
OLR Bill Analysis

sSB 201

AN ACT CONCERNING THE ATTORNEY GENERAL'S RECOMMENDATIONS REGARDING PRICE DISCLOSURE, SERVICE AGREEMENTS, THE NEW HOME CONSTRUCTION GUARANTY FUND AND THE CONNECTICUT UNFAIR TRADE PRACTICES ACT.

SUMMARY

This bill requires anyone selling goods or services in the state to disclose their total price, including fees and charges other than taxes, and makes violations an unfair or deceptive trade practice under the Connecticut Unfair Trade Practices Act (CUTPA).

The bill prohibits certain service providers from entering into “unfair service agreements” with residential property owners, makes these agreements unenforceable, and makes violations of this prohibition an unfair or deceptive trade practice under CUTPA. The bill prohibits these agreements from being recorded in the land records and establishes certain legal remedies for property owners if they are recorded. It also requires service providers that previously entered into service agreements to record a new notice on the land records that meets specified requirements.

The bill expands eligibility for the New Home Construction Guaranty Fund to allow consumers to recuperate money from the fund for judgments awarded against certain individuals with an ownership interest in a new home construction company who violated certain laws. It also makes these individuals and contractors liable for consumer payouts from the fund that result from a judgment against them.

The bill also authorizes the Department of Consumer Protection (DCP) to investigate violations of and enforce the terms of an “assurance of voluntary compliance” under CUTPA and makes these violations a

willful CUTPA violation. It also allows these assurances to require the payment of investigative costs.

Lastly, the bill makes technical and conforming changes.

EFFECTIVE DATE: Upon passage, except the price disclosure provision is effective October 1, 2024, and the unfair service agreements provisions are effective July 1, 2024.

§ 1 — TOTAL PRICE DISCLOSURE

The bill requires people and businesses advertising, displaying, or offering any good or service for sale in the state to clearly and conspicuously disclose the total price. This includes all mandatory fees and charges except taxes imposed by a government entity.

§§ 2-7 — UNFAIR SERVICE AGREEMENTS

Prohibition on Entering Into Unfair Service Agreements (§§ 2 & 3)

The bill prohibits service providers from entering into “unfair service agreements” with persons (i.e., people, government agencies, and legal or commercial entities) who hold an interest in residential property with one to four units (i.e., residential property). Under the bill, a “service provider” is a person providing, or agreeing to provide, a service to another person in the state related to residential property maintenance, purchases, or sales. A “service agreement” is a contract in which a service provider agrees to provide these services (see § 7 below).

Under the bill, a service agreement is unfair if on or after July 1, 2024, the agreement:

1. does not require the service provider to perform any tasks within one year of entering into the agreement;
2. claims to run with the land or bind the property’s future owners;
3. allows the service provider to assign the rights to provide services under the agreement without prior notice to or consent from the property owner; or
4. claims to create a lien, encumbrance, or security interest in the

property.

The bill makes unfair service agreements unenforceable.

Unfair Service Agreements Recorded in the Land Records (§§ 4 & 5)

The bill (1) prohibits persons from taking action to record unfair service agreements or any notices or memorandums about these agreements in the land records and (2) allows town clerks to refuse to receive these documents for recording.

If an unfair service agreement, notice, or memorandum is recorded:

1. it is not considered to give actual or constructive notice to the applicable property's purchaser or creditor;
2. any person with an interest in the property or the attorney general can apply to the Superior Court for an order declaring the agreement unenforceable; and
3. any person with an interest in the property may recover the actual damages, costs, and attorney's fees that may be proven against the service provider that recorded the agreement.

Under the bill, if a town clerk is presented with a court order declaring the agreement, notice, or memorandum unenforceable, he or she must discharge the document.

Requirement to Rerecord Prior Service Agreements (§ 6)

By July 31, 2024, service providers that entered into a service agreement on or before June 30, 2024, must record a notice of the agreement with the town clerk of the town where the residential property is located. These notices must include:

1. the title "Notice of Service Agreement" printed in at least 14-point bold type;
2. a legal description of the residential property subject to the agreement;

3. the fee amount, or calculation methodology, specified in the agreement;
4. the agreement's expiration date or circumstances under which it will expire; and
5. the service provider's name, address, telephone number, and notarized signature (or that of its authorized officer or employee, as applicable).

If a service provider fails to timely record this notice, the service agreement is void and unenforceable and any interest in the applicable property may be conveyed free and clear of the agreement.

Excluded Agreements (§ 7)

The bill's prohibition on unfair service agreements and its related provisions do not apply to the following:

1. home warranties or similar products covering the maintenance cost of any major home system for a fixed period (e.g., electrical, plumbing, heating, ventilation, and air conditioning);
2. insurance contracts;
3. options or rights of first refusal to purchase residential property;
4. instruments that create a common interest community, and any amendments to those instruments;
5. maintenance or repair agreements entered into by a common interest community unit owners' association;
6. mortgage loans or commitments to make or receive mortgage loans;
7. security agreements relating to the sale or rental of any personal property or fixture governed by the Uniform Commercial Code; and
8. regulated utility service providers (e.g., cable, electrical, sewer,

telephone, and water).

Mechanic's Liens (§ 7)

Under the bill, the unfair service agreement prohibition and related provisions do not impair the rights granted by any mechanic's lien that is placed on residential real estate under the law.

§§ 8 & 9 — NEW HOME CONSTRUCTION GUARANTY FUND

Under current law, a consumer who is awarded a judgment (e.g., a binding arbitration decision, court judgment, order, or decree) against a registered new home construction contractor but is unable to satisfy the judgment (i.e., get payment from the contractor) may apply to DCP to instead recuperate the judgment amount (up to \$30,000) from the New Home Construction Guaranty Fund. (New home construction contractors annually pay into this fund when renewing their registrations.) Under the bill, consumers may also recuperate money from the fund if the judgment was awarded against certain individuals with an ownership interest in a new home construction company who have been found by a court to have violated certain laws (i.e., "proprietors").

More specifically, to qualify as a "proprietor," the person must meet two criteria. First, he or she must have an ownership interest in a new home construction company that is currently, or was previously, registered by DCP. Second, he or she must have been found by a court to have violated the state's new home construction contractor laws for the company's conduct. The company must either be currently registered as a new home construction company or have been registered within two years before it entered into the contract with the consumer harmed by the company's or owner's actions.

The bill makes consumers awarded a judgment against a proprietor eligible for funds from the New Home Construction Guaranty Fund subject to the same conditions and requirements the law has for consumers with a judgment against a contractor. For example, among other things, the consumer:

1. must apply in writing to DCP within two years of the judgment being finalized;
2. is eligible to receive up to \$30,000 from the fund for the actual damages and costs he or she was awarded by the court (excluding punitive damages) and minus any amount already recovered; and
3. must affirm that he or she has made a good faith effort to satisfy the judgment by following statutory post-judgment procedures.

Additionally, the bill makes new home construction contractors and proprietors liable for consumer payouts from the New Home Construction Guaranty Fund that result from a judgment against them.

§§ 10, 11 & 12 — ASSURANCES OF VOLUNTARY COMPLIANCE UNDER CUTPA

Existing law allows the DCP commissioner to accept an assurance of voluntary compliance from anyone alleged to have violated CUTPA. These assurances generally specify the terms by which the person (usually a company) will come into compliance with CUTPA. By law, they are not admissions of violations and an investigation closed by an assurance of voluntary compliance may be reopened at any time.

The bill authorizes the DCP commissioner to investigate violations of and enforce the terms of an assurance of voluntary compliance and ask the attorney general to apply to the Superior Court for relief in the same way as the law allows for CUTPA violations. The bill also makes these violations a willful violation under CUTPA. In doing so, it allows the attorney general to ask the court to impose a civil penalty of up to \$5,000 for each violation.

Lastly, the bill allows the assurances to require the person to pay for investigative costs. Existing law allows them to include restitution costs.

BACKGROUND

Related Bills

sSB 3, favorably reported by the General Law Committee, generally

prohibits businesses that offer to sell, lease, or provide consumer goods or services from advertising, displaying, or offering the good or service at a price unless it includes any charges and fees other than taxes.

SB 15 (File 67), favorably reported by the General Law Committee, prohibits individuals and legal entities from advertising, displaying, or offering pricing for (1) event tickets and (2) consumer goods or services on food delivery platforms, lodging platforms, or primary or secondary ticket platforms unless they disclose the total price, including all mandatory fees or charges, other than taxes.

sHB 5203, favorably reported by the Transportation Committee, requires auto dealers to include in a vehicle's price all charges and fees that a buyer must pay to purchase the vehicle, except that dealers may exclude taxes and other government-imposed charges.

sHB 5236 (File 103), favorably reported by the General Law Committee, allows the DCP commissioner to impose a civil penalty of up to \$5,000 for CUTPA violations, after an administrative hearing.

sHB 5272, favorably reported by the Planning and Development Committee, (1) expands eligibility for the New Home Construction Guaranty Fund to allow consumers to recuperate money from the fund for judgments awarded against certain individuals with financial or operational control of a new home construction company; (2) increases, from \$30,000 to \$50,000, the maximum amount consumers may recuperate from the fund; and (3) lowers, from \$750,000 to \$650,000, the maximum balance the fund may carry.

COMMITTEE ACTION

General Law Committee

Joint Favorable Substitute

Yea 22 Nay 0 (03/12/2024)