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Testimony in Support of
Senate Bill No. 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

General Law Committee
Thursday, February 29th, 2024

Thank you for the opportunity to submit testimony in support of the above-referenced proposals.

Senate Bill No. 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

The statutory changes that the Office of the Attorney General (OAG) recommends in this bill are based on: our experience enforcing the Connecticut Unfair Trade Practices Act (CUTPA) and the need to address hidden and often exorbitant junk fees that are not included in the posted price but are tacked at the last minute; protect homeowners from certain predatory and deceptive "residential exclusive listing agreements;" expand access to the New Home Construction Guaranty Fund; and strengthen the enforcement mechanisms related to Assurances of Voluntary Compliance (AVCs).

Section 1 – Banning "junk" fees

This provision would broadly combat the all-too-common problem of hidden "junk" fees, charges that are not included in the advertised price of a product or service but are ultimately imposed on consumers, other than taxes required by a government entity. Sellers and service providers use junk fees to misrepresent the actual total price by advertising an artificially low price and then adding on hidden fees and costs. It is a classic bait-and-switch.

Section 1 builds on the Committee's efforts last year, to require all-in ticket pricing for live events in Public Act 23-98, which prohibits any increase in price, other than delivery fees for a non-electronic tickets, from the time that the consumer selects a seat until they checkout. **Importantly, this provision closes a loophole in last year's legislation by requiring all-in pricing from the moment the ticket is first advertised, displayed, or offered, even prior to the consumer selecting their seat.** Since the enactment of Public Act 23-98, we have heard from consumers that ticketing platforms continue to run ads or otherwise offer tickets that do not include all-in pricing, prior to the selection of a seat. Section 1 of S.B. No. 201 would close this gap in the disclosure law.

Consumers deserve to know the full cost up-front, not be shocked or surprised at the time of payment that the actual price is far higher than originally disclosed. Too often, however,

consumers find themselves paying higher prices for goods and services than they were led to believe up front, rendering useless their time and effort in comparison shopping to find fair prices.

This proposal would require that those selling goods and services to list the total price, including all mandatory fees and charges other than taxes imposed by a government entity when advertising, displaying, or offering prices. It would also make clear that the failure to do so violates the Connecticut Unfair Trade Practices Act (CUTPA). This section does not burden businesses because it only makes plain what is already expected: honestly tell consumers what their product or service costs up front. It also levels the playing field among competitors.

This proposal is not only consistent with, but would bolster, the United States Federal Trade Commission's proposed Trade Regulation Rule on Unfair or Deceptive Fees. NPRM 207011.

I strongly support the FTC's proposal to outlaw of junk fees altogether. The proposed federal rule would make it an unfair or deceptive trade practice under the FTC Act to advertise an amount the consumer may pay without clearly disclosing the total price and misrepresent the nature of fees imposed. While the proposed federal rule would apply broadly to most industries, it would not supersede, alter, or affect any state statute or regulation. In other words, it would allow states to enact greater protections than afforded by the federal rule to protect consumers from junk fees and bait-and-switch pricing. The FTC does not provide for state enforcement. But Section 1 of S.B. No. 201 would further protect consumers from this abusive conduct by giving Department of Consumer Protection and the Office of the Attorney General better tools to police this deceptive activity when we become aware of it.

In our work at the Office of the Attorney General, we commonly encounter the use of junk fees as part of a pattern of other deceptive conduct. Our investigations have revealed junk fees charged by internet and cable providers, hotels and short-term lodging providers, delivery services, and car rental and travel companies. Given what we have seen across the marketplace, the Office of the Attorney General believes a junk fee bill should capture all sectors.

Section 2 through 7 – Ensuring that predatory and deceptive "Residential Exclusive Listing Agreements" are unenforceable and providing a mechanism for removing existing agreements from property records.

Several states, including Connecticut, are investigating a Florida-based company, MV Realty. MV presently has two licensed realtors in Connecticut. The Attorney General's investigation has revealed that MV targets lower-income homeowners, offering them residential exclusive listing agreements, which MV calls Homeowner Benefit Agreements ("HBA") under which MV provides homeowners a modest cash payment of a few hundred dollars in exchange for the exclusive right to list their homes for sale for a period of 40 years. If a homeowner elects to sell their home during the 40-year period, the MV realtor with exclusive listing rights

merely lists the home on the multiple listing service (MLS) – they do not market the home or otherwise facilitate a sale, in the manner a homeowner would expect of a licensed realtor. If the homeowner seeks to cancel the exclusive listing agreement or lists their home without using an MV agent, however, they are subject to a penalty of 3% of the market price of their home, or several thousand dollars. Moreover, the exclusive listing agreements are entered on the land records as a lien.

There are approximately 400 MV Homeowner Benefit Agreements recorded on residential land records in Connecticut.

After receiving complaints from Connecticut consumers, the Attorney General's investigation revealed that many homeowners did not understand the terms of the agreement when it was offered, were not given time to review the paperwork presented and reviewed and signed the exclusive listing agreements on cracked iPads without a notary present. Some were not afforded the opportunity to read the agreement at all and had it read to them, while others were not given copies of the agreements after execution. Many homeowners did not learn of the terms of the exclusive listing agreement until they were preparing to close on the sale or refinance of their home and the lien was discovered following a title search, forcing them to pay exorbitant amounts to have it removed.

After a handful of states sued MV, the company filed for Chapter 11 bankruptcy and sought to enjoin the states' actions. MV was unsuccessful in preventing the suits from going forward and states including Connecticut continue to pursue all available remedies for removing the exclusive listing agreements from homeowners' land records and seek restitution for consumers who were forced to pay MV. As part of that effort, we propose to clarify that unconscionably long exclusive listing agreements are unenforceable and provide mechanisms for removing existing agreements from land records.

In Section 2, we propose that an exclusive listing agreement would be designated unfair if any part of the service is not to be performed within one year and runs with the land, creates a lien or can be assigned without notice to the owner of the property. Section 3 would specify that any exclusive listing agreement designated as unfair in this Act would be unenforceable and would provide that entering into an exclusive listing agreement with a homeowner is a per se violation of CUTPA, allowing an individual or the Attorney General to bring an action under CUTPA against the service provider.

Section 4 would clarify that recording exclusive listing agreements would not be permitted and that the town clerk may refuse to accept them, and pursuant to Section 5(a), should an exclusive listing agreement be recorded, the Act would allow the Attorney General or a homeowner to petition the superior court to declare the agreement unenforceable and the agreement would be dissolved upon presentment of such order to the town clerk.

Finally, and significantly, Section 6 would nullify existing unfair exclusive listing agreements, such as MV's HBAs, by requiring service providers who entered into these agreements on or before June 30, 2024 to re-record notice of such agreement with the town clerk. If a provider fails to re-record such notice, the agreement would be declared void and unenforceable, and the property could be conveyed free and clear of the service agreement. Section 7 clarifies that the bill does not apply to legitimate agreements and contracts for services.

We believe this proposal protects Connecticut homeowners from predatory real estate service providers by dissolving existing deceptive and unfair exclusive listing agreements, as well as preventing service providers from entering into such unfair agreements in the future.

Section 8 – Increasing Eligibility for the New Home Construction Guaranty Fund

Currently some consumers are excluded from accessing the New Home Construction Guaranty Fund (NHCGF) because when an action is brought in criminal court, it must be brought against an individual and not an individual's business entity.

We appreciate the Committee taking up this proposal, given some particularly egregious and deceptive conduct by a Connecticut new home construction contractor which came to light in the past couple years. As you may know, the Office of the Attorney General has filed criminal charges against Sunlight Construction Inc. owner William Ferrigno, charging the Simsbury developer with five counts of failing to refund very large deposits on homes that he never built. Ferrigno collected deposits ranging from $40,000 to $175,000 for the construction of new homes in Avon, Burlington and Simsbury. Ferrigno never built the homes, and never returned the deposits. In some instances, Ferrigno never even owned the land he was claiming to sell.

The New Home Construction Guaranty Fund can reimburse consumers who are unable to collect for losses resulting from work performed by a new home builder. By law, a consumer who has obtained a court judgment, order, or decree against a new home contractor can apply to the Department of Consumer Protection for restitution for the amount of the judgment, order, or decree, other than punitive damages, and subtracting any amount already recovered from the contractor. Under current law, homeowners may be eligible to receive up to $30,000 from the NHCGF if certain conditions are met, namely that a new home builder was registered with DCP within two years prior to signing the contract with the homeowner and the consumer must apply in writing to DCP within two years of the date of the court judgment.

The proposed language in subsection (d) permits payment to a consumer from the NHCGF following a criminal disposition against a new home builder who has an ownership interest in a business entity that previously registered with DCP. This distinction is especially important because a criminal disposition can only be imposed against an individual contractor and not a business entity. By making this change, a new home contractor who is found criminally liable can no longer avoid all monetary liability by seeking refuge behind his or her business entity. Similarly, subsection (g) protects DCP's interest in recovering any monies paid out from the NHCGF by holding the

individual new home improvement contractor liable for the resulting debt to the guaranty fund. Ultimately, the proposed language will allow for expanded access to the NHCGF as a result of a criminal disposition.

To alleviate some concerns raised by the Home Builders and Remodelers Association of Connecticut, would respectfully request that the Committee revise section 8(g) as follows:

> (g) Whenever the commissioner orders payment to an owner out of the guaranty fund based upon a decision, judgment, order or decree of restitution against an individual that **has been found to violate Chapter 399a of the general statutes and** has an ownership interest in a business entity holding a certificate or that has held a certificate under this chapter within the two years of the effective date of entering into the contract with the owner, the individual that the order of restitution was issued against and **such business entity ~~the contractor~~** shall be ~~**jointly and severally**~~ liable for the resulting debt to the guaranty fund.

Finally, we would note that DCP has proposed a parallel change to the Home Improvement Guaranty Fund (Sec. 20-432) in Section 3 of House Bill No. 5236, which is being considered by the General Law Committee. The Office of the Attorney General supports making this parallel change to the HIGF.

Section 9 through 11 – Strengthening Assurances of Voluntary Compliance and Adding New Tools for Resolving CUTPA Investigations

DCP and the OAG routinely investigate suspected violations of CUTPA. If enforcement is necessary, the Commissioner of Consumer Protection is authorized to accept an assurance of voluntary compliance (AVC) from the respondent, usually a company, as an alternative to litigation. AVCs generally provide that the respondent will come into compliance with CUTPA on specified terms. They may also include consumer restitution or other payments. By statute, AVCs are not admissions of legal violations, making them akin to settlement agreements. AVCs allow the State to secure compliance and consumer relief more efficiently and less formally than through litigation.

To expand the availability of AVCs as a remedy, these provisions enable the Attorney General to enforce violations of AVCs in Superior Court. Presently, the AVC statute, C.G.S. § 42-110j, does not contain an enforcement mechanism. While an investigation closed with an AVC may be reopened at any time, a violation of the AVC, as such, is not actionable by the State. Thus, AVCs are practically unavailable where the State requires an enforceable commitment by the respondent to resolve an investigation. Common examples include required actions after the date of the AVC, such as making future payment(s) to the State or consumers or implementing policies and procedures to prevent future violations. In such cases, the Attorney General typically sues in Superior Court and enters stipulated judgments

enforceable by the court's contempt power, a process which can be more costly and time consuming than the case may merit.

The proposed legislation also treats a respondent's violation of an AVC as evidence that the respondent knew or should have known the relevant conduct was unlawful, meaning that the Attorney General may seek civil penalties for such violations under § 42-110o. Together, these provisions expand the range of situations in which an AVC is an acceptable resolution to an investigation while not altering the language in § 42-110j that makes the AVC, itself, a non-admission of liability.

We would respectfully request that the Committee revise section 9 as follows, to give DCP access to the same tools for ensuring compliance with an AVC:

> Sec. 9. Section 42-110j of the general statutes is repealed and the following is substituted in lieu thereof (Effective from passage):
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> In the administration of this chapter, the commissioner may accept an assurance of voluntary compliance with respect to any method, act or practice deemed in violation of this chapter from any person alleged to be engaged or to have been engaged in such method, act or practice. Such assurance may include an amount as restitution to aggrieved persons and for investigative costs. No such assurance of voluntary compliance shall be considered an admission of violation for any purpose. Matters thus closed may at any time be reopened by the commissioner for further proceedings in the public interest. In the event of any violation of the terms of an assurance of voluntary compliance accepted under this section, the commissioner may **proceed as provided in sections 42-110d and 42-110e** or **may** request that the Attorney General apply **in the name of the state** to the Superior Court for relief from such violation consistent with section 42-110m, as amended by this act.

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