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## OLR Bill Analysis

### sHB 6767 (as amended by House "A")\*

#### **AN ACT CONCERNING THE DEPARTMENT OF CONSUMER PROTECTION'S RECOMMENDATIONS REGARDING LICENSING AND ENFORCEMENT.**

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*Raises the revenue threshold above which a registered charitable organization must submit to a formal audit, while allowing smaller organizations to instead submit to a CPA's financial "review report"*

§ 32 — CONSUMER PRIVACY AND SAFEGUARDING REQUIREMENTS

*Makes changes to SB 1058, as amended by Senate Amendment "A," § 5, further modifying the penalty and enforcement mechanism for personal information safeguarding requirements*

**SUMMARY**

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

1. expanding the DCP commissioner's enforcement powers, such as establishing them specifically for apprentice law violations;
2. standardizing the process for renewing lapsed DCP credentials and adding requirements for completing required continuing education;
3. expanding the information that must be submitted to DCP for it to determine whether a criminal history may preclude credentialing;
4. setting a deadline for the removal of leased fuel tanks;

5. requiring homemaker-companion agencies to notify clients and DCP before making certain changes to, or terminating, services;
6. raising the revenue threshold above which a registered charitable organization must submit to a formal audit; and
7. modifying the penalty and enforcement mechanism for certain personal information safeguarding requirements.

\*House Amendment "A" (1) modifies the provisions on leased fuel tank removal and reinstates the current penalty for violations of certain written contract provisions; (2) modifies the provisions on inquiries about prior convictions and credentialing, including eliminating a requirement that applicants pay for the service; (3) clarifies the homemaker-companion agency provisions, including adding exceptions to a requirement that clients receive advance notice of unilateral termination of services and delaying the effective date; (4) eliminates a provision in the underlying bill giving the DCP commissioner a broad grant of subpoena power; and (5) adds the provisions on charitable organizations' financial statements and personal information safeguarding requirements.

EFFECTIVE DATE: Upon passage, except the provisions on homemaker-companion agencies are effective October 1, 2023, and those on data safeguarding are effective July 1, 2023.

## **§ 1 — PRICE SIGNAGE FOR SPECIALTY FUELS**

*Allows specialty fuel prices to be posted per liter or half-gallon, rather than only per gallon*

The bill allows sellers of specialty engine fuel (e.g., racing fuel and fuel for agricultural or other off-road applications) to post prices per half-gallon or liter instead of per gallon, as current law requires. This authorization only applies if the fuel is not subject to a quality or usability standard set by the American Society for Testing and Materials or another national consensus quality or usability standard.

## **§ 2 — LEASED FUEL TANK REMOVAL DEADLINE**

*Sets a 30-day deadline for heating fuel dealers to remove a residential leased fuel tank after the consumer terminates service*

The bill requires heating fuel dealers that lease or lend a heating fuel tank and associated equipment to a consumer to remove the tank and equipment from the consumer's residential premises within 30 days after the consumer terminates the fuel delivery service. A dealer who violates this requirement may be subject to a fine of up to \$250, payable through the Centralized Infractions Bureau. A violation is also an unfair trade practice (see BACKGROUND).

Heating fuel dealers are individuals or companies that sell at retail heating fuel (i.e., a petroleum-based fuel used primary for residential heating or domestic hot water) (CGS § 16a-17).

### **§§ 3-4, 6, 8 & 17 — INQUIRIES ABOUT A CONVICTION AND CREDENTIALING**

*Expands the information that people with criminal histories must submit to DCP when asking if their conviction disqualifies them from obtaining various occupational credentials*

PA 22-88 created a process for people who were convicted of a crime to learn if their conviction would disqualify them from getting various occupational licenses, certificates, and permits. Under current law, someone making this request must submit (1) details on the conviction and (2) any required payment (up to \$15 per request, which is waivable). The bill modifies these procedures for the following DCP-credentialed professions:

1. public accountants (§ 3);
2. architects (§ 4);
3. tradespeople in the following fields: elevator installation, repair, and maintenance; fire protection sprinkler systems; flat glass work; gas hearth; heating, piping, and cooling; irrigation; plumbing and piping; residential stair lift; sheet metal; solar; swimming pool; and electrical (§ 6);
4. major contractors (§ 8); and
5. public service gas technicians (§ 17).

Under the bill, someone making a request to determine if a conviction precludes credentialing must (1) apply on a DCP prescribed form and (2) agree to a state and national criminal history records check. The bill maintains current law's requirement that the person give details on the conviction but eliminates the requirement that they pay a waivable processing fee of up to \$15. The bill also specifies that the department's timeline to respond to requests is triggered by the submission of a complete application.

### **§ 5 — ARCHITECTS WORKING AS INTERIOR DESIGNERS**

*Specifies the conditions under which an architect working as an interior designer must comply with continuing education requirements*

The bill specifies that licensed architects who complete the required continuing education (CE) requirements for architects do not need to complete those for interior design work unless they hold an interior designer certificate of registration. By law, architects are allowed to use the title "interior designer" without obtaining the credential (CGS § 20-377l).

The bill also specifies that if a licensed architect is also a registered interior designer, then he or she must comply with the CE requirements for interior designers.

### **§ 7 — TRADE LICENSING LAW VIOLATIONS**

*Increases civil penalties for violations of various licensing laws, including those on apprentice hiring; gives the DCP commissioner new enforcement options for violations of apprentice hiring laws*

#### ***Civil Penalties for Violations of Trade Licensing Laws***

After notice and a hearing, existing law allows trade examining boards and the DCP commissioner to impose civil penalties for:

1. engaging in work without the appropriate trade license or apprentice registration certificate, or with an expired one;
2. willfully employing or supplying for employment an unlicensed or unregistered person;
3. willfully and falsely pretending to qualify for work that requires

a trade credential that one does not have; or

4. violating other provisions of the trade licensing laws or regulations.

Under current law, a first violation subjects the violator to a penalty of up to \$1,000; a second violation to a penalty of up to \$1,500; and a third or subsequent violation occurring less than three years after a previous violation to a \$3,000 penalty. The bill instead sets the maximum penalty for a violation at \$3,000, regardless of if it is a first or subsequent one. Unchanged by the bill, an improperly registered apprentice is not penalized for a first offense.

### ***Apprentice Hiring Law Violations***

By law, apprentices in certain trades and their employers must participate in the state Department of Labor's (DOL) occupational apprenticeship program (see BACKGROUND). The bill gives the DCP commissioner new enforcement options for situations in which employers (1) offer apprenticeships without registering with the DOL's apprenticeship program or (2) do not verify that an apprentice is registered with DOL. Specifically, the bill allows the commissioner to:

1. issue a cease and desist order to a person who advertises, offers, engages in, or practices the work of an apprenticeship training program, for the purpose of providing the experience necessary to obtain a journey person's license, without first registering the employer and program with DOL;
2. issue a cease and desist order to a registered employer who employs a person as an apprentice without first verifying that he or she is registered as an apprentice with DOL; and
3. for either of the above violations, after a hearing, impose a fine of up to \$5,000 per violation.

Under existing law, it is a:

1. Connecticut Unfair Trade Practices Act (CUTPA) violation to fail

to comply with trade licensing laws, including those on apprentice hiring (see BACKGROUND) and

2. class B misdemeanor to willfully engage in work that requires an apprentice registration certificate without one (punishable by up to six months imprisonment, a \$1,000 fine, or both).

The bill also modifies how civil penalties for violations of the licensing statutes, including the apprentice hiring laws, are applied (see above).

### **§ 9 — NEW HOME CONSTRUCTION CONTRACTORS**

*Establishes that registrations renewed during the transition year from biennial to annual credentialing will be effective for 18 months and cost \$180*

Under existing law, certain new home construction contractor registrations are valid for two years and will expire on September 30, 2023. After that, under the provisions of a 2021 law, new home construction contractor registrations expire on March 31 annually.

The bill establishes that registrations renewed during the transition year will be effective for 18 months and cost \$180 (for one-year registrations, the fee is \$120). Additionally, registrants for the transitional 18-month license must make a prorated contribution of \$360 to the New Home Construction Guaranty Fund (for one-year registrations, the fee is \$240). Lastly, the bill specifies that new home construction contractors that also do the work of a home improvement contractor must make a prorated contribution of \$150 to the Home Improvement Guaranty Fund (for one-year registrations, the fee is \$100).

### **§§ 10-16 — HOME IMPROVEMENT CONTRACTORS AND SALESPERSONS**

*Modifies requirements for getting and maintaining a contractor or salesperson registration; increases civil penalties for violating related laws*

#### ***Home Improvement Businesses (§ 12)***

The bill specifies a home improvement contractor that is not an individual can be structured as any business entity; it does not have to be structured as a corporation. It makes related changes to specify that

a home improvement contractor that is a legal entity must give DCP a list of its individual owners.

The bill requires a home improvement contractor, structured as a legal entity, to maintain a list of its employees and contractors, and all employment documents associated with them, in an auditable format for at least four taxable years. These businesses must, upon the commissioner's or his or her representative's request, (1) immediately make the list and documents available for inspection and copying and (2) produce copies of the list and documents within two business days, if requested. The documents and copies must be provided in electronic format unless it is not commercially practical.

***Registration Information Provided to DCP (§§ 11 & 13)***

The bill requires home improvement contractors to provide (1) an email address when applying to DCP for a registration and (2) certain conviction history disclosures, as described below.

The bill also requires a registered home improvement contractor or salesperson to update, through DCP's online licensing system and within 30 days of a change, any application information given as part of a registration (e.g., contact or insurance information, or criminal history). If the contractor is a business entity, the bill specifies that this applies to the criminal histories of the business's owners.

***Disclosing Criminal Convictions (§§ 12-14)***

The bill requires home improvement contractors, when applying to DCP for a registration, to disclose whether they (or an owner in the case of a business entity) was found guilty or convicted of an act that (1) is a felony under Connecticut or federal law or (2) was committed in another jurisdiction but, if committed in Connecticut, would be a felony. By law, state agencies may only take action related to a credential against a person found guilty or convicted of a felony if the decision is based on (1) the conviction's nature, (2) its relationship to the practitioner's ability to perform the occupation's duties or responsibilities safely or competently, (3) information about the practitioner's degree of rehabilitation, and (4) the time passed since the conviction or release.



Following a felony conviction of an individual registrant or a business owner, if the commissioner makes the decision in keeping with the above four considerations, the bill specifically allows the commissioner to revoke, suspend, or refuse to issue or renew a home improvement salesperson's or contractor's registration; place the registrant on probation; or issue a letter of reprimand.

***Civil Penalties (§ 15)***

The bill eliminates current law's graduated civil penalty scheme and replaces it with a maximum penalty of \$1,500.

By law, after notice and a hearing, the commissioner may impose civil penalties for:

1. engaging in work that requires a registration without having an active one,
2. willfully employing or supplying for employment an unregistered person,
3. willfully and falsely pretending to qualify for work that requires a registration that one does not have, or
4. violating other provisions of the trade licensing laws or regulations.

Currently, a first violation subjects the violator to a penalty of up to \$500; a second violation within three years of the first to a penalty of up to \$750; and a third or subsequent violation within three years after a previous violation to a \$1,500 penalty. The bill keeps the maximum penalty (\$1,500) for these violations but applies it to any violation. The bill also eliminates a provision setting the minimum penalty for a radon mitigation work related violation at \$250.

***Technical Changes (§§ 10, 12 & 16)***

The bill makes technical and conforming changes.

**§§ 18 & 19 — HOMEMAKER-COMPANION AGENCIES**

*Expands disclosure requirements for homemaker-companion agencies, such as when an agency changes service rates or ceases operations; requires background checks of certain prospective agency owners*

**Disclosures to Clients (§§ 18 & 19)**

The bill adds disclosure requirements for homemaker-companion agencies. It requires agencies to give at least 60 days' written notice to a client or their representative before changing a service rate (unless there is also a change in the level or type of services). If the disclosure is not made, the charge is unenforceable. The bill also requires agencies to:

1. disclose in writing to a person scheduled to receive services (or his or her authorized representative), the full legal name of the employee who will provide the services, before the employee enters the client's home and
2. include in the contract, which by law must be provided within seven days after beginning services, notice that the agency must give at least 60 days' written notice before changing service rates.

Additionally, with exceptions, at least 10 days before a homemaker-companion agency unilaterally stops providing services to a Connecticut client, the bill requires the agency to notify the person in writing, explaining how he or she (1) may transition to alternative care and (2) will be reimbursed for any prepaid services. The notice must also have contact information for the person to get more information from the agency. The bill allows exceptions to this requirement if:

1. the client, his or her authorized representative, or someone else living with the client or with access to his or her home verbally or physically abused, threatened, or otherwise mistreated an agency employee;
2. providing homemaker or companion services would place the agency at risk of failing to comply with an applicable local, state, or federal law (e.g., antidiscrimination, employment, health, or occupational safety laws); or
3. the client failed to pay for homemaker or companion services as

required under the written contract or service plan.

Consequently, in these circumstances, the agency can stop providing services without giving the 10 days' notice the bill otherwise requires.

***Sale, Change in Ownership, or Ceasing Operations (§§ 18 & 19)***

Existing law requires applicants for a homemaker-companion agency registration to submit to a state and national criminal history check (CGS § 20-672). The bill also generally requires, before any sale or change in ownership of an agency, each proposed new owner or, if a proposed new owner is a business entity, the individuals who own the entity, to submit to state and national criminal history records checks. The bill exempts a proposed new owner from this requirement if he or she:

1. owns less than 10% of the shares or other equity interests in any publicly listed or traded homemaker-companion agency and will not engage in the agency's day-to-day operations or direct its management and policies or
2. owns less than 5% of the shares or other equity interests in any private homemaker-companion agency and will not engage in the agency's day-to-day operations or its direct management and policies.

The bill also makes a background check unnecessary if the commissioner waives the requirement that a new agency application be filed under the general registration law, CGS § 20-672.

Under the bill, at least 10 days before a homemaker-companion agency stops providing all services in Connecticut it must notify DCP in writing, which must include contact information that it may use to contact the agency to get more information.

**§§ 20 & 28-29 — UNTIMELY CREDENTIAL RENEWALS**

*Revises the process and requirements for renewing a lapsed DCP credential*

The bill revises the process for renewing a DCP credential after the deadline for doing so has passed by setting a broadly applicable 90-day threshold for untimely renewals that can be obtained without DCP

reinstatement.

Under current law, if a person allows a DCP credential to lapse and the period for automatic reinstatement has ended (or the law did not specify one), the person can apply to DCP for reinstatement. Generally, DCP can reinstate the credential (without examination, if applicable) only if fewer than three years passed since the deadline for automatic reinstatement. But in the case of licenses specifically, the law does not have a three-year limit. So, under current law, the department has discretion to reinstate a lapsed license without examination.

### ***Late Renewals***

Under the bill, if a renewal application is submitted within 90 days of the credential's expiration, the applicant has to pay existing law's late fee (i.e., 10% of the renewal fee, up to \$100, but at least \$10), but does not need to apply for reinstatement.

### ***Reinstatement***

If more than 90 days (or another period specified in law for automatic reinstatement) elapse, but fewer than three years, the bill requires an application for reinstatement. As under existing law, it is within DCP's discretion whether to reinstate the credential. The bill eliminates DCP's authority to reinstate a license that lapsed for more than three years. It also specifies that one cannot apply for a new license instead of using the bill's reinstatement process in the three-year period during which the reinstatement process applies.

Under the bill, reinstatement requirements vary depending on whether the person worked in the field without a required credential. The bill applies the same free structure as currently applies to reinstatements but adds continuing education requirements. So, under the bill:

1. if the applicant did not work, he or she must (a) pay the current year's renewal fee for reinstatement and (b) take any continuing education required for the year of, and the year before, the reinstatement; and

2. if the applicant worked, he or she must (a) pay all license and late fees due for the period in which the credential was lapsed and (b) show completion of all continuing education required for the year before reinstatement.

The bill also makes conforming changes in the e-cigarette and vaping product laws that refer to the late fee (§§ 28-29).

### **§ 21 — PENDING ACTIONS AND THE FREEDOM OF INFORMATION ACT**

*Exempts from disclosure under the Freedom of Information Act records related to pending enforcement actions or investigations*

The bill makes all records, papers, and documents obtained during a DCP investigation or enforcement action confidential and not subject to disclosure under the Freedom of Information Act until the investigation or enforcement action is adjudicated or otherwise settled or closed.

### **§§ 22 & 23 — FOOD WITH ADDED SULFITING AGENTS**

*Aligns the state's Uniform Food, Drug and Cosmetic Act with federal requirements on sulfiting agents in foods*

The bill updates the state's Uniform Food, Drug and Cosmetic Act to conform to federal law and regulations on sulfiting agents in foods (e.g., sulfur dioxide, sodium sulfite, or sodium bisulfite). Specifically, it eliminates a provision specifying that food is adulterated if it has added sulfiting agents and instead allows for their addition as an "incidental additive," as defined and permitted under federal law. Under federal law, these are generally additives that are present in a food at insignificant levels and have no technical or functional effect in that food, such as processing aids.

The bill correspondingly (1) eliminates requirements for warning consumers that sulfiting agents are present in bulk, unpackaged food and (2) specifies when manufactures must list the agents as ingredients.

### **§§ 24-27 — BEDDING SUPPLY DEALER CREDENTIAL**

*Eliminates an obsolete license for bedding supply dealers*

The bill eliminates an obsolete license for supply dealers, which under current law are people who manufacture, process, package,

repackage, or otherwise prepare for sale natural or synthetic fibers, feathers, or other soft material used to manufacture bedding. Bedding includes mattresses, pillows, quilts, and upholstered furniture used for sleeping, resting, or reclining. Existing law, unchanged by the bill, requires a license before operating as a bedding:

1. manufacturer (i.e., someone who makes, prepares for sale, or imports bedding that contains filling material);
2. importer (i.e., someone who imports bedding from outside the United States);
3. renovator (i.e., someone who adds new filling material to bedding for a fee); or
4. secondhand dealer (i.e., someone who sells secondhand bedding).

### **§§ 30 & 31 — CHARITABLE ORGANIZATIONS AUDIT REQUIREMENT**

*Raises the revenue threshold above which a registered charitable organization must submit to a formal audit, while allowing smaller organizations to instead submit to a CPA's financial "review report"*

Currently, under the Connecticut Solicitation of Charitable Funds Act, charitable organizations with more than \$500,000 in annual gross revenue must include a CPA's audit report in the annual financial report they submit as part of the DCP registration process. Under the bill, beginning with annual reports due after July 1, 2023:

1. organizations with over \$1 million in gross revenue must only attest in their annual report that the organization was subject to a CPA's audit and
2. organizations with gross revenues over \$500,000 and not exceeding \$1 million can instead attest that they were subject to a CPA's financial review report.

### **§ 32 — CONSUMER PRIVACY AND SAFEGUARDING REQUIREMENTS**

*Makes changes to SB 1058, as amended by Senate Amendment "A," § 5, further modifying the penalty and enforcement mechanism for personal information safeguarding requirements*

Existing law requires people in possession of certain types of personal information to (1) safeguard the data, and computer files and documents containing it, from misuse by third parties and (2) destroy, erase, or make the data, computer files, and documents unreadable before disposing of them. These safeguarding requirements apply to information associated with a particular individual through one or more identifiers (e.g., Social Security numbers, driver's license numbers, state identification card numbers, account numbers, debit or credit card numbers, passport numbers, alien registration numbers, health insurance identification numbers, or any military identification information).

The bill changes the penalty and, in some cases, the enforcement mechanism for these safeguarding requirements. Currently, violators are subject to a \$500 civil penalty for each violation, up to \$500,000 for a single event, and penalties only apply if the violation was intentional. The bill instead makes a violation an unfair trade practice under CUTPA. Among other things, CUTPA allows the DCP commissioner to investigate complaints, issue cease and desist orders, and order restitution in certain cases. While individuals generally can sue under CUTPA, the bill specifies that it does not create a private right of action and disallows individuals and classes from suing under it. Under CUTPA, courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorney's fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for restraining order violations (CGS § 42-110a et seq., see BACKGROUND).

The bill additionally allows DCP to conduct an administrative hearing and impose a civil penalty of up to \$5,000 per violation.

Under current law, DCP enforces safeguarding requirements, unless the person possessing data is supervised by another state agency under a license, registration, or certificate. In that case, the other state agency enforces them. The bill exempts the attorney general's actions from these provisions. Additionally, it allows, rather than requires, civil

penalties to be deposited into the privacy protection guaranty and enforcement account.

## **BACKGROUND**

### ***Related Bills***

sSB 135 (File 95), reported favorably by the General Law Committee, caps at \$100 various annual and biennial DCP occupational credentialing fees for individuals, such as contractors in the trades.

sSB 1025 (File 104), as amended by Senate Amendment "A" and passed by the Senate, makes various changes to the homemaker-companion laws, including (1) requiring DCP to revoke a homemaker-companion agency's registration if it violates certain statutory requirements frequently, (2) specifying how agencies may market their services and requiring them to include certain information in their client contracts or service plans, and (3) requiring the Office of Policy and Management to develop a plan to transition oversight of these agencies to the Department of Public Health.

sSB 1058 (Files 204 and 676), as amended by Senate Amendment "A" and passed by the Senate, contains identical provisions on charitable organizations' financial statements (§§ 16 & 17) and related provisions on consumer privacy data safeguarding (§ 5).

### ***Connecticut's Apprenticeship Program***

States administer apprenticeship programs within a framework set by federal law. DOL administers Connecticut's apprenticeship program through its Office of Apprenticeship Training (OAT). Programs must meet all the minimum requirements set by OAT, the State Department of Education, and DCP.

Apprenticeship programs may be sponsored by an employer or a union-employer joint committee. An employer can sponsor an apprenticeship program only if it registers with, and is approved by, DOL. Apprentices register with DOL through approved employers. When they register, apprentices receive a registration form that contains the agreement between the employer and apprentice, spelling out each



party's responsibilities (CGS §§ 31-22m to 31-22v; Conn. Agencies Regs., §§ 31-51d-1 to -12).

***Connecticut Unfair Trade Practices Act (CUTPA)***

The law prohibits businesses from engaging in unfair and deceptive acts or practices. CUTPA allows the consumer protection commissioner to issue regulations defining what is an unfair trade practice, investigate complaints, issue cease and desist orders, order restitution in cases involving less than \$10,000, enter into consent agreements, ask the attorney general to seek injunctive relief, and accept voluntary statements of compliance. It also allows individuals to sue. Courts may issue restraining orders; award actual and punitive damages, costs, and reasonable attorney's fees; and impose civil penalties of up to \$5,000 for willful violations and \$25,000 for violation of a restraining order.

**COMMITTEE ACTION**

General Law Committee

Joint Favorable Substitute

Yea 22 Nay 0 (03/07/2023)