a "Z" license restriction, which restricted the prospective licensee solely to school bus operation. The "Z" restriction was eliminated in 2007 along with the fee waiver provision. DMV continued to waive fees based on its prior procedures, although there was no longer a statutory authority for the waiver. The act, in effect, restores the fee waiver that existed prior to 2007.

EFFECTIVE DATE: July 1, 2009

§ 51 — SECOND KNOWLEDGE TEST FOR DRIVER'S LICENSE

By law, before the DMV commissioner can issue a learner's permit to anyone under age 18, the applicant must pass a vision screening and a knowledge test on the motor vehicle laws and rules of the road. Previously, it also permitted the commissioner to administer a second knowledge test before issuing a driver's license to anyone under age 18. The act makes this second knowledge test prior to licensure mandatory. It permits

the commissioner, subject to standards and requirements he imposes, to authorize licensed driving instruction schools in good standing and secondary school driver education programs to administer the second pre-licensure knowledge test as part of the eight-hour safe driving practices course required for everyone under age 18 and certify to the commissioner, under oath, that the test was administered.

The act specifies that the fee for the eight-hour course must be \$125 (the fee previously authorized by DMV regulation), but if the knowledge test is administered as part of the course it permits a fee of up to \$150. It permits the commissioner to adopt regulations for the administration and certification of the knowledge test.

EFFECTIVE DATE: October 1, 2009

§ 52 — DRIVER'S LICENSE EXAMINATION FEE

Prior law required payment of a \$40 fee for a driver's license examination. It also permitted the commissioner to charge a \$15 in advance for scheduling a license examination appointment which he had to apply toward the \$40 fee if the appointment was kept. The act (1) eliminates the authority for the \$15 advance appointment fee and (2) makes it clear that the \$40 examination fee covers all phases of the examination process (vision screening, knowledge test, and road test). It also specifies that the examination fee must be paid in the manner the commissioner directs and that any applicant who fails the examination, or any part of the examination, must pay an additional \$40 to retake it.

EFFECTIVE DATE: October 1, 2009

§ 53 — USED MOTOR VEHICLE "AS IS" DISCLAIMER NOTICE

By law, a used car dealer may sell a used vehicle "as is" if it meets certain requirements, such as its cash purchase price is less than \$3,000 or it is at least seven years old. For an "as is" disclaimer to be enforceable it must, among other things, appear on the front page of the sales contract and state certain things such as:

1. "this means that you will lose your implied warranties";
2. "you will have to pay for any repairs needed after sale";
3. "if we have made any promises to you, the law says we must keep them, even if we sell 'as is'" and
4. "to protect yourself, ask us to put all promises into writing."

The act requires that this last declaration in the disclaimer notice of the sales contract also say, to ask the dealer "if we offer a warranty on this vehicle."

EFFECTIVE DATE: October 1, 2009

§ 54 — DEFINITION OF "SERIOUS TRAFFIC VIOLATION" FOR MOTOR CARRIERS

Under federal law and motor carrier safety regulations, a commercial motor vehicle driver must be disqualified from driving a commercial vehicle for at least 60 days if convicted of committing two serious traffic violations or 120 days if convicted of three serious traffic violations within a three-year period. One such serious traffic violation is exceeding the posted speed limit by 15 miles per hour or more.

The act conforms Connecticut's law to the federal definition by adopting the standard of 15 miles per hour or more above the posted limit instead of speeding "in excess of" 15 miles per hour above the limit.

EFFECTIVE DATE: October 1, 2009

§ 55 — EVALUATION OF ALL ON-BOARD DIAGNOSTIC TESTING EMISSIONS INSPECTION PROGRAM

The act requires the Department of Environmental Protection (DEP), in consultation with DMV, to evaluate, using models approved by the Environmental Protection Agency, whether the present system for conducting motor vehicle emissions inspections could be replaced when the current contract for providing these inspections expires by a system that exclusively uses on-board diagnostic (OBD) information systems for model year 1996 and newer motor vehicles and remain in compliance with federal Clean Air Act requirements. DEP must complete the evaluation and provide it to the DMV commissioner at least six months before he enters into a negotiated agreement or agreements, as provided by law, for a successor system.

By law, most gasoline- and diesel-powered motor vehicles up to 10,000 pounds gross weight that are more than four, and less than 25, model years old are subject to emissions inspections. Only vehicles that are 1996 or newer have OBD capability. Thus, the all-OBD inspection system DEP must evaluate could include only 1996 and newer vehicles that have these capabilities.

EFFECTIVE DATE: Upon passage

§§ 56 & 57 — ADDRESS CHANGES AND NON-DRIVER IDENTITY CARDS

The act requires anyone who holds a DMV-issued non-driver photo identification card to notify the DMV commissioner of a change of address within 48 hours in the same way drivers' license holders must. It also subjects identity card holders to the provisions of the law requiring furnishing of a correct address to the Department of Social Services in child support cases. As is the case for driver's license holders, violations are designated as infractions.

The act eliminates a reference to DMV regulations in a law requiring DMV to notify a state that has issued someone a driver's license if the commissioner issues such person a Connecticut non-driver photo identification card. DMV has no such regulations.

EFFECTIVE DATE: July 1, 2009

§§ 58 & 59 — SPECIAL INTEREST COLLEGIATE LICENSE PLATES

By law, the DMV commissioner may issue special license plates that bear the logos or emblems of Connecticut public and independent colleges and universities pursuant to regulations he must adopt. Prior law specified certain things the regulations had to cover including:

1. the eligibility criteria for institutions to participate,
2. provisions for issuing or renewing the plates after receiving a form from the institution certifying that the applicant made a contribution of at least \$50 to its scholarship fund or account before each such issuance or renewal,
3. fees for the plates, and
4. any additional information or fees the commissioner requires.

The prior law also required that the contributions the institution receives be distributed based on financial need.

The act (1) eliminates all the specific content requirements for the regulations, as well as the requirement that contributions be distributed based on financial need and (2) establishes a second set of statutory requirements under which the commissioner, on or after October 1, 2009 and within available appropriations, may issue collegiate "commemorative" plates. This would, in effect, establish a second collegiate plate program operated under different requirements from the existing one.

If the commissioner issues these plates under the new statutory requirements, the act requires him to collect a \$55 fee in addition to any normal registration or renewal fees that otherwise apply. DMV must retain \$15 of the \$55 for initial issuance and \$5 for renewal to use for the cost of producing, issuing, renewing, and replacing the collegiate commemorative plates. In order for DMV to issue an institution's collegiate commemorate plate, the act requires the institution to demonstrate that there is a demand for at least 400 such plates.

The portion of the \$55 fee not retained by DMV must be deposited in non-lapsing accounts the act requires the comptroller to establish for each educational institution for which a commemorative plate is established. The comptroller must distribute the funds

on a quarterly basis to each institution that has a plate account. However, unlike the existing collegiate plate program, the institution must spend the funds it receives on both (1) scholarships based on financial need and (2) alumni outreach.

The act prohibits the motor vehicle commissioner from charging a transfer fee to someone who transfers an existing registration to or from a collegiate commemorative plate. It permits the commissioner to set higher fees for plates that (1) have letters and numbers from a previously issued plate; (2) have a combination of letters or numbers requested by the registrant, i.e., "vanity" plates; and (3) are low-number plates issued in accordance with state law. It authorizes the commissioner to adopt implementing regulations.

EFFECTIVE DATE: October 1, 2009

§ 60 — "SHARE THE ROAD" SPECIAL LICENSE PLATES

Beginning January 1, 2010, the act permits the DMV to issue, within existing budgetary resources, special "Share the Road" license plates to anyone requesting them. DMV must charge a \$60 fee for the plates in addition to any registration fee otherwise required for the vehicle and must retain \$15 for the costs of producing, issuing, renewing, and replacing the plates. DMV may not charge a registration transfer fee for anyone who switches to the Share the Road plates from another plate.

The DMV commissioner may charge a higher fee for plates that (1) contain numbers and letters from a previously issued plate, (2) contain letters in place of numbers ("vanity plates"), and (3) are low-number plates issued in accordance with state law. The DOT and DMV commissioners must determine the design of the plates by agreement, in consultation with an organization that advocates on behalf of bicyclists.

The act establishes a special, non-lapsing General Fund account into which must be deposited \$45 of the \$60 special fee for issuing the plates. DOT must spend funds in the account to enhance public awareness of the rights and responsibilities of bicyclists and motorists jointly using the highway and to promote bicycle use and safety. The DOT commissioner must deposit into the Share the Road account any private donations he receives for it.

The DMV commissioner may provide for the reproduction and marketing of the Share the Road plate image for clothing, recreational equipment, posters, mementoes, or other products or programs he finds suitable. Any money received through such marketing must go into the special account.

EFFECTIVE DATE: July 1, 2009

§ 61 — FRANCHISE AGREEMENTS REGARDING SALE OF MOTOR HOMES

PA 09-50 substantially revises portions of the law governing new motor vehicle manufacturers, distributors, dealers, and the franchise agreements between them. This act removes manufacturers, distributors, and dealers of motor homes from these revised laws and, instead, keeps them under the laws as they existed on January 1, 2009, before any of the changes made by PA 09-50. A “motor home” is defined as a vehicular unit designed to provide living quarters and necessary amenities that are built into an integral part of, or permanently attached to, a truck or van chassis.

EFFECTIVE DATE: Upon passage

§§ 62-64 — DRUNK DRIVING OFFENSES AND ADMINISTRATIVE LICENSE SUSPENSIONS

By law, it is a criminal violation to operate a motor vehicle, on the highway or elsewhere, (1) while under the influence of alcohol, drugs, or both or (2) with an “elevated blood alcohol content.” Someone is considered to have an elevated blood alcohol content (BAC) when the ratio of alcohol in the blood is .08% or more, by weight, or, if under age 21, the ratio of alcohol in the blood is .02% or more. Anyone who receives a driver's license in Connecticut is deemed by law to have given “implied consent” to a chemical test of his blood, breath, or urine to determine the presence of alcohol or drugs.

A police officer who has arrested someone for driving under the influence of alcohol or drugs and advised him of his constitutional rights can request the person to submit to a blood, breath, or urine test. If the person either (1) refuses to take the test or (2) takes the test and the results show an elevated blood alcohol content, the police officer sends the arrest report and test results to the DMV and the person is subject to an administrative license suspension. This is called an “administrative per se” license suspension. This suspension operates entirely independently of the procedures for prosecuting the accused person on the criminal charge.

The act:

1. decreases, from .08% to .04% the presumptive level for determining if a driver of a commercial motor vehicle (a large truck, bus, or hazardous materials transporter) is operating with an elevated blood alcohol level for both the criminal offense and the administrative suspension;
2. broadens the scope of the law that prohibits someone under age 21 from operating a motor vehicle on a highway with a BAC of .02% or

- more to apply anywhere, including on private property, rather than just on a highway;
3. decreases the minimum time police must wait before administering the required second blood-alcohol test from 30 to 10 minutes and, for criminal DUI prosecutions, narrows the range of test results that requires an extrapolation or “relation back” of the test results to establish the driver's blood-alcohol level at the actual time of operation of the vehicle;
4. for administrative per se license suspension hearings, eliminates a parallel “relation back” provision entirely and requires only that the test be commenced within two hours of the time of operation;
5. allows police to submit the required arrest documentation and test results to DMV for the administrative license suspension process electronically and gives the DMV commissioner more time to render a decision following an administrative hearing;
6. notwithstanding the statutory requirement for service of subpoenas at least 18 hours before appearance is required, requires any subpoena summoning a police officer as a witness in a per se hearing to be served on the officer at least 72 hours before the designated time of the hearing; and
7. expands the circumstances under which blood test results from someone taken to a hospital can be used under the administrative per se process.

Elevated Blood Alcohol Content When Driving Commercial Motor Vehicle

The act expands the definition of “elevated blood alcohol content” to include operating a commercial motor vehicle with a blood-alcohol level of .04% or more. This applies to both the criminal violation and the administrative per se license suspension process. Thus, the act reduces the presumptive level for determining if someone is driving a commercial motor vehicle while under the influence of alcohol from .08% to .04%. The law already requires someone found to have been driving a commercial motor vehicle with a blood-alcohol level of .04% or more to be disqualified from driving commercial vehicles for one year.

A commercial motor vehicle is one for which the driver must hold a commercial driver's license. By law, these include vehicles designed and used to transport people or property, except for farming vehicles, fire apparatus or emergency vehicles, and recreational vehicles in private use, that:

1. have a gross vehicle weight rating over 26,000 pounds or a gross combination weight rating of more than 26,000 pounds inclusive of one or more towed units with gross weight ratings over 10,000 pounds;
2. are designed to transport 16 or more passengers, including the driver, or more than 10 passengers, including the driver, when the passengers are students under age 21 being transported to and from school; or
3. are transporting hazardous material in quantities that require placards under federal law or that are listed as a select agent or toxin under federal regulations.

Expanded Application of "Zero Tolerance" Law for Drivers Under Age 21

Under prior law, no one under age 21 could operate a motor vehicle with a BAC of .02% or more if such operation was on a public highway, any road established under a special municipal district, any private road for which a speed limit has been established by a local traffic authority pursuant to state law, in any parking area for 10 or more cars, or on school property. The criminal DUI and administrative license suspension laws were applicable to minors under these circumstances.

The act eliminates these geographic limitations from the "zero tolerance" law for those under age 21 and makes it similar to the scope of the regular DUI criminal law. Thus, under the act, anyone under age 21 operating a motor vehicle anywhere, including on private property, with a BAC of .02% or more is subject to prosecution for DUI.

The law does not define what constitutes "operating" a motor vehicle. On several occasions, the Connecticut Supreme Court has determined that "operating" a motor vehicle and "driving" a motor vehicle are not synonymous (see BACKGROUND).

Admissibility Of Chemical Test Results And Administration Of Second Chemical Test

Previously, in order for the results of a chemical test to be admissible in a criminal prosecution, the law required a second test of the same type to be given to the accused person at least 30 minutes after the first test. If the additional test results showed the person's blood-alcohol level to be .12% or less and the result was higher than the first test result, evidence had to be presented showing that the test results accurately indicated the BAC at the time of the alleged offense. This is known as "relation back."

The act (1) decreases the minimum required time between the first and second tests from 30 to 10 minutes and (2) lowers the blood-alcohol test result that triggers the relation back determination from .12% to .10%.

Elimination of "Relation Back" in Administration Suspension Hearing

By law, someone suspended by DMV for failing a blood-alcohol test or for refusing to take the test has one week from receiving the DMV suspension notice to request an administrative hearing. The prior law had a "relation back" provision that was similar to the criminal statute, that is, the results of the chemical test were considered sufficient to indicate the person's BAC level at the time of vehicle operation, except if the second test result was .12% or less and was higher than the first test result, evidence had to be presented showing that the test results and analysis accurately indicated the BAC at the time of vehicle operation.

The act eliminates consideration of "relation back" at the administrative hearing. Instead, it requires only that it be shown that the test was started within two hours of vehicle operation.

Hospital Blood Test Results

By law, if a police officer obtains the results of a chemical analysis of a blood sample from a driver involved in an accident who suffers or allegedly suffers physical injury, the results are submitted to DMV for an administrative per se suspension proceeding similar to the normal procedure following an arrest not involving hospital treatment. The act expands the circumstances under which such blood test results can be used to include situations where the police officer determines that the person requires treatment or observation at a hospital, even if an injury is not apparent.

Process Changes

The act makes several changes in the administrative per se suspension process. Previously, the commissioner could grant one continuance of the hearing for up to 15 days. If he failed to render a decision within 30 days from the date the person received notice of arrest from the police officer (or 45 days if a continuance is granted), he had to reinstate the person's license or nonresident operating privilege. Notwithstanding this reinstatement, the commissioner could render a decision within the following two days after suspending the license or privilege.

The act eliminates the time limits for the commissioner to render a decision and permits multiple continuances. It requires the commissioner to render a decision at the hearing's conclusion and send notice to the person.

The act permits police reports that must be sent to DMV under the administrative per se license suspension law to be transmitted electronically as an alternative to mailing a hard copy. The commissioner may accept such electronic submissions, including electronic signatures, subject to security procedures the commissioner specifies and in accordance with state law applicable to transmission of electronic records. The act specifies that, in any administrative license suspension hearing, submission of the record electronically may not be grounds to object to the admissibility of the police report.

EFFECTIVE DATE: October 1, 2009

§ 65 — DEVICES AFFECTING LICENSE PLATE RECOGNITION

Under prior law, no plates, devices, or attachments could be affixed to or cover the official number plates on a motor vehicle. The act revises this prohibition to state instead that nothing may be affixed to a motor vehicle or to its number plates that obscures or impairs the visibility of any information on the plates. Thus, for example, under the act, a license plate holder that covers part of the license plate would be legal as long as all of the information on the plate is completely visible.

EFFECTIVE DATE: October 1, 2009

§ 66 — PROVISION OF IGNITION INTERLOCK DEVICE RESTRICTION IN ELECTRONIC DRIVER RECORD

The act requires the DMV commissioner to put information pertaining to someone's ignition interlock device restriction into his or her electronic driver's license or driving history record and ensure that this record is accessible to law enforcement officers. The information must include the duration of the restriction.

EFFECTIVE DATE; October 1, 2009

§ 67 — COMMERCIAL DRIVER'S INSTRUCTION PERMITS

By law, the DMV commissioner may issue a commercial driver's instruction permit for a period of up to six months and may reissue or renew it only once, for a maximum of six months, within a two-year period. Thus a permit holder who has not completed instruction within the one-year period covered by the initial issuance and renewal may not be issued another permit until two years pass from the initial issuance.

Until June 30, 2011, the act allows the commissioner to reissue or renew permits more than once for up to six months each time. On and after July 1, 2011, the law reverts to the existing restriction to one six-month reissuance or renewal.

A commercial driver's instruction permit allows someone who holds a valid driver's license to receive instruction in driving a commercial motor vehicle from someone licensed to operate the same type of commercial vehicle the trainee is learning to drive.

EFFECTIVE DATE: Upon passage

§ 68 — REPEAL OF DMV STUDY OF DISTRACTIVE DEVICES IN MOTOR VEHICLES

The act repeals the requirement that DMV study issues relating to driver use of electronic equipment installed in motor vehicles that is unrelated to vehicle operation. This requirement included devices such as word processors, computer video monitors, devices that provide Internet access, and any other equipment of a similar nature. DMV was required to submit its findings and recommendations to the Transportation Committee by February 1, 2008. It never conducted the study.

EFFECTIVE DATE: Upon passage

§ 69 — REPEAL OF REQUIREMENTS REGARDING HIGH-MILEAGE VEHICLES

The act repeals the law requiring the DMV commissioner to adopt regulations that (1) establish safety and performance standards for high-mileage motor vehicles and (2) require necessary safety equipment. High-mileage motor vehicles are vehicles with: (1) at least three wheels in contact with the ground; (2) a completely enclosed seat where the driver sits; (3) a single or two-cylinder gasoline or diesel engine, or an electric engine; and (4) efficient fuel consumption.

EFFECTIVE DATE: January 1, 2010

BACKGROUND

Eligibility Criteria for Handicapped Parking Plates or Placards

Connecticut's law uses the federal criteria for defining limitation in ability to walk (23 CFR § 1235.2). These criteria can involve physician-certified limitations that are not outwardly visible. Specifically, under these criteria, someone qualifies if a physician, APRN, or DMV handicapped-driver training unit member certifies that the person:

1. cannot walk 200 feet without stopping to rest;
2. cannot walk without the use of, or assistance from, a cane, brace, crutch, another person, prosthetic device, wheelchair, or other assistive device;
3. is restricted by lung disease to such an extent that his or her forced respiratory volume or arterial oxygen tension is below certain limits;

4. uses portable oxygen;
5. has a cardiac condition that creates functional limitations falling within the American Heart Association's Class III or IV criteria; or
6. is "severely limited" in walking ability due to an arthritic, neurological, or orthopedic condition.

For eligibility purposes, someone is considered blind if his or her central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if it is better than 20/200 but is accompanied by a limitation in fields of vision such that the widest diameter of the visual field subtends an angle of no more than 20 degrees (CGS § 1-1f).

Operating a Motor Vehicle

In *State v. Swift*, the court ruled that a person operates a motor vehicle within the meaning of the drunk driving statute "when in the vehicle he intentionally does any act or makes use of any mechanical or electrical agency which alone or in sequence will set in motion the motive power of the vehicle (125 Conn. 399, 403 (1939)). Another series of decisions determined that sitting at the wheel of a nonmoving vehicle with the engine running constituted operation (*State v. Wiggs*, 60 Conn. App. 551, 554-55 (2000); *State v. Marquis*, 24 Conn. App. 467, 468-69 (1991); *State v. Ducatt*, 22 Conn. App. 88, 93, cert. denied, 217 Conn. 804 (1990)).

In *State v. Haight*, the Supreme Court determined that the definition of operation was satisfied when a defendant was seated in a vehicle that neither was in motion nor had its motor running. The court upheld the conviction when the defendant was found sleeping in the driver's seat of a legally parked vehicle, with the key in the ignition and the headlights illuminated. The court concluded that "mere insertion of the key constituted operation" (279 Conn. 548, 555-56 (2006)).

In its most recent decision in March 2009, the Supreme Court overturned the appellate court and concluded that a person who had started a vehicle's engine with a remote starter and then had gotten behind the steering wheel was operating the vehicle in that the person had undertaken the first act in a sequence of steps necessary to set in motion the motive power of a vehicle equipped with a remote starter. The court stated that although no evidence appeared to indicate that the ignition key had been inserted and turned, actions that would have been necessary in order to have put the vehicle into gear and moved, the act of starting the motor with the remote starter constituted the first step in the sequence of steps involved in operating the vehicle (*State v. Cyr*, 291 Conn. 49 (2009)).

PA 09-4—SB 861

*Select Committee on Veterans' Affairs
Public Safety and Security Committee*

**AN ACT CONCERNING RETIREMENT FROM
MILITARY SERVICE**

SUMMARY: This act makes all enlisted Connecticut National Guard members, not just officers and warrant officers who meet certain service criteria, eligible to retire from active service and be placed on the National Guard's list of retirees ("retired list"). Members on the retired list may be voluntarily recalled to active duty by the governor and, when performing such duty, receive the same pay and allowances as members of a similar grade on the active list.

The act also sets the mandatory retirement age for all guard members, not just officers and warrant officers, at 64 or as set by laws and regulations governing the National Guard.

EFFECTIVE DATE: Upon passage

RETIRED LIST

Under prior law, an officer or warrant officer who served 10 years as an officer or enlisted person, including at least three years as a commissioned officer or warrant officer, could apply and be placed on the retired list in the highest grade in which he or she served. An officer or warrant officer who served 20 or more years could apply and be commissioned and placed on the list at the next highest grade at which he or she was ever commissioned, but no higher than a general.

The act allows (1) all members who serve 10 years to apply to be placed on the list in the highest grade in which they served and (2) all members who serve 20 or more years to apply to be placed on the list at one grade above the highest grade they ever held, but not above brigadier general or sergeant major.

The act allows each member only one retirement promotion, and it requires that applications be timely and submitted to the adjutant general through the chain of command before the member retires. Under prior law, an officer could apply (1) while in service, through proper officers, or (2) after leaving service, directly to the adjutant general.

By law, people on the retired list must be withdrawn from command and line of promotion. The act requires that they be removed from unit rosters as well. Also, by law, they (1) must be kept on the state armed forces register; (2) are subject to the National Guard's rules and regulations; (3) may wear, within the limitations of law and regulations, the uniform of the rank at which they retired; (4) may, if they consent, be detailed from the retired list and placed on active duty at

the governor's order; and (5) serve without pay, except when on such duty, in which case, they are entitled to the same pay and allowances as officers of a similar grade on the active list.

PA 09-5—HB 5138

*Select Committee on Veterans' Affairs
Public Health Committee*

**AN ACT CONCERNING THE PLACEMENT OF
UNITED STATES FLAGS ON THE GRAVES OF
VETERANS**

SUMMARY: This act prohibits towns, cemetery associations, or ecclesiastical societies that care for cemeteries from enacting bylaws that restrict the placement of U.S. flags on veterans' graves from the Saturday before Memorial Day until the Monday after July 4 in any year.

EFFECTIVE DATE: Upon passage

PA 09-10—HB 6406

*Select Committee on Veterans' Affairs
Public Health Committee*

**AN ACT CONCERNING THE MILITARY
SUPPORT PROGRAM**

SUMMARY: This act requires the Department of Mental Health and Addiction Services to work with the state Veterans' Affairs (VA) Department, not just the Department of Children and Families, to provide transitional behavioral health services for members of any reserve component of the U.S. Armed Forces (and their dependents) called to active duty in Operation Enduring Freedom (Afghanistan) or Operation Iraqi Freedom.

By law, the services are provided to veterans when no Department of Defense (DOD) coverage is available for such services or the veteran is not eligible for them. They must continue until an approved application is received from the federal VA and coverage is available.

EFFECTIVE DATE: Upon passage

PA 09-54—HB 6410

*Select Committee on Veterans' Affairs
Transportation Committee*

AN ACT CONCERNING THE USE OF HAND-HELD MOBILE TELEPHONES BY MEMBERS OF THE ARMED FORCES WHILE OPERATING A MOTOR VEHICLE

SUMMARY: This act includes U.S. Armed Forces members operating military vehicles among those exempt, while performing their official job duties, from the ban on talking on a hand-held cellular telephone or using a mobile electronic device while driving on a highway. Peace officers, firefighters, and ambulance or authorized emergency vehicle drivers are also exempt.

State law defines the “armed forces” as the U.S. Army, Navy, Marine Corps, Coast Guard, and Air Force and their reserve components, including the Connecticut National Guard performing duty under Title 32 of federal law.

EFFECTIVE DATE: Upon passage

BACKGROUND

Cell Phone Use

Any driver at least age 18 may use a hand-held cellular phone, regardless of the prohibition, solely to communicate about an emergency with an emergency response operator, hospital, physician’s office or health clinic, ambulance company, or fire or police department. School bus drivers may use hand-held cellular phones under the same circumstances and also to place emergency calls to school officials.

Authorized Emergency Vehicles

By law, an “authorized emergency vehicle” is a (1) fire department vehicle, (2) police vehicle, or (3) public service company or municipal department ambulance or emergency vehicle designated or authorized for use as an emergency vehicle by the motor vehicle commissioner (CGS § 14-1(a)).

Mobile Electronic Device

The law defines a “mobile electronic device” as any hand-held or portable electronic equipment capable of providing data communication between two or more people. It includes text messaging or paging devices, personal digital assistants, laptop computers, video game equipment, digital video disk, and equipment that takes or transmits digital photographs. It does not include audio equipment or equipment installed in the

vehicle to provide (1) navigation, emergency, or other aid to the driver or (2) video entertainment to rear-seat passengers.

PA 09-90—sHB 5664

*Select Committee on Veterans' Affairs
Public Safety and Security Committee
Appropriations Committee*

AN ACT CONCERNING THE AWARD OF RIBBONS AND MEDALS TO VETERANS FOR SERVICE IN TIME OF WAR AND CONCERNING FUNERAL HONOR GUARDS FOR DECEASED STATE OFFICERS AND MEMBERS OF THE GENERAL ASSEMBLY

SUMMARY: This act eliminates an apparent ambiguity concerning posthumous awards of war service ribbons and medals to eligible veterans.

It also eliminates the public safety commissioner’s duty to provide a six-member, State Police funeral honor guard for a legislator whose next of kin requests it. It, instead, requires the Legislative Management executive director to direct the State Capitol Police to provide a capitol police honor guard. The act, unlike prior law, does not specify the number of officers.

EFFECTIVE DATE: Upon passage

AWARD OF MEDALS AND RIBBONS

By law, the veterans’ affairs commissioner, in conjunction with the adjutant general, must award a ribbon and medal to any wartime veteran who lived in Connecticut when called to active duty service or is living in Connecticut when the award is made. Prior law allowed posthumous awards “on or after July 1, 2005.” But it was unclear whether this meant (1) posthumous awards could be made for veterans who died on or after July 1, 2005 or (2) posthumous awards could be made on or after this date, no matter when the veteran died.

The act eliminates the 2005 date. It instead (1) limits posthumous awards to veterans who died on or after January 1, 2000 and (2) requires posthumous awards to be made within existing budgetary resources. By law, the cost of the ribbons and medals is paid from funds appropriated to the Military Department’s military assistance account.

PA 09-117—sSB 1063

*Select Committee on Veterans' Affairs
Finance, Revenue and Bonding Committee
Appropriations Committee*

**AN ACT CONCERNING ELIGIBILITY FOR
BENEFITS FOR VETERANS IN SERVICE IN
TIME OF WAR**

SUMMARY: This act expands the pool of people eligible for veterans' war service benefits by changing the start and end dates of Operation Earnest Will (escort of Kuwaiti oil tankers flying the U.S. flag in the Persian Gulf). The benefits include property tax exemptions; public college tuition waivers; and financial help from the Soldiers, Sailors and Marines Fund.

The act also specifies that the 90 days qualifying war service required for benefit eligibility do not have to be consecutive, by defining "service in time of war" as "ninety or more cumulative days," instead of "ninety or more days," in statutorily specified wars or operations. By law, unchanged by the act, a veteran does not have to meet the 90-day requirement if he or she (1) left the service earlier because of a service-connected disability or (2) served for the duration of a war or operation that lasted less than 90 days.

EFFECTIVE DATE: Upon passage

OPERATION EARNEST WILL

Under prior law, the dates of this operation were February 1, 1987 to July 23, 1987. The act corrects and sets the dates as July 24, 1987 to August 1, 1990 to conform to Department of Defense regulations (32 CFR § 578.25). It thus increases the defined length of the operation from approximately six months to 36 months. But it also eliminates pre-July 24, 1987 service as qualifying service for this operation.

PA 09-163—HB 6394

*Select Committee on Veterans' Affairs
Public Safety and Security Committee*

**AN ACT CONCERNING THE MILITARY
FAMILY RELIEF FUND**

SUMMARY: This act makes immediate relatives of Connecticut-domiciled armed forces members, including Connecticut National Guard members, who are not on active duty eligible to receive benefits from the Military Family Relief Fund. Under prior law, only immediate relatives of service members on active duty qualified.

EFFECTIVE DATE: Upon passage

BACKGROUND

Military Family Relief Fund

This fund is a separate, nonlapsing General Fund account administered by the state treasurer. The Military Department uses it to make grants to pay for essential personal or household goods or services in Connecticut, if paying for them is a hardship because of a member's service. "Immediate relatives" are an eligible member's spouse, child, or parent domiciled in Connecticut or other relatives living in his or her household. "Essential personal household goods or services" include house repairs, uninsured medical services, transportation, babysitting, clothing, school supplies, and other goods or services essential to the relatives' well being.

PA 09-176—SB 846

*Select Committee on Veterans' Affairs
Planning and Development Committee
Finance, Revenue and Bonding Committee*

**AN ACT CONCERNING THE DISABLED
VETERANS' PROPERTY TAX EXEMPTION**

SUMMARY: This act eliminates the requirement that a veteran claiming the disabled veterans' property tax exemption provide annual proof of disability unless he or she is age 65 or older or rated permanently disabled by the U.S. Veterans' Administration (VA). Under the act, any veteran, regardless of age or disability rating, who submits initial proof of his or her VA disability rating to the town assessor must submit proof and reestablish eligibility in subsequent years only if the VA modifies the rating. The act also makes a technical change.

The disabled property tax exemption is available to veterans with a disability rating of 10% or greater. Exemption amounts vary depending on the disability rating and other factors.

EFFECTIVE DATE: Upon passage

ABUSE

See Child Abuse

ACCOUNTANTS AND ACCOUNTING

Derivative financial transactions, CPA audit requirement
09-48 166

ADMINISTRATIVE REGULATIONS

See also Buildings and Building Codes; specific agencies

Small business impact/regulatory flexibility requirements
09-19 83

ADMINISTRATIVE SERVICES, DEPT. OF

Pharmaceutical bulk purchasing plan, state development
09-206 313

ADOPTION

Biological parent identifying information, records access
09-185 160

ADVERTISING

Acupuncture, title restriction
09-21 293
Motor vehicle recycler, unlicensed business advertisement penalties
09-243 268
Securities, false senior citizen specialty prohibited
09-174 55

AFFIRMATIVE ACTION

Metropolitan District Commission, state policy compliance
09-87 277

AGRICULTURE

See also Dairies and Dairy Products

Apple cider/wine manufacturers, sales/shipments
09-47 128
Farm Wine Development Council, membership
09-42 103
Farm wineries, hours of sale extended
09-47 128

AGRICULTURE, DEPT. OF

Agricultural Sustainability Account, established
09-229 116
Federal Pasteurized Milk Ordinance incorporation option repealed
09-229 116
Fertilizer regulations, enforcement authority
09-229 116

Local shellfish management plan comments, FOIA applicability
09-195 112
Nonprofit organizations, certain grant eligibility modifications
09-229 116
Shellfish research vessel renamed "John H. Volk"
09-91 105

AIDS

See also Diseases

HIV testing consent law, revised
09-133 299

AIR POLLUTION

Motor vehicle emissions program, federal compliance evaluation
09-187 356
School Bus Emission Reduction Program, grant modifications
09-1 29
Zero-emission buses, implementation plan development
09-186 350

AIRPORTS

Bradley International food service contracts, personnel retention exemption
09-184 85

ALCOHOL AND DRUG ABUSE

See also Driving While Intoxicated

DCF treatment facilities, DPH licensing exemption/medication administration
09-197 163
DMHAS prevention/treatment plan, benchmarks/reports/content
09-149 291
Treatment, auricular acupuncture title restrictions/certification
09-21 293

ALCOHOLIC BEVERAGES

Apple cider/wine manufacturers, sale/shipments
09-47 128
Bottle deposit funds, accounting/escheats
09-1 29
Farm Wine Development Council, membership expanded
09-42 103
Farm wineries, hours of sale extended
09-47 128
Wine festival liquor permits, created
09-47 128

AMBULANCES

See Emergency Vehicles

AMERICAN RECOVERY AND REINVESTMENT**ACT OF 2009**

Health insurance coverage continuation, election/premium assistance 09-3	39
State/local budget stabilization assistance grants 09-12	42

ANIMALS*See also Fish and Game*

Animal care trusts, authorized 09-169	240
Permit requirements, DEP regulations 09-198	112
Pet lemon law, established 09-228	115
Pet shops, canine certificates of origin requirement 09-228	115
Potentially dangerous, definition amended 09-198	112
Reindeer importation, limited authorization 09-198	112

ANTITRUST

Investigations, confidentiality requirements 09-68	223
Violations, maximum civil penalty increased 09-68	223

APPROPRIATIONS*See State Budget***ASSESSMENT***See Property Taxes***ATTORNEY GENERAL**

Antitrust investigations, submitted material confidentiality 09-68	223
Metropolitan District Commission representation prohibited, CHRO/EEOC complaints 09-87	277

ATTORNEYS*See also Attorney General; Chief State's Attorney*

Client funds, IOLTA participation requirements changed 09-152	238
Client solicitation, "runners" prohibited 09-222	249

AUDITS AND AUDITORS

Charitable organization audits, revenue threshold increased 09-102	129
--	-----

AUTHORITIES*See also* specific authorities

Water pollution control sewer system expansion, assessments allowed 09-89	279
---	-----

AUTOMOBILES*See Motor Vehicles***BANKING, DEPT. OF**

Community Reinvestment Act plan, filing waiver 09-100	48
Connecticut Business Opportunity Investment Act, changes 09-160	52
Consumer credit licenses, changes 09-208	58
Debt adjusters, surety bond calculation method, revised 09-23	47
Elderly-specific financial advisors, education requirements 09-174	55
"Expedited" bank applications allowed 09-100	48
Federal credit rate limitation enforcement, data sharing authorized 09-100	48
Main office relocation application, fee prohibited 09-100	48
Mortgage professional license applications, abandonment declaration 09-207	56
"Nonprime" home loan interest rate, adjustment authority extended 09-207	56
Personal information safeguards, state chartered banks enforcement authority 09-71	47

BANKS AND BANKING*See also Credit Unions; Foreclosure; Investments;
Loans; Mortgages*

Capital stock banks, dividend declaration 09-100	48
Defaulted loans, rate increase prohibited 09-207	56
Federal credit rate limitation, applicability 09-100	48
Federal SAFE Mortgage Licensing Act implementation 09-209	64
Money transmitters, licensing requirements 09-208	58

Out-of-state, laws/activities clarified 09-100	48	Health Information Technology and Exchange Advisory Committee, established 09-232	316
Personal information safeguards, federal compliance 09-71	47	Judicial Review Council decisions, Workers' Compensation Commissioner appeals authorized 09-69	224
Small loan lender laws, applicability expanded 09-208	58	Juvenile Access Pilot Program Advisory, created 09-194	78
"Special need limited branches" allowed 09-100	48	Metropolitan District, affirmative action compliance 09-87	277
BAZAARS AND RAFFLES		Obesity Task Force, created 09-148	301
"Blower ball game" cash prizes allowed 09-34	333	Pharmacy, disciplinary records disclosure 09-150	132
BEVERAGE CONTAINERS		Private Sector Health Care Advisory Committee, established 09-147 (VETOED)	180
Bottle deposits expanded, noncarbonated beverages 09-2	32	Probate Redistricting, established 09-114	227
BIDS AND BIDDING		Psychiatric Security Review, temporary leave conditions authorized 09-162	240
<i>See also Contracts and Contractors; Government Purchasing</i>		Real Property Electronic Recording Advisory Committee, authorization date 09-224	144
Micro-business, state contracting preference 09-184	85	Regional planning agency boards, membership increased 09-80	277
BOARDS AND COMMISSIONS		Revaluation Working Group, eliminated 09-196	282
<i>See also Connecticut Siting Council; Education, Boards of; Workers' Compensation</i>		Route 11 Greenway Authority, land purchase options authorized 09-97	348
Bicycle and Pedestrian Advisory, established 09-154	349	State Academic Awards, graduate/undergraduate degrees authorized 09-159	150
Bi-State Long Island Sound, established 09-151	110	State Planning and Development, OPM smart growth implementation study 09-230	287
Bond Commission, capitol district heating/cooling system purchase, bond authorization 09-15	139	SustiNet Health Partnership Board of Directors, established 09-148	301
Children and Families Advisory Council, authority/oversight expanded 09-205	80	Tobacco Use Task Force, created 09-148	301
Codes and Standards Committee, membership increased/requirements 09-192	342	BOATS AND BOATING	
Contracting Standards, MDC procurement regulations 09-87	277	Manslaughter in the 2nd degree with a vessel, created 09-140	109
Criminal Justice Policy Advisory, correctional staff health and safety subcommittee established 09-223	251	Marine dealers/surveyors & yacht brokers, registration/regulations 09-105	106
Enhancing Agency Outcomes, established 09-2	32	Shellfish research vessel renamed "John H. Volk" 09-91	105
Farm Wine Development Council, membership expanded 09-42	103		
Health Care Workforce Task Force, created 09-148	301		

BONDS

Bond Commission, capitol district heating/cooling system purchase	
09-15	139
Debt adjuster surety calculation method, revised	
09-23	47
Hartford projects, allocation deadline extended	
09-234	86
Surety, underground heating oil tank contractor requirement eliminated	
09-122	131
Surety cancellation, consumer credit license suspension	
09-208	58

BRIDGES

Commemorative designations	
09-186	350

BROWNFIELDS

See Hazardous Substances

BUDGET

See State Budget

BUILDINGS AND BUILDING CODES

See also State Buildings

Demolition, DPS license required	
09-35	334
Elevator inspections, private residence exemption	
09-35	334
Energy efficiency standards, delay/modifications	
09-192	342
Fire safety code, manufacturing compliance required	
09-35	334
Fire safety/prevention codes, statutory incorporation	
09-177	339
"Green building" requirements, delay/reduced application	
09-192	342
Green buildings, tax credit established	
09-202 (VETOED)	284
Occupational licensing construction violation, municipal notification authority codified	
09-153	338

BUSES

Zero-emission, state implementation plan	
09-186	350

BUSINESS

See also Contracts and Contractors; Corporation Business Tax; Corporations; Economic Development; Limited Liability Companies; Manufacturers; Restaurants; Retail Trade; Small Business

Authorized agent resignation, registration revocation process modified	
09-38	215
Business Corporation Act, changes	
09-55	216
Commercial future advance loans, safe harbor provisions	
09-161	54
Connecticut Business Opportunity Investment Act, changes	
09-160	52
Connecticut competitiveness, DECD evaluation required	
09-233	86
Foreign, unauthorized in-state operation, penalties increased	
09-83	225
Legal/health care, client solicitation "runners" prohibited	
09-222	249
Scrap metal processors, telecommunications cables/wire receipt procedures	
09-243	268
Shareholder appraisal rights, changes	
09-55	216

CAPITAL PUNISHMENT

Eliminated	
09-107 (VETOED)	225

CEMETERIES

Veterans' graves, certain U.S. flag placement restrictions prohibited	
09-5	373

CHARITABLE ORGANIZATIONS

See also Nonprofit Organizations

Audits, revenue threshold increased	
09-102	129
Donation bins, restrictions/requirements	
09-119	131
"Paid solicitor," definition expanded	
09-102	129

CHIEF COURT ADMINISTRATOR

Fee increases, revenue certification/IOLTA transfer	
09-152	238

Problem Solving in Family Matters Committee, reports 09-175	77	Guardian death/disability, custodial transfer 09-185	160
CHIEF MEDICAL EXAMINER, OFFICE OF		Out-of-state facility transfer, attorney notification requirement 09-194	78
Biologic material, release conditions 09-37	294	Out-of-state placements, reduction plan 09-1	29
CHIEF STATE'S ATTORNEY		Parental suitability considerations 09-185	160
Corrupt Organization and Racketeering Activity Act, forfeiture proceeds study 09-193	243	Permanency plans, required information 09-194	78
CHILD ABUSE		Records, disclosure to DDS allowed 09-142	300
<i>See also Children and Families, Dept. of</i>		State Advisory Council, authority/oversight expanded 09-205	80
DCF data collection, substance abusing parent/guardian 09-205	80	Strategic plan, supersedes master plan 09-205	80
DCF reports to DPH, expanded 09-232	316	Substance abuse treatment facilities, DPH license exemption/medication administration 09-197	163
Mandatory reporters, foster parents added 09-185	160	CHILDREN AND MINORS	
Mandatory reporters, school superintendent added 09-242	267	<i>See also Adoption; Child Abuse; Child Support; Day Care; Foster Care</i>	
Removal of child from parental custody, preferred caregivers 09-185	160	Abuse/neglect cases, preferred caregivers 09-185	160
Victims, "tender years" hearsay rule exception modified 09-63	223	Abuse/neglect proceedings, public access pilot program 09-194	78
CHILD CARE		Autism spectrum disorder diagnosis/treatment, health insurance coverage expanded 09-115	173
<i>See Day Care</i>		DCF children in custody, report 09-96	77
CHILD SUPPORT		DCF records, disclosure to DDS allowed 09-142	300
Obligors, training program participation 09-175	77	DDS voluntary services program, medical assistance qualification/coverage 09-66	157
CHILDREN AND FAMILIES, DEPT. OF		Driving under the influence, private property 09-187	356
Abuse/neglect cases, relative notification expanded/preferred caregivers 09-185	160	Health insurance, stepchild coverage 09-124	175
Abuse/neglect data, substance abusing parent/guardian 09-205	80	Hearsay rule, "tender years" exception Evidence Code conformance 09-63	223
Certain reports required 09-194	78	Infant/baby food containers, Bisphenol-A ban 09-103	106
Child abuse registry check, DSS job applicants 09-85	296	Machine gun use/ownership, prohibited 09-62	223
Children in custody, report 09-96	77	Newborns, cystic fibrosis screening 09-20	293
Confidential information disclosure, employee responsibilities/whistleblower protections 09-185	160	Paintball safety instruction/equipment requirements 09-113	337
Facilities, advisory groups required 09-205	80		

- Permanency plans, specific DCF information required
09-19478
- Primaries, 17-year olds voting eligibility
09-36141
- Residential treatment facilities, DCF/DSS out-of-state placement reduction plan
09-129
- CIGARETTES**
See Tobacco Products
- CIVIL PREPAREDNESS**
- International Emergency Management Assistance Memorandum of Understanding, codified
09-28331
- Municipal training, state reimbursement eliminated
09-27331
- CIVIL PROCEDURE**
See also Courts; Crimes and Offenses; Criminal Procedure; Evidence; Foreclosure
- Antitrust violations, maximum penalty increased
09-68223
- Claims Commissioner, vacate/further proceedings authority
09-44216
- DSS rental assistance decisions, administrative/judicial appeals
09-118159
- Fire losses, statute of limitation extended
09-164202
- Foreign businesses, unauthorized in-state operation, penalties increased
09-83225
- Identity theft violations, damages/remedies
09-239132
- Monetary damages, motion to revive judgment
09-215248
- Motor vehicle recycler, unlicensed business penalties
09-243268
- Personal information trafficking, actions allowed
09-239132
- Personnel Files Act violations, civil penalty/DOL recovery actions established
09-101272
- Wage discrimination, damages
09-101272
- CIVIL UNIONS**
- Transformed to marriage
09-13213
- COLLEGES AND UNIVERSITIES**
See also Connecticut State University; Higher Education; Higher Education, Dept. of; University of Connecticut
- Credit card offers, marketing/debt collection
09-167 54
- Northwestern Community, nursing program establishment
09-130 150
- Veteran tuition waivers, federal educational assistance payments recovery
09-159 150
- COMMISSIONS**
See Boards and Commissions
- COMMON INTEREST COMMUNITIES**
- Common Interest Ownership Act, modifications
09-225 251
- Terrorism risk insurance, coverage requirement
09-164 202
- COMPACTS**
- International Emergency Management Assistance Memorandum of Understanding, codified
09-28 331
- COMPUTERS**
See Internet
- CONDOMINIUMS**
See Common Interest Communities
- CONFIDENTIALITY**
See also Freedom of Information
- Attorney General antitrust investigations, requirements
09-68 223
- Banking Dept. records, federal SAFE Act disclosure modifications
09-209 64
- CII financial assistance reports, gross revenue
09-172 84
- Connecticut Health Information Network participants, authorized information disclosure
09-95 297
- Conn-OSHA investigations, employee anonymity expanded
09-106 274
- DCF records, disclosure to DDS allowed
09-142 300
- DCF records, employee whistleblower protections
09-185 160
- Defendant competency examination, treatment disclosure
09-79 224

DOL's employer data, private grant administrator disclosure 09-33	269	CONNECTICUT STATE LIBRARY Real Property Electronic Recording Advisory Committee, authorization date 09-224	144
Employment applications, security/disposal requirements 09-239	132	CONNECTICUT STATE UNIVERSITY <i>See also Colleges and Universities; Higher Education</i>	
Enhanced 9-1-1 subscriber information, utilization 09-86	336	CONSTRUCTION <i>See Contracts and Contractors</i>	
Patient identity, emergency responder infectious disease exposure notification 09-76	334	CONSUMER PROTECTION <i>See also Occupational Licensing</i>	
Pharmacist/pharmacy dispensing errors disciplinary action, identification disclosure 09-150	132	Donation bins, restrictions/requirements 09-119	131
Protection and Advocacy for Persons with Disabilities Office, federal compliance 09-65	157	Home contractors, business interest contract disclosure requirement 09-18	127
State-chartered banks, personal information safeguards enforcement 09-71	47	Identity theft, definition/penalties/statute of limitations, expanded 09-239	132
CONNECTICUT DEVELOPMENT AUTHORITY Tax incremental financing, sunset dates extended 09-61	84	"Paid solicitor," definition expanded 09-102	129
CONNECTICUT HEALTH AND EDUCATION FACILITIES AUTHORITY Credit Union League Student Loan Program, reserve guarantees 09-110	149	Real estate disclosure form, content amended 09-127	177
CONNECTICUT HOUSING FINANCE AUTHORITY Emergency Mortgage Assistance Program, eligibility modifications 09-209	64	Repair facility steering prohibition strengthened 09-237	210
CONNECTICUT INNOVATIONS, INC. Financial assistance recipients, gross revenue disclosure/confidentiality 09-172	84	Senior citizen discount program, eligibility posting requirement/penalty 09-53	25
CONNECTICUT RESOURCES RECOVERY AUTHORITY Ash landfill, Franklin/Windham prohibition 09-112 (VETOED)	108	CONSUMER PROTECTION, DEPT. OF <i>See also Occupational Licensing</i>	
CONNECTICUT SITING COUNCIL Food-waste-to-energy plant, distressed community environmental compatibility certificate prohibition 09-112 (VETOED)	108	Bisphenol-A ban enforcement 09-103	106
		Business license applicants, workers' compensation insurance evidence 09-104	130
		Charitable organizations, audit/fees/reports, waiver authority 09-102	129
		Pharmacist/pharmacy dispensing errors disciplinary action, identification disclosure 09-150	132
		Privacy Protection Guaranty and Enforcement Account, identity theft restitution/procedure 09-239	132
		Real estate disclosure form, content regulations 09-127	177
		Time share plans, oversight/regulation 09-156	186
		CONTRACTS AND CONTRACTORS <i>See also Bids and Bidding; Government Purchasing</i>	
		Commercial construction payment requests, pending change order status requirement 09-146	131

- Government, certified payroll submission
method
09-25269
- Health/human services, purchase of services
requirements
09-210163
- Home construction, business interest disclosure
requirements
09-18127
- Land use permit, expiration timeframes
extended
09-181281
- License applicants, workers' compensation
insurance evidence
09-104130
- Micro-business, state bid preference
09-18485
- Naval Submarine Base infrastructure, exemptions
09-23486
- Nondiscrimination requirements,
intergovernmental exception/protected class
expansion
09-158239
- Occupational licensing violation, municipal
notification authority codified
09-153338
- Services, personnel retention requirement
09-183275
- Set-aside program, minority enterprise
definition expanded
09-158239
- State custodial services, health insurance
assistance
09-129
- Underground heating oil tank removal, surety
bonds/liability insurance
09-122131
- CONTROLLED SUBSTANCES**
See Drugs and Medicine
- CORPORATION BUSINESS TAX**
See also Limited Liability Companies
- CORPORATIONS**
*See also Business; Economic Development; Limited
Liability Companies; Nonprofit Organizations*
- Business Corporation Act, changes
09-55216
- Foreign, unauthorized in-state operation,
penalties increased
09-83225
- Medical foundations, organizational
authorization
09-212244
- Shareholder appraisal rights, changes
09-55 216
- CORRECTION, DEPT. OF**
See also Prisons and Prisoners
- Inmate assault/disciplinary reports,
facility-specific data
09-39 216
- Reentry furloughs/earned credit, report
requirements
09-2 32
- Staff health/safety, Criminal Justice Policy
subcommittee established
09-223 251
- CORRECTIONAL FACILITIES**
See Prisons and Prisoners
- COURTS**
*See also Civil Procedure; Criminal Procedure;
Judges; Judicial Branch; Probate Courts;
Superior Courts; Supreme Court*
- Filing fees increased
09-152 238
- Workers' Compensation Review Board, appeals
procedure modification
09-178 241
- CREDIT**
Credit cards, college marketing policy
09-167 54
- CREDIT UNIONS**
Student loans, CEFA reserve guarantees
09-110 149
- CRIME VICTIMS**
Personal information trafficking, civil actions
allowed
09-239 132
- CRIMES AND OFFENSES**
*See also Civil Procedure; Criminal Procedure;
Driving While Intoxicated; Evidence; Sexual
Assault; Superior Courts; Traffic Rules and
Regulations*
- Adulterated dairy product trade, established
09-229 116
- Attorney General, antitrust investigatory
subpoena, failure to comply penalty
increased
09-68 223
- Autism spectrum disorder coverage, health
insurer violation established
09-115 173
- "Blocking the box," infraction established
09-171 241

Capital felony renamed "murder with special circumstances"
 09-107 (VETOED) 225

Client solicitation "runner" employment, penalties
 09-222 249

Criminal impersonation, penalties increased
 09-239 132

DEP animal permit violation, penalties increased
 09-198 112

Drunken/reckless boating homicide, penalty increased
 09-140 109

Emergency communications interruption, penalties increased
 09-243 268

Employment applications security/disposal, penalties
 09-239 132

Fire safety code, penalties
 09-177 339

Identity theft, definition/penalties enhanced
 09-239 132

Internet hunting, misdemeanor established
 09-198 112

Larceny, threshold property values increased
 09-138 236

Machine gun transfer to minors, penalties established
 09-62 223

Manslaughter in the 2nd degree with a vessel, created
 09-140 109

Meters/utility facility access violation, residential building owner sanctions
 09-31 99

Mobile electronic device use while driving, armed forces exemption
 09-54 374

"Move over" law, established
 09-121 348

Natural gas companies/affiliates code of conduct, civil penalties
 09-218 99

Personal access devices, unlawful possession
 09-239 132

Personnel Files Act violation, civil penalty
 09-101 272

Potentially dangerous animal possession, penalties increased
 09-198 112

Private occupational school regulation violation, penalty
 09-116 149

Public transit personnel assault, felony created
 09-191 242

Residential mortgage fraud, created
 09-207 56

Restroom accessibility violation, infraction
 09-129 298

Senior citizen retail discount, eligibility posting violation penalty
 09-53 25

Speeding to elude police, penalty increased
 09-191 242

Street racing, vehicle impoundment permitted
 09-120 348

Unlicensed massage therapy practice, misdemeanor
 09-182 242

CRIMINAL PROCEDURE

See also Civil Procedure; Crimes and Offenses; Driving While Intoxicated; Evidence

Capital punishment eliminated
 09-107 (VETOED) 225

Competency examination, deadlines defined/treatment disclosure authorized
 09-79 224

Corrupt Organization Racketeering Activity Act, expanded
 09-193 243

Criminal Justice Information System, Federal Public Defender Office access permitted
 09-26 214

Identity theft, prosecution venue
 09-239 132

Murder with special circumstances, life imprisonment
 09-107 (VETOED) 225

DAIRIES AND DAIRY PRODUCTS

Adulterated, trade prohibited/penalties
 09-229 116

Milk producer grant program/Agricultural Sustainability Account, created
 09-229 116

Milk regulation changes
 09-229 116

DAY CARE

Pesticide application, modifications
 09-56 104

DEATH

See also Cemeteries; Funerals

DMHAS inpatient deaths, OPA notification
 09-67 158

DEATH PENALTY*See Capital Punishment***DEBTORS AND CREDITORS***See also Bankruptcy*

College students, debt collection practices limitations 09-167	54
Consumer credit licensees, changes 09-208	58
Debt adjusters, licensing requirements 09-208	58
Debt negotiation, defined 09-208	58
Defaulted self-storage renters, motor vehicle sale/disposal 09-187	356
Vehicle repossession, bankruptcy status prohibition 09-189	56

DEVELOPMENTAL SERVICES, DEPT. OF

DCF records access, allowed 09-142	300
Job applicants, child abuse registry check 09-85	296
Voluntary services program, medical assistance qualification/coverage 09-66	157

DEVELOPMENTALLY DISABLED*See also Developmental Services, Dept. of*

Autism spectrum disorder diagnosis/treatment, insurance coverage mandate expanded 09-115	173
Silver Alert System, established 09-109	26

DISABLED PERSONS*See also Protection and Advocacy for Persons With Disabilities, Office of*

Handicapped parking certification, changes 09-187	356
Protection and Advocacy Office, federal confidentiality compliance 09-65	157
State Supplement Program applicants, transfer of assets exception added 09-73	158
Taxicab wheelchair accessibility regulations, exemption 09-186	350

DISASTERS*See Civil Preparedness; Emergencies***DISCRIMINATION***See also Affirmative Action*

Contract requirements, defined/revised 09-158	239
Gender wage claims, modifications 09-101	272

DISEASES*See also AIDS*

Alzheimer's, State-Wide Respite Care Program, eligibility/services expanded 09-75	159
Cystic fibrosis, newborn screening 09-20	293
Epidermolysis bullosa wound care supplies, health insurance coverage 09-51	171
Infectious disease exposure, emergency responder notification 09-76	334
Lyme, long-term antibiotic use allowed 09-128	298
Restroom access, medical condition requirements 09-129	298

DIVORCE*See Child Support***DOGS***See Animals***DRINKING WATER***See Water and Related Resources***DRIVERS' LICENSES**

Special driving permit, higher education purpose 09-187	356
---	-----

DRIVING WHILE INTOXICATED

Under age 21, modifications 09-187	356
Commercial vehicle operators, BAC lowered 09-187	356
Drunken/reckless boating homicide, penalty increased 09-140	109

DRUG ABUSE*See Alcohol and Drug Abuse*

DRUGS AND MEDICINE

See also Alcohol and Drug Abuse; Pharmacies and Pharmacists

Anxiety prescription history, insurance underwriting restrictions
09-123 175

Bulk purchasing plan, state development
09-206 313

DCF substance abuse treatment facilities, medication administration
09-197 163

Manufacturer rebates, DSS pharmacy assistance programs
09-14 155

Medication administration, SDE regulations required
09-155 310

Prescription eye drops, insurance denial prohibited
09-136 26

Therapeutic contact lenses, dispensing/sale
09-58 294

DRUNK DRIVING

See Driving While Intoxicated

ECONOMIC AND COMMUNITY DEVELOPMENT, DEPT. OF

Community development grants, enterprise zone low/moderate-income housing restriction
09-40 153

Connecticut business competitiveness evaluation requirement
09-233 86

Energy program assessments, annual report inclusion
09-233 86
09-234 86

Sunset termination, eliminated
09-234 86

ECONOMIC DEVELOPMENT

See also Manufacturers

Community development grants, enterprise zone low/moderate-income housing restriction
09-40 153

Connecticut business competitiveness evaluation required
09-233 86

Enterprise zone property tax exemption, median income qualification revised
09-93 84
09-234 86

Municipalities, regional mutual agreements authority/procedure
09-231 289

Projects, permitting compliance certification/professional criteria
09-184 85

Statutes, minor/technical changes
09-234 86

Tax incremental financing, sunset dates extended
09-61 84

EDUCATION

See also Colleges and Universities; Education, State Dept. of; Higher Education; Higher Education, Dept. of; Magnet Schools; Schools and School Districts; Students; Teachers

Secondary, special need limited bank branches
09-100 48

Statutes, technical revisions
09-45 95

Truancy data, strategic school profile inclusion
09-143 96

EDUCATION, BOARDS OF

See also Schools and School Districts

Crisis response drills, format development
09-131 337

EDUCATION, STATE DEPT. OF

Medication administration, regulations required
09-155 310

Public school information system, unique student identifier
09-241 96

Public school information system data disclosure, educational nonprofits
09-241 96

ELDERLY PERSONS

See also Home Health Care; Nursing Homes

Financial/insurance advisors, false advertising prohibition
09-174 55

Home care program, personal care assistance requirements
09-64 25

Identity theft, enhanced penalties
09-239 132

Senior citizen discount, eligibility posting requirements
09-53 25

Silver Alert System, established
09-109 26

State Supplement Program applicants, transfer of assets exception added
09-73 158

State-Wide Respite Care Program, eligibility/services expanded 09-75	159	Volunteer ambulance service workers' compensation premiums, calculation method 09-88	271
ELECTIONS		EMERGENCY VEHICLES	
<i>See also Primaries</i>		Ambulances, nonemergency service payment disclosure/prior authorization decisions 09-210	163
U.S. Senate vacancies, special election 09-170	141	"Move over" law established 09-121	348
ELECTRIC UTILITIES		Patient transport, DPH license/certification required 09-16	293
<i>See also Utilities</i>		EMINENT DOMAIN	
Collinsville hydroelectric facility agreement 09-238 (VETOED)	101	DOT unnecessary condemned property sale, mediation 09-186	350
Integrated resource assessments, report submission 09-218	99	EMISSIONS	
Rocky Hill property sale, stranded costs reduction exemption 09-203 (VETOED)	142	<i>See Air Pollution</i>	
EMERGENCIES		EMPLOYMENT	
<i>See also Civil Preparedness</i>		<i>See Labor and Employment</i>	
Communication interruption, equipment theft penalties increased 09-243	268	ENERGY	
School crisis response drills required 09-131	337	<i>See also Electric Utilities; Utilities</i>	
EMERGENCY MANAGEMENT AND HOMELAND SECURITY, DEPT. OF		American Recovery and Reinvestment Act grant applications, OPM submission to General Assembly 09-3	39
Nuclear safety emergency preparedness program plan, report deadlines changed 09-27	331	Capitol district heating/cooling system, DPW/TEN Companies purchase 09-15	139
EMERGENCY SERVICES		Collinsville hydroelectric facility agreement 09-238 (VETOED).....	101
<i>See also Firefighters and Fire Officials; Law Enforcement Officers</i>		DECD program assessments, annual report inclusion 09-233	86
Emergency duty, state reimbursement clarified 09-27	331	09-234	86
Enhanced 9-1-1 information, Reverse 9-1-1 use allowed 09-86	336	Food-waste-to-energy plant, distressed community prohibition 09-112 (VETOED).....	108
Infectious disease exposure, emergency responder notification/procedures 09-76	334	Green building tax credit, established 09-202 (VETOED).....	284
International Emergency Management Assistance Memorandum of Understanding, codified 09-28	331	State building code efficiency standards, delayed/modified 09-192	342
Municipal civil preparedness training, state reimbursement eliminated 09-27	331	Weatherization plan development, low income households, appropriation repealed 09-2	32
Patient transport, DPH license/certification required 09-16	293		

ENTERPRISE ZONES

See also Economic Development

Community development grants,
low/moderate-income housing restriction
09-40 153

Property tax exemption, median income
qualification revised
09-93 84
09-234 86

ENVIRONMENTAL PROTECTION

*See also Agriculture; Air Pollution; Fish and Game;
Hazardous Substances; Hazardous Waste;
Pollution; Solid Waste Management; Water and
Related Resources; Water Pollution*

Conservation and development plan,
Connecticut Heritage Areas consideration
09-221 286

Conservation and development plan, smart
growth/greenhouse gas reduction
considerations
09-230 287

Fertilizer AAPFCO model law updated
09-229 116

Green cleaning program, school
implementation/plan
09-81 95

Lawn sprinkler systems, residential installation,
rain sensor requirements
09-32 128

ENVIRONMENTAL PROTECTION, DEPT. OF

Animal permit regulations required
09-198 112

Collinsville hydroelectric facility agreement
09-238 (VETOED) 101

Commercial fishing license transfer, exception
09-195 112

Connecticut River publicly-owned islands,
control/custody
09-203 (VETOED) 142

Floodplain management, brownfield mill
exemptions
09-141 110

Food-waste-to-energy plant, distressed
community solid waste permit prohibition
09-112 (VETOED) 108

Hazardous/solid waste, beneficial use permits
expanded
09-211 114

Horse trail preservation
09-180 111

Marine dealers/surveyors & yacht brokers,
registration/regulations
09-105 106

Marine sport fishing license fee, authorized
uses
09-173 280

Motor vehicle emissions inspection program,
federal compliance evaluation
09-187 356

Municipal water quality projects, Clean Water
Fund use authorized
09-12 42

Penfield Lighthouse preservation,
lease/occupancy authorized
09-203 (VETOED) 142

Permits, municipal application review
requirement
09-190 282

State lands, authorized hunting baseline
09-173 280

Unclaimed beverage container deposits
09-1 29

ESTATES AND TRUSTS

See also Probate Courts

Animal care, authorized
09-169 240

Beneficiary, criminal profiting restrictions
expanded
09-201 244

Business sale trust accounts, depository
institutions expanded
09-160 52

Gift instrument, restriction release/modification
09-102 129

"Special needs trust" transfer, State Supplement
Program applicants exception added
09-73 158

EVIDENCE

Hearsay rule, "tender years" exception,
Evidence Code conformance
09-63 223

EXPLOSIVES

Regulation variance approval authorized
09-35 334

FAMILY AND MEDICAL LEAVE

See Labor and Employment

FARMS AND FARMERS

See Agriculture; Dairies and Dairy Products

FINANCIAL INSTITUTIONS

See Banks and Banking; Credit Unions

FIRE SAFETY

- Codes, statutory conformance/update
09-177339

FIREARMS

See Weapons

FIREFIIGHTERS AND FIRE OFFICIALS

See also Emergency Services

- Deputy fire marshal authority
09-35334
- Fire police, reflectorized clothing use expanded
09-137338
- School building inspection reports, submission to
school board
09-227343
- Smoke/carbon monoxide detector installation,
liability exemption
09-78336
- State Fire Marshal, explosives regulation
variance approval
09-35334

FISCAL ANALYSIS, OFFICE OF

- Revenue estimate consensus
09-21444

FISH AND GAME

See also Animals

- Commercial license transfer, exception
09-195112
- DEP animal permits, regulations
required/violation penalties increased
09-198112
- Hunting, state land availability
09-173280
- Internet hunting prohibited
09-198112
- Local shellfish management plans, FOIA
applicability
09-195112
- Marine sport fishing license, created
09-173280
- Saugatuck Shores shellfishing, penalties
modified
09-173280

FLAGS

- State purchase, U.S. manufacturer required
09-224144

FOOD PRODUCTS

- Life-threatening allergies, school management
plan public availability
09-155310
- Packaging, Bisphenol-A ban
09-103106

FOOD STAMP PROGRAM

See also Supplemental Nutrition Assistance Program

- Renamed Supplemental Nutrition Assistance
Program
09-9 155

FORECLOSURE

- Mediation program, mandatory
09-209 64
- Vacant property, owner registration system
09-144 51

FORESTS

See State Parks and Forests

FORFEITURE

- Identity theft proceeds, privacy protection
account deposit
09-239 132

FOSTER CARE

- Mandatory child abuse reporters, foster parents
09-185 160

FRANCHISES

- Motor vehicle, statutes revised
09-50 345

FREEDOM OF INFORMATION

See also Confidentiality; Records and Recordkeeping

- Enhanced 9-1-1 subscriber database, exemption
09-86 336
- Local shellfish management plans, applicability
09-195 112
- Public school information system, disclosure
09-241 96
- School district truancy data
09-143 96

FUEL

See Oil and Gas

FUNERALS

See also Cemeteries; Death

- Honor guards for legislators, Capitol Police
responsibility
09-90 374

GAMBLING

See also Bazaars and Raffles; Special Revenue, Division of

- "Blower ball game" cash prizes allowed
09-34 333
- Off-track betting simulcasting facilities,
increased/location designations
09-132 337

GENERAL ASSEMBLY

See also Fiscal Analysis, Office of; Program Review and Investigations Committee

American Recovery and Reinvestment Act application, public hearing requirement
09-1242

CII financial assistance recipient data examination
09-172 84

Commerce Committee, regulatory flexibility analysis participation
09-1983

Family support magistrates, appointment approval required
09-139 (VETOED)237

Funeral honor guards for legislators, Capitol Police responsibility
09-90374

GENETIC TESTING

Biologic material of deceased, conditional release
09-37294

GOVERNMENT PURCHASING

See also Bids and Bidding; Contracts and Contractors

Brownfields remediation, green technology requirement
09-23589

Construction contractors, certified payroll submission method
09-25269

Consultant services, DOT advertising methodology
09-186350

Contract nondiscrimination requirements, definition/revision
09-158239

Health/human services, purchase of service requirement
09-210163

Metropolitan District Commission, state procurement procedures compliance
09-87277

Micro-business bid preference
09-18485

National/state flags, U.S. manufacturer requirement
09-224144

Service contracts, personnel retention requirements
09-183275

Standard wage law modifications
09-183275

GOVERNOR

American Recovery and Reinvestment Act application, submittal to General Assembly
09-1242

CII financial assistance recipient data examination
09-17284

Inter-agency fund transfers, temporary authority
09-129

U.S. Senate vacancies, appointment authority modified
09-170141

GRANTS

See Education Cost Sharing Grants

GUNS

See Weapons

HANDICAPPED PERSONS

See Disabled Persons

HAZARDOUS SUBSTANCES

See also Pesticides

Ash landfill, Franklin/Windham prohibition
09-112 (VETOED)108

Bisphenol-A, food container ban
09-103106

Brownfields development projects, regulatory changes
09-23589

HAZARDOUS WASTE

Beneficial use permits, DEP issuance
09-211114

HEALTH

See also Mental Health

Connecticut Health Information Network information disclosure
09-95297

HEALTH CARE

See Medical Care

HEALTH CARE FACILITIES

See also Home Health Care; Hospitals; Nursing Homes

Cystic fibrosis, newborn screening
09-20293

Utilization studies/plan, OCHA methodology revised
09-77295

HEALTH INSURANCE*See also Managed Care Organizations; Medicaid*

Autism spectrum disorder diagnosis/treatment coverage 09-115	173
Colonoscopy charges, prohibition 09-188 (VETOED)	205
Consumer report card, medical loss ratio inclusion 09-46	166
Continuation coverage, election/premium assistance 09-3	39
Coverage mandates expanded 09-188 (VETOED)	205
Employer premium cancellation, terminated employees 09-126	176
Epidermolysis bullosa wound care supplies, coverage 09-51	171
Expedited external appeal process, established 09-49	167
Mandated benefits review program established 09-179	203
Postclaims underwriting, clarification 09-135 (VETOED)	178
Prescription eye drops, denial prohibited 09-136	26
Probate judges/employees, payment/eligibility changes 09-114	227
State custodial services contractors, state assistance funds 09-1	29
State plan, municipal/nonprofit/small business pooling 09-147 (VETOED)	180
State plan, self-insured conversion 09-147 (VETOED)	180
State-funded medical coverage, DDS voluntary services program eligibility 09-66	157
State/municipal, bulk pharmaceutical purchasing plan development 09-206	313
Stepchildren, coverage mandate 09-124	175
SustiNet Health Partnership, health care delivery plan 09-148	301
Telephone application, requirements 09-135 (VETOED)	178
Underwriting restrictions, anxiety prescription drug history 09-123	175

Wellness program participation incentives 09-188 (VETOED).....	205
---	-----

HEALTH MAINTENANCE ORGANIZATIONS*See Managed Care***HEALTH PROFESSIONS***See also Nurses and Nursing; Optometry and Optometrists; Pharmacies and Pharmacists; Physicians*

Acupuncture, title restrictions/advertisement 09-21	293
Ambulance transportation, qualified medical personnel permitted 09-16	293
Behavioral health providers, mental health/substance abuse dual licensure 09-149	291
Client solicitation, "runners" prohibited 09-222	249
Fee schedules, provider access expanded 09-204	207
Health Care Workforce Task Force, created 09-148	301
HIV testing general consent, immunity 09-133	299
Imaging services, certain charges prohibited 09-206	313
Medical foundations, organizational authorization 09-212	244
Nursing home personnel, pain management training 09-108	25
Obstetrical ultrasounds, restrictions 09-125	297
Physicians/psychiatrists, DMHAS private practice 09-145	300

HEALTHCARE ACCESS, OFFICE OF

State-wide health care facilities plan utilization review, modification 09-77	295
--	-----

HEATING OIL*See Oil and Gas***HIGHER EDUCATION***See also Colleges and Universities; Connecticut State University; University of Connecticut*

Private occupational school, operational requirements/DHE administrative appeal process 09-99	147
--	-----

Private occupational school regulation violation, administrative penalty 09-116	149	Medical foundations, organizational authorization 09-212	244
HIGHER EDUCATION, DEPT. OF		HOUSING	
Board of Governors, credit card marketing policy adoption 09-167	54	<i>See also Connecticut Housing Finance Authority; Landlord and Tenant</i>	
Veterinary medicine, Kirklyn M. Kerr grant program named 09-159	150	Community development grants, enterprise zone low/moderate-income restriction 09-40	153
HIGHWAYS AND ROADS		DSS rental assistance decisions, administrative/judicial appeals 09-118	159
<i>See also Bridges</i>		Enterprise zone property tax exemption, median income qualification revised 09-93	84
Bicycle/pedestrian access, DOT budget allocation 09-154	349	09-234	86
Commemorative designations 09-186	350	Meters/utility facility access, residential buildings 09-31	99
"Control cities" designation regulations 09-186	350	HUMAN SERVICES	
DOT condemnation resales, mediation process 09-186	350	Program eligibility criteria, American Recovery and Reinvestment Act payment exclusion 09-3	39
Golf cart operation, limited authorization 09-187	356	Programs, results-based accountability assessment 09-166	292
Municipal road improvements, planning commission approval requirement amended 09-92	279	Providers, state purchase of services contract required 09-210	163
HISTORIC PRESERVATION		Statutes, technical revisions 09-8	155
Connecticut Heritage Areas, established/agency responsibilities 09-221	286	HUNTING	
Historic districts, real estate disclosure form 09-127	177	<i>See Fish and Game</i>	
HOLIDAYS AND PROCLAMATIONS		IMMUNITY	
Public awareness days, proclamation 09-224	144	<i>See Liability</i>	
HOME HEALTH CARE		INFORMATION TECHNOLOGY, DEPT. OF	
Home Care Program for Elders, personal care assistance requirements 09-64	25	Reports, certain requirements eliminated 09-143	96
"Money Follows the Person" program, reports to General Assembly required 09-17	25	INLAND WETLANDS	
HOSPITALS		Land use permit expiration, timeframes extended 09-181	281
Hospital-acquired conditions, health care charges prohibited 09-206	313	INSURANCE	
Infectious disease exposure, emergency responder notification 09-76	334	<i>See also Health Insurance; Life Insurance; Medicaid; Motor Vehicle Insurance</i>	
		Consumer Leases Act, disclosure requirements expanded 09-134	177
		Derivative financial transactions, controls 09-48	166

- Extended warranty insurers, revised requirements
09-24165
- Fire losses, reimbursement timeframes/statute of limitations
09-164202
- Life, criminal profiteering restrictions expanded
09-201244
- Property/casualty flex rates, sunset date extended
09-217210
- Statutes, technical changes
09-74172
- Terrorism coverage, condominium policies
09-164202
- Underground heating oil tank contractors, financial coverage expanded
09-122131
- INSURANCE, DEPT. OF**
- Accelerated death benefits, regulations
09-216209
- Consumer report card, named/Commissioner responsibilities
09-46166
- Health, expedited external appeal process established
09-49167
- Health wellness programs, regulations
09-188 (VETOED)205
- Life insurance/annuity sales, elderly advisor regulations
09-17455
- Mandated health benefit review program, contract/assessment
09-179203
- Property/casualty flex rates, sunset date extended
09-217210
- INTEREST**
- Defaulted loans, rate increase prohibited
09-20756
- INTERNATIONAL AFFAIRS**
- International Emergency Management Assistance Memorandum of Understanding, codified
09-28331
- INTERNET**
- Hunting software prohibited
09-198112
- INVESTMENTS**
- Derivative financial transactions, controls
09-48166
- Elderly advisor credentials
09-174 55
- Racketeering, CORA definition expanded
09-193 243
- Shareholder appraisal rights, changes
09-55 216
- Uniform Securities Act, definitions/minor changes
09-160 52
- JUDGES**
- See also* specific courts
- Family support magistrates, appointment procedure modified
09-139 (VETOED)..... 237
- Family support magistrates, child support obligor training program participation
09-175 77
- JUDICIAL BRANCH**
- See also Chief Court Administrator; Judges; specific courts*
- JUVENILES**
- See Children and Minors*
- LABOR, DEPT. OF**
- Confidential employer data, private grant administrator disclosure
09-33 269
- Conn-OSHA investigations, employee anonymity expanded
09-106 274
- Gender wage discrimination suits, modification
09-101 272
- Personnel Files Act, civil penalty imposition/use
09-101 272
- LABOR AND EMPLOYMENT**
- See also Affirmative Action; Discrimination; Municipal Officers and Employees; Retirement and Pensions; State Officers and Employees; Unemployment Compensation; Wages; Whistleblowers; Workers' Compensation*
- Bradley International Airport food service contracts, personnel retention requirement exemption
09-184 85
- Client solicitation, "runners" prohibited
09-222 249
- DDS applicants, child abuse registry check
09-85 296
- Employment applications, security/disposal requirements
09-239 132

Family and Medical Leave Act, military caregiver leave
 09-70270

Gender wage discrimination claim, modifications
 09-101272

Health insurance continuation coverage, election/premium assistance
 09-339

Metropolitan District Commission, affirmative action compliance
 09-87277

Service contracts, personnel retention requirement
 09-183275

Standard wage law modifications
 09-183275

Statutes, technical changes
 09-6269

Terminated employees, employer health insurance premium cancellation
 09-126176

LAND USE
See Planning and Zoning

LANDFILLS
See Solid Waste Management

LANDLORD AND TENANT
 Meters/utility facilities access, residential buildings
 09-3199

LAW ENFORCEMENT OFFICERS
 Funeral honor guards for legislators, Capitol Police responsibility
 09-90374

Silver Alert System, department notification requirements
 09-10926

Speeding to elude police, penalty increased
 09-191242

LEASES AND LEASING
 Consumer Leases Act, insurance disclosure requirements expanded
 09-134177

LEGISLATIVE BRANCH
See General Assembly

LEMON LAW
 Pet, established
 09-228115

LIABILITY
 Automatic external defibrillators, qualified immunity
 09-59222

Brownfield developers, protection program established
 09-23589

Emergency responders' infectious disease exposure notification omission, immunity
 09-76334

Enhanced 9-1-1 subscriber information release, protections expanded
 09-86336

Insurance information misrepresentation, joint producer/applicant liability
 09-135 (VETOED)178

Medical practitioner immunity, HIV general consent provisions
 09-133299

Municipal protections, brownfields development projects
 09-23589

Smoke/carbon monoxide detector installation, fire department exemption
 09-78336

LIBRARIES
See Connecticut State Library

LICENSING
See Drivers' Licenses; Occupational Licensing

LIENS AND ENCUMBRANCES
See also Foreclosure
 Blight/property maintenance expenses, municipal liens allowed
 09-14451

Municipal land records, discharge procedure
 09-213246

LIFE INSURANCE
 Accelerated death benefits, qualifying events expanded
 09-216209

Elderly-specific advisor, regulation
 09-17455

LIMITED LIABILITY COMPANIES
 Authorized agent resignation, registration revocation process modified
 09-38215

Foreign, unauthorized in-state operation, penalties increased
 09-83225

LIQUOR
See Alcoholic Beverages

LOANS*See also Banks and Banking; Mortgages*

- Commercial future advance loans, safe harbor provisions
 - 09-16154
- Secondary lenders, licensing requirement modification
 - 09-20964
- Small loan lender laws, applicability expanded
 - 09-20858

LONG ISLAND SOUND

- Bi-State Long Island Sound Commission, established
 - 09-151110

MANAGED CARE ORGANIZATIONS*See also Health Insurance*

- Consumer report card, medical loss ratio inclusion
 - 09-46166
- Expedited external appeal process, established
 - 09-49167
- HMO fee schedules, provider access expanded
 - 09-204207

MANUFACTURERS

- Asphalt, sales tax exemption eligibility
 - 09-200125
- Fire code compliance
 - 09-35334

MARINE RESOURCES

- Saugatuck Shores shellfishing, penalties modified
 - 09-173280

MARRIAGE

- Contract nondiscrimination requirements, "marital status" defined
 - 09-158239
- Officiation, religious exemption allowed
 - 09-13213
- Out-of-state marriage recognition rule
 - 09-13213
- Redefined, same-sex inclusion
 - 09-13213

MASS TRANSIT

- Public transit personnel assault, felony created
 - 09-191242

MEDICAID*See also Health Insurance*

- DDS voluntary services program, qualification assistance
 - 09-66157

MEDICAL CARE*See also Diseases; Home Health Care*

- Automatic external defibrillators, negligent provision/maintenance
 - 09-59222
- Cystic fibrosis, newborn screening
 - 09-20293
- HIV testing consent law, revised
 - 09-133299
- Lyme disease, long-term antibiotic use authorized
 - 09-128298
- Mammography reports, breast density information required
 - 09-41165
- Medical foundations, organizational authorization
 - 09-212244
- Nonemergency transportation, broker disclosures/prior authorization decisions
 - 09-210163
- Obstetrical ultrasounds, restrictions
 - 09-125297
- Pain management training requirement, nursing home staff
 - 09-10825
- SustiNet Health Partnership, health care delivery plan
 - 09-148301

MEDICAL PROFESSIONS*See Health Professions***MEDICAL RECORDS***See Records and Recordkeeping***MEDICINE***See Drugs and Medicine***MENTAL HEALTH**

- Mental disability, contract nondiscrimination protected class established
 - 09-158239
- Psychiatric Security Review, temporary leave conditions authorized
 - 09-162240

MENTAL HEALTH AND ADDICTION SERVICES, DEPT. OF

- Client deaths, OPA notification
 - 09-67158
- Criminal defendant competency examination, treatment disclosure
 - 09-79224
- Operations, minor changes
 - 09-145300

Substance abuse plan, benchmarks/content/reports 09-149	291	Repair facility steering prohibition, strengthened 09-237	210
Transitional behavioral health services, collaboration required 09-10	373	Underinsured motorist conversion coverage notification, required 09-72	172
MENTAL RETARDATION		MOTOR VEHICLES	
<i>See Developmentally Disabled</i>		<i>See also Air Pollution; Buses; Emergency Vehicles; Highways and Roads; Traffic Rules and Regulations</i>	
MILITARY		Franchises, statutes revised 09-50	
<i>See also National Guard; Veterans</i>		345	
Family and Medical Leave Act, caregiver leave 09-70		Golf cart road operation, limited authorization 09-187	
270		356	
Military Family Relief Fund, inactive duty eligibility 09-163		Length/weight limits, certain towing vehicle exemptions 09-186	
375		350	
Mobile electronic device use while driving, exemption 09-54		Mobile electronic device use while driving, armed forces exemption 09-54	
374		374	
Transitional behavioral health services, agency collaboration required 09-10		Motorized personal property, wrecker disposal requirements/procedures 09-187	
373		356	
U.S. Naval Submarine Base infrastructure contracts, exemptions 09-234		Repossession, bankruptcy status prohibition 09-189	
86		56	
MILK		Self-storage facility sale/disposal procedure, defaulting renters 09-187	
<i>See Dairies and Dairy Products</i>		356	
MINORS		Street racing, vehicle impoundment permitted 09-120	
<i>See Children and Minors</i>		348	
MORTGAGES		Taxicabs, ADA accessibility compliant, regulatory exemption 09-186	
<i>See also Foreclosure; Loans</i>		350	
Emergency Mortgage Assistance Program, effective date 09-219		MOTOR VEHICLES, DEPT. OF	
75		Collegiate license plates, second program authorized 09-187	
Emergency Mortgage Assistance Program, eligibility modifications 09-209		356	
64		Emissions inspection program, DEP federal compliance evaluation 09-187	
Federal SAFE Mortgage Licensing Act implementation 09-209		356	
64		Motor vehicle recycler, unlicensed business penalties 09-243	
"Nonprime" home loan definition, modified 09-207		268	
56		"Share the Road" license plates, authorized 09-187	
Residential mortgage fraud, crime established 09-207		356	
56		MUNICIPAL OFFICERS AND EMPLOYEES	
MOTOR VEHICLE INSURANCE		<i>See also Firefighters and Fire Officials; Law Enforcement Officers; School Personnel; Teachers</i>	
Cancellation, fees limited 09-98		Conn-OSHA investigations, employee anonymity expanded 09-106	
172		274	
Policy limits, disclosure to litigant required/procedure 09-240			
211			

Rabies vaccination records, release to Animal Control Officer
 09-228115
 Town Clerk, certain land record recording procedures modified
 09-213246

MUNICIPALITIES

See also Government Purchasing; Municipal Officers and Employees; Planning and Zoning; Property Taxes; Schools and School Districts; Special Districts
 Assessment, annual adjustment option repealed
 09-60123
 Assessment appeals procedure, modifications
 09-196282
 "Blocking the box" ordinances allowed
 09-171241
 Civil preparedness training, state reimbursements eliminated
 09-27331
 Distressed, food-waste-to-energy plant prohibited
 09-112 (VETOED)108
 Fertilizer regulation/storage/use ordinances, prohibition
 09-229116
 Franklin/Windham, ash landfill prohibition
 09-112 (VETOED)108
 Health insurance, cooperative purchase agreements permitted
 09-147 (VETOED)180
 Invasive plant sale/purchase, ordinance prohibition reinstated
 09-52103
 Land value taxation, pilot program established
 09-236290
 Liability protections, brownfields development projects
 09-23589
 Local aid eligibility, economic stimulus payment income disregard
 09-129
 Occupational licensing fines, collection limited
 09-153338
 Off-track betting simulcasting facilities, location approval requirement
 09-132337
 Port authority dissolution/modification, DOT consent
 09-186350
 Property liens, maintenance/blight expense recovery
 09-14451

Property maintenance ordinance adoption/enforcement
 09-144 51
 Regional councils, interlocal agreement promotion opportunities/obstacles
 09-231 289
 Regional mutual agreements, authority/procedure
 09-231 289
 Regional planning agency boards, membership increased
 09-80 277
 Regional planning organization property, tax exemption authorization
 09-226 287
 Revaluation, regional schedules allowed
 09-60 123
 Revaluation delay, effective date modified
 09-196 282
 Revaluation delay/phase-in suspension, allowed
 09-60 123
 Road improvements, planning commission approval requirement amended
 09-92 279
 Sewer systems assessment, land records certificate/release
 09-89 279
 State health plan, pooling option
 09-147 (VETOED)..... 180
 State land conveyances, authorized/amended
 09-203 (VETOED)..... 142
 State permit applications, agency preliminary review requirements
 09-190 282
 Tax amnesty program, modification
 09-234 86
 Time shares, land record requirement
 09-156 186
 Vacant foreclosures, owner registration requirement
 09-144 51
 Veterans' graves, certain U.S. flag placement restrictions prohibited
 09-5 373
 Water quality projects, Clean Water Fund financial assistance
 09-12 42
 Waterbury, food-waste-to-energy plant prohibition
 09-112 (VETOED)..... 108

NATIONAL GUARD

See also Military
 Retired list, eligibility expanded/mandatory age
 09-4 373

NATURAL GAS

See Oil and Gas

NONPROFIT ORGANIZATIONS

See also Charitable Organizations

Donation bins, restrictions/requirements
09-119 131

Educational, public school information system
disclosure
09-241 96

Medical foundations, organizational
authorization
09-212 244

State employee health insurance plan,
eligibility
09-147 (VETOED) 180

NURSES AND NURSING

See also Health Professions

Northwestern Community College, program
establishment
09-130 150

NURSING HOMES

Medicaid patient admission, third-party
guarantee condition prohibited
09-168 27

Pain management training requirement
09-108 25

Patients' rights, contractual limitations
prohibited
09-168 27

State Supplement Program applicants,
transfer of assets exception added
09-73 158

NUTRITION

Obesity Task Force, created
09-148 301

Restaurant menus, nutritional disclosure
09-157 (VETOED) 311

OCCUPATIONAL LICENSING

See also Accountants and Accounting; Boards and Commissions; Consumer Protection, Dept. of; Health Professions; Teachers

Behavioral health providers, mental
health/substance abuse dual licensure
09-149 291

Consumer credit licensing, changes
09-208 58

Debt adjuster applicants, surety bond
alternative
09-23 47

Debt adjusters, eligibility expanded
09-208 58

Debt negotiator, license required
09-208 58

Demolition, license requirement
09-35 334

DPH licensing/scope of practice,
amendments
09-232 316

Massage therapy, unlicensed practitioner
penalty
09-182 242

Millwright work, definition clarified
09-153 338

Money transmitter licensee requirements,
modifications
09-208 58

Mortgage professional applications,
abandonment declaration
09-207 56

Mortgage professionals, federal SAFE
Mortgage Licensing Act implementation
09-209 64

Secondary small loan lenders, exemption
09-209 64

Violations, municipal revenue modified
09-153 338

Workers' compensation insurance evidence
requirements
09-104 130

OCCUPATIONAL SCHOOLS

See Higher Education

OFFICE OF POLICY AND MANAGEMENT

See Policy and Management, Office of

OIL AND GAS

See also Utilities

Heating fuel meters/facilities access,
residential buildings
09-31 99

Natural gas companies/affiliates, code of
conduct
09-218 99

Propane dealers, service termination
restrictions
09-218 99

Underground heating oil tank removal,
contractor surety bonds/liability insurance
09-122 131

OPTOMETRY AND OPTOMETRISTS

Therapeutic contact lenses, dispensing/sale
09-58 294

PARKING AND PARKING FACILITIES

Handicapped certification, changes
09-187 356

Stamford Transportation Center garage, pre-demolition requirement 09-186	350	Regionally significant projects, RPO pre-application review 09-165	279
PARKS AND FORESTS <i>See State Parks and Forests</i>		PLANTS Invasive species, municipal sale/purchase ordinance prohibition reinstated 09-52	103
PATIENT'S RIGHTS Contractual limitations prohibited 09-168	27	POLICE <i>See Law Enforcement Officers</i>	
Mammography reports, breast density information required 09-41	165	POLICY AND MANAGEMENT, OFFICE OF American Recovery and Reinvestment Act grant applications, submission to General Assembly 09-3	39
Medicaid patient admission, third party guarantee condition prohibited 09-168	27	Conservation and development plan, Connecticut Heritage Areas consideration 09-221	286
PESTICIDES <i>See also Hazardous Substances</i> Day care/school applications, modifications 09-56	104	Conservation and development plan deadlines/content 09-230	287
PHARMACIES AND PHARMACISTS <i>See also Drugs and Medicine</i> Dispensing errors disciplinary action, identification disclosure 09-150	132	FY09 expenses, consulting/personnel service reductions required 09-1	29
Drug manufacturer rebates, DSS pharmacy assistance programs 09-14	155	Green building tax credit, regulations/report 09-202 (VETOED).....	284
Prescriptions, receipt/storage requirements 09-22	127	Purchase of service report, eliminated 09-210	163
PHYSICIANS DMHAS private practice allowed 09-145	300	Regional mutual agreements, oversight responsibilities 09-231	289
Lyme disease long term antibiotic treatment, disciplinary action prohibited 09-128	298	Revenue estimate consensus 09-214	44
Therapeutic contact lenses, dispensing/sale 09-58	294	State budget reduction responsibilities 09-2	32
PLANNING AND ZONING Conservation and development plan, Connecticut Heritage Areas consideration 09-221	286	POLLUTION <i>See Air Pollution; Water Pollution</i>	
Conservation and development plan, smart growth content 09-230	287	POPULAR NAME "Move over" law 09-121	348
Land use permit expiration, timeframes extended 09-181	281	Silver Alert System 09-109	26
Municipal road improvements, commission approval requirement amended 09-92	279	PORTS Authority dissolution/modification, DOT consent 09-186	350
		POWER PLANTS <i>See Electric Utilities</i>	
		PRESCRIPTION MEDICINES <i>See Drugs and Medicine</i>	

PRIMARIES

See also Elections

U.S. Senate vacancies, primary procedures
 09-170 141

17-year olds, voting eligibility
 09-36 141

PRISONS AND PRISONERS

See also Correction, Dept. of

Criminal Justice Policy Advisory Commission,
 corrections staff health and safety
 subcommittee established
 09-223 251

Inmate assault/disciplinary reports,
 facility-specific data
 09-39 216

PRIVACY

See Confidentiality; Freedom of Information

PROBATE COURTS

See also Estates And Trusts

Reforms/redistricting
 09-114 227

PROBATION

Supervision fee, payment due date
 09-84 225

PROCLAMATIONS

See Holidays and Proclamations

PROGRAM REVIEW AND INVESTIGATIONS

COMMITTEE

Human services programs, results-based
 accountability assessment
 09-166 292

Sunset law reviews, postponed
 09-166 292

PROPERTY AND REAL ESTATE

See also Common Interest Communities; Planning and Zoning; State Property

Brownfields development projects,
 regulatory changes
 09-235 89

Brownfields development projects, Transfer Act
 exemptions expanded
 09-235 89

Disclosure forms, content changes/additions
 09-127 177

Floodplain management, brownfield mill
 exemptions
 09-141 110

Land records, certain recording procedures
 modified
 09-213 246

Real Property Electronic Recording Advisory
 Committee, authorization date
 09-224 144

Route 11 Greenway Authority, land purchase
 options authorized
 09-97 348

Time shares, sale/management
 09-156 186

PROPERTY TAXES

Disabled veterans exemption, proof of eligibility
 modified
 09-176 375

Enterprise zone exemption, median income
 qualification revised
 09-93 84
 09-234 86

Exemption/relief eligibility, American
 Recovery and Reinvestment Act
 09-3 39

Land value taxation, pilot program established
 09-236 290

Local benefit programs, economic stimulus
 payments income disregard
 09-1 29

Municipal amnesty program, modification
 09-234 86

Municipal assessment appeals procedure,
 modifications
 09-196 282

Regional planning organization property,
 exemption
 09-226 287

Revaluation, annual adjustment option repealed
 09-60 123

Revaluation, delay/phase-in suspension, allowed
 09-60 123

Revaluation delay, effective date modified
 09-196 282

Revenue sharing, regional mutual agreements
 09-231 289

PROTECTION AND ADVOCACY FOR PERSONS WITH DISABILITIES, OFFICE OF

See also Disabled Persons

Confidentiality, federal compliance
 09-65 157

PSYCHOLOGISTS AND PSYCHIATRISTS

DMHAS facilities, private practice allowed
 09-145 300

PUBLIC ACCOMMODATIONS

Restroom access, medical condition
 requirements
 09-129 298

PUBLIC EMPLOYEES

See Municipal Officers and Employees; State Officers and Employees

PUBLIC HEALTH, DEPT. OF

- Behavioral health providers, mental health/substance abuse dual licensure
09-149291
- Connecticut Health Information Network, participant information disclosure
09-95297
- DCF substance abuse treatment facilities, licensure exemption
09-197163
- Drinking water contamination, municipal notification mandate
09-30103
- Drinking water quality projects, alternative financial assistance
09-1242
- Licensing/scope of practice, amendments
09-232316
- Lyme disease long term antibiotic treatment, physician disciplinary action prohibited
09-128298
- Maternity homes, licensure requirement repealed
09-197163
- Permits, municipal application review requirement
09-190282
- Pharmacist/pharmacy dispensing errors disciplinary action, identification disclosure
09-150132
- Radon, safety standards/evaluation procedures updated
09-220314
- Restaurant chains, nutritional information disclosure regulations
09-157 (VETOED)311
- Sewage discharge categories, establishment deadline extended
09-220314
- Statutes, technical revisions
09-11293
- Statutory revisions
09-232316
- Water company exclusive service area provider certificates, issuance considerations
09-220314

PUBLIC RECORDS

See Freedom of Information; Records and Recordkeeping

PUBLIC SAFETY, DEPT. OF

- Demolition license created
09-35 334
- Funeral honor guards for legislators, responsibility removed
09-90 374
- Sex offender release, school superintendent notification
09-199 243
- Silver Alert System, established
09-109 26
- Statutes, technical revisions
09-7 331

PUBLIC UTILITIES

See Utilities

PUBLIC UTILITY CONTROL, DEPT. OF

- Natural gas companies, code of conduct establishment/enforcement
09-218 99
- Water company exclusive service area provider certificates, issuance considerations
09-220 314

PUBLIC WORKS, DEPT. OF

- Business licensees, workers' compensation insurance evidence
09-104 130
- Capitol district heating/cooling system, DPW/TEN Companies purchase/powers
09-15 139
- Torrington, Clark Street title acquisition
09-203 (VETOED)..... 142

QUASI-PUBLIC AGENCIES

See also specific agencies

- Brownfields remediation, green technology requirement
09-235 89

RAPE

See Sexual Assault

REAL ESTATE

See Property and Real Estate

RECORDS AND RECORDKEEPING

See also Freedom of Information

- Adoption, biological parent identifying information, access
09-185 160
- Connecticut Health Information Network participants, confidential information disclosure
09-95 297

Criminal Justice Information System,
 Federal Public Defender Office access
 allowed
 09-26214

DCF records, disclosure to DDS allowed
 09-142300

DOL confidential employer data, private grant
 administrator disclosure
 09-33269

Land, certain procedures modified
 09-213246

Land, Real Property Electronic Recording
 Advisory Committee authorization date
 09-224144

Land records filing fee, increased
 09-229116

Pharmacy Commission records/proceedings
 disclosure allowed
 09-150132

Prescriptions, receipt/storage requirements
 09-22127

Rabies vaccination, release to Animal Control
 Officer
 09-228115

School district truancy data, FOIA public
 record
 09-14396

Time shares, land records requirements
 09-156186

RECREATION

See Sports and Recreation

RECYCLING

See Solid Waste Management

REGIONAL PLANNING

Agency boards, membership increased
 09-80277

Projects of regional significance, voluntary pre-
 application review
 09-165279

Property tax exemption, regional planning
 organizations
 09-226287

Regional mutual agreements
 authority/procedures
 09-231289

RELIGIOUS GROUPS

Marriage officiation/services, exemptions
 09-13213

RESOURCES RECOVERY

See Solid Waste Management

RESTAURANTS

Chains, nutritional information disclosure
 09-157 (VETOED)311

RETAIL TRADE

See also Business

Apple cider/wine manufacturers,
 sales/shipments
 09-47128

Bisphenol-A, food container ban
 09-103106

Farm wineries, hours of sale extended
 09-47128

Internet hunting software, prohibited
 09-198112

Invasive plants, municipal ordinance prohibition
 reinstated
 09-52103

Machine gun sale to minors, prohibited
 09-62223

Pet shops, canine certificates of origin/prohibited
 purchases
 09-228115

Restroom access, medical condition
 requirements
 09-129298

Senior citizen discount, eligibility posting
 requirements
 09-5325

RETIREMENT AND PENSIONS

See also Teacher Retirement

National Guard retirement list,
 eligibility/mandatory age
 09-4373

Probate judges, eligibility/incentives
 09-114227

RIVERS

See also Water and Related Resources

Farmington, Collinsville hydroelectric facility
 agreement
 09-238 (VETOED)101

ROADS

See Highways and Roads

SALES AND USE TAXES

Asphalt manufacturers, exemption eligibility
 09-200125

SCHOOL BOARDS

See Education, Boards of

SCHOOL PERSONNEL

See also Schools and School Districts; Teachers

Athletic trainers, medication administration permitted	
09-155	310
CPR/AED operation, training requirements	
09-94	296
Private contractors, statutory rape applicability	
09-242	267

SCHOOLS AND SCHOOL DISTRICTS

See also Education; Education, Boards of; Magnet Schools; School Personnel; Students; Teacher Retirement; Teachers

Automatic external defibrillators, on site availability/trained personnel	
09-94	296
Cardiac emergency action response plan development	
09-94	296
Crisis response drills required	
09-131	337
Expulsion, readmission prevention prohibited	
09-82	96
Fire marshal inspection reports, receipt	
09-227	343
Green cleaning program, implementation/plan	
09-81	95
Life-threatening food allergy management plan, public availability	
09-155	310
Medication administration, school personnel/self-medication	
09-155	310
Pesticide applications, modifications	
09-56	104
Radon inspection/evaluation duties amended	
09-220	314
Sex offender release, superintendent notification	
09-199	243
Superintendents, mandatory abuse/neglect reporters	
09-242	267
Truancy data, strategic school profile inclusion	
09-143	96

SECRETARY OF THE STATE

Authorized agent resignation, registration revocation process modified	
09-38	215

SECURITIES

See Investments

SENTENCING

See Criminal Procedure

SEWERS AND SEWAGE

See also Solid Waste Management

Alternative treatment discharge categories, establishment deadline removed	
09-220	314
System expansion, water pollution control authority assessments	
09-89	279

SEXUAL ASSAULT

Sex offender release, school superintendent notification	
09-199	243
Statutory rape, school contractor applicability	
09-242	267
Victims, "tender years" hearsay rule exception modified	
09-63	223

SMALL BUSINESS

See also Business

State agency regulations, definition/impact analysis	
09-19	83
State employee health insurance plan, eligibility	
09-147 (VETOED).....	180

SMOKING

See Tobacco Products

SOCIAL SERVICES, DEPT. OF

Child support collection efforts/noncustodial parents, report required	
09-175	77
Drug manufacturer rebates, expanded requirements	
09-14	155
Food Stamp Program renamed	
09-9	155
Home Care Program for Elders, personal care assistance requirements	
09-64	25
Medicare savings program eligibility, income disregard increased	
09-2	32
"Money Follows the Person" program, reports to General Assembly required	
09-17	25
Pharmaceutical bulk purchasing plan, state development	
09-206	313
Pharmacy assistance programs, Medicaid rebate parity	
09-14	155

Rental assistance decisions, administrative/judicial appeals 09-118	159	Paintball safety instruction/equipment, minors 09-113	337
Responsible fatherhood program, grant applications authorized 09-175	77	STATE AGENCIES <i>See also State Funds; State Officers and Employees; specific state agencies</i>	
State Supplement Program applicant, transfer of assets exception added 09-73	158	Brownfields remediation, green technology use 09-235	89
State-Wide Respite Care Program, expanded eligibility/services regulations 09-75	159	Child Advocate report responses, 90 day timeframe 09-205	80
Supplemental Nutrition Assistance Program, state program renamed 09-9	155	Connecticut Health Information Network, personal information disclosure 09-95	297
SOLID WASTE MANAGEMENT <i>See also Sewers and Sewage</i>		Connecticut Heritage Areas, responsibilities 09-221	286
Ash landfill, Franklin/Windham prohibition 09-112 (VETOED)	108	Contaminated mill site development, certification exemptions 09-235	89
Beneficial use permits, DEP individual authorizations 09-211	114	Enhancing Agency Outcomes Commission, established 09-2	32
Bottle deposits, noncarbonated beverages inclusion 09-2	32	Fund transfers, Governor's temporary authority 09-1	29
Food-waste-to-energy plant, distressed community prohibition 09-112 (VETOED)	108	Personal service agreements, certain reports eliminated 09-210	163
Motor vehicle recycler, unlicensed business penalties 09-243	268	Regulations, small business impact/regulatory flexibility requirements 09-19	83
Scrap metal processors, telecommunications cable/wire receipt procedures 09-243	268	Sunset reviews, delayed 09-166	292
SPECIAL DISTRICTS		Volunteer services cost-benefit analysis, annual report requirement repealed 09-224	144
Taxing district, lake water quality maintenance purpose 09-173	280	STATE AID <i>See also Education Cost Sharing Grants; State Funds</i>	
SPECIAL REVENUE, DIVISION OF		Community development grants, enterprise zone low/moderate-income housing rehabilitation restriction 09-40	153
Off-track betting simulcasting facilities, increased/location designations 09-132	337	Eligibility, economic stimulus payments income disregard 09-1	29
SPORTS AND RECREATION		Farm transition grant program, nonprofit eligibility 09-229	116
Bicycle/pedestrian access projects, DOT budget allocation 09-154	349	Milk producer grant program, established 09-229	116
Connecticut Heritage Areas, established/agency responsibilities 09-221	286	Program eligibility criteria, American Recovery and Reinvestment Act payment exclusion 09-3	39
Horse trail preservation 09-180	111		

School Bus Emission Reduction Program, grant modifications 09-1	29	Military Family Relief, inactive duty eligibility 09-163	375
STATE BUDGET		Privacy Protection Guaranty and Enforcement Account, created 09-239	132
Deficit mitigation, second FY09 plan 09-1	29	Private Occupational School Protection Account, fund utilization restricted 09-99	147
Deficit mitigation, third FY09 plan 09-2	32	Probate Court Administration, modifications 09-114	227
Deficit mitigation, fourth FY09 plan 09-111	42	Public Works Heating and Cooling Energy Revolving Account, created 09-15	139
Revenue estimates, OPM/OFA consensus 09-214	44	Teacher Retirement, fund transfers 09-111	42
STATE BUILDINGS		STATE OFFICERS AND EMPLOYEES	
<i>See also Buildings and Building Codes</i>		<i>See also specific Constitutional Officers; specific state agency or office</i>	
"Green building" requirements, delay 09-192	342	Conn-OSHA investigations, employee anonymity expanded 09-106	274
STATE COMPTROLLER		Family and Medical Leave Act, military caregiver leave 09-70	270
Pharmaceutical bulk purchasing plan, state development 09-206	313	Health plan, self-insured conversion 09-147 (VETOED).....	180
Revenue estimate consensus, responsibilities 09-214	44	STATE PARKS AND FORESTS	
State health insurance plan, expansion/self-insured conversion 09-147 (VETOED)	180	Horse trail preservation 09-180	111
STATE FIRE MARSHAL		STATE PROPERTY	
<i>See Firefighters and Fire Officials</i>		<i>See also Property and Real Estate; State Buildings</i>	
STATE FUNDS		Conveyances, authorized/amended 09-203 (VETOED).....	142
<i>See also State Aid; State Budget</i>		DOT condemnation resales, mediation process 09-186	350
Agricultural Sustainability Account, established 09-229	116	Waterford weigh station use, East Lyme Boy Scout troop 09-186	350
Clean Water, municipal water quality project use authorized 09-12	42	STATE PURCHASING	
Client Security, general fund transfer 09-2	32	<i>See Bids and Bidding; Contracts and Contractors; Government Purchasing</i>	
Client Security, general fund transfer repealed 09-29	214	STATE SYMBOLS	
Debt Service Retirement, certain financial settlements deposit requirement repealed 09-111	42	National/state flag purchases, US manufacturer required 09-224	144
Deficit mitigation, second FY09 plan fund transfers 09-1	29	STATE TREASURER	
Deficit mitigation, third FY09 plan fund transfers 09-2	32	Client Security Fund maintenance 09-29	214
Deficit mitigation/transfers, fourth FY09 plan 09-111	42	Financial settlements revenue, certain deposit requirements repealed 09-111	42
General, bottle deposit escheats 09-1	29		

Funds transfer, authority expanded
 09-11142

STATUTE OF LIMITATIONS
 Fire losses, increased
 09-164202
 Gender wage discrimination claims, extended
 09-101272
 Identity theft, extended
 09-239132

STATUTES
See also Uniform and Model Laws; Uniform Commercial Code
 Economic development, minor/technical changes
 09-23486
 Education, technical revisions
 09-4595
 Fire safety/prevention codes, incorporation
 09-177339
 Human services statutes, technical revisions
 09-8155
 Insurance, technical changes
 09-74172
 Labor, technical changes
 09-6269
 Motor vehicle franchise law, revision
 09-50345
 Public health, revisions
 09-232316
 Public health, technical revisions
 09-11293
 Public safety, technical revisions
 09-7331
 Revision of 2009, adopted
 09-57222

STUDENTS
 Expulsion, readmission prevention prohibited
 09-8296
 Public college, credit card marketing/
 debt collection practices
 09-16754
 Public school information system, unique
 identifiers
 09-24196
 Self-medication regulations, asthmatic
 inhalers/epipens
 09-155310
 Statutory rape, school contractor applicability
 09-242267

SUBSTANCE ABUSE
See Alcohol and Drug Abuse

SUNSET LAW
 State agencies termination review, delayed
 09-166292

SUPERIOR COURTS
See also Courts
 Animal care trusts, jurisdiction
 09-169240
 Biologic material of deceased, petition to
 release
 09-37294
 Child placement procedures, amendments
 09-185160
 Client Security Fund fee collection/recording
 responsibilities
 09-29214
 Hearsay rule, "tender years" exception Evidence
 Code conformance
 09-63223
 Identity theft, prosecution venue
 09-239132
 Identity theft correction orders, required
 09-239132
 Juvenile abuse/neglect proceedings, public
 access pilot program
 09-19478
 Monetary damages, motion to revive
 judgment
 09-215248
 Murder victim beneficiary, criminal
 profiteering determination
 09-201244
 Probation supervision fee, payment due date
 09-84225
 Wage discrimination, damages
 09-101272

SUPPLEMENTAL NUTRITION ASSISTANCE PROGRAM
See also Food Stamp Program
 Food Stamp Program renamed
 09-9155

SUPREME COURT
See also Courts
 Judicial Review Council decisions, Workers'
 Compensation Commissioner appeal
 authorized
 09-69224

TASK FORCES
See Boards and Commissions

TAXATION

*See also Corporation Business Tax; Income Taxes;
Property Taxes; Sales and Use Taxes*

Green building tax credit, established
09-202 (VETOED)284

TEACHER RETIREMENT

COLA calculation, technical adjustments
09-43123

TELECOMMUNICATIONS

See also Utilities

Emergency service interruption/equipment
theft, penalties enhanced
09-243268

Enhanced 9-1-1, liability protections
broadened
09-86336

TELEPHONES

See also Utilities

Enhanced 9-1-1 subscriber information,
expanded use allowed
09-86336

Mobile electronic device use while driving,
armed forces exemption
09-54374

TOBACCO PRODUCTS

Tobacco Use Task Force, created
09-148301

TRAFFIC RULES AND REGULATIONS

"Blocking the box" ordinances allowed
09-171241

"Control cities" designation regulations
09-186350

Electronic toll impact study
09-186350

Golf cart road operation, limited authorization
09-187356

Mobile electronic device use while driving,
armed forces exemption
09-54374

"Move over" law established
09-121348

"Move over" law expanded
09-187356

Speeding to elude police, penalty increased
09-191242

Street racing, vehicle impoundment permitted
09-120348

TRANSPORTATION, DEPT. OF

ARRA reports, General Assembly submission
09-186350

Bicycle/pedestrian access projects, report/budget
allocation
09-154 349

Bridgeport train station commuter bus
service study
09-186 350

Consultant services, advertising methods
modified
09-186 350

DOT condemnation resales, mediation
process
09-186 350

Easements, conveyances
09-203 (VETOED)..... 142

Electronic toll impact study
09-186 350

Permits, municipal application review
requirement
09-190 282

Route 6, property disposal process modified
09-203 (VETOED)..... 142

Route 7, property sale/use restrictions reinstated
09-203 (VETOED)..... 142

Stamford Transportation Center parking garage,
pre-demolition requirement
09-186 350

Unnecessary condemned property sale,
mediation process
09-186 350

Zero-emission buses, implementation plan
development
09-186 350

TRUCKS AND TRUCKING

Towing, length/weight limit exceptions
modified
09-186 350

TRUSTS

See Estates and Trusts

UNEMPLOYMENT COMPENSATION

See also Labor and Employment

Voluntary resignation, limited eligibility
09-3 39

UNIFORM AND MODEL LAWS

See also Uniform Commercial Code

American Plant Food Control Officials 2008
fertilizer law, adopted
09-229 116

Common Interest Ownership Act, modifications
09-225 251

Uniform Consumer Leases Act renamed
09-134 177

Uniform Securities Act, definitions/minor changes 09-160	52	VETERINARY MEDICINE	
UNIFORM COMMERCIAL CODE		Kirklyn M. Kerr grant program named 09-159	150
Leases, insurance disclosure requirements expanded 09-134	177	Rabies vaccination records, release to Animal Control Officer 09-228	115
UNIVERSITIES		VICTIM'S RIGHTS	
<i>See Colleges and Universities; Connecticut State University; Higher Education; University of Connecticut</i>		<i>See Crime Victims</i>	
UNIVERSITY OF CONNECTICUT		VITAL RECORDS	
Center for Public Health and Health Policy, mandated health benefit review analysis 09-179	203	<i>See Records and Recordkeeping</i>	
Health Center, academic detailing program establishment 09-232	316	VOTERS AND VOTING	
UTILITIES		<i>See Elections; Primaries</i>	
<i>See also Electric Utilities; Oil and Gas; Telecommunications; Telephones; Water Companies</i>		WAGES	
Capitol district heating/cooling system, DPW/TEN Companies purchase 09-15	139	<i>See also Labor and Employment</i>	
Meters/facilities access requirement, residential buildings 09-31	99	Gender discrimination claim, modifications 09-101	272
Service termination, verification 09-31	99	Government construction contractors, certified payroll submission method 09-25	269
VETERANS		Standard wage law, determination method modified 09-183	275
<i>See also Military</i>		WARRANTIES	
Disabled, property tax exemption, proof of eligibility modified 09-176	375	Extended warranty insurers, revised requirements 09-24	165
Graves, U.S. flag placement, certain restrictions prohibited 09-5	373	WATER AND RELATED RESOURCES	
Operation Earnest Will, wartime service dates changed 09-117	375	<i>See also Long Island Sound; Rivers; Water Pollution</i>	
Service ribbons/medals, posthumous awards clarification 09-90	374	Drinking water contamination, DPH municipal notification 09-30	103
Transitional behavioral health services, agency collaboration required 09-10	373	Exclusive service area providers, notification requirements 09-220	314
Wartime service definition, non-consecutive dates 09-117	375	Floodplain management, brownfield mill exemptions 09-141	110
		Lakes, special taxing district water quality maintenance authorized 09-173	280
		Lawn sprinkler systems, residential installation, rain sensor required 09-32	128
		WATER COMPANIES	
		<i>See also Utilities</i>	
		Supply plans, underground infrastructure replacement practices inclusion 09-220	314

WATER POLLUTION

- Drinking water contamination, DPH municipal notification
 - 09-30103
- Municipal water quality projects, Clean Water Fund use authorized
 - 09-1242

WEAPONS

- Machine gun use/ownership transfers to minors, prohibited
 - 09-62223
- Paintball safety instruction/equipment, minors
 - 09-113337

WETLANDS

See Inland Wetlands

WHISTLEBLOWERS

See also Labor and Employment

- DCF confidential information disclosure, employee responsibilities/protections
 - 09-185160
- Protections, gender wage discrimination witnesses
 - 09-101272

WILLS

See Estates and Trusts

WORKERS' COMPENSATION.

- Business license applicants, insurance coverage evidence
 - 09-104130
- Correctional staff claims, facility-specific data
 - 09-39216
- Judicial Review Council decisions, Supreme Court appeals authorized
 - 09-69224
- Review Board decisions, appeal procedure modification
 - 09-178241
- Volunteer ambulance service premiums, calculation method
 - 09-88271

ZONING

See Planning and Zoning

INDEX BY PUBLIC ACT NUMBER

09-1 29	09-57 222	09-113 337
09-2 32	09-58 294	09-114 227
09-3 39	09-59 222	09-115 173
09-4 373	09-60 123	09-116 149
09-5 373	09-61 84	09-117 375
09-6 269	09-62 223	09-118 159
09-7 331	09-63 223	09-119 131
09-8 155	09-64 25	09-120 348
09-9 155	09-65 157	09-121 348
09-10 373	09-66 157	09-122 131
09-11 293	09-67 158	09-123 175
09-12 42	09-68 223	09-124 175
09-13 213	09-69 224	09-125 297
09-14 155	09-70 270	09-126 176
09-15 139	09-71 47	09-127 177
09-16 293	09-72 172	09-128 298
09-17 25	09-73 158	09-129 298
09-18 127	09-74 172	09-130 150
09-19 83	09-75 159	09-131 337
09-20 293	09-76 334	09-132 337
09-21 293	09-77 295	09-133 299
09-22 127	09-78 336	09-134 177
09-23 47	09-79 224	09-135 (VETOED) 178
09-24 165	09-80 277	09-136 26
09-25 269	09-81 95	09-137 338
09-26 214	09-82 96	09-138 236
09-27 331	09-83 225	09-139 (VETOED) 237
09-28 331	09-84 225	09-140 109
09-29 214	09-85 296	09-141 110
09-30 103	09-86 336	09-142 300
09-31 99	09-87 277	09-143 96
09-32 128	09-88 271	09-144 51
09-33 269	09-89 279	09-145 300
09-34 333	09-90 374	09-146 131
09-35 334	09-91 105	09-147 (VETOED) 180
09-36 141	09-92 279	09-148 301
09-37 294	09-93 84	09-149 291
09-38 215	09-94 296	09-150 132
09-39 216	09-95 297	09-151 110
09-40 153	09-96 77	09-152 238
09-41 165	09-97 348	09-153 338
09-42 103	09-98 172	09-154 349
09-43 123	09-99 147	09-155 310
09-44 216	09-100 48	09-156 186
09-45 95	09-101 272	09-157 (VETOED) 311
09-46 166	09-102 129	09-158 239
09-47 128	09-103 106	09-159 150
09-48 166	09-104 130	09-160 52
09-49 167	09-105 106	09-161 54
09-50 345	09-106 274	09-162 240
09-51 171	09-107 (VETOED) 225	09-163 375
09-52 103	09-108 25	09-164 202
09-53 25	09-109 26	09-165 279
09-54 374	09-110 149	09-166 292
09-55 216	09-111 42	09-167 54
09-56 104	09-112 (VETOED) 108	09-168 27

09-169	240	09-194	78	09-219	75
09-170	141	09-195	112	09-220	314
09-171	241	09-196	282	09-221	286
09-172	84	09-197	163	09-222	249
09-173	280	09-198	112	09-223	251
09-174	55	09-199	243	09-224	144
09-175	77	09-200	125	09-225	251
09-176	375	09-201	244	09-226	287
09-177	339	09-202 (VETOED)	284	09-227	343
09-178	241	09-203 (VETOED)	142	09-228	115
09-179	203	09-204	207	09-229	116
09-180	111	09-205	80	09-230	287
09-181	281	09-206	313	09-231	289
09-182	242	09-207	56	09-232	316
09-183	275	09-208	58	09-233	86
09-184	85	09-209	64	09-234	86
09-185	160	09-210	163	09-235	89
09-186	350	09-211	114	09-236	290
09-187	356	09-212	244	09-237	210
09-188 (VETOED).....	205	09-213	246	09-238 (VETOED)	101
09-189	56	09-214	44	09-239	132
09-190	282	09-215	248	09-240	211
09-191	242	09-216	209	09-241	96
09-192	342	09-217	210	09-242	267
09-193	243	09-218	99	09-243	268