OLR RESEARCH REPORT

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2013 VETO PACKAGE

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The governor vetoed the following public acts:

PA 13-100, *An Act Concerning Safety and Certification Standards for the Spray Foam Insulation Industry*

PA 13-158, *An Act Concerning Bail Bonds*

PA 13-201, *An Act Concerning the Recommendations of the Connecticut Sentencing Commission Regarding the Membership of the Commission*

PA 13-219, *An Act Concerning Reemployment and the Municipal Employees' Retirement System*

PA 13-237, *An Act Concerning All-Terrain Vehicles and the Certification of Household Goods Carriers*

PA 13-278, *An Act Concerning Members of a Medical Foundation*

PA 13-284, *An Act Concerning Medical Spa Facilities*

PA 13-309, *An Act Concerning Employer Use of Noncompete Agreements*

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A vetoed act will not become law unless it is reconsidered and passed again by a two-thirds vote of each house of the General Assembly. The legislature is scheduled to meet for a veto session on July 22, 2013.

This report consists of a brief summary of each act in numerical order, the final vote tallies, and excerpts from the governor's veto messages.

PA 13-100 — HB 5908

An Act Concerning Safety and Certification Standards for the Spray Foam Insulation Industry

This act requires the consumer protection commissioner, in consultation with the commissioners of public health and energy and environmental protection, to adopt regulations developing safety and certification standards for the spray foam insulation industry.

Senate vote: 34 to 0 (May 30)
House vote: 145 to 0 (April 24)

Excerpt from the governor's veto message:

> …I am concerned that the bill provides insufficient guidance as to the scope or objectives of the required regulations. Accordingly, I believe that signing this bill into law would result in unnecessary expense to the state and would impose an undue burden on three state agencies, none of which possesses expertise in the spray foam insulation industry. Finally, I note that Public Act 13-43, signed into law on May 28, 2013, establishes a detailed certification requirement for certain types of spray foam insulation….
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> …[A] more practical approach would be to encourage those installing spray foam insulation to obtain training, credentialing or certification under programs such as have been developed, on a national basis, by the American Chemistry Council's Center for the Polyurethane Industry and the Spray Polyurethane Foam Alliance, in consultation with the U.S. Environmental Protection Agency, the National Institute for Occupational Safety and Health, and the Occupational Safety and Health Administration.

PA 13-158 — sHB 6689

An Act Concerning Bail Bonds

This act makes numerous changes relating to bail bonds, including:

1. allowing a surety to apply to the court to be released from a bond after a principal absconds;

2. allowing a court to extend, for good cause, the required six-month stay of execution on a bond forfeiture order when an accused fails to appear in court;

3. automatically terminating a bond and releasing a surety when an accused voluntarily returns between five business days and six months after a bond forfeiture order;

4. requiring the court to vacate a bond and release a professional bondsman or surety bail bond agent and insurer upon satisfactory proof that the accused is held by a federal agency or removed by U.S. Immigration and Customs Enforcement, if the prosecutor does not seek extradition;

5. creating a nine-member task force to examine ways to reduce the costs of extraditing someone to Connecticut and the feasibility of allowing courts to vacate bond forfeiture orders when a professional bondsman, surety bail bond agent, or insurer pays the extradition costs; and

6. specifying that a bond that is automatically terminated because a defendant is sentenced by a court is considered terminated when the sentence actually begins.

Senate vote: 34 to 0 (May 31)
House vote: 131 to 0 (May 24)

Excerpt from the governor's veto message:

> This bill would, among other things, automatically terminate a bond and release a surety when an accused voluntarily returns between five days and six months after a bond forfeiture order. This would undermine the efficient functioning of Connecticut's bail bond system and compromise the state's ability to assure that those facing criminal charges appear in court.
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> The objective of a bail bond is to ensure that an arrested person appears in court as required by that bond. Releasing a surety when an accused voluntarily returns within six months would render the court date conditioned in a bail bond effectively meaningless, giving arrested persons an additional six months to show up in court without consequence and as a matter of course.

PA 13-201 — HB 6509

An Act Concerning the Recommendations of the Connecticut Sentencing Commission Regarding the Membership of the Commission

This act expands, from 23 to 27, the membership of the Connecticut Sentencing Commission by adding the Judiciary Committee's chairpersons and ranking members, or their designees. The designees must be chosen from among the committee's members.

By law, the commission (1) reviews the state's existing criminal sentencing structure and any proposed changes to it and (2) makes recommendations to the governor, the legislature, and criminal justice agencies.

Senate vote: 35 to 0 (June 5)
House vote: 132 to 9 (June 4)

Excerpt from the governor's veto message:

> The Commission is defined in statute as a criminal justice agency and is distinct from commissions and task forces that are largely advisory in nature. As such, it would be inappropriate for legislators to sit on the Commission as full voting members. While I applaud the proponents' intention to familiarize the chairpersons and ranking members with

> the work of the Commission, this objective can be accomplished through regular meetings with such members or by the members' voluntary attendance at the Commission's public meetings.

PA 13-219 — SB 704

An Act Concerning Reemployment and the Municipal Employees' Retirement System

By law, an employee collecting retirement benefits from the Municipal Employees' Retirement System (MERS) must stop collecting the benefits if he or she returns to work for his or her former municipal employer, or any other municipality that participates in MERS, for more than 20 hours per week or 90 days per year. This act allows such an employee to continue to collect MERS benefits as long as he or she does not participate in MERS during the reemployment.

Administered by the state retirement commission, MERS is a statewide pension system for municipal employees that municipalities can opt into by agreeing to meet specified financial requirements. Participating municipalities are not required to enroll all of their employees and can allow some of their employees or unions to participate while others do not. Certain municipal employees, such as teachers and part-time employees, cannot participate in MERS.

Senate vote: 36 to 0 (April 18)
House vote: 141 to 1 (June 4)

Excerpt from the governor's veto message:

> Under this bill, retirees would be able to continue collecting full retirement benefits and receive compensation for full time employment. I believe this bill would impose an undue burden on municipalities and is inconsistent with the purpose of the municipal retirement system, which is intended to provide assistance to our retirees and not current employees.

PA 13-237 — SB 190

An Act Concerning All-Terrain Vehicles and the Certification of Household Goods Carriers

This act requires the Department of Energy and Environmental Protection (DEEP) to implement, by July 1, 2014, the all-terrain vehicle (ATV) proposals provided in its November 2002 publication entitled "All-Terrain Vehicle Policy and Procedures." The publication provides a procedure for DEEP and ATV organizations to designate state land for ATV use. It allows the organizations to submit to DEEP proposals identifying land appropriate for such use. DEEP must review proposals and decide whether to approve of the use. An organization with an approved proposal must then enter into a concession agreement with DEEP for the land's development, operation, and maintenance.

The act also makes changes to a law that requires anyone operating a motor vehicle to transport household goods for hire as a "household goods carrier" (e.g., a moving van company) to obtain a certificate of public convenience and necessity from the transportation commissioner. The act modifies the criteria that the commissioner may consider when deciding whether to issue a certificate.

Senate vote: 35 to 0 (June 5)
House vote: 146 to 0 (June 6)

Excerpt from the governor's veto message:

> Each year, thousands of hikers, cyclists, equestrians, and cross-country skiers, from the very young to senior citizens, use the hundreds of miles of recreational trails on state-owned land. We welcome and encourage outdoor recreation. But we must carefully balance our desire to encourage outdoor recreation with our fundamental mission of protecting our natural resources for future generations. The speed, noise, and power of All-Terrain Vehicles (ATVs) bring greater potential for degradation or destruction of our unique and delicate natural resources. Accordingly, any new legislation regarding ATV usage must take a deliberate, thoughtful and balanced approach. I do not believe that Public Act 13-237 succeeds.

I urge those interested in changing policies concerning ATV usage on state land to work together with DEEP and other stakeholders to craft a more thoughtful legislative proposal that would support creation of sustainable ATV trails.

Public Act 13-237 does contain a valuable provision regarding the certification of transporters of household goods, removing unnecessary barriers to investment. That provision deserves to become law and I look forward to seeing such a provision reintroduced in the next legislative session.

PA 13-278 — sSB 992

An Act Concerning Members of a Medical Foundation

This act expands the list of entities that may be members of a medical foundation to include certain for-profit entities that are parties to a letter of intent, entered into on or before August 1, 2013, with (1) Greater Waterbury Health Network, Inc., (2) Bristol Hospital and Health Care Group, Inc., or (3) another hospital or health system. The act applies despite the existing medical foundations law, which restricts membership in medical foundations to (1) hospitals or health systems organized as nonstock (nonprofit) corporations and (2) medical schools meeting certain criteria.

The act applies to entities that have the following organizational form:

1. stock corporations organized under the state business corporation law or any predecessor statute or

2. foreign stock or nonstock corporations, foreign limited partnerships, or foreign limited liability companies authorized to transact business or conduct affairs under the state business corporation law, nonstock corporation law, uniform limited partnership act, or limited liability company law, or any predecessor statutes.

Senate vote: 33 to 2 (June 5)
House vote: 120 to 25 (June 5)

Excerpt from the governor's veto message:

> This bill would allow certain for-profit entities to become members of a medical foundation. As this bill carves out an exception to existing law for the benefit of specific for-profit entities, further consideration is warranted to determine whether such exceptions are appropriate and, if so, whether existing law should be amended on a broader basis. Further consideration is also warranted to determine whether current law provides adequate safeguards to guard against any perceived or actual threat to the independence of medical decisions made by providers employed by for-profit entities.

PA 13-284 — sSB 1067

An Act Concerning Medical Spa Facilities

This act sets various requirements for medical spa facilities (i.e., facilities where cosmetic medical procedures are performed). Among other things, the act requires these facilities to employ or contract with a physician meeting certain criteria as the establishment's medical director. It requires the medical director, or another physician meeting the same criteria and employed by the facility, to perform an initial physical assessment of a person before he or she can undergo a cosmetic medical procedure at the facility.

Under the act, cosmetic medical procedures at a medical spa facility must be performed by a state-licensed physician, physician assistant (PA), advanced practice registered nurse (APRN), or registered nurse (RN), in accordance with applicable statutory authority. If a PA, APRN, or RN is performing a procedure, he or she must be acting under a physician's supervision and control.

The act's requirements appear to apply to all facilities where cosmetic medical procedures are performed, including those where other types of procedures are performed (e.g., hospitals).

Senate vote: 35 to 0 (June 1)
House vote: 117 to 29 (June 5)

Excerpt from the governor's veto message:

> Protecting public health is an essential role of government, and I strongly support the objectives of this bill. Many of the procedures covered in this bill should only be performed by a licensed medical professional. And, indeed, many cosmetic procedures have already been deemed to be medical in nature, requiring that they be performed by licensed professionals.
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> However, requiring physicians to perform all initial assessments and to perform or supervise and control all cosmetic medical procedures may unnecessarily limit the scope of practice of Advanced Practice Registered Nurses (APRNs) and other licensed medical professionals. Requiring physicians employed or on contract with a medical spa to perform all initial assessments may also unduly burden small businesses if such assessments could be done by another medical professional or an individual's own physician.
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> Requirements as demanding as those included in this bill should follow from a determination by a professional board or working group or upon recommendation by the Department of Public Health following a scope of practice review.

PA 13-309 — sHB 6658

An Act Concerning Employer Use of Noncompete Agreements

This act voids noncompete agreements imposed on an employee as a condition of his or her continued employment with an employer who was acquired by, or merged with, another employer, unless before entering into the agreement, the employer provides the employee with (1) a written copy of the agreement and (2) at least seven calendar days to consider the agreement's merits. The act applies to noncompete agreements made, renewed, or extended on or after October 1, 2013.

An employee may waive his or her rights under the act by signing a separate document describing the rights he or she is waiving before entering into the noncompete agreement. The act specifies that it does not limit or deny an employee any rights they have under the law.

Senate vote: 35 to 0 (June 5)
House vote: 138 to 4 (June 1)

Excerpt from the governor's veto message:

> Notwithstanding the robust common law in Connecticut regarding the appropriate use and scope of noncompete agreements, additional protections for employees may be warranted to guarantee a reasonable period of time to review a written noncompete agreement before entering into such an agreement in the first instance. Unfortunately, this bill leaves certain key terms undefined or unclear. As a result, this bill has the potential to produce legal uncertainty and ambiguity in the event of merger or acquisition. If signed into law, costly and time-consuming litigation would likely be required to provide necessary clarity. It would be better for both employers and employees to receive greater clarity from the General Assembly on this issue next session.

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