

General Assembly

February Session, 2024

Amendment

LCO No. 5029



Offered by: SEN. MARONEY, 14<sup>th</sup> Dist. REP. D'AGOSTINO, 91<sup>st</sup> Dist.

To: Subst. Senate Bill No. 201

File No. 156 Cal. No. 121

(As Amended by Senate Amendment Schedule "A")

"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."

Strike everything after the enacting clause and substitute the
 following in lieu thereof:

"Section 1. (NEW) (*Effective July 1, 2024*) For the purposes of this
section and sections 2 to 6, inclusive, of this act:

5 (1) "Person" has the same meaning as provided in section 1-79 of the 6 general statutes;

(2) "Record" means to present any instrument to a town clerk for
placement in the land records pursuant to section 7-24 of the general
statutes;

_	sSB 201 Amendment		
10	(3) "Rerecord" means to present any previously recorded instrument		
11	to a town clerk for placement in the land records pursuant to section 7-		
12	24 of the general statutes;		
13	(4) "Desidential real property" means and family to four family		
	(4) "Residential real property" means one-family to four-family		
14	residential real estate located in this state;		
15	(5) "Real estate listing agreement" means any contract under which a		
16	real estate listing provider agrees to provide any real estate listing to any		
17	person in connection with any sale of residential real property;		
18	(6) "Real estate listing provider" means any person who (A) is a party		
19	to a real estate listing agreement, and (B) provides, or agrees to provide,		
20	any real estate listing under the real estate listing agreement; and		
21	(7) "Unfair real estate listing agreement" means any real estate listing		
21	agreement that (A) is entered into on or after July 1, 2024, (B) does not		
22	require the real estate listing provider who is a party to such agreement		
23 24	to perform any part of the real estate listing pursuant to such agreement		
2 <del>1</del> 25	within the one-year period immediately following the date on which the		
26	parties to such agreement entered into such agreement, and (C) (i)		
27	purports to run with the land or bind future owners of interests in the		
28	residential real property that is the subject of such agreement, (ii) allows		
29	for any assignment of any right to provide the real estate listing under		
30	such agreement without first providing notice to, and obtaining consent		
31	from, the owner of the residential real property that is the subject of such		
32	agreement, or (iii) purports to create any lien or encumbrance upon, or		
33	other security interest in, the residential real property that is the subject		
34	of such agreement.		
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- Sec. 2. (NEW) (*Effective July 1, 2024*) (a) No real estate listing provider
  shall enter into any unfair real estate listing agreement with any person
  who holds any interest in residential real property.
- 38 (b) No unfair real estate listing agreement shall be enforceable.
- 39 (c) A violation of subsection (a) of this section shall be deemed an

40 unfair or deceptive trade practice under subsection (a) of section 42-110b41 of the general statutes.

42 Sec. 3. (NEW) (Effective July 1, 2024) No person shall record or 43 rerecord, or cause to be recorded or rerecorded, any unfair real estate 44 listing agreement or any notice or memorandum thereof. If any such 45 agreement, notice or memorandum is recorded or rerecorded, such 46 agreement, notice or memorandum shall not be deemed to provide 47 actual or constructive notice to an otherwise bona fide purchaser or 48 creditor of the residential real property that is the subject of such 49 agreement. Notwithstanding the provisions of section 7-24 of the 50 general statutes, a town clerk may refuse to receive any unfair real estate 51 listing agreement, or any notice or memorandum thereof, for recording 52 or rerecording.

53 Sec. 4. (NEW) (Effective July 1, 2024) (a) Not later than July 31, 2024, 54 each real estate listing provider who entered into a real estate listing 55 agreement on or before June 30, 2024, shall rerecord such agreement, 56 and record notice of such agreement, with the town clerk of the town in 57 which the residential real property that is the subject of such agreement 58 is located if such agreement (1) purports to run with the land or bind 59 future holders of interests in such residential real property, (2) allows 60 for any assignment of any right to provide the real estate listing under 61 such agreement without first providing notice to, and obtaining consent 62 from, the owner of such residential real property, or (3) purports to 63 create any lien or encumbrance upon, or other security interest in, such 64 residential real property.

65 (b) Each notice recorded pursuant to subsection (a) of this section 66 shall include (1) the title "Notice of Real Estate Listing Agreement" 67 printed in not less than fourteen-point bold type, (2) a legal description 68 of the residential real property that is the subject of the real estate listing 69 agreement, (3) the amount of the fee specified in the real estate listing 70 agreement or the method by which such fee shall be calculated, (4) the 71 date or circumstances under which the obligation set forth in the real 72 estate listing agreement shall expire, (5) the name, address and

telephone number of the real estate listing provider, and (6) if the real
estate listing provider is (A) an individual, the notarized signature of
the individual, or (B) an entity, the notarized signature of an authorized
officer or employee of the entity.

(c) If a real estate listing provider fails to rerecord any real estate listing agreement pursuant to subsection (a) of this section, and record a notice of such agreement pursuant to subsections (a) and (b) of this section, on or before July 31, 2024, such agreement shall be void and unenforceable and any interest in the residential real property that is the subject of such agreement may be conveyed free and clear of such agreement.

84 Sec. 5. (NEW) (*Effective July 1, 2024*) (a) If any unfair real estate listing 85 agreement or notice or memorandum thereof is recorded or rerecorded, any person who holds an interest in the residential real property that is 86 87 the subject of such agreement or the Attorney General may petition the 88 Superior Court for an order declaring such agreement to be void and 89 unenforceable. Such petition shall include (1) the address of such 90 residential real property, (2) the name, address and telephone number 91 of the real estate listing provider who is a party to such agreement, (3) 92 the name and address of each person who is known to hold an interest 93 in such residential real property, and (4) the name of the town, and the 94 volume and page number of the land records, where such agreement, 95 notice or memorandum is recorded or rerecorded.

96 (b) Upon filing a petition under subsection (a) of this section, the 97 petitioner shall provide reasonable notice to the Attorney General and 98 all persons who hold an interest in the residential real property 99 disclosing that the petitioner has filed such petition with the court. The 100 petitioner shall append to the petitioner's complaint a statement 101 certifying that the petitioner has provided such reasonable notice. Such 102 statement shall include the names of such other persons, if known, the 103 nature of their interests in such residential real property and the manner 104 in which the petitioner provided such reasonable notice. If the petitioner 105 fails to provide such reasonable notice, the court may direct the

petitioner to provide such reasonable notice and certify to the court thatthe petitioner has provided such reasonable notice.

108 (c) In reviewing a petition filed under subsection (a) of this section, 109 the court may only consider evidence as to whether the real estate listing 110 provider recorded or rerecorded, or caused to be recorded or 111 rerecorded, an unfair real estate listing agreement or a notice or 112 memorandum thereof. The court may issue an order declaring such 113 agreement, notice or memorandum to be void and unenforceable upon 114 a showing that such agreement, notice or memorandum does not 115 comply with the provisions of sections 1 to 6, inclusive, of this act. Such 116 order shall include the volume and page number of the land records 117 where such agreement, notice or memorandum is recorded or 118 rerecorded, and shall direct the town clerk of the town in which the 119 residential real property is located to discharge the recording or 120 rerecording of such agreement, notice or memorandum as void and 121 unenforceable.

122 (d) If any unfair real estate listing agreement or notice or 123 memorandum thereof is recorded or rerecorded, any person with an 124 interest in the residential real property that is the subject of such 125 agreement may recover such actual damages, costs and attorney's fees 126 as may be proven against the real estate listing provider who recorded 127 or rerecorded such agreement, notice or memorandum or caused such 128 agreement, notice or memorandum to be recorded or rerecorded. Such 129 actual damages, costs and attorney's fees shall be in addition to, and not 130 in lieu of, any damages, costs and attorney's fees awarded in any action 131 brought under chapter 735a of the general statutes for a violation of 132 subsection (a) of section 2 of this act.

Sec. 6. (NEW) (*Effective July 1, 2024*) Any real estate listing provider who records or rerecords, or causes to be recorded or rerecorded, any unfair real estate listing agreement or any notice or memorandum thereof, including, but not limited to, any such agreement, notice or memorandum recorded before July 1, 2024, and assigns such real estate listing provider's rights under such agreement shall, not later than thirty

139	days after the date of such assignment, provide notice of such				
140	assignment to (1) any person who holds any interest in the residential				
141	real property that is the subject of such agreement, (2) the town clerk of				
142	the town in which the residential real property that is the subject of such				
143	agreement is located, and (3) the Attorney General.				
144	Sec. 7. Section 42-110j of the general statutes is repealed and the				
145	following is substituted in lieu thereof ( <i>Effective from passage</i> ):				
146	In the administration of this chapter, the commissioner may accept				
147	an assurance of voluntary compliance with respect to any method, act				
148	or practice deemed in violation of this chapter from any person alleged				
149	to be engaged or to have been engaged in such method, act or practice.				
150	Such assurance may include an amount as restitution to aggrieved				
151	persons and for investigative costs. No such assurance of voluntary				
152	compliance shall be considered an admission of violation for any				
153	purpose. Matters thus closed may at any time be reopened by the				
154	commissioner for further proceedings in the public interest. In the event				
155	of any violation of the terms of an assurance of voluntary compliance				
156	accepted under this section, the commissioner may proceed as provided				
157	in sections 42-110d and 42-110e or may request that the Attorney				
158	General apply in the name of the state to the Superior Court for relief				
159	from such violation consistent with section 42-110m, as amended by this				
160	<u>act.</u>				
161	Sec. 8. Subsection (a) of section 42-110m of the general statutes is				
162	repealed and the following is substituted in lieu thereof ( <i>Effective from</i>				
163	passage):				

(a) Whenever the commissioner has reason to believe that any person
has been engaged or is engaged in an alleged violation of any provision
of this chapter said commissioner may proceed as provided in sections
42-110d and 42-110e or may request the Attorney General to apply in
the name of the state of Connecticut to the Superior Court for an order
temporarily or permanently restraining and enjoining the continuance
of such act or acts or for an order directing restitution and the

171 appointment of a receiver in appropriate instances, or both. Proof of 172 public interest or public injury shall not be required in any action 173 brought pursuant to section 42-110d, section 42-110e or this section. 174 Such action may include an application to enforce any term of an 175 assurance of voluntary compliance accepted under section 42-110j, as 176 <u>amended by this act.</u> The court may award the relief applied for or so 177 much as it may deem proper including reasonable attorney's fees, 178 accounting and such other relief as may be granted in equity. In such 179 action the commissioner shall be responsible for all necessary 180 investigative support.

181 Sec. 9. Subsection (b) of section 42-1100 of the general statutes is
182 repealed and the following is substituted in lieu thereof (*Effective from passage*):

184 (b) In any action brought under section 42-110m, as amended by this 185 act, if the court finds that a person is wilfully using or has wilfully used 186 a method, act or practice prohibited by section 42-110b, the Attorney 187 General, upon petition to the court, may recover, on behalf of the state, 188 a civil penalty of not more than five thousand dollars for each violation. 189 For purposes of this subsection, a wilful violation occurs when: [the] (1) 190 <u>The party committing the violation knew or should have known that his</u> 191 conduct was a violation of section 42-110b; or (2) a person violates the 192 terms of an assurance of voluntary compliance accepted under section 193 42-110j, as amended by this act.

Sec. 10. Section 42-515 of the 2024 supplement to the general statutes
is repealed and the following is substituted in lieu thereof (*Effective July*1, 2024):

As used in this section and sections 42-516 to 42-526, inclusive, unlessthe context otherwise requires:

(1) "Abortion" means terminating a pregnancy for any purpose otherthan producing a live birth.

201 (2) "Affiliate" means a legal entity that shares common branding with

202 another legal entity or controls, is controlled by or is under common 203 control with another legal entity. For the purposes of this subdivision, 204 "control" and "controlled" mean (A) ownership of, or the power to vote, 205 more than fifty per cent of the outstanding shares of any class of voting 206 security of a company, (B) control in any manner over the election of a 207 majority of the directors or of individuals exercising similar functions, 208 or (C) the power to exercise controlling influence over the management 209 of a company.

(3) "Authenticate" means to use reasonable means to determine that
a request to exercise any of the rights afforded under subdivisions (1) to
(4), inclusive, of subsection (a) of section 42-518 is being made by, or on
behalf of, the consumer who is entitled to exercise such consumer rights
with respect to the personal data at issue.

215 (4)"Biometric data" means data generated by automatic 216 measurements of an individual's biological characteristics, such as a 217 fingerprint, a voiceprint, eye retinas, irises or other unique biological 218 patterns or characteristics that are used to identify a specific individual. 219 "Biometric data" does not include (A) a digital or physical photograph, 220 (B) an audio or video recording, or (C) any data generated from a digital 221 or physical photograph, or an audio or video recording, unless such 222 data is generated to identify a specific individual.

223 (5) "Business associate" has the same meaning as provided in HIPAA.

(6) "Child" has the same meaning as provided in COPPA.

225 (7) "Consent" means a clear affirmative act signifying a consumer's 226 freely given, specific, informed and unambiguous agreement to allow 227 the processing of personal data relating to the consumer. "Consent" may 228 include a written statement, including by electronic means, or any other 229 unambiguous affirmative action. "Consent" does not include (A) acceptance of general or broad terms of use or a similar document that 230 231 contains descriptions of personal data processing along with other, 232 unrelated information, (B) hovering over, muting, pausing or closing a 233 given piece of content, or (C) agreement obtained through the use of 234 dark patterns.

235 (8) "Consumer" means an individual who is a resident of this state. 236 "Consumer" does not include an individual acting in a commercial or 237 employment context or as an employee, owner, director, officer or 238 contractor of a company, partnership, sole proprietorship, nonprofit or 239 government agency whose communications or transactions with the 240 controller occur solely within the context of that individual's role with 241 the company, partnership, sole proprietorship, nonprofit or government 242 agency.

(9) "Consumer health data" means any personal data that a controller
uses to identify a consumer's physical or mental health condition or
diagnosis, and includes, but is not limited to, gender-affirming health
data and reproductive or sexual health data.

(10) "Consumer health data controller" means any controller that,
alone or jointly with others, determines the purpose and means of
processing consumer health data.

(11) "Controller" means a person who, alone or jointly with others,determines the purpose and means of processing personal data.

(12) "COPPA" means the Children's Online Privacy Protection Act of
1998, 15 USC 6501 et seq., and the regulations, rules, guidance and
exemptions adopted pursuant to said act, as said act and such
regulations, rules, guidance and exemptions may be amended from
time to time.

257 (13) "Covered entity" has the same meaning as provided in HIPAA.

(14) "Dark pattern" means a user interface designed or manipulated
with the substantial effect of subverting or impairing user autonomy,
decision-making or choice, and includes, but is not limited to, any
practice the Federal Trade Commission refers to as a "dark pattern".

(15) "Decisions that produce legal or similarly significant effectsconcerning the consumer" means decisions made by the controller that

result in the provision or denial by the controller of financial or lending
services, housing, insurance, education enrollment or opportunity,
criminal justice, employment opportunities, health care services or
access to essential goods or services.

268 (16) "De-identified data" means data that cannot reasonably be used 269 to infer information about, or otherwise be linked to, an identified or 270 identifiable individual, or a device linked to such individual, if the 271 controller that possesses such data (A) takes reasonable measures to 272 ensure that such data cannot be associated with an individual, (B) 273 publicly commits to process such data only in a de-identified fashion 274 and not attempt to re-identify such data, and (C) contractually obligates 275 any recipients of such data to satisfy the criteria set forth in 276 subparagraphs (A) and (B) of this subdivision.

(17) "Gender-affirming health care services" has the same meaning asprovided in section 52-571n.

(18) "Gender-affirming health data" means any personal data
concerning an effort made by a consumer to seek, or a consumer's
receipt of, gender-affirming health care services.

(19) "Geofence" means any technology that uses global positioning
coordinates, cell tower connectivity, cellular data, radio frequency
identification, wireless fidelity technology data or any other form of
location detection, or any combination of such coordinates, connectivity,
data, identification or other form of location detection, to establish a
virtual boundary.

(20) "HIPAA" means the Health Insurance Portability and
Accountability Act of 1996, 42 USC 1320d et seq., as amended from time
to time.

(21) "Identified or identifiable individual" means an individual whocan be readily identified, directly or indirectly.

293 (22) "Institution of higher education" means any individual who, or

_	sSB 201 Amendment		
294	school, board, association, limited liability company or corporation that,		
295	is licensed or accredited to offer one or more programs of higher		
296	learning leading to one or more degrees.		
297	(23) "Mental health facility" means any health care facility in which at		
298	least seventy per cent of the health care services provided in such facility		
299	are mental health services.		
300	(24) "Neural data" means information that (A) is generated by		
301	measuring the activity of an individual's central or peripheral nervous		
302	system, and (B) can be processed by, or with the assistance of,		
303	<u>neurotechnology.</u>		
304	(25) "Neurotechnology" means a device, instrument or set of devices		
305	or instruments that allows for a connection to be made to an individual's		
306	central or peripheral nervous system for various purposes, including,		
307	but not limited to, reading, recording or modifying an individual's brain		
308	activity or the information obtained from an individual's brain activity.		
309	[(24)] (26) "Nonprofit organization" means any organization that is		
310	exempt from taxation under Section 501(c)(3), 501(c)(4), 501(c)(6) or		
311	501(c)(12) of the Internal Revenue Code of 1986, or any subsequent		
312	corresponding internal revenue code of the United States, as amended		
313	from time to time.		
314	[(25)] (27) "Person" means an individual, association, company,		
315	limited liability company, corporation, partnership, sole proprietorship,		
316	trust or other legal entity.		
317	[(26)] (28) "Personal data" means any information that is linked or		
318	reasonably linkable to an identified or identifiable individual. "Personal		
319	data" does not include de-identified data or publicly available		
320	information.		
321	[(27)] (29) "Precise geolocation data" means information derived from		
322	technology, including, but not limited to, global positioning system		
323	level latitude and longitude coordinates or other mechanisms, that		

directly identifies the specific location of an individual with precision
and accuracy within a radius of one thousand seven hundred fifty feet.
"Precise geolocation data" does not include the content of
communications or any data generated by or connected to advanced
utility metering infrastructure systems or equipment for use by a utility.

[(28)] (30) "Process" and "processing" mean any operation or set of operations performed, whether by manual or automated means, on personal data or on sets of personal data, such as the collection, use, storage, disclosure, analysis, deletion or modification of personal data.

333 [(29)] (31) "Processor" means a person who processes personal data
334 on behalf of a controller.

[(30)] (32) "Profiling" means any form of automated processing performed on personal data to evaluate, analyze or predict personal aspects related to an identified or identifiable individual's economic situation, health, personal preferences, interests, reliability, behavior, location or movements.

340 [(31)] (33) "Protected health information" has the same meaning as
341 provided in HIPAA.

[(32)] (34) "Pseudonymous data" means personal data that cannot be attributed to a specific individual without the use of additional information, provided such additional information is kept separately and is subject to appropriate technical and organizational measures to ensure that the personal data is not attributed to an identified or identifiable individual.

[(33)] (35) "Publicly available information" means information that (A) is lawfully made available through federal, state or municipal government records or widely distributed media, and (B) a controller has a reasonable basis to believe a consumer has lawfully made available to the general public.

353 [(34)] (36) "Reproductive or sexual health care" means any health

354 care-related services or products rendered or provided concerning a 355 consumer's reproductive system or sexual well-being, including, but not 356 limited to, any such service or product rendered or provided concerning 357 (A) an individual health condition, status, disease, diagnosis, diagnostic 358 test or treatment, (B) a social, psychological, behavioral or medical 359 intervention, (C) a surgery or procedure, including, but not limited to, 360 an abortion, (D) a use or purchase of a medication, including, but not 361 limited to, a medication used or purchased for the purposes of an 362 abortion, (E) a bodily function, vital sign or symptom, (F) a 363 measurement of a bodily function, vital sign or symptom, or (G) an 364 abortion, including, but not limited to, medical or nonmedical services, 365 products, diagnostics, counseling or follow-up services for an abortion.

366 [(35)] (37) "Reproductive or sexual health data" means any personal
367 data concerning an effort made by a consumer to seek, or a consumer's
368 receipt of, reproductive or sexual health care.

369 [(36)] (38) "Reproductive or sexual health facility" means any health
370 care facility in which at least seventy per cent of the health care-related
371 services or products rendered or provided in such facility are
372 reproductive or sexual health care.

373 [(37)] (39) "Sale of personal data" means the exchange of personal data 374 for monetary or other valuable consideration by the controller to a third 375 party. "Sale of personal data" does not include (A) the disclosure of 376 personal data to a processor that processes the personal data on behalf 377 of the controller, (B) the disclosure of personal data to a third party for 378 purposes of providing a product or service requested by the consumer, 379 (C) the disclosure or transfer of personal data to an affiliate of the 380 controller, (D) the disclosure of personal data where the consumer 381 directs the controller to disclose the personal data or intentionally uses 382 the controller to interact with a third party, (E) the disclosure of personal 383 data that the consumer (i) intentionally made available to the general 384 public via a channel of mass media, and (ii) did not restrict to a specific 385 audience, or (F) the disclosure or transfer of personal data to a third 386 party as an asset that is part of a merger, acquisition, bankruptcy or

other transaction, or a proposed merger, acquisition, bankruptcy or
other transaction, in which the third party assumes control of all or part
of the controller's assets.

390 [(38)] (40) "Sensitive data" means personal data that includes (A) data 391 revealing an individual's (i) racial, national or ethnic origin, (ii) religious 392 or philosophical beliefs, (iii) union membership, (iv) mental or physical 393 health condition, [or] disability, diagnosis [,] or treatment, (v) 394 pregnancy, (vi) sex life [,] or sexual orientation, or (vii) citizenship or 395 immigration status, (B) consumer health data, (C) [the processing of] 396 genetic or biometric data, [for the purpose of uniquely identifying an 397 individual,] (D) personal data [collected from a known] of a consumer 398 whom the controller knows, or has reason to know, is a child, (E) data 399 concerning an individual's status as a victim of crime, as defined in 400 section 1-1k, [or] (F) precise geolocation data, (G) a photograph, film, 401 video recording or other similar medium that shows the naked or 402 undergarment-clad private area of a consumer, (H) neural data, (I) a 403 consumer's financial information, including, but not limited to, a consumer's financial account number, financial account log-in 404 405 information, debit card number or credit card number, which, in 406 combination with any security or access code, password or credential, 407 would allow access to a consumer's account, debit card or credit card, 408 or (J) a government-issued identifier, including, but not limited to, a 409 Social Security number, passport number, state identification card number or driver's license number, that is not required to be publicly 410 411 displayed pursuant to applicable law.

412 [(39)] (41) "Targeted advertising" means displaying advertisements to 413 a consumer where the advertisement is selected based on personal data 414 obtained or inferred from that consumer's activities over time and across 415 nonaffiliated Internet web sites or online applications to predict such 416 consumer's preferences or interests. "Targeted advertising" does not 417 include (A) advertisements based on activities within a controller's own 418 Internet web sites or online applications, (B) advertisements based on 419 the context of a consumer's current search query, visit to an Internet web 420 site or online application, (C) advertisements directed to a consumer in

421 422 423	response to the consumer's request for information or feedback, or (D) processing personal data solely to measure or report advertising frequency, performance or reach.	
424 425 426	agency or body, other than the consumer, controller or processor or an	
427	[(41)] (43) "Trade secret" has the same meaning as provided in section	

428 35-51."

This act shall take effect as follows and shall amend the following sections:					
Section 1	July 1, 2024	New section			
Sec. 2	July 1, 2024	New section			
Sec. 3	July 1, 2024	New section			
Sec. 4	July 1, 2024	New section			
Sec. 5	July 1, 2024	New section			
Sec. 6	July 1, 2024	New section			
Sec. 7	from passage	42-110j			
Sec. 8	from passage	42-110m(a)			
Sec. 9	from passage	42-110o(b)			
Sec. 10	July 1, 2024	42-515			