

Legislative History for Connecticut Act

PA 82-398

Act Number:	398	Year:	1982
Bill Number:	SB 345	Pages	
Senate Pages:	1166-1174, 4011-4012, 4083		12
House Pages:	6052-6061		10
Committee:	Labor 82-85, 94, 99-101, 117- 121, 124-125, 130, 132-133, 142		19
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CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1982

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SENATE

REGULAR SESSION
Wednesday, April 14, 1982

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of the circle that we are now dealing with Cal. 107, Senate Bill 544, File 145. The motion is adopt the bill as amended. The machine is open. Please record your vote. Has everyone voted? The machine is closed. The Clerk will please tally the vote.

Result of the Vote: 11 Yea. 25 Nay. THE
BILL IS DEFEATED.

THE PRESIDENT:

May I call your attention to the fact that we have adopted two bills in two hours. At this rate, I think you should communicate with your homes, your families that we will be detained here perhaps a little longer than we had anticipated, unless we are all mindful that we will attend assiduously to our responsibilities and move along.

THE CLERK:

Moving right along, then, Cal. 136, File 254.
Senate Bill 345. AN ACT REQUIRING THE PROVISION OF
INSURANCE COVERAGE AND EMPLOYEE WELFARE FUND PAYMENTS
WHILE COLLECTING WORKERS' COMPENSATION.

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Favorable report of the Committee on Labor and Public Employees. The Clerk has an amendment.

THE PRESIDENT:

Senator Skelley.

SENATOR SKELLEY: (35th)

Yes, Mr. President. Moving right along, I would acceptance of the Joint Committee's favorable report and passage of the bill.

THE PRESIDENT:

I understand there is an amendment. Am I correct, Mr. Clerk?

THE CLERK:

The Clerk has Senate Amendment Schedule A. LCO 2580. Copies have been distributed. The amendment is offered by Mike Skelley.

THE PRESIDENT:

Senator Skelley.

SENATOR SKELLEY: (35th)

Yes, Mr. President, I move adoption of the amendment and ask that the reading be waived and I be allowed to summarize.

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THE PRESIDENT:

Without objection, you may proceed.

SENATOR SKELLEY:

Summarizing the amendment, it says that it takes effect from its passage.

THE PRESIDENT:

Do you wish to remark further? Senator Matthews.

SENATOR MATTHEWS: (26th)

Mr. President, a question, through you, to Senator Skelley.

THE PRESIDENT:

Proceed.

SENATOR MATTHEWS:

Senator Skelley, why do you recommend that this act shall take effect from its passage?

THE PRESIDENT:

Senator Skelley.

SENATOR SKELLEY:

Through you, Mr. President, I was going to get into basically some of the lawsuit arguments that lead up to the reason this bill is before the chamber right now.

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There currently is an appeals that was being taken on the original decision on the bill, on that portion of the statutes, if, in fact, we can make it effective upon passage, that appeals may be dropped.

THE PRESIDENT:

Senator Matthews.

SENATOR MATTHEWS:

The understanding I have is that as long as the case has been undetermined, it is still in the appeal process that the conditions of the paragraph, what is it 3l-50h, 5lh, are still in effect and therefore there is no reason, as I see it, to worry about the date that this bill should take effect because the effect of 3l-5lh is still there.

THE PRESIDENT:

Senator Skelley.

SENATOR SKELLEY:

Through you, Mr. President, there is an employer in fact it has come to our attention that United Technologies is ignoring the stay. Our conversation

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with the Comp commissioners has been that they have just flat out ignored it and I think if you remember, through you, Mr. President, John, that problem was brought up in the committee which is why we set the date of May first; effective upon passage may, in fact, be the original date we have on the bill.

THE PRESIDENT:

Senator Matthews.

SENATOR MATTHEWS:

All right. My comment is merely that as long as the program, the conditions of the statute is still in effect, I don't really see the necessity for having the date of the bill become effective on passage. But, I have made my point. Thank you very much.

THE PRESIDENT:

Any further comment on the amendment? If not, all those in favor signify by saying Aye. Those opposed Nay. The Ayes have it. THE AMENDMENT IS ADOPTED.

Is there a second amendment? No. Senator Skelley.

SENATOR SKELLEY:

Mr. President, just to summarize briefly on the

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bill. Currently, in the statutes, state statutes, there was a compromise position that was reached last year in dealing with a provision of our state statutes as Senator Matthew has alluded to, 31-51h, that would, in fact, say that an individual that was injured on the job and was receiving workers' compensation that sickness and accident would be provided for him or her and their dependents. The suit was brought by Stone and Webster and the suit said that the federal statutes under (next word unintelligible), would override state statutes. The court upheld or ruled against the state and there was an appeal process taken. What we are doing here is taking the exact same language and moving it into workers' compensation statutes. There is no change in benefits. As I said before, there is no change in the way in which we are dealing with it. We feel that if we move it into the workers' comp statutes that we would meet some of the problems that the court has already pointed out.

If there is no objection, Mr. President, ah, I guess there is objection. I would urge the circle's support.

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THE PRESIDENT:

SENATOR MATTHEWS.

SENATOR MATTHEWS:

Thank you, Mr. President. A brief comment or two. Number one is that I think we all agree that the benefits that are available and should be available must be taken care of in one form or another. I don't think there is any question about that.

The point that I think I would make is, as I made the comment earlier, the statute in effect is still there and the benefit program is still in effect. If the court decides that the state is correct in their repeal that is one answer. The other answer, however, would be that if it turns the other direction, then since they have changed from one chapter of the statutes to another chapter, that is into the workmen's compensation chapter, then what will have to be done, if any employer wishes to test the case, then they will have to go through the court procedure which they are going through now, all over again. And it seems to me wiser and much more sensible to wait until the court decision is made which

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will be in May, I believe or early June of this year which is only a short period away, and this will accommodate the problem which we now have without requiring another whole lawsuit possibility to come forth. And I think under those circumstances, it is reasonable to await to see what would happen because nobody is going to be hurt during this period and nobody will be hurt afterwards. Thank you very much.

THE PRESIDENT:

And thus, Senator Matthews, you oppose placing this on the Consent Calendar, I take it?

SENATOR MATTHEWS:

Yes, sir. I do.

THE PRESIDENT:

Thank you. The Clerk please make an announcement for a roll call.

THE CLERK:

An immediate roll call will be held in the Senate. Will all senators please take their seats. An immediate roll call in the Senate. Will all senators please be seated.

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THE PRESIDENT:

The issue before the chamber is the motion to adopt Cal. 136, Senate Bill 345, File 254 as amended by Senate Amendment Schedule A. The machine is open. Please record your vote. The machine is closed. The Clerk please tally the vote.

Result of the Vote: 25 Yea. 11 Nay. THE BILL AS AMENDED IS ADOPTED.

THE CLERK:

Moving right along, Cal. 142 which was originally passed temporarily and is now ready to be taken up, File 248. Substitute for Senate Bill 587. AN ACT CONCERNING COASTAL MANAGEMENT. Favorable report of the Committee on Planning and Development. The Clerk has an amendment.

THE PRESIDENT:

Senator Wilber Smith.

SENATOR WILBER SMITH: (2nd)

Mr. President, I move acceptance of the Joint Committee's favorable report and passage of the bill.

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Monday, May 3, 1982

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THE PRESIDENT:

Without objection, so ordered.

THE CLERK:

Cal. 136, File 254. Senate Bill 345. AN ACT
REQUIRING THE PROVISION OF INSURANCE COVERAGE AND
EMPLOYEE WELFARE FUND PAYMENTS WHILE COLLECTING WORKERS'
COMPENSATION, as amended by Senate Amendment Schedule A.
Favorable report of the Committee on Labor and Public
Employees.

Senate passed the bill with Senate A on
April 14. House rejected Senate Amendment A on April 29.

THE PRESIDENT:

Senator Skelley.

SENAOR SKELLEY: (35th)

Mr. President, I move acceptance of the Joint
Committee's favorable report and passage of the bill
in concurrence with the House.

THE PRESIDENT:

Will you remark?

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SENATOR SKELLEY:

Yes, very briefly, Mr. President. Senate Amendment A merely said effective upon passage and the House thought otherwise and I find no problem with the bill in its current form.

I move it to Consent, if there is no objection.

THE PRESIDENT:

Without objection, so ordered.

THE CLERK:

CA1. 150, File 264. Senate Bill 563. AN ACT CONCERNING THE INSTALLATION OF SMOKE DETECTION DEVICES IN DORMITORIES, as amended by Senate Amendment Schedules A, B and C. Favorable report of the Committee on Public Health.

Senate passed bill with Senate A, B, and C. on April 14. House rejected Senate Amendment Schedules B and C on April 29.

THE PRESIDENT:

Senator Regina Smith.

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the vote. Result of the Vote: 31 Yea. 0 Nay. THE

SECOND CONSENT CALENDAR IS ADOPTED.

HB 5803, HB 5240, HB 5858,

HB 5882, SB 345, SB 563,

SB 473, SB 589, SB 17, SB 651, SB 420, SB 67, SB 424,

SENATOR SCHNELLER: SB 438, SB 373, SB 66, SB 649, SB 578.

Mr. President, it is our intention to commence at one p.m. tomorrow. Caucus at noon. At the moment, we are going to recess at the Call of the Chair so that some disagreeing actions that will be coming up from the House can be read in.

THE PRESIDENT:

Oh, the matters have arrived.

SENATOR SCHNELLER:

Mr. President, while we are still in session, I would like to ask for suspension of the rules for immediate transmittal of all items that have been acted upon today and going to the House to be sent to the House.

THE PRESIDENT:

Without objection, so ordered.

The Clerk will now read in some Business from the House.

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House of Representatives

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DEPUTY SPEAKER FRANKEL:

The bill as amended is passed.

CLERK:

Calendar Page 2, Calendar No. 439, Senate Bill

No. 345, AN ACT REQUIRING THE PROVISION OF INSURANCE

COVERAGE AND EMPLOYEE WELFARE FUND PAYMENTS WHILE

COLLECTING WORKERS' COMPENSATION, as amended by

Senate Amendment Schedule "A". Favorable Report of the

Committee on Labor and Public Employees.

REP. GELSI: (58th)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Fred Gelsi.

REP. GELSI: (58th)

I move acceptance of the Joint Committee's Favorable Report and passage of the bill in concurrence with the Senate.

DEPUTY SPEAKER FRANKEL:

The question is on acceptance and passage in concurrence with the Senate. Will you remark, sir?

REP. GELSI: (58th)

Yes, Mr. Speaker. The Clerk has Senate Amendment Schedule "A". Will the Clerk please call and read the amendment, LCO No. 2580.

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DEPUTY SPEAKER FRANKEL:

The Clerk has LCO No. 2580 previously designated Senate Amendment Schedule "A". Will the Clerk please call and read the amendment.

CLERK:

LCO No. 2580 designated Senate Amendment Schedule "A" offered by Sen. Skelley of the 35th District.

After line 473 insert the following:

Section 8. This act shall take effect from its passage.

DEPUTY SPEAKER FRANKEL:

The amendment is in your possession. What is your pleasure, sir.

REP. GELSI: (58th)

I move adoption of the amendment.

DEPUTY SPEAKER FRANKEL:

The question is on adoption of Senate Amendment Schedule "A". Will you remark on its adoption?

REP. GELSI: (58th)

Yes, Mr. Speaker. The reason this amendment was put on this bill in the Senate was because a lot of the, or some of the employers who were under this section are ignoring the stay of appeals from a court case and are not providing medical insurance for their employees when they're

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collecting workmens' comp.

And as far as I'm concerned, Mr. Speaker, they're also ignoring the good intent of this legislature last year that under a bi-partisan move, came up with a bill to try to take care of what is considered to be a very serious problem and I would hope that the members of this Chamber would support the amendment.

DEPUTY SPEAKER FRANKEL:

Will you remark further on the adoption of Senate Amendment Schedule "A".

Rep. Paul Abercrombie.

REP. ABERCROMBIE: (87th)

Thank you, Mr. Speaker. Just commenting briefly on the amendment, and I will be speaking more on the bill.

I think quite frankly what we're doing here is jumping from the frying pan into the fire, simply because of the court situation with the bill and the fact that the court decision ruled the bill we passed last year unconstitutional there is a stay of that decision.

I would not disagree with Rep. Gelsi that there may have been a couple of incidents where employers in fact, had denied benefits, but I just feel strongly that now by adopting this amendment, that in fact it's going to raise some very serious questions because we are, in fact,

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repealing the law that we put into effect last year. So that if the higher court in fact were to overturn the lower court, I think it raises serious questions. If the higher court should do this, I in fact, believe that the court would provide some remedy as far as the statute is concerned, and I just question the idea of making this effective upon passage.

DEPUTY SPEAKER FRANKEL:

Will you remark further on the adoption of Senate "A".

REP. GELSI: (58th)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Gelsi.

REP. GELSI: (58th)

Trying to stay on the amendment itself, I would say that really what will become the bill no matter what the higher court does, the intention of this legislature would be concreted by this change. We'd be taking away from the civil laws under 31-51 h and we'd come under Chapter 568 which is part of our administrative law.

In that fashion, I think under the workmens' comp laws of this state, what we would be doing would be completely legal.

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DEPUTY SPEAKER FRANKEL:

Will you remark further on the adoption of Senate "A".

REP. VAN NORSTRAND: (141st)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Van Norstrand.

REP. VAN NORSTRAND: (141st)

Mr. Speaker, the trouble on this with passage is, we're now on holding pattern in the court. Court could ultimately tell us what we did was right. At which point we've put into effect something that says we're going to do something else.

We're going to be in a never, never land. I think the thing we ought to do is defeat this amendment. We can debate the bill and the merits of whether this is the course of action to follow because there's some substantive questions.

REP. KINER: (59th)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. William Kiner.

REP. KINER: (59th)

Despite the fact that the minority leader believes

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that we should be on a holding pattern, regrettably, some employees indeed are being hurt by this change in the law and I don't believe, Mr. Speaker, it would be equitable in that case to keep us on a holding pattern.

And again, Mr. Speaker, I would urge as Rep. Gelsi said, accept this amendment.

DEPUTY SPEAKER FRANKEL:

Will you remark further on the adoption of Senate Amendment Schedule "A".

If not, all those in favor please signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER FRANKEL:

Those opposed nay.

REPRESENTATIVES:

No.

DEPUTY SPEAKER FRANKEL:

The nays have it. The amendment fails.

Will you remark further on this bill? Will you remark further?

REP. GELSI: (58th)

Mr. Speaker.

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DEPUTY SPEAKER FRANKEL:

Rep. Gelsi.

REP. GELSI:

Yes, Mr. Speaker. I think what this bill addresses and I alluded to it earlier, is that we're removing the law providing for medical benefits for employees who happen to be out on workmens' comp to cover their families under the, our own administrative law, and we're probably better off with it being there.

I think taking the chance of leaving working men and women of this state because they happen to get hurt on the job and are collecting workmens' comp to have someone in their family end up with either cancer or some other illness which puts them into a hospital and bankrupts that family, is completely idiotic and I think that's what's going to happen by the actions of this House tonight and I would hope that this bill is passed.

REP. ABERCROMBIE: (87th)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Abercrombie.

REP. ABERCROMBIE: (87th)

Yes, Rep. Gelsi raises some very serious questions and concerns and I have had those same concerns and

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expressed those in the labor committee and one that in fact voted to bring the bill out, but as in many cases with legislation that we deal with, once it gets out of committee, we have the opportunity to take a second look at it.

And let me just say those points he raises as far as employers with serious medical problems, the fact of the matter is, there is a stay of that decision. Those employees are protected under the laws that we have on the books today that we passed last year. That is a valid statute that has to be dealt with and recognized and the employees must receive the benefits under it, until that court decision is made.

I'll restate that when that court acts, in fact, if it overturns the lower court, that I think that they will provide remedy as to the way to proceed. If they don't, then the statute will remain on the books and the employees will be protected.

I would recommend that we defeat this legislation.
Thank you.

REP. GELSI: (58th)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Gelsi.

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REP. GELSI: (58th)

For the second time, and very briefly. I guess any one of us as individuals can have any thoughts that that we want, but one of the gentlemen who I have an awful lot of respect in this state, and that's Commissioner Art Goody of the Commissioner of Workmen's Compen feels differently. He feels we need this legislation and I would hope that all the members in this Chamber support it.

DEPUTY SPEAKER FRANKEL:

Will you remark further? If not, the staff and guests please come to the well of the House.

Would the members please take their seats. The machine will be opened.

The House of Representatives is now voting by roll. Would the members please return to the Chamber. There is a roll call vote in progress in the Hall of the House. Would the members return to the Chamber immediately.

Have all the members voted? Have all the members voted? If so, the machine will be locked.

The Clerk will take a tally.

Will the Clerk please announce the tally.

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CLERK:

Senate Bill 345.

Total number voting 135

Necessary for passage 68

Those voting yea 87

Those voting nay 48

Those absent and not voting 16

DEPUTY SPEAKER FRANKEL:

The bill is passed.

CLERK:

Calendar 446, Substitute for Senate Bill 315,

AN ACT CONCERNING THE REGULATION OF PUBLIC SERVICE

COMPANIES, as amended by Senate Amendment Schedules

"A" and "B". Favorable Report of the Committee on Energy
and Public Utilities.

REP. LAVINE: (100th)

Mr. Speaker.

DEPUTY SPEAKER FRANKEL:

Rep. Lavine.

REP. LAVINE: (100th)

Mr. Speaker, I move the Joint Committee's Favorable
Report and passage of the bill.

DEPUTY SPEAKER FRANKEL:

The question is on acceptance and passage. Will you

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STANDING
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JOHN ARCUDI: I'd like to testify on 345 which is a bill attempting to replace 3151H. 3151H is a section of the Labor Laws of the State that has been in effect since 1967. Since 1977, the enforcement provisions have been in the worker comp commission along with the Superior Court, but last year in the summer of 1981, Judge Cleary of the U.S. District Court declared that 3151H was preempted by the 1974 ERISA legislation of the United States Congress.

Very, very briefly, Judge Cleary held on the basis of federal U.S. Supreme Court decisions and Circuit Court of Appeals decisions that when the United States Congress originally entered into the labor field by the passage of the Wagner Act in 1935, the Taft-Hartley Act in 1947 and various other acts in Title XXIX of the United States Code, they occupied the field of contract bargaining. Between employees and employers. That the ERISA talked about contracts that came out of this contract bargaining process, that the whole contract bargaining process had become a subject for federal legislation, that no state could then pass laws concerning the contract bargaining process of employees in interstate commerce, which is the field which is occupied by the original Wagner Act and all the amendments after. Judge Cleary held that pension plans and health insurance and the other fringe benefits that have been obtained by the employees in contract bargaining have been obtained under a federally protected right in a federally legislated field.

And he further held that when Connecticut attempted to extend benefits to employees who were injured and therefore not working and therefore not directly not covered by the contract provisions, what Connecticut was doing was interfering with that bargaining process and that bargaining process was the process which was the subject of federal law. However, there is an exception to the federal law which Judge Cleary held that Connecticut's 3151H did not come under. The exception to the federal law is that if the state legislates plans that are obligatory on the employer in order to satisfy a worker compensation obligation, then that plan is an exception to the occupancy of the field by the federal Congress in this series of legislative acts beginning with the Wagner Act in 1935.

31345 is an attempt to make the 3151H obligation which has been in our law for 15 years now, to make it a part of

MR. ARCUDI: (continued)

Chapter 568, the Worker Compensation Law. It attempts to do that first by broadening the definition of income or really by creating a new definition of income. Under 31275, the wages section, the definition section of chapter 568, wages are included or really, they are not really defined.

They are simply in section 31309, in section 31310, you have a computation of a compensation rate based on wages. Of course, you have defined wages over the 70 years and it included such things as a hired hand on a farm, his board, his room and all that kind of thing has been included in wages. The fringe benefits have not been included in wages for the purposes of the Worker Compensation law during the past 70 years.

The first section of 31-345 does not change its concept of wages as it has existed for 70 years, but get the new concept into the definition in 31-375, the concept of income. And that's, Section 1 is a definition of income to include wages and other, and fringe benefits.

Section 2 of the statute relates to the obligation of employers under 31-284, the obligation of employers to fulfill by insurance or by self-insurance their obligations under chapter 568. Traditionally, the employer under 284 has been able to insure his full liability with insurance to have self-insurance or a combination of both. Section 2 simply excludes from that overall coverage, this new coverage for fringe benefits. So that the insurance companies have traditionally argued that they are not covering 3151H because 3151H is not part of the Worker Compensation law.

That would not be changed, that insurance company argument would still be valid that they would not have to in their regular worker compensation insurance policy insure the fringe benefits obligation. This section 2 protects that present insurance scheme for worker compensation. Section 3 is the heart of the act in that it provides that an employer must, when he has provided for his employees these fringe benefits, his health insurance and life insurance, for his working employees, that he must create a plan for the injured employee who is receiving Worker's Comp, giving the injured employee similar benefits

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MR. ARCUDI: (continued)

to the employee who was working. That is the heart of the law of this section, the heart of the new law.

Section 4 provides that when the employer reports an injury on the regular forms, under 31-316, he shall also report the existence of health insurance plan. And Section 5 gives the right of the employee to go to the worker's comp Commissioner to have his rights enforced. It eliminates, Section 5 eliminates this Superior Court remedy. Now this becomes totally an administrative remedy. In line with the idea that something which is an administrative remedy is part of chapter 568 which is part of our administrative law, rather than part of our civil law, general jurisdiction over which the courts have cognizance.

Section 6 incorporates the amendment passed at 3151H last year including 31-349, rollover benefits so that after 104 weeks of payment, these fringes, the obligation may be rolled over to the second injury fund, to the pool, to the industry pool. This is what 345 attempts to do. We don't know what's going to happen to the Judge Cleary's decision and the U. S. Court of Appeals for the second circuit is not there, briefs have been written, but it is doubtful that a decision is going to be reached before May 5 so that Connecticut is in the situation of not knowing whether it has a law such as 3151H or not and it will not know until the Second Circuit has spoken and I doubt that it will speak before May 5.

345 attempts to fill that gap. I'd be very happy to answer any questions on this thing.

REP. KINER: Thank you, Commissioner. Are there any questions from our Committee?

REP. ABERCROMBIE: Yes, according to Section 3 on lines 190 and 191, the wording to provide accident and health insurance life insurance coverage for any employee. What would happen in a case where an employer had ten employees and of those ten, for some reason, let's say only five or six were covered under this type of coverage. And three or four maybe because their spouse was covered or something didn't elect to take coverage. Would that wording, for

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REP. ABERCROMBIE: (continued)
any employee, would this then require that the employer under the unique situation because he had only one or two employees covered that he would be required to provide the benefit.

MR. ARCUDI: I don't really have an answer. The general theory is that this legislation has been attempting not to give any more than the employee already has, so I would say that the chances are that he wouldn't be required if he hadn't provided it while the employee was working. He wouldn't be required to provide it after the employee got injured.

REP. ABERCROMBIE: Well I have difficulty with that wording because it tells me that if any group of employees where anyone were provided benefits then those remaining employees would be entitled to this coverage under the provisions of this act with that wording the way it is. I don't know why we just can't use wording where an employer is providing benefits.

MR. ARCUDI: I'm sure that is a matter of semantics and there wouldn't be any reason if you wanted to spell that out very clearly why you couldn't. You know, for an amendment.

REP. ABERCROMBIE: Yea, I would appreciate any thoughts you have on that as far as wording or even (inaudible). Do you understand my point?

MR. ARCUDI: Yes, I understand your point. If you want, I'll make some suggestions, if you want, but I'll have to work on it a little bit.

REP. ABERCROMBIE: Okay.

REP. KINER: Are there any more questions from the Committee? If not, thank you, Commissioner. I would ask the members of the Committee to identify yourselves so that when the transcript is typed up, we will know who is talking. The next person to testify is Susan Bucknell.

SUSAN BUCKNELL: Good morning. My name is Susan Bucknell and I'm Executive Director of the Commission on the Status of Women. What I'd like to do this morning is to support or indicate the Commission's strong support for Committee

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MR. CRISCO: (continued)

effects. I wish I could give you an answer and I would be only too happy in the future as we look at it more closely to sit down with the Chairmen of the Committee and to give a more detailed analysis of the problem. The potential problems. And the way it could be used. In regards to , you know, unfortunately, we wish we didn't have to speak to you to say. We keep getting the impression that before the ball game even starts, we will be behind 100 to nothing. So do you understand why we are here?

REP. KINER: Thank you, Joe. Greg Berg, CCM.

GREG BERG: Mr. Chairman, members of the Committee. My name is Greg Berg and I am the Director of Management Services for the Connecticut Conference of Municipalities. Today, I'm going to give you some testimony on four bills before you. Two of the bills I think are, the questions that I have are somewhat technical in nature. First, Senate bill 294, An Act Concerning Reopener Clauses in Municipal Collective Bargaining Agreements. I believe that this bill has the unintended affect as drafted to eliminate the mediation and fact-finding steps in the impasse procedures on reopener clauses. And I would urge you to amend that bill to eliminate that problem.

Secondly, with respect to Senate Bill 345, An Act Requiring the Provision of Insurance Coverage and Employee Welfare Payments While Collecting Workers Compensation. You heard earlier, Chairman Arcudi say that the need for this bill arose out of a clear position that said that the federal ERISA Act preempts the state section 3151H. As I'm sure you know, the federal ERISA stat sheet does not cover public sector employers, does not cover the state and it does not cover municipalities. Therefore, Section 3151H has not been preempted for municipalities and I believe that, therefore, the bill, Senate Bill 345 should not necessarily cover municipal employers.

With respect to Senate Bill 241, An Act Including Part-Time Municipal Employees Within Collective Bargaining. The Connecticut Conference of Municipalities is opposed to this bill. We believe that part-time employees have always been excluded from the Connecticut act because they do not share a community of interest with other full-time

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MS. TIANTI: (continued)

are not overburdened in the tax on unemployment compensation. We do think that the comparison of benefits by state is also important and these are the Labor Department's figures. If you take the average unemployment benefit payments as the computer does, the ratio of the average weekly wage, the percentage of lost wages made up by benefits by Connecticut's Unemployment Comp, Connecticut ranks 31st among the 50 states. We are talking in terms of the average benefit rate. So that and even in this type of a situation where we do have a maximum benefit rate currently of 146 plus the dependency allowance, the average benefit rate is something like \$107 a week, including the dependency allowance. So that no worker, even at the low end, can exist on those types of benefits.

We also have 37 states having a weekly benefit rate higher than Connecticut's. So I think that we need to address this problem, we need to improve the benefit rates and the cap should be removed because under current, the current maximum benefit rate of \$146 is, I believe, something like 48% of the state's average production wage. So we would urge you to correct those inequities in that particular piece of legislation. I think it is important to note, too, that we recognize the problems of the Connecticut Unemployment Comp Fund insofar as its funding mechanism is concerned, but it's our contention and studies have been done which indicate that the funding mechanism was changed and I believe it was 1972 or '73 and it was done deliberately to keep the fund broke so that benefits could not be improved.

We think that there is a social responsibility on the part of the employers in the State of Connecticut to provide for employees who are out of work through no fault of their own. Also, obviously, we urge you give a joint favorable report to Senate Bill 345 which is the act requiring provision of insurance coverage and employee welfare fund payments while collecting workman's compensation. Commissioner Arcudi indicated to you the need for this particular legislation. I think it's clear that the legislature since enactment of this provision in 1967 clearly intended to protect employees and their families from non-work related illnesses or injuries when this particular piece of legislation was enacted. I think the courts were wrong and we do have that on appeal, but it is

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MS. TIAN TI: (continued)

encumbent upon the legislature to reaffirm that commitment. There are workers currently today being harmed by this. There was a young women up here last week at one of the hearings who told me that she is out on a injury and she is the head of the household of a family with three children and her employer had stopped paying for her non work-related health insurance and thus, her son had to go into the hospital and she has no insurance coverage.

So I think that it comes out to about 20,000 workers a year jeopardized if that inequity is not corrected. So I urge you to give a joint favorable report to that particular piece of legislation. Finally, I would ask you to reject the House Bill 5487 which concerns spouse coverage under group health insurance plans. It seems to me, that my recollection, I think it was three or four years ago that this Committee gave a favorable report on this particular piece of legislation which was enacted to correct an inequity that exists, that existed prior to that particular piece of legislation. When a husband and wife work for two separate employers and even though they are insured under the same company, insurance company, whether it be Blue Cross, Blue Shield, Aetna or what have you, as long as they are in a different group plan, there is a coordination of benefits and thus, they can, in fact, if they -- either they or their dependents can on a health related, a health problem, have a coverable disease or something they do collect from the prime employer. And then get a coordination of benefits up to the actual cost of that particular care from the other insurance plan.

It's only when they both work for the same employer that they could not have that. They would only insure one so that there could be a gap in the payments of, between the benefits paid and the actual cost. This particular piece of legislation did, four years ago, was to say that they would have the same coordination of benefits, that they would, since they had more than likely negotiated those benefits as -- in lieu of wages -- that they would both be enrolled in the plan. They would pay the premiums and there would be that coordination of benefits. So that if a child entered the hospital and there was a balance from the husband's insurance that was not covered, the wife's or the spouse's would pick it up. So that there

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MS. TIAN TI: (continued)
would not then be a disadvantage simply because they worked for the same employer. It is worthwhile, we think it should remain and that you should not give this bill a favorable report. Thank you.

REP. KINER: Betty, referring back to Bill 203 once more, please. One quick question. Do you know of any incidents where employees were indeed penalized?

MS. TIAN TI: Yes. It happens frequently that employees are disciplined and in fact discharged for refusing to work overtime.

REP. KINER: Thank you, Betty.

MS. TIAN TI: I might just say that only about perhaps 3% of the union contracts in the state prohibit that type of disciplinary action.

REP. KINER: Thank you, Betty. Senator Mustone.

SEN. MUSTONE: Amelia Mustone, 13th Senate. This question was addressed to Susan Bucknell. She did not have the information. I thought maybe you do. How many other states include part-time work ?

MS. TIAN TI: It's my understanding, Senator Mustone, that Connecticut is unique in excluding them. I have heard of no other state that excludes part-time employees. The National Labor Relations Act does not exclude them. They take each instance, each petition for representation separately and if there is a continuity, a regular -- even if they work one day a week, they are considered employees under the Act. To the best of my knowledge, there is no other state that excludes part-time employees as Connecticut public sector laws do. I will check it to be sure, but the last time I researched it, there was no other state. It was unique in Connecticut law.

SEN. MUSTONE: Thank you.

MS. TIAN TI: You're welcome.

SEN. SKELLEY: Betty, to the best of your knowledge, I will even pose this question to Counsel. Under the current

MR. DENTAMARO: (continued)

Number one, it wouldn't be economically feasible for the worker nor for the employer to put someone on and do the paperwork to hire - put someone on for one to five hours. We stand that we support these two bills and we encourage you to enact them. Thank you.

REP. KINER: Frank, what are some of the disparities that result in - what happens now when you have, you know, someone who's in collective bargaining and someone who perhaps works only 19 hours now is not in collective bargaining. Where do the disparities come in - in wages, benefits? If you don't have the information now you could send it to us, but I'd be curious to know.

MR. DENTAMARO: Well, some of the information I have, but most of it has to do with the benefits. They're excluded on a lot of the benefits. They're also excluded from being protected in instances where we know there are personality conflicts between supervisors and employees. And it's very easy to tell a part-time employee that happens to need that job and it helps support the family that they're out without any recourse to due process.

REP. KINER: Thank you, Frank. Mark Soycher.

MARK SOYCHER: Representative Kiner and members of the Committee on Labor and Public Employees, my name is Mark Soycher. I'm general counsel for the Associated General Contractors of Connecticut, the construction association in Connecticut representing over 100 firms in the industry, including suppliers, general contractors, subcontractors, and related businesses providing other services such as insurance, accounting, engineering, etc. Our members perform primarily commercial, institutional and industrial construction. I'm here today to comment on raised Committee Bill No. 345, An Act Requiring the Provision of Insurance Coverage and Employee Welfare Fund Payments While Collecting Workers Compensation.

The ACG is adamantly opposed to this bill, both as to its general intent and as to specific provisions in it which I'll point out. This bill seeks to rewrite section 31-51H of the General Statutes within the workers compensation provisions. Section 31-51H commonly requires that an employer must provide continuing health insurance or that he must continue making hourly contributions to the employee

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MR. SOYCHER: (continued)

welfare benefit plan which in turn provides that insurance while an employee is eligible to receive or is receiving workers compensation benefits. This shifting of current statutory obligations from one section of the law to another is proposed for the purpose of avoiding a court decision which has not yet been rendered.

A recent federal district court ruling in the case of Stone and Webster Engineering Corporation versus Illsley has held that as to the employee benefit plan at issue in that case, Section 31-51H is pre-empted by federal law. I think Commissioner Arcudi explained that quite clearly earlier. The effect of that ruling, however, has been staid pending an outcome of an appeal to the second circuit court of appeals. The case on appeal won't be decided for several months. Therefore, until such time as a definitive ruling is provided by the courts, Section 31-51H remains in full force and effect.

Because the obligations which Bill 345 proposed are identical to those currently mandated by Section 31-51H the bill presents the same questions as are being litigated in the Stone and Webster case. If the court of appeals reverses the lower court ruling, Section 31-51H will continue to be applicable, making Bill 345 totally unnecessary. If the court of appeals affirms the lower court ruling rendering Section 31-51H void, the legislation before you continues rather than resolves the legal defects upon which such a decision would be based.

The basis of the lower court ruling was that state Section 31-51H impermissively regulated the duration of payments made by an employer to a joint administered employee union welfare fund. The challenge of statutory obligation directly and fundamentally altered negotiated obligations typically part of complex benefit plans. These plans are already subject to extensive federal regulation under the Employee Retirement Income Security Act, ERISA, and the Labor Management Relations Act, federal labor law.

Recognizing that current state and federal regulation -- concurrent to state and federal regulation of these areas posed a significant risk of conflicting mandates, federal lawmakers clearly expressed in ERISA that the application of state laws in these areas is to be pre-empted by federal law.

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MR. SOYCHER: (continued)

The reason Bill 345 looks to the workers comp statutes to express the obligations currently stated in Section 31-51H is that a section in ERISA says that employee benefit plans maintained solely for the purpose of complying with workers comp laws are exempt from ERISA coverage. The proponents of Bill 345 obviously believe that simply by taking Section 31-51H out of the General Statutes, Chapter 557 entitled Regulation of Employment, and adding those same requirements to Chapter 568, the Workers Comp Act, they will convert those obligations into a workers compensation statute.

No matter where or how expressed, the substance of 345 of Section 31-51H is a regulation of employment mandating that a particular level and form of insurance coverage be provided by an employer under certain situations as part of the employee benefit plan. The courts have explicitly stated that ERISA's authors clearly meant to preclude the states from avoiding through form the substance of the pre-emption provision. Elements of Bill 345 represent an attempt at exactly such avoidance.

I present this somewhat technical argument to you, not so much to object to the underlying intent of the proposed law or of 31-51H, but rather to emphasize to you that should this legislation be necessary at all, certain sections, if enacted, would still violate the principles upon which 31-51H would be judged effective. After enactment, however, an extensive and wasteful lawsuit borne by employers, similar to the Stone and Webster litigation would be necessary to prove what I believe to be somewhat obvious.

At a minimum, I believe the offending provisions of Bill 345 are those which refer to contributions to employee welfare funds. Connecticut General Statutes, Section 31-53 defines employee welfare fund as any trust fund established by one or more employers and one or more labor organizations to provide benefits under an employee welfare plan established and maintained for employees and their dependents, including but not limited to medical, disability, unemployment and retirement benefits. The definition precisely defines the employee benefit plan involved in the Webster litigation, and the type of plan in effect generally in the construction industry.

For all of the above reasons...

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MR. SOYCHER: (continued)

The references I suggest be deleted are throughout the statute. I can either go through them now or provide it in a written statement to you afterwards.

REP. KINER: If you would provide a statement, the Committee would appreciate that.

MR. SOYCHER: As a practical matter the employee protection sought to be provided by Section 31-51H and by Bill 345, and specifically by the contributions language throughout, which I referred to, is generally unnecessary in the unionize construction industry. Increased contributions to welfare and pension plans, as a result of collectively negotiated agreements and improved management of benefit plan funds, permitted management and union trustees to expand the terms of health insurance in many instances to provide anywhere from 9 to 24 months of continuing coverage for participating employees and their dependents, from the date of injury after the point from which no additional contributions would be made on their behalf.

This is an example of the collective bargaining process and the progress that has been made through that process, and why - I believe that these types of requirements are unnecessary in the construction industry. Particularly involving negotiated items in collectively bargained agreements.

There is one last comment I would like to make regarding the general substance of Bill 345 which represents a disturbing proposal. Workers compensation statutes have traditionally provided injured employees with a form of compensation intended to be a substitute for wages and payment for medical expenses incurred as a result of work-related injuries. Bill 345 represents an expansion of the scope of workers compensation to mandate general insurance covering an employee and his dependents for expenses unrelated to the workplace. This is no longer workers compensation. It is conceptually outside the basic philosophy of workers compensation statutes. That is why Section 31-51H originally and currently is written within Chapter 557 entitled Regulation of Employment.

Bill 345 is a wholly inappropriate vehicle by which to seek such a significant shift in principle of workers compensation. For all of the above reasons, Bill 345

MR. SOYCHER: (continued)

is an improper and untimely piece of legislation, particularly in light of the literal flood of critical and immediate issues in need of current legislative action. However, if you must address this area in some manner through legislation this session, I urge you to make the changes I have suggested and will provide to you to better implement what you are seeking and to avoid constitutional difficulties, the subject of the litigation which are likely to arise under the language of this bill as it is presently drafted.

I would also just point out that I think Betty Tianti incorrectly assumed that Commissioner Arcudi was endorsing the intent of this bill. I think he accurately summarized what it was proposing to do and also highlighted the difficulties I've pointed out to some extent. If you have any questions...

REP. KINER: Thank you, sir. The Chair would like to indicate that according to the agenda we were supposed to be meeting here from 10:00 to 12:00 and then taking a break and meeting in Room 4½ at 1:00. There was a scheduling problem. That problem is over with and the Chair would like to continue with the public hearing. There are only seven or eight more speakers, and unless there are any concerns from those present here, we will continue. Jim Brown.

JIM BROWN: Good morning. My name is James Brown. I'm general counsel to the Insurance Association of Connecticut. I very much appreciate your not taking a break until 1:00 at this particular moment. I'd like to speak this morning in opposition to Senate Bill 204 which is the bill which would prohibit an employer from reducing insurance coverage on employees who have reached the age of 65 and are eligible for Medicare. We believe that this bill would represent a substantial and unreasonable burden on employers, and in some cases might actually hurt the very people it is obviously intended to help. When Congress passed the federal Age Discrimination in Employment Act, it explicitly recognized that the cost of providing certain benefits to all the workers is greater than providing those same benefits to younger workers. But the same benefits provided to all workers without regard to age would discourage employment of

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MR. BROWN: (continued)

are both employed by the same employer that there is coordination of benefits in that plan. The concept of coordination of benefits really doesn't fit on one single plan. The concept of coordination of benefits was adopted by the insurance industry in the situation where two individuals - a husband and wife - are insured under two separate plans, and the coordination of benefits was incorporated not to guarantee 100% coverage of all of their bills, but rather to prevent the possibility of their receiving more than 100% coverage for their bills.

That possibility, receiving more than 100% coverage for their bills, does not exist when there is one employer, one policholder covering them both. The concept of deductibles and co-insurance which impose upon an individual the requirement to pay a portion of his or her medical bills is integral to the issue of health care cost containment, and we shouldn't do away with those concepts unless it is absolutely necessary. The current law, I believe it's Section 38 262D, whichever section it is that would be repealed by this bill, forces a single employer to pay 100% of the premium for 100% of the costs of the husband and wife that are working for him.

That is a burden that we feel is unfair and it is not an uncommon situation for, particularly in municipalities where you have a few small employers who provide most of the jobs, to have husband and wife working for the same employer. And so we would support passage of House Bill 5487.

REP. KINER: Thank you, Jim. Jay - and I'm having difficulty reading the last name - Bylow.

JOY BYLAN: Good morning Committee members, or more correctly, good afternoon. I'm Joy Bylan, I'm a senior staff rep for the Connecticut Employees Independent Union and we represent about 8,000 state and municipal employees. I'm here to speak on three bills, Senate Bill 241, the inclusion of part-time workers in the municipal collective bargaining act; Senate Bill 242, the inclusion of state employees - part-time state employees in the collective bargaining act; and Senate Bill 345, the workers comp insurance benefit.

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MS. BYLAN: (continued)

I'll speak briefly on Senate Bills 241 and 242 together. We believe that these part-time workers, those who work under 20 hours a week, should be included in the state and municipal collective bargaining act because there is a community of interest between the employees who work side by side, doing the same work, even though one may work 19½ hours and the other 25.

The employee who works 25 hours has the protection of a collective bargaining contract, while the 19½ hour employee does not. The 19½ hour employee is also doing bargaining unit work. And in many instances, the employer takes advantage of the 19½ hour employee to avoid the provisions of the collective bargaining contract. The 19½ hour employee should be treated the same as their fellow employees, regardless of the number of hours, and we urge your support on both these bills.

Concerning Senate Bill 345, An Act Requiring Continuation of Insurance Coverage While an Employee is on Workers Comp. I think Commissioner Arcudi explained this very well. This provision, this act, is needed for clarification of the 31-51H statute. It is needed because there should be a continuation of medical insurance coverages to the injured employee and his family. I think we must remember that the injured employee is unable to work, and the loss of medical coverage can be devastating to he and his family.

The bill also provides a method for filing complaints under this section, other than through legal remedies, and the payment of benefits from the second injury fund.

Lastly, it makes the continuation of the insurance a part of the workers compensation act and we urge your support. Thank you.

REP. KINER: Thank you, Joy. Gary Foster.

VINCE SCAVAZZO: I'm not Gary Foster. I'm Vince Scavazzo. I've written both names if Gary was here, if you don't mind. I'm Vince Scavazzo, I'm Co-Director of AFSCME, Connecticut. We represent some 30,000 members in the state of Connecticut at this time.

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MR. BREZINA: (continued)

that a lot of employers are beginning to furlough and lay off their workers during holiday periods. It is becoming common practice and I believe it is a way to cut down the unemployment. We had this instance happen in our shop. It was slow all through the month of November and December. But our company waited until that period between Christmas and New Year's where they had never furloughed or laid off anybody before. They waited until that period because they knew that there were two holidays in there which would decrease the unemployment benefit. And thereby, believing, decreasing the amount they would have to pay to this insurance.

On bill 345, we are in support of continuing the insurance coverage for workers out on compensation because again, as Betty, who points out things very well pointed out, if a child should get sick in a family and the breadwinner of the family is out on unemployment compensation, a minor illness even can do, it can ruin this person. It can throw them so far in debt that it takes half a year when they do get back to work just to pull themselves back together. I have seen this happen many times in our shop. And I am just now beginning to start working with workman's compensation and seeing some of the hardships that it does bring on when somebody does get hurt on the job.

The one bill we do oppose is the one concerning spouse coverage. On insurance. There is many workers in our shops and especially in Brian Electric where a husband and wife both work for the same employer. In Bridgeport, I don't know if it is like this in most major industrial cities, but in Bridgeport, I know that in a lot of factories, husbands and wives both work. And I myself benefited by this because my wife and I both have dental coverage but if not for her coverage, I would have been stuck for \$1300 bill. And there is no way that I would have been able to handle that and I would just like to say that we oppose that law and support the other four. Thank you.

REP. KINER: Borden Steeves.

REP. STEEVES: Borden Steeves, 116th. How many, in that bill 203, how many workers would be affected by that. I have heard that all morning, that

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REP. STEEVES: Well, I imagine there's a lot of skills that those people that are laid off would not necessarily have the skills that are needed for the people who are working overtime.

MR. BREZINA: Not in our shop. Although the jobs that, the overtime is coming through on are mostly jobs of inventory control and material handling. They are the lowest jobs on the scale and we feel that before they are forcing people or pushing people for overtime, somebody should, at least a couple workers should, be called back off the unemployment lines to fill these jobs. Because they aren't tool maker's jobs. Or anything like that. Tool-makers are working overtime and that doesn't bother us. And that keeps us working, too. As long as the dyes and the tools are good, we work. But most of the overtime is being passed out on material handlers' jobs, simple machine operators, not the type of jobs, I mean, any specific skill is required. It isn't the higher scales.

REP. KINER: Thank you, John. Next person to testify is my neighbor from Windsor Locks, Joyce Wojtas. You're on.

JOYCE WOJTAS: Good afternoon. My name is Joyce Wojtas and I am the Director of Legislative Relations for the Connecticut Construction Industry's Association. We represent the heavy highway road building, sewer, utility contractors in the State of Connecticut. I would like to address my remarks to Raised Committee Bill 345 and go on record in opposition to the bill as drafted. I would like to echo the remarks of Mark Sloyter from Associated General Contractors and not repeat the information that he has given this Committee today. But would like to add that, as you know, our contracts are negotiated. Welfare funds are negotiated according to the Taft-Hartley Act and National Labor Relations Act. Many hours are spent between the union and management negotiating the benefits of employee welfare funds.

I think Raised Committee Bill 345 is taking a step that is going to be a disincentive for these negotiations in the future and would also be a disincentive to get into employee welfare funds which have been such a benefit to the union persons that work for the construction industry. I think it is best that the Committee allow this particular bill to sit tight until the actual appeal in the court has been

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MS. WOJTAS: (continued)

rendered. Then you can possibly make a decision to get at exactly what you want to accomplish as far as providing continuous coverage under the Workman's Compensation law. I think the need and equity and merit connected with the bill had been taken into consideration in the collective bargaining agreement and I think that the federal government recognizes there has to be uniformity in this area and we would like to continue with it that way. I have much more information that I am planning on submitting to this Committee and I thank you for your time.

REP. KINER: Thank you for your brevity. Thank you, Joyce. Any questions. Mike Ferrucci.

MICHAEL FERRUCCI: Chairman Kiner, members of the Committee. My name is Michael Ferrucci. Staff Representative and lobbyist for and Council Member for the American Federation of State, County and Municipal Employees with a statewide membership of 30,000 and growing. I am here today to speak specifically on several bills and in many cases, I will associate my remarks with those of Betty Tianti, but I would offer some brief comment at this point. On Senate Bills 241 and 242, involving the part-time issue on both the state and municipal sector, this matter is extremely important to the Council for operation representing both state and municipal workers. We have attempted in the past to get the legislation on the books and hopefully, there will be an opportunity to do that in this session. What we have been saying based on past experience has been developing even more and more, unfortunately to the position that we have raised question about.

And that is to deny access to the bargaining process by employees working less than 20 hours a week is to promote manipulation of the law that was intended to represent workers. In fact, the manipulation is such that there is considerable erosion taking place in too many of our communities which is nothing more than a product of the 20 year, the 20 hour situation. It is not unusual, as you have heard speakers before me tell you, that in any given workplace, it is easier for an employer to put on board workers performing work of 19 hours and in some cases, blatant enough to set out a work schedule of 19 and three quarter hours. Clearly, a circumvention of the law only to chisel. And really, undermine the system. It is not unusual for

Testimony

Legal Service Training And Advocacy Project, Inc.

111 Oak Street 112
Hartford, CT 06106

525-6604

Training Office
495 Orange Street
New Haven, CT 065
(203) 777-2531

~~XXXXXXXXXXXXXXXXXXXXXXXXXXXX~~ Atty. Jan VanTassel, Ex. Director

Robert A. Bertisch
Liz Ryan Cole
Attorney at Law
Barbara Underwood
Sandy Blake
Karen Crosby
Sandi Kahn
Jill Cutler

STATEMENT OF JAN VANTASSEL BEFORE THE LABOR COMMITTEE
MARCH 1, 1982

SB-295 AN ACT CONCERNING MAXIMUM AND MINIMUM BENEFIT RATES UNDER UNEMPLOYMENT COMPENSATION

Legal Services supports the efforts of the AFL-CIO to increase the minimum benefit rate under Unemployment Compensation to twenty per cent of the average production wage and remove the six dollar cap on yearly benefit increases. Connecticut citizens who have been working and contributing to our economy should not be denied an equitable compensation rate when they are laid off..

SB-345 AN ACT TO PROVIDE INSURANCE COVERAGE AND EMPLOYEE WELFARE FUND PAYMENTS WHILE COLLECTING WORKERS' COMPENSATION

The purpose of this bill is simply to assure that the Legislature's original intent of providing health and life insurance benefits to people collecting workers' compensation benefits is in fact carried out. This clarification of the law has been necessitated by a recent federal court decision. Immediate action on this bill is essential to protect thousands of Connecticut workers.

SB-241 AN ACT INCLUDING PART-TIME MUNICIPAL EMPLOYEES WITHIN COLLECTIVE BARGAINING

SB-242 AN ACT INCLUDING PART-TIME STATE EMPLOYEES WITHIN COLLECTIVE BARGAINING

Each of these bills would allow part-time employees to choose whether or not to be represented for the purposes of collective bargaining. With increased interest in job-sharing, it is important that part-time employees not be denied this very basic worker's right to collective bargaining.

Legislative Office
179 Allyn Street
Room 508
Hartford, CT 06103
(203) 525-6604

Jan Van Tassel
Attorney at Law
Edward Dale
Attorney at Law
Shelley White
Legislative Liaison
Kathy Zabel