

Legislative History for Connecticut Act

HB 6388 PA 58 1985

House 2018, 2141 (2)

Senate 1105, 1112-1113 (3)

Labor 543-544, 606-608, 621-622 (6)

**LAW/LEGISLATIVE REFERENCE
DO NOT REMOVE FROM LIBRARY**

11

Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate
and House of Representatives Proceedings

Connecticut State Library

Compiled 2013

H-394

CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
1985

VOL. 28
PART 6
1832-2153

House of Representatives

Wednesday, April 3, 1985

Page 8, Calendar No. 168, Bill No. 7541, File No. 187, AN ACT CONCERNING COMPLIANCE WITH THE REQUIRED HEALTH ASSESSMENTS OF STUDENTS.

Calendar No. 169, Bill No. 6388, File No. 193, AN ACT CONCERNING "WHISTLE BLOWING" PROTECTIONS.

Calendar No. 171, Bill No. 7573, File No. 195, AN ACT CONCERNING THE KILLING OF DOGS WORRYING OR PURSUING DEER.

Calendar No. 174, Bill No. 306, File No. 23, AN ACT CONCERNING REGULATIONS FOR THE STORAGE, USE AND TRANSPORTATION OF FLAMMABLE OR COMBUSTIBLE LIQUIDS.

Page 9, Calendar No. 175, Bill No. 311, File No. 27, AN ACT CONCERNING REGULATIONS FOR THE STORAGE, USE AND TRANSPORTATION OF LIQUEFIED PETROLEUM GAS OR LIQUEFIED NATURAL GAS.

Calendar No. 176, Bill No. 492, File No. 143, AN ACT CONCERNING THE REAL ESTATE LICENSE EXAMINATION.

Calendar No. 177, Bill No. 635, File No. 154, AN ACT CONCERNING MAILING REQUIREMENTS FOR ACCIDENT AND LIABILITY INSURANCE LIENS.

Calendar No. 179, Bill No. 741, File No. 128, AN ACT CONCERNING THE SUBSCRIBER SURVEY AND VOTE FOR EXTENDED LOCAL CALLING TELEPHONE SERVICE.

kok

173

House of Representatives

Wednesday, April 3, 1985

File No. 180. Calendar No. 157, House Bill No. 7682,

File No. 181. Calendar No. 159, House Bill No. 5657,

File No. 178. Calendar No. 161, House Bill No. 6083,

File No. 184.

Page 7, Calendar No. 162, House Bill No. 6084,

File No. 186. Page 8, Calendar No. 168, House Bill No.

7541, File No. 187. Calendar No. 169, House Bill No.

6388, File No. 193. Calendar No. 171, House Bill No.

7573, File No. 195. Calendar No. 174, Senate Bill No.

306, File No. 23.

Page 9, Calendar No. 175, Senate Bill No. 311,

File No. 27. Calendar No. 176, Senate Bill No. 492, File

No. 143. Calendar No. 177, Senate Bill No. 635, File No.

154. Calendar No. 179, Senate Bill No. 741, File No. 128.

Page 10, Calendar No. 182, Senate Bill No. 818,

File No. 130. Thank you, Mr. Speaker.

DEPUTY SPEAKER BELDEN:

The motion before us is to adopt the Consent Calendar as read by Rep. Esposito. Is there objection to any item which has been read for the Consent Calendar for today? Hearing none, it is adopted.

CLERK:

Page 12, Calendar No. 32, House Bill No. 5774,

S-234

CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1985

VOL. 28

PART 4

1058-1399

THE CLERK:

Page 9, Cal. NO. 202, House Bill No. 6388, File No. 193. An Act Concerning Whistle-Blowing Protections. Favorable Report of the Committee on Labor and Public Employees.

THE CHAIR:

Senator Hampton.

SENATOR HAMPTON:

Yes, Mr. President, I move acceptance of the Committee's joint Favorable Report and passage of the bill.

THE CHAIR:

Would you remark?

SENATOR HAMPTON:

Yes, Sir. This law prohibits private sector and municipal employers from taking retaliatory action an employee who reports to a State or municipal agency any actual or suspected violation of State, municipal, or federal law. This bill would expand that protection to include retaliatory against employees who report to a federal agency. If there are no objections, I move to the consent calendar.

THE CHAIR:

Hearing no objection, so ordered.

THE CLERK:

Cal. No. 203, Substitute for House Bill No, 6393, File No. 179. An Act Concerning Workers' Compensation Awards. Favorable Report of the Committee on Labor and Public Employees.

THE CHAIR:

Senator Hampton.

The Senate will stand at ease.

THE CLERK:

An immediate roll call has been ordered on the consent calendar,
will all Senators please return to the Chamber. Immediate roll call
on the consent calendar, will all Senators please return to the
Chamber.

THE CHAIR:

Please give your attention to the Clerk, who will now call those
items that have been moved to the consent calendar, including an
item that was reconsidered today from a previous... the previous
session. Mr. Clerk.

THE CLERK:

The first item is that reconsidered item, Senate Bill 776,
formerly Cal. No. 54.

Page 3, Cal. 166. SB 35

Page 4, Cal. No. 170, Cal. No. 171, Cal. No. 172, and Cal. No.
175. SB 138, SB 844, SB 845, SB 374

Page 5, Cal. Nos. 179 and 180. SB 867, SB 868

Page 6, Cal. Nos. 182, 185, 186. HB 7621, HB 5969, HB 7528

Page 7, Cal. Nos. 188, 189, 190, 191, 192, and 193. HB 7491, HB 6083, HB 6084, HB 7432, HB 7530, HB 7571

Page 8, all items. HB 5986, HB 6242, HB 6597, HB 6721, HB 7679, HB 7680
Cal. Nos. 194, 195, 196, 197, 198 and 199.

Page 9, all items. HB 7682, HB 5657, HB 6388, HB 6393, HB 6394, HB 5193
Cal. Nos. 200, 201, 202, 203, 204, and 205.

Page 10, Cal. Nos. 207 and 208. SB 553, SB 787

And page 11, Cal. No. 206. HJ 46

THE CHAIR:

Are there any changes, any omissions? Machine is open, please
record your vote on the items that have been moved on the consent

calendar, and as called by the Clerk. Has everyone voted? Machine is closed, Clerk please tally the vote.

Result of the vote: 36 yea, 0 nay. The consent calendar is adopted.

THE CLERK:

Clerk has an announcement to make. Next Wednesday, the 17th, the Senate picture will be taken at 12:00 noon. Will all Senators try and be in the Senate Chamber at five minutes of twelve.

THE CHAIR:

Any further announcements? Senator Robertson.

SENATOR ROBERTSON:

Mr. President, if I might Sir, we're awaiting an emergency certified bill on the transportation of nuclear waste, and unfortunately, if we could stand at ease before we either move on or adjourn, Sir. I'd appreciate if we could stand at ease for a few moments.

THE CHAIR:

Either that, or do you want to recess for ten minutes?

SENATOR ROBERTSON:

Ten minutes is fine.

THE CHAIR:

The Senate will recess for ten minutes, unless there are announcements or points of personal privilege before we do that.

Senator Larson.

SENATOR LARSON:

Thank you, Mr. President, just a quick announcement to remind everyone that we will be practicing outside after we adjourn. Thank

JOINT
STANDING
COMMITTEE
HEARINGS

LABOR
AND
PUBLIC
EMPLOYEES

PART 2

363-726

1985

State Capitol
Room W-56
March 12, 1985
9:00 A.M.

ll
kdc

LABOR AND PUBLIC EMPLOYEES

PRESIDING CHAIRMEN: Senator Hampton
Representative O'Neill

COMMITTEE MEMBERS PRESENT:

SENATORS: Hampton, Matthews, Harper

REPRESENTATIVES: O'Neill, Gelsi, Adamo,
Kiner, Emmons, Savage

Cass. 1 SEN. HAMPTON: -- on Labor and Public Employees. Our first
speaker is J. D. Eaton, State Ethics Commission.
Mr. Eaton.

MR. J. D. EATON: Good morning. I'm Mr. Eaton of the Ethics
Commission staff, and the Ethics Commission's remarks
this morning concern Committee Bill 6388, whistle blowing
protection. This would extend the protection now given
by, to employees of municipalities and private firms
who blow the whistle to employees on their employer who
blow the whistle to the, to a federal agency.

SEN. The Ethics Commission supports whistle blowing protection.
It's one of the more common ways that it gets information
on state personnel who are, maybe violating the code of
ethics or other state laws.

MR. Often these revelations are made as a, in a spirit of
public duty, but there's no protection to anyone who
reports his employer's possible illegal activity to the
Ethics Commission. The section that Committee Bill 6388
would amend does not apply to state, to the state
employers who are state employees, or state officials
and the only other whistle blowing protection act that
the Ethics Commission is aware of is 4-61DD which gives
some protection to persons who blow the whistle to the
attorney general. Ethics Commission and a code of
ethics for public officials were established in 1978 to
increase the confidence of the public and the integrity

SEN. HANCOCK: Any other questions? Thank you R. Eaton.

2
kdc

LABOR

March 12, 1985

MR. EATON: (Continued) of Government operation. Its Commission's hindered in achieving his goals when State personnel are afraid to report possible violations of the Code to the Ethics Commission. The Commission urges that this Committee extend the Whistle Blowing Protection of Section 3151M to the persons who report violations to the Ethics Commission. You could do this either of two ways, you could amend the section that Committee bill 6388 refers to by deleting the exception that it now contains for the State as an employer. The other way would be to amend the Section 4-61DD concerning whistle flowing to the Attorney General to add the Ethics Commission to it.

Municipal employees who report illegal activity are protected from retaliation, and employees of private firms are protected against the retaliation, there's some protection against retaliation for persons who report possible violation of the law to the Attorney General. The Ethics Commission is to achieve the purpose for which it was established, it needs protection for those who report violations of the Code of Ethics to the Commission.

SEN. HAMPTON: Just for my own edification Mr. Eaton, if a person comes to the Ethics Commission and tells you of something that's going on illegally, do you have to identify that person?

MR. EATON: Only if it, if that person's testimony is required to substantiate the allegation -- or if that person of course is the one that signs the complaint then obviously that person is not only identified as involved in it but the instigator of the allegation. The Commission can file its own complaints and often does to protect someone who blows the whistle to it. But that person's testimony is involved -- we've had people who have, -- who will tell us about a problem and then won't testify even in our confidential hearing for fear of retaliation from their superiors. It's a very obvious fear if it's -- if their boss is the one they feel is doing something wrong.

SEN. HAMPTON: Any other questions? Thank you Mr. Eaton.

64
kdc

LABOR

March 12, 1985

REP. ADAMO: (continued) those things, that would drive us absolutely crazy.

SEN. HAMPTON: Any other questions? Thank you Mary.

ATTY. CONKLIN: Thank you.

SEN. HAMPTON: Ruth Poldi?

MS. RUTH POLDI: My name is Ruth Poldi, and I'm here to testify on House Bill 6388 which is an Act concerning whistle blowing protections.

SEN. HAMPTON: Ruth, may I interrupt just a moment, please. I know that there are several of you here but . . .

MS. POLDI: I'm not with Legal Services.

SEN. HAMPTON: You're not representing the same group?

MS. POLDI: No, I'm not. I'm with . . .

SEN. HAMPTON: Then I apologize to you, I was just going to say to you, let's don't go over the same.

MS. POLDI: I'm testifying on a different bill, in fact I don't think anybody's testified on this bill today. And I will be brief, but I do believe that this is an important bill because it is a bill that would correct an important oversight in the current whistle blowing statute. As the law -- current law Section 31-51M reads, it provides protections to any employee, private employee, who reports to a public agency suspected violations of State or Federal law. The statute incorporates the definition of public agency as defined in Section 1-18A of the Connecticut General Statutes. The problem with that statutory definition is that it limits the definition of public agency to state agencies, or agencies which are political subdivisions of the state. Therefore if an employee reports a suspected violation of state or federal law to a federal agency which is often the appropriate agency, she is not covered by the State Whistle Blowing Act. She's also not covered by the

65
kdc

LABOR

March 12, 1985

MS. POLDI: (continued) Federal Whistle Blowing Act because that Act only protects federal employees. So a number of times we have situations where someone -- for instance who works in a meat packing plant -- will report violations of food and drug laws to the appropriate agency which in this case would be the federal agency and she could be retaliated against by her employer and have no recourse to state or federal law.

It appears that this was an oversight when 31-51M was enacted in 1982 because the legislative history reveals that Senator Owens intended -- in bringing out the bill anticipated that it would cover people who also reported violations to federal agencies and that's really all that this bill would do although it is an important bill because it leaves a number of people uncovered for conduct that we want to encourage them to do. To engage in.

: One question if I may. Is there any problems with federal preemption?

MS. POLDI: With respect -- well as I said there's no problem with federal preemptions concerning the Federal Whistle Blowing Law because that doesn't cover federal employees. Are you talking about the National Labor Relations Act, that's the only other law I can think of.

The current state of the law concerning anybody who would try to seek protections under this Act if he or she were represented by a union, is in total disarray. And the very issue that you represent -- you pointed to concerning a union member whether he or she is only limited to the National Labor Relations Act, practically all circuit -- there's a split in the federal courts. It appears that the unanimity is that a person is not Federal Labor Relations Act does not preempt even a union member's right to proceed under a State Whistle Blowing Act if the conduct is a tort conduct, you know if the cause of action is a tort which this cause of action would be as opposed to something that is covered by the collective bargaining agreement. So I think even though some courts are saying that union members aren't covered by State Whistle Blowing Acts because

66
kdc

LABOR

March 12, 1985

MS. POLDI: (continued) their recourses under the National Labor Relations Act still -- even those courts would agree that if their collective bargaining agreement doesn't protect them, then they still have recourse to independent state tort remedies which this would be. That's really the only preemption issue. No Connecticut court has decided that issue, State or Federal, Second Circuit hasn't decided the issue. It might be soon.

SEN. HAMPTON: Thank you Ruth. Mr. Swensson? He isn't here. Then she isn't here. I'm sorry I'm going. Marcia Winn? Thank you for writing clearly Marsha. I'm not sure if this young lady is legal or not. She didn't sign her name on the sheet.

MS. MARCIA WINN: I (inaudible) proxy and I'm afraid I'm not wearing my badge either today.

SEN. HAMPTON: I think we should call the cops right now.

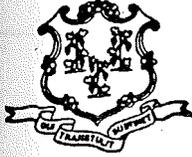
MS. WINN: I apologize.

SEN. HAMPTON: Go ahead.

MS. WINN: Okay. I'm Marcia Winn, I'm an attorney who represents claimants before Workers Compensation Commissions as well as claimants before various other administrative agencies and also in court proceedings.

I'm here on behalf of a number of the Workers Compensation Bills and I'd like to address them in pairs if I may for brevity sake.

I'm going to address first Committee Bill 6403 and Committee Bill 6399. I think that some of the importance underlying each of these bills can best be addressed by my giving you an example of a claimant who was represented by my firm a number of years ago. This individual was a laborer, hit his thumb during the course of his employment and seemed to have a fairly minor injury at that particular point in time. The thumb nail never quite healed. What happened a number of years later is that the mutated cells that had been hit, developed as cancerous cells, they later metastasized, they



STATE OF CONNECTICUT
STATE ETHICS COMMISSION

621

STATEMENT TO THE COMMITTEE
ON LABOR & PUBLIC EMPLOYEES

BY THE

STATE ETHICS COMMISSION

ON

COMMITTEE BILL NO. 6388

MARCH 12, 1985

Committee Bill No. 6388 would extend the protection against retaliation, given by section 31-51m, General Statutes to an employee who exposes his employer's unlawful activity, to employees who make their disclosure to Federal agencies.

The Ethics Commission supports protection for whistle-blowers. One of the more common ways the Commission learns of violations of the Code of Ethics for Public Officials (Chapter 10, Part I, General Statutes), particularly in the Executive Branch, is from whistle-blowers. Reports of violations are often motivated by a sense of civic duty. Yet these public-spirited State employees have no statutory protection against retaliation. Section 31-51m does not apply to State employees who report violations of the law by their superiors. Section 4-61dd, General Statutes, the only other whistle-blower protection the Ethics Commission is aware of, applies to State employees but only to those who report suspected illegal activity to the Attorney General.

The Ethics Commission and the Code of Ethics for Public Officials were established to increase the confidence of the public in the integrity of State government operations. It is hindered in accomplishing its purpose when State employees who know of illegal activities committed by their superiors are afraid to reveal them to the Ethics Commission.

The Ethics Commission urges that this Committee extend whistle-blowing protection to State employees who report suspected violations of the Code of Ethics to the Commission. It recommends that Committee Bill No. 6388 be amended to accomplish this. The change could be effected in either of two ways. Subdivision 31-51m(a)(2), General Statutes could be amended by removing the exclusion of the State as an employer. Alternatively, section 4-61dd could be amended to

(OVER)

Phone: (203) 566-4472

30 Trinity Street • Hartford, Connecticut 06106

An Equal Opportunity Employer

add reports of improper activity made to the Ethics Commission by present or former State employees.

Municipal employees who report illegal activity in municipal affairs are protected from retaliation. So are employees of private firms. State employees who blow the whistle to the Attorney General have limited protection against revelation of their identity, and protection against retaliation. If the Ethics Commission is to achieve the goals set for it when it was established, there must be protection for those who report illegal or unethical activity to it.



J. D. Eaton
Executive Director and
General Counsel

JDE:cc