



# House of Representatives

General Assembly

**File No. 337**

February Session, 2022

House Bill No. 5409

*House of Representatives, April 6, 2022*

The Committee on Insurance and Real Estate reported through REP. WOOD, K. of the 29th Dist., Chairperson of the Committee on the part of the House, that the bill ought to pass.

## **AN ACT CONCERNING FINANCIAL PLANNERS AND THE CONNECTICUT UNFAIR INSURANCE PRACTICES ACT.**

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

1 Section 1. Section 38a-1 of the 2022 supplement to the general statutes  
2 is repealed and the following is substituted in lieu thereof (*Effective*  
3 *October 1, 2022*):

4 Terms used in this title and section 2 of this act, unless it appears from  
5 the context to the contrary, shall have a scope and meaning as set forth  
6 in this section.

7 (1) "Affiliate" or "affiliated" means a person that directly, or indirectly  
8 through one or more intermediaries, controls, is controlled by or is  
9 under common control with another person.

10 (2) "Alien insurer" means any insurer that has been chartered by or  
11 organized or constituted within or under the laws of any jurisdiction or  
12 country without the United States.

13 (3) "Annuities" means all agreements to make periodical payments  
14 where the making or continuance of all or some of the series of the  
15 payments, or the amount of the payment, is dependent upon the  
16 continuance of human life or is for a specified term of years. This  
17 definition does not apply to payments made under a policy of life  
18 insurance.

19 (4) "Commissioner" means the Insurance Commissioner.

20 (5) "Control", "controlled by" or "under common control with" means  
21 the possession, direct or indirect, of the power to direct or cause the  
22 direction of the management and policies of a person, whether through  
23 the ownership of voting securities, by contract other than a commercial  
24 contract for goods or nonmanagement services, or otherwise, unless the  
25 power is the result of an official position with the person.

26 (6) "Domestic insurer" means any insurer that has been chartered by,  
27 incorporated, organized or constituted within or under the laws of this  
28 state.

29 (7) "Domestic surplus lines insurer" means any domestic insurer that  
30 has been authorized by the commissioner to write surplus lines  
31 insurance.

32 (8) "Foreign country" means any jurisdiction not in any state, district  
33 or territory of the United States.

34 (9) "Foreign insurer" means any insurer that has been chartered by or  
35 organized or constituted within or under the laws of another state or a  
36 territory of the United States.

37 (10) "Insolvency" or "insolvent" means, for any insurer, that it is  
38 unable to pay its obligations when they are due, or when its admitted  
39 assets do not exceed its liabilities plus the greater of: (A) Capital and  
40 surplus required by law for its organization and continued operation;  
41 or (B) the total par or stated value of its authorized and issued capital  
42 stock. For purposes of this subdivision "liabilities" shall include but not  
43 be limited to reserves required by statute or by regulations adopted by

44 the commissioner in accordance with the provisions of chapter 54 or  
45 specific requirements imposed by the commissioner upon a subject  
46 company at the time of admission or subsequent thereto.

47 (11) "Insurance" means any agreement to pay a sum of money,  
48 provide services or any other thing of value on the happening of a  
49 particular event or contingency or to provide indemnity for loss in  
50 respect to a specified subject by specified perils in return for a  
51 consideration. In any contract of insurance, an insured shall have an  
52 interest which is subject to a risk of loss through destruction or  
53 impairment of that interest, which risk is assumed by the insurer and  
54 such assumption shall be part of a general scheme to distribute losses  
55 among a large group of persons bearing similar risks in return for a  
56 ratable contribution or other consideration.

57 (12) "Insurer" or "insurance company" includes any person or  
58 combination of persons doing any kind or form of insurance business  
59 other than a fraternal benefit society, and shall include a receiver of any  
60 insurer when the context reasonably permits.

61 (13) "Insured" means a person to whom or for whose benefit an  
62 insurer makes a promise in an insurance policy. The term includes  
63 policyholders, subscribers, members and beneficiaries. This definition  
64 applies only to the provisions of this title and does not define the  
65 meaning of this word as used in insurance policies or certificates.

66 (14) "Life insurance" means insurance on human lives and insurances  
67 pertaining to or connected with human life. The business of life  
68 insurance includes granting endowment benefits, granting additional  
69 benefits in the event of death by accident or accidental means, granting  
70 additional benefits in the event of the total and permanent disability of  
71 the insured, and providing optional methods of settlement of proceeds.  
72 Life insurance includes burial contracts to the extent provided by  
73 section 38a-464.

74 (15) "Mutual insurer" means any insurer without capital stock, the  
75 managing directors or officers of which are elected by its members.

76 (16) "Person" means an individual, a corporation, a partnership, a  
77 limited liability company, an association, a joint stock company, a  
78 business trust, an unincorporated organization or other legal entity.

79 (17) "Policy" means any document, including attached endorsements  
80 and riders, purporting to be an enforceable contract, which  
81 memorializes in writing some or all of the terms of an insurance  
82 contract.

83 (18) "State" means any state, district, or territory of the United States.

84 (19) "Subsidiary" of a specified person means an affiliate controlled  
85 by the person directly, or indirectly through one or more intermediaries.

86 (20) "Unauthorized insurer" or "nonadmitted insurer" means an  
87 insurer that has not been granted a certificate of authority by the  
88 commissioner to transact the business of insurance in this state or an  
89 insurer transacting business not authorized by a valid certificate.

90 (21) "United States" means the United States of America, its territories  
91 and possessions, the Commonwealth of Puerto Rico and the District of  
92 Columbia.

93 Sec. 2. (NEW) (*Effective October 1, 2022*) (a) For the purposes of this  
94 section:

95 (1) "Fiduciary duty" has the same meaning as provided in section 36a-  
96 860 of the general statutes; and

97 (2) "Financial planner" has the same meaning as provided in section  
98 36a-860 of the general statutes.

99 (b) A financial planner doing business in this state shall disclose to a  
100 consumer in this state, upon request, whether such financial planner has  
101 a fiduciary duty to such consumer for each recommendation that such  
102 financial planner makes to such consumer regarding insurance.

103 (c) Any violation of this section shall be deemed an unfair method of  
104 competition and unfair and deceptive act or practice in the business of

105 insurance under section 38a-816 of the general statutes, as amended by  
106 this act.

107 Sec. 3. Section 38a-816 of the 2022 supplement to the general statutes  
108 is amended by adding subdivision (27) as follows (*Effective October 1,*  
109 *2022*):

110 (NEW) (27) Any violation of section 2 of this act.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2022</i>	38a-1
Sec. 2	<i>October 1, 2022</i>	New section
Sec. 3	<i>October 1, 2022</i>	38a-816

**INS**      *Joint Favorable*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 23 \$	FY 24 \$
Insurance Dept.	GF - Potential Revenue Gain	Minimal	Minimal

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill results in a potential minimal revenue gain to the General Fund, to the extent the Insurance Commissioner assesses additional fines or penalties for violations of the Connecticut Unfair Insurance Practices Act (CUIPA). The bill requires a financial planner to disclose to a Connecticut consumer, if requested, whether he or she has a fiduciary duty to them for each insurance recommendation made and makes violating this disclosure requirement a violation of CUIPA. CUIPA fines can range from \$5,000 per violation up to a maximum of \$250,000 in aggregate penalties per entity in any six-month period.

**The Out Years**

The annualized ongoing fiscal impact identified above would continue into the future subject to the amount of fines assessed.

**OLR Bill Analysis****HB 5409*****AN ACT CONCERNING FINANCIAL PLANNERS AND THE CONNECTICUT UNFAIR INSURANCE PRACTICES ACT.*****SUMMARY**

By law, financial planners must disclose to consumers, upon request, whether they have a fiduciary duty to them for each recommendation they make (CGS 36a-860). By law, a (1) “financial planner” is someone who, for compensation, offers individualized financial planning or investment advice, unless the activity is otherwise regulated by state or federal law and (2) “fiduciary duty” is a duty to act with prudence in the consumer’s best interest and with undivided loyalty to them.

This bill specifies that a financial planner doing business in Connecticut must also disclose to a Connecticut consumer, if requested, whether he or she has a fiduciary duty to them for each insurance recommendation made. The bill makes violating this disclosure requirement an unfair or deceptive act or practice in the business of insurance (i.e., CUIPA violation, see BACKGROUND).

EFFECTIVE DATE: October 1, 2022

**BACKGROUND*****Connecticut Unfair Insurance Practices Act (CUIPA)***

The law prohibits engaging in unfair or deceptive acts or practices in the business of insurance. It authorizes the insurance commissioner to conduct investigations and hearings, issue cease and desist orders, impose fines, revoke or suspend licenses, and order restitution for per se violations (i.e., violations specifically listed in statute). The law also allows the commissioner to ask the attorney general to seek injunctive relief in Superior Court if he believes someone is engaging in other unfair or deceptive acts not specifically defined in statute.

Fines may be up to (1) \$5,000 per violation to a \$50,000 maximum or (2) \$25,000 per violation to a \$250,000 maximum in any six-month period if the violation was knowingly committed. The law also imposes a fine of up to \$50,000, in addition to or in place of a license suspension or revocation, for violating a cease and desist order (CGS § 38a-815 et seq.).

**COMMITTEE ACTION**

Insurance and Real Estate Committee

Joint Favorable

Yea 17 Nay 0 (03/22/2022)