

Legislative History for Connecticut Act

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HB 5041	PA 88-226	1988
Labor 20-21, 42-43		/4
Judiciary 744-745, 766-780, 782-791, 804-805, 844-845, 861-866, 883-884, 902-906		/44
House 221, 3715-3772		/59
Senate 2701-2711		/11
TOTAL		118 p.

Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate  
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are certain industries today. There are certain small businesses, particularly the small businesses, that allow extreme leeway in terms of what their employees do on a break and how much time.

Now, you are going to require those employees to come under real scrutiny in terms of the reporting requirements. I think this is just an added burden on the state, and an added burden on the employee. They are having a tough enough time in this state, without making it any tougher.

This isn't really a necessary bill. If it is being abused, the individual people in the particular jobs, who are working for the particular business, should be able to address this with their employee themselves. They don't need State legislation to correct this.

HB5041

Workman Compensation: I just left Finance Committee. They have got three bills, dealing with the Second Injury Fund. I don't believe that employees know what is happening out here.

The insurance companies are... go ahead...make whatever legislation you want. They just keep increasing the rates on these people. So, what you have is the small businessman, the backbone of our state's industry, not even taking out Workman Compensation insurance any more, because they can't afford it.

We have problems with Workers' Compensation. We have problems in the Second Injury Fund. But, I don't believe this legislation is going to address either of them.

REP. ADAMO: Which one? Excuse me. Which one are you talking about, Representative Casey?

REP. CASEY: The one dealing with 5041. It is supposedly to limit the immunity for civil action granted to principle employers under the Workers' Compensation Act. But, I dare say that I don't know what the statement of purpose really was going to be the final act.

REP. ADAMO: That is exactly what the (inaudible)...

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REP. CASEY: ...action on the bill.

I am just going to say 5096... I can get into it, but if employers are requiring employees to do work that it does not conform to OSHA or to any of the other federal and state Health and Safety Requirements in the workplace, they certainly should be coming under some penalties and fines now. I just think it is redundant legislation.

REP. ADAMO: Any further questions?

REP. O'NEILL: One. Did I understand you correctly when you said that there are a lot of employers who are not taking out Workers' Compensation?

REP. CASEY: Yes. I just heard it from the State Treasurer's Office, yes, indeed.

REP. O'NEILL: What is she going to do about it?

REP. CASEY: They are looking to increase the penalties by 15%.

REP. O'NEILL: So, this is another group of people in the state who are not obeying the law, too?

REP. CASEY: Well, supposedly, that is true.

REP. O'NEILL: Do you know any?

REP. CASEY: At the present time, do I know any? No. Most of them are struggling very hard to meet the new increases in their insurance policies, that deal with...

REP. O'NEILL: (inaudible) from the State Treasurer's Office told you...?

REP. CASEY: You have got Senate Bill 79, Senate Bill 80.

REP. ADAMO: No, no. Wait, those are Finance bills. We haven't received those bills.

REP. CASEY: Those are Finance bills which you will, which will be coming here.

WILLIAM SHORTELL: That's right.

REP. TABORSK: We're not going to have massive walkouts. We're going to have workers saying "You want me to do what?" and not be disciplined for insubordination or fired because they questioned the safety or health of their working conditions.

WILLIAM SHORTELL: I think you're exactly right.

TIM MORSE: I think another point that bears mentioning is that this would be not necessarily people that are refusing to work period and then walk out go and home, but they're refusing to do one particular job or work in one particular condition that they feel is unsafe. You know, it's certainly fine if there's a requirement that people offer to do other work and that they're allowed to do other safe work without discipline. The question is being able to refuse to do a particular piece of unfit work and broadening it to include health and safety provisions and give those committees certain rights.

SEN. SPELLMAN: Further questions of the committee? Thank you very much, gentlemen.

WILLIAM SHORTELL: Thank you.

SEN. SPELLMAN: Next is Brian Anderson. Brian is Joyce Wojtas going to speak with you? Joyce Wojtas, also.

BRIAN ANDERSON: Good afternoon, Senator Spellman and Members of the Committee. In the interest of saving the committee time, we're testifying together. I'm representing the Utility Contractors Association of Connecticut and Joyce represents the Connecticut Construction Industries Association.

JOYCE WOJTAS: Good afternoon, Mr. Chairman and Members of the Committee. We would like to go on record in opposition to Raised Committee Bill 5041 limiting immunity for principal employers under the Workers' Compensation Act.

This bill would expose principal employers or

general contractors to liability for both negligence and Workers' Compensation Benefits. The basic purpose of the Workers' Comp. Act is to grant employees suffering a work-connected injury a statutory right to compensation regardless of fault or cause of the injury. In exchange for the certainty and speed of recovery for employees and the increased liability of employers common law claims for damages from work-related injuries are abolished under the act. Current law provides protection because the principal employer or contractor is liable for Workers' Comp. Benefits if a subcontractor is irresponsible or uninsured. The current law does provide a means whereby any principal employer or general contractor is going to be cautious in choosing those people that do work for him.

The increased liability under this bill is going to add to costs of everything including the home building industry and the construction industry as a whole. I would hope that you would take a closer look at it and if it -- I had heard someone earlier testify about straightening out some type of problem with the current law. It seems very clear according to the language because if a subcontractor fails to insure his employees the principal employer is liable.

I would also like to make some comments on Raised Committee Bill 5043 concerning the construction workers fringe benefit fund. We have a concern as to a definition of delinquency in the bill. In our collective bargaining agreements with the Connecticut Construction Industries Association we negotiate with the laborers, the teamsters, the operating engineers, the carpenters and the bricklayers. Each collective bargaining agreement or under the trust of funds that are collected by the trustees have a different delinquency time. It could be 15 days after the actual month's work. It could be 30 days and they are different and if this bill is going to go forward, I would hope that it would be in connection with that or define it so that it would be in accordance with the collective bargaining agreement.

And I'd also like to say that if this particular bill is being promoted to protect union workers, I

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REP. NYSTROM: Yeah, but we can't adjust the financial question.

REP. TABORSAK: ...and I don't think this bill addresses that either.

REP. NYSTROM: I agree. Thank you.

SEN. AVALLONE: Kyle Ballou.

KYLE BALLOU: Good afternoon Senator Avallone, members of the committee. My name is Kyle Ballou. I am a staff attorney at Connecticut Business and Industry Association. CBA is opposed to House Bill #5041, limiting the immunity for principal employers under the workers compensation act.

The passage of this bill would begin the erosion of the 70 year-old workers compensation system. The workers compensation system was designed to provide immediate compensation to employees injured on the job, without anyone having to prove fault or liability. Presently a subcontractor finds it in his best interest to police a work area for safety since he will have to pay workers compensation to those in his employ who are injured. But if there is another party, i.e. the principal employer who will have to pay damages if sued in court, who believe that the safety incentive is no longer there.

Conversely, the principal employer is encourage to use subcontractors who are uninsured, so that the principal can cover the workers compensation, thus immunizing himself from civil action. This bill would also apply retroactively to law suits still pending. This creates unforeseen liabilities for defendants presently in court. We urge you to reject this bill. Thank you.

SEN. AVALLONE: Thank you. Representative Hanchuruck.

REP. HANCHURUCK: Kyle, who didn't this bill get killed in Labor?

KYLE BALLOU: Why did it not?

REP. HANCHURUCK: Yeah.

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KYLE BALLOU: The Representatives and Senators in that committee decided to vote it out. I'm not really sure, Representative Hanchuruck.

SEN. AVALLONE: Representative Nystrom. Any other questions? Thank you.

KYLE BALLOU: Thank you.

SEN. AVALLONE: Representative Berner. Sue Merrow.

SUE MERROW: Good afternoon. My name is Susan Merrow. I represent the Connecticut Clean Water Coalition, an organization of 16 environmental groups whose purpose is to work for public policies which protect and preserve our state's water resources. In their behalf, I urge your favorable consideration for Raised Committee Bill #5877, AN ACT REGULATING THE DISCHARGE OF SEWAGE FROM VESSELS.

Long Island Sound is a major seafood and recreation resource of inestimable value to the people of Connecticut. It serves as a receptacle for all sorts of pollution from rivers and streams, from cities, from harbors, and also from heavy boating use, and also discharge from vessels is also a significant part of this pollution burden. We support, wholeheartedly, the approach to controlling sewage discharges described in this bill, including the Commissioner of DEP the power to create no discharge zones, and to require the provision of pump-out stations.

Responsible management of one's own sewage is not a novel concept, and it seems logical to us to extend this concept to the boating public. The Clean Water Coalition also recognizes that boats are not the sole source of sewage discharges into Long Island Sound, and we support revisions...an important adjunct to the provisions in this bill will be stricter enforcement by DEP against other direct discharges of sewage into the Sound, and we certainly support those efforts also.

We appreciate your attention to these remarks.

SEN. AVALLONE: Any questions? Thank you very much.

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of housing is a state-wide problem. This bill really says to the small town, don't worry about it. We're not going to impose this upon you because you don't fit the way the bill is written. You have to have 5,000 rental units, so you're off the hook.

So, if you have a family that's down on their luck, you can continually send them bus fair, send them off to a large town. I personally don't feel that this bill addresses the real issue and that's housing in general for the whole State of Connecticut. That's what I told the people at that time, and I repeat that now.

REP. BERNER: I see your point.

REP. MCCA VANAGH: Anybody else? Thank you very much.

REP. BERNER: Thank's for your time and for the Vice-Chair's indulgence.

REP. MCCA VANAGH: You're welcome. Next we have a panel here I guess, Robert Hughes, Tom, I think it's Holleran, and John Shanas or...is there 3 people to speak here. I apologize...I'm having a hard time reading the (inaudible). I apologize if I did your name wrong, but would you please give us your names when you speak.

ROBERT HUGHES: My name is Robert Hughes.

THOMAS HALLIMAN: My name is Thomas Halliman.

REP. MCCA VANAGH: Halliman, OK. You got one other...

JOHN STAMAS: John Stamas.

REP. MCCA VANAGH: John Stamas, OK.

ROBERT HUGHES: My name, as I already stated is Robert Hughes. My brother, John, was a casualty of the Bridgeport L'Ambiance collapse on April 23, 1987. He died under tons of concrete and steel. An accident that could have been prevented had our legislature passed proper laws and safeguards for the working men in the State of Connecticut. They did not. It doesn't seem that their intentions are to do so in the too near future. HB 5041

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Today, I want to support and urge our legislations, in particular the legislators who passed torque reform who voted for it, post-torque reforms. Today I want to support HB #5041, principal employers bill. As we've been watching the developments in the L'Ambiance case, we found out through Jack Kelly about a week ago, criminal prosecution is not possible in the State of Connecticut, because laws have not been properly written.

The people who could have prevented the deaths of 28 men at L'Ambiance, did not. They will suffer no penalties under law, it seems. As far as compensation for the families of L'Ambiance, it seems that at this point torque reform will tremendously limit their just due. I would like to say shame on all the legislators in the State of Connecticut who voted for the torque reform bill of May, 1986. Shame for all the legislators who voted for torque reform of April 30, 1987, and shame on anyone who does not vote for HB 5041, the only last chance that the victims of L'Ambiance have to get their just due.

We, the common working people, are sick and tired and totally fed up, and we have to come to the legislature to scream, enough is enough is enough is enough. We will no longer put up with those legislators who protect the special interest groups primarily, in the State of Connecticut, the insurance industry.

The insurance industry...torque reform, I understand was not just written by the insurance industry, but meetings were held at the Aetna Life and Casualty in Hartford. The bill, once formulated was handed to our legislators. Our legislators were told to vote for it and they did so. It's about time you started to remember who your constituents are. Most of your constituency is the working man of the State of Connecticut.

He is not protected on the worksite because of you people. His family will not be protected now. The victims left behind children, they left behind wives, they left behind fathers, they left behind all kinds of people, and none of them are going to

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be protected or get their just due.

Shame on you all if you don't vote for HB 5041. I will make sure, I will spend the last days of my life fighting to see that your political careers crumble and come down faster than L'Ambiance every did. L'Ambiance was 11 seconds, I understand. But we will no longer tolerate your irresponsibility and your protection of the bankrolls of the insurance industry in the State of Connecticut.

**TOM HALLIMAN:** My name is Tom Halliman. I am here with my wife, Francine today. Francine lost her 24 year old brother at L'Ambiance Plaza. I am here to support Bill #5041, the principal employer bill.

I believe that the present legislation favors the insurance companies and the big contractors at the expense of working people, injured people. Working people in Connecticut are currently being taken advantage of by their employers. It is indeed discriminatory to expect an individual to perform services on your property without assuming liability for any potential injury.

Any homeowner is aware that they are liable for anyone being injured on their property. To (inaudible) general contractors as not being liable is both unjust and discriminatory. I will even suggest that it is unconstitutional in that it invites negligence on the part of the general contractor. Asking a person to perform a service for a wage is normally a fair transaction. For an employer to purchase a service without being responsible for potential injury gives that employer a license to take unfair advantage against their employees.

With the unsafe working conditions at L'Ambiance Plaza, the general contractor was taking unfair advantage against all that were working there. Many workers complained that working conditions weren't safe. They were told that their complaints were actually the typical conditions for the lift-slab technique of construction.

Many of the workers complained that the building was swaying too much, only to be told that this was a standard occurrence in the lift-slab technique.

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Workers complained that they were being instructed to use very large amounts of "dryers" in mixing concrete slabs. Dryers enables cement to dry faster. Again, workers were told that this was a safe technique.

There was also a concern over the large amount of water contained in the foundation when it was being set. The concern being that perhaps the foundation may not be secure. Most of us are aware that there are deadlines set on projects and that there are often shortcuts taken in order to meet these deadlines. This is normally an accepted procedure, as long as the procedures meet the fine safety guidelines. When there is no liability to be assumed by a contractor, it creates an opportunity to victimize working people.

In the case of L'Ambiance Plaza, this led to the maiming and slaughtering of human beings directly due to the contractor's assumption that they could do whatever they wished and get away with it. I strongly recommend that general contractors be made liable for injuries on the job, and that they be made to assume liability when injuries are due to the general contractor's negligence. Thank you.

REP. MCCA VANAGH: Would you use this microphone over here please. Thank you very much.

JOHN STAMAS: Once again, my name is John Stamas. Earlier this afternoon, there was a spokesman from the insurance industry who gave the insurance industry position and I...(inaudible) in my mind, she said there would be an erosion of workman's benefits if this bill is passed. I am convinced now I am on the right side in supporting Bill #5041, giving limited immunity to principal employers.

I am the brother-in-law of Mario Collelo, one of the 28 victims in the Plaza disaster. My wife is in the back, Grace. Mario left 4 sisters and 1 brother. He was unmarried, but he was like a father to many of his nieces and nephews. At Mario's wake, one of his former friends called him a prince. I think that describes him perfectly. It was a terrible and unnecessary loss.

I taught US history for 28 years. I don't claim to have a profound knowledge of the law under the Constitution, but I do think that something is scandalously wrong with our present workman's compensation law. And some time ago, in my moments of anger, I jotted down some notes and, if you'll permit me: at that time I was angered at the protection given the principal contractor by state law.

As I understand it, the contractor is protected from any liability by workman's compensation laws in return for a paltry \$3,000 burial expense for the family of the victim. I understand that that burial expense has been raised to \$3,600, and I would like to see anyone in here try and get a decent funeral for less than 4 or 5,000 so I think that has to be revised. I don't think it's within your jurisdiction to do so, but I do think that's a part of the unfolding scandal.

I think the present law makes workers second class citizens, and employers are getting away with murder. I am an employer now myself. I took an early retirement from teaching so I'm on the other side of the fence now, but I still feel the same way. I think that the present law violates the Constitution because workers are denied due process.

Amendment 14, and this is an exact quotation, says that "no State shall make or enforce any law which shall abridge the privileges of citizens of the United States, nor shall any State deprive any person of life, liberty or property without due process of law."

I think that Amendment 7 also applies, and I'm not going through the entire Constitution. But I think it's important to state that I'm against even limited immunity, but I know one must accept part of a loaf. Amendment 7 says, "in suits of common law where the value in controversy shall exceed \$20, the right of trial of jury shall be preserved." I think, you know, it's pretty clear, and it's as absolute as in Amendment 14.

I think that no one should be immune from legal

action. We should all be held responsible for our actions. We should all be held accountable, as you are. Even the President is held accountable, and I don't know why special privileges should be given to any employer.

Lastly, we are supposed to be in an age of a humane and compassionate Connecticut, and I feel certain that the legislature will act in the best interest of the workers. Thank you.

REP. MCCA VANAGH: Are there any questions? Any legislators like to speak. Thank you very much, I appreciate your coming.

...(inaudible)

REP. MCCA VANAGH: I really think they represented it very well, and we will have to stick with the people who signed up. I appreciate...Robert Meyers please.

ROBERT MEYERS: Thank you, Mr. Vice-Chairman. I'm here representing the Department of Public Safety. To speak mercifully briefly in support of Raised Committee Bill #5828, specifically the first portion, thereof. There arise this year a procedure problem in law enforcement in the State of Connecticut where the statutes, as written, allow police sergeants and above to take the oath of persons making reports to them if they work for the same police department.

In several areas of the State, we have constables working for us and the Chief State's Attorney advised us that we cannot take their oaths since we cannot process their paperwork in an orderly fashion. The first section of this bill fills that void by adding constables to those people whose oaths we can take and we would urge its approval. If there is a way to add a line to it to have it take effect on its passage rather than in October, we'd appreciate it. But we'll certainly settle for October. Thank you, Sir.

REP. MCCA VANAGH: Any questions? Go ahead, Hanchuruck.

REP. HANCHURUCK: If I'm not mistaken, this legislation also increases the 2-4 week waiting period for the

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delivery, so the purchases of a pistol or revolver...

ROBERT MEYERS: No, I said I was limiting my remarks to Section 1 of the Bill. I believe there is another speaker signed up who will address Section 2 of the Bill which is the portion you've mentioned.

REP. HANCHURUCK: OK, thank you.

REP. MCCA VANAGH: Thank you very much.

ROBERT MEYERS: Thank you, sir.

REP. MCCA VANAGH: Robert Nasti.

ROBERT NASTI: Good afternoon. Members of the Committee, my name is Robert Nasti and I'm the Labor Relations Manager of the United Illuminating Company. One of my responsibilities there is to administer UI's worker's compensation program.

I am here today to testify in opposition to Committee Bill #5041, AN ACT LIMITING IMMUNITY FOR PRINCIPAL EMPLOYERS UNDER THE WORKERS COMPENSATION ACT. I presented you with some written testimony and would like to summarize, if I may, a few points.

UI's philosophy has been, and will continue to be, a commitment to provide a safe work environment for all of their employees. Beyond that, we assure ourselves and our employees that we will provide them with the maximum benefits under the law. Beyond what the law provides, we go beyond that. We provide additional pay for 6 months for any injured employees. We transfer this philosophy to our outside contractors.

As part of the utility business, we experience period of heavy workload. In order to meet our needs, we have to hire outside contractors, and when our needs are met and when the workload goes back to normal, we simply terminate their services. During the time that those contractors are on our property, we have employees that work side-by-side with these outside contractors, under the same conditions, doing the same kind of work.

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If any injury occurs on the job, our employees will have the sole remedy of workman's compensation under the provisions...

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...proposed legislation, the outside contractors working side-by-side with our employees would have the remedy of workman's compensation and also they would be able to pursue litigation against UI.

We are sympathetic to the factors that appear to be behind this legislation, and feel that there may be cases where worker's compensation should not be the sole remedy. However, we urge you to look beyond the present situation, and attempt to find alternatives that not only address the needs of the worker, but also take into consideration the potential negative impact legislation of this type may have on the business community in general, on the UI, and also its customers.

Thank you for this opportunity to appear before you, and if you have any questions, I will try to answer them.

REP. MCCA VANAGH: Are there any questions from the members? Thank you very much. Oh, I'm sorry, Representative Hanchuruck.

REP. HANCHURUCK: Yes, if this legislation were to pass, would there be a tremendous financial burden on United Illuminating or business in general?

ROBERT NASTI: In our particular case, it appears that there would be because we've have to take a look at the outside contractors and how many we have in there and what our potential liability is. We are self-insured. The issue of worker's compensation wouldn't be the problem. It would be the litigation.

In certain situations litigation would be OK. But we think we would find a lot of unnecessary litigation, and the cost to defend and the cost of settlements we think would be high. We would have to study it further, but our initial reaction to it is that it may be a cost that may have to be passed on to the customer and, of course, our

charge is to be very prudent on any costs that are passed on to the customer.  
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REP. HANCHURUCK: You don't know what these costs...without a study, if I'm correct, you don't know how much you'd have to increase everybody's bill by?

ROBERT NASTI: We don't have a number. We know it would be increased. To what extent, we think it would be significant, but to what extent we cannot tell you at this point. We intend to do some more work on this thing. We've only been working on this thing for about a month, and at this point we just don't know.

REP. HANCHURUCK: Thank you.

REP. MCCA VANAGH: Any body else? Thank you very much. Jack Cronan please. A. C. Carr. John Notto. Robert Curter, Carter, I'm sorry. Thank you.

ROBERT CARTER: Good afternoon. My name is Robert F. Carter. I live in Southbury and my law firm is in New Haven. I'm here to speak in favor of House Bill #5041, which would limit immunity granted to principal employers and which has been under discussion by several witnesses.

First, let me correct or fill in the rest of the picture about what Mr. Nasti was testifying about in the United Illuminating situation. The law in most states in what House Bill #5041 would make the law in Connecticut. It's not the legislature's fault that the law is in the state that it's in now.

It was a judicial mistake. It's a judge-made rule that we're talking about. Not a legislative rule. An employee of a sub-contractor can sue a negligent second sub-contractor cross-stream. And an employee of a general contractor and in that case UI can sue the negligent sub-contractor. So if you have the two men working side-by-side, if the negligence of the sub-contractor caused the UI man injury, then the UI man can sue that sub-contractor.

And what happens if he proves that the negligence causes his injury, UI gets paid back on its worker's compensation out of that recovery and if there's anything left over, then the injured party gets it. What the weird thing is in Connecticut, is that even though the injured employee can sue cross-stream, that is from sub-contractor to sub-contractor, or down-stream that is from general contractor, in this case UI, down against the sub-contractor, there is no such thing in Connecticut because of the principal employer judicial interpretation of suing upstream. That is an injured employee of the sub-contractor is not allowed to sue the general contractor because of this judge-made rule.

The law, in virtually, of every other State, the general rule in the United States, I found one exception that's like Connecticut, but the general rule, the vast majority rule is that only if an employer pays worker's compensation to an injured employee does he get immunity from common-law torque liability.

That's clearly the fair rule and that's all that this bill would do. It is not going to undermine worker's compensation at all. In fact, it will make Connecticut like the rest of the United States. In fact, it will strengthen the worker's compensation. As I stated, and as you probably know already, if there is a third party suit, the worker's compensation company of the employer, or if the employer is self-insured like United Illuminating, as the first claim outside the cost of litigation get paid back all their worker's compensation that is paid to that injured employee.

This situation doesn't come up often. I've done these cases...I do primarily cases for injured workers and workers with occupational diseases, especially. It doesn't come up often. That is, maybe 3 or 100 of the work-related injury cases that I do have some potential third party liability in them. Of those 3% or 4% of cases where there might be a third party liability, that is if a Mack truck runs over a messenger boy while he's crossing the street, he would have a claim against the truck driver. Of those small number of cases, it's a

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very tiny minority of those, probably 1 in 25 or 1 in 50 where this principal employer defense arises.

But when it does come up it's really horrible. It's enormously unfair. And that's all that this is about. It would bring Connecticut in line with the rest of the United States. You should know that it's a judge-made rule only. The legislation that's on the books, that is the statutes, Section 31-291, doesn't provide this immunity to principal employers from common-law liability.

It's a judge-made rule that you should clarify. That's what this statute should do is to clarify that law to make it clear that this judge-made rule should be corrected. In fact, the principal employers have no liability. They pay no worker's compensation. They don't pay premiums for this theoretical liability under 291, and if a sub-contract does happen not to pay worker's compensation, the worker is protected by the second injury fund anyway.

So, it is simply giving immunity from common-law liability for negligence for nothing to the principal employers, and it's not fair.

REP. MCCAVANAGH: Any questions.

REP. HANCHURUCK: Mr. Carter, if we were to pass this legislation as it stands now, it would be retroactive so that those people who were killed at L'Ambiance would be able to take advantage of it. Are you familiar with some of the other legislation in other states. Was it passed retroactively?

ROBERT CARTER: This issue has not arisen in other states with respect to retroactivity that I know about. In fact, I came up early to sign up and went over and did some research on that at the State Library this afternoon. What happened was that many states have statutes, virtually all of them, similar to 291 which says that the general contractor or principal employer is also liable for worker's compensation, even though it's a theoretical liability that doesn't exist any more because of the second injury fund.

When judges came to interpret them in the other

states, the judges said well if you pay worker's compensation then the employee can't sue you. But if you don't, then you can be sued just like the Mack truck driver or a defective machine manufacturer.

So this precise issue of retroactivity of modifying principal employer defense, I couldn't find any law and I doubt that there is any. It is clearly important that you put in the proper legislation history to show first that you're not changing the statute that you wrote, the legislature wrote, you're changing the judge-made rule to clarify the law so that it can be retroactivity and you should let the courts know that it should be retroactive. You want it to be retroactive to apply...it's not just L'Ambiance.

I have a case in Waterbury now the PGP disaster case where the people left the plant, the real employees of the plant left the plant and walked away from it when the hurricane was coming, leaving a security guard and then the successive security guards left the toxic processes going so that one guy was dead. The next guy that came in, my client, is now brain damaged-probably permanently.

Two other people are still totally disabled. In that situation is a live issue too. The cases where it comes up don't come up often, but it's really monstrously unfair to let someone walk away from his negligence when there's nothing, there's no quid pro quo, they don't pay worker's compensation, they don't even pay any insurance premiums extra because of the theoretical liability.

I think you can make it retroactive but I couldn't find any precise law.

REP. HANCHURUCK: Now regarding the other states where this legislation is in effect, do they have serious insurance problems or do they have higher consumer costs because of this or have businesses left those states because of this type of law?

REP. CARTER: No, see it's the law all over. It's not like you can...it's not like passing this law would make Connecticut ferocious to employees or hostile

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to employers. This is the law all over the country. And no, the answer is it doesn't have any large additional costs to the worker's compensation system or otherwise. As I said, the cases are infrequent and if there is a collection that is from the principal employer, then the worker's compensation carrier gets paid back on (inaudible) anyway. So, that there's a balancing of the effect.

What it does though is promote safety in these situations where the general contractor or principal employer has control over the premises or the job, but now has no incentive to provide safety because it can have no liability.

REP. HANCHURUCK: Now, if you'll pardon my prejudice, your voice dictates to me that you may be from another part of the country other than from Connecticut. Is that correct?

ROBERT CARTER: Right. I've lived here for 25 years, but my accent...I'm from Tennessee.

REP. HANCHURUCK: So, you came to Connecticut as a young man.

ROBERT CARTER: I came here to go to school. And I stayed here because of the civilization. This is a good way to correct one small piece of unfairness. I think the worker's compensation is good in Connecticut, and the court system is good.

REP. HANCHURUCK: What I wanted to get at if you'll excuse me, by your accent, is are you familiar with the laws down in Tennessee where you came from regarding this sort of thing? Mr. Nasti in his previous testimony testified that there might be some frivolous law suits because hey why not take a shot. If you can get a lawyer who would be willing to take a contingency case, you know, he might strike it rich with your particular case. Against a general contractor who has paid no insurance. Are there going to be these frivolous law suits? And if there are these frivolous law suits, is it going to be an added financial burden to some of these general contractors?

ROBERT CARTER: Well, frivolous law suits are less a

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problem here because of the subrogation for worker's compensation. First the worker's compensation company has to get paid back on any of these third party cases. So there is a big incentive unlike, for example, medical malpractice, not to bring a suit unless there's something important going on.

The only state that I could find that was like Connecticut was either Alabama or Georgia that had the same rule, that is providing immunity to someone other than the employer who paid the worker's compensation.

REP. HANCHURUCK: Well, I found your testimony very informative and enlightening. I appreciate your coming up today.

REP. MCCA VANAGH: Representative Nystrom.

REP. NYSTROM: Just for my understanding, I hope I don't force you to repeat what you've already said. But, the way the law is now in Connecticut, if the principal employer pays worker's comp to the employee who was injured, they cannot be sued.

ROBERT CARTER: That's right. And that's the way it will be after the statute.

REP. NYSTROM: If this law passes, that principal employer who pays the worker's comp to their employee still can't be sued.

ROBERT CARTER: That's exactly right.

REP. NYSTROM: However, if they sub-contract out to another company then they do not pay that individual's worker's comp but the other company pays the worker's comp and then they become injured on their site, that employer who sub-contracted is going to be sued by that other employee.

ROBERT CARTER: If they could prove that it was the fault of the general contractor or principal employer.

REP. NYSTROM: That's right. Then fault itself will have to be established. Negligence shown and all that.

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ROBERT CARTER: Sure. In fact, that can happen now on the plant. The employee of the principal contractor can sue the sub-contractor, but one sub-contractor or employee of one sub-contractor can sue another sub-contractor if they're negligent. It's just the upstream suit that's barred by this wrong interpretation on the statute. So I urge you to correct it.

REP. NYSTROM: Could you...a little bit more about the upstream.

ROBERT CARTER: All I mean is that an injured employee of a sub-contractor can't sue a general contractor or principal employer.

REP. NYSTROM: He can only sue his own.

ROBERT CARTER: He can't sue his own in those cases because he's barred by worker's comp, but he can sue another sub-contractor or driver of a Mack truck.

REP. MCCA VANAGH: Anybody else? Thank you very much.

...excuse me there is someone here with these lovely children but I...and if it's all right with everyone else, I'd like to ask the mother to come forward and give her testimony.

SHARON BYRON: I'm very sorry you don't have a day care facility here. I'm Sharon Byron, a management consultant by profession, and a parent of four children, 10, 8, 5, and 3. Most of my contemporaries are working today or at home with their kids. I'm in favor of Bill #5877 regulating the discharge of sewage from vessels.

(inaudible) ...Westbrook area on Long Island Sound for over 40 years, following the trail of marina expansion for the past 4 years, taken a trip on Project Oceanology, and listening to the assorted marine specialists we have learned a lot about Long Island Sound.

The most amazing effect was discovered this past Summer as we observed the Mannuncopesic River flush. In a marine biology textbook, fresh or

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vehicles, boats, that have to be equipped with this sanitation device, you know if they don't have it, then they are in violation. Which vehicles have to be equipped do you know?

SHARON BYRON: No, I don't know. May I add one more thing because I got a phone call that this meeting was being held last night. One of the other severe pollutants that we have going on is the metallic that is coming from the base of these boats. These boats are harbored in the area, and the metals from the paints also pollute the water, and then they settle and they also kill the shellfish. I'm sorry I missed the beginning speakers coming in here, but I hope that area was addressed. We have to start doing something about each aspect, and it is important to get to the boaters now. No matter what size the boats are.

REP. HANCHURUCK: What are we going to paint our boats with then? I don't have a boat, but just to raise a rhetorical question.

SHARON BYRON: We're at a point now where we have to start thinking about what we're putting into the environment, and we have to look at closed systems. Trash is becoming a very serious issue. It's not good news. Thank you for hearing me.

REP. MCCA VANAGH: Paul McQuillan.

PAUL MCQUILLAN: Thank you, Mr. Chairman. I am here (HB 504) today wearing a different hat than last time I appeared before you, earlier this week, with the (inaudible) Commission. Today, I think first of all, I am representing the interest of the Connecticut Trial Lawyers Association, and also myself personally as a trial lawyer who, over the last 30 years, has appeared before the workman's compensation commissioner, and been involved in the workman's compensation law during that period of time.

I think that one of the first things that you are interested in as that over the last 4 or 5 years when this legislature has been so actively involved with what we called the so-called torque reform, one of the principal issues that was brought to you by the insurance industry and by the industries of

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the State of Connecticut was that there had to be responsibility.

That's why we're going to have joint and several liability done away with. That everybody had to be responsible. That's what we're asking for in asking you to amend this statute concerning immunity for the principal employer. That people be held responsible for their conduct.

There have been several questions that have been presented to you today. I think that someone who has been schooled in the law, I'm almost embarrassed to sit here after listening to the articulation of the people whose families were involved. Because they presented to you very accurately what the problem is, and they are here representing an issue that has been highlighted because of the terrible disaster of the L'Ambiance in Bridgeport.

But much of the good law and many of the good things that you and I enjoy in life today have been brought about by disasters. Almost all of the conveniences that we're enjoying in life today, probably came out of WWII, and the events that occurred during that time, and the advancements of science. This disaster has highlighted the fact that this is legislation that is long overdue.

You have an explanation of the law that I'm not going to go into because I think that Mr. Carter did an excellent job of explaining to you what the problem is there. But he said to you that one of the problems was that this was not with the particular legislation that our General Assembly had enacted, but with a court-made law.

For anyone who has been involved in workman's compensation in the State of Connecticut, they know that there is almost no one in the court system in

the State of Connecticut that has any knowledge of workman's compensation. That may sound frightening to you. Especially in our Supreme Court. For 50 years, we have one judge that at one time heard a case, and every case in workman's compensation was referred to this judge on the Supreme Court to make the decision. Some of the decisions were frightening.

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Workman's compensation, being an administrative type of law, was completely different from our adversary position. So, when he says that part of the problem, and it's kind of a frightening term for me to use but it's the ignorance of the court in applying this particular law that brought this result about, is quite true.

I think that what you are seeing here, perhaps, is in the next few years, one of the highlights of the responsibility of the legislature might be to take an overall look into seeing whether or not workman's compensation is serving the purpose for which it was intended. Back in the days, when my father worked in a mill in Willimantic, and you got your arm cut off, they handed you a tin cup.

Workman's compensation supplemented that. But I'm not so sure that today it serves that purpose. Especially when you go there and stand in line for so long. I will end this by saying that I endorse those who have come before us. Our association...this is probably the one principal concern that we have in this session of the legislature. We've had some tough battles in the last few years with no fault, with torque reform, but right now we feel that the opportunity is here to put this law into its proper perspective, and to protect the rights of the workmen.

When you sit down as I have with a young man who was in the accident over at Ensign Bickford and blown to shreds where they couldn't even identify any part of his body and all he can collect is \$3000 for his family for funeral expenses is rather frightening. Maybe we are taking the first step. As far as this act being retroactive, I think our Supreme Court, had it pretty well set in the past 2 years that when this body, in the Grand Jury legislation made certain acts retroactive, our court has said that this body, when it comes to law, makes the law of the State of Connecticut.

I think there would be no problem whatsoever with the constitutionality of a retroactive position. I'm sorry for taking so much time, but thank you.

BART HALLORAN: It's certainly up to you,

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Representative Wollenberg. I just had a few brief comments. If I might, my name is Bart Halloran, and I'm here really more to try to give you a prospect of what some of the problems is with this particular law, the 1986 torque reform law which applies to L'Ambiance Plaza and the interplay of the two of them.

As you know, under the 1986 torque reform law, joint and several liability is basically done away with. The jury is to consider each person not each party and the responsibility of each person and assign blame based on that. Whether or not they are a party to the law suit. This leads to an extreme unfairness in this part, because if you consider the people who are before you today, they cannot sue their own employer. Everybody agrees with that.

However, the jury is going to be forced to consider the fault of their own employer. They might say, well that's OK, at least they got worker's compensation benefits from that person. But the jury is then going to consider the fault of the principal employer which is significant in this matter.

The principal employer is McComber and TPMI who OSHA has seen fit to fine 2 million dollars for what they called "willful safety violations". Now, TPMI and McComber are paying these people absolutely nothing in worker's compensation. So that not only are these people not going to be able to sue TPMI/McComber directly, but the fault of TPMI and McComber is going to be deducted from whatever they should receive. This would have a secondary effect, because the second part of the torque reform allows you to go back after a year and have the other parties rack up the fault of the person who you can't collect against.

So, (inaudible) ...the City of Bridgeport is going to end up paying quite a bit more than is their fair share of this because of the interplay of principal employer and joint and several liability. I would suggest that there is a very simply way to straighten this out and that is if the principal employer as intended under law, has to pay worker's compensation benefits, fine. He's immune. If he

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doesn't have to pay worker's compensation benefits, he shouldn't be immune to those people.

Any questions? I'd be happy to answer. Thank you.

REP. WOLLENBERG: A couple, well part two. You are talking about the principle doesn't pay Workmen's Comp., he carries Workmen's Comp. I mean he pays the premiums for that. Isn't that right?

BART HALLORAN: For his people.

REP. WOLLENBERG: He doesn't have to pay the employer of the sub.

BART HALLORAN: That is correct.

REP. WOLLENBERG: But he does carry it? What then is the preclude the principal contractor from hiring people without Workmen's Compensation and then all he is going to be responsible for is - he is going to pay the Workmen's Comp. so then he won't be responsible on negligence. Isn't that right?

BART HALLORAN: If I could, what would happen under that scenario, because this was brought up before the Labor Committee when Commissioner Cooney was there. He supported this bill - I can represent him.

What would happen with that under our current law of course by law you have to carry Workers' Comp. and what happens is the Second Injury Fund is then responsible and the Second Injury Fund sues the subcontractor for the benefits. So to say that the subcontractor's are suddenly going to go naked I don't think is a realistic problem at least Commissioner Cooney didn't at that hearing.

REP. WOLLENBERG: Okay, okay. But you know if they want Dixie the Second Injury Fund can do whatever they want I mean you know they are not going to collect anything.

BART HALLORAN: That is correct but unfortunately that does happen even now. People don't carry insurance that are supposed to but I don't think that this bill will need to be (inaudible - both talking)

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REP. WOLLENBERG: Will the general then, the general won't be responsible to pay the employee of the sub who doesn't have the Workers' Comp. is that true?

PAUL MCQUILLAN: He will be subject to a suit under negligence.

REP. WOLLENBERG: Okay. If the sub doesn't have the Workmen's Comp. carrier, doesn't carry Workmen's Comp. can the employee go after the General?

PAUL MCQUILLAN: For Workmen's Comp?

REP. WOLLENBERG: Under Workmen's Comp.?

PAUL MCQUILLAN: I would say no.

REP. WOLLENBERG: Then the only people who can go after the General for their Workmen's Comp. are the employees of the General. If the employee is under the sub even though they are working on the property of the they couldn't go after the General.

: For Workmen's Comp.

REP. WOLLENBERG: Okay, so then they can't get out. They can't get out of the suit. Okay. I was thinking they would get away with the suit for negligence. If they somehow could pay the sub's employee through Workmen's Comp.

: I don't think that would happen. In some systems I think that could happen where you would have a wrap around policy but under our system I don't believe that would work.

REP. WOLLENBERG: Okay, because it would be a way around it. And the Negligence is going to be a much higher suit. Is this anti-Tort reform whatever that means.

BART HALLORAN: I don't think, I've been here for six years trying to get this corrected which was before anybody was using the term Tort-reform. And it was actually passed on Judiciary several times. It came out of Labor because this is really a Workmen's Compensation matter although it does have ramifications obviously on the Judiciary.

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REP. WOLLENBERG: What is the problem with it then. Why don't we do it? (inaudible) our costs are going to go up to the -- we heard that all through Tort reform you know that that was why the insurance was so high and we find out that it is not so. It doesn't make any difference whether you have Tort reform or not insurance rates sky rocket.

PAUL MCQUILLAN: I don't use the term Tort-reform - I use the term Jury Intimidation. If you have been before a jury in the last four years in Connecticut you would know what I am talking about.

How this mass advertising of Tort-reform has shaken our jury system and intimidated people to a point where they almost can not sit on a jury and logically come to a conclusion and I don't think they really were concerned about Tort-reform - the message was gotten across to the juries every nickel they spent in their judgement they were taking out of their own pockets supposedly which of course was not true either.

REP. WOLLENBERG: And in order to administrate what we did is such a nightmare that it judges . . .

PAUL MCQUILLAN: You know, Mr. Wollenberg I have been quoted in the past week as saying the Bill and its probably offensive looking before you people that the Bill itself is almost it is not intelligible.

But it really defies interpretation and our Association had, really we had a Seminar with it. Every top lawyer in this state for a full Saturday session trying to figure out what does this Bill say - what can we tell our clients, what can we say to a Jury, what do we say in the Request to Charge and we don't know. And you know what - the Judges don't know and really Tort-reform may be the best thing in the world but you should be able to understand it.

REP. WOLLENBERG: Mr. McQuillan at least Sen. Avallone and several members of this Committee and myself spent hundreds of hours and came up with the same conclusion that you are telling us is happening now so at least we have some . . .

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PAUL MCQUILLAN: I don't mean to be insulting but it is a frightening thing for us . . .

REP. WOLLENBERG: You are talking to the right people. We predicted this because we listened to a lot of people on it and this is what happened.

BART HALLORAN: Just to answer your question on what the problem has been Rep. Wollenberg I think that people somehow (inaudible) this has gone way beyond what it is doing. People think we are trying to destroy the Worker's Compensation system or allow law suits in every situation. That isn't what is happening.

It is a very very almost sliver out of the entire thing that Mr. Carter was explaining. You know once you start using the terms Principal Employer and (inaudible) everybody gets confused there is no question. But I think if you just look at it as you know if you pay Worker's Compensation you are immune, if you don't you are not, I think it makes sense and it is fair.

:Just one more thing for Mr. McQuillan before - I don't want to let him get away without comment on the Supreme Court and I am wondering if that is also true in Zoning Cases at all I mean recently we have been kind of concerned.

:Hopefully we are going to correct some of that - stop it.

REP. HANCHURUCK: Gentlemen I am concerned if we pass this legislation are we going to see a move where that people who work in sub-contractor type industries, you know, your carpenters and your plumbers and those type of people are they going to be out of work because General Contractors are going to say well I would rather just pay the insurance than face liability from a law suit by one of you guys.

And also they'll hire their own people and maybe some people who are sub-contractors by trade and who may feel gee I want to work for myself or whatever might all of a sudden be out of work. Are we going to see that at all?

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PAUL MCQUILLAN: I dont, I was interested and I didn't address myself to some of the questions you asked Mr. Carter because I think they were revealing about the contingent fee frivolous suit what is it going to do to industry? Is it going to drive out people. If there and we have been hearing about those fear tactics for several years I would like to have somebody tell me one doctor who has left the State of Connecticut because he can't practice here because of insurance? I would like to know one industry that has left the State of Connecticut because they had to leave here because of insurance.

Once this crisis that they created got over two years ago, the rates have gone down drastically. Any loss that occurred last year for the insurance industry occurred on October 19. They were making tons of money until October 19 when their portfolios and it has been said throughout the investment industry that it probably was created by an insurance industry in the City of Hartford when they moved their portfolio that day. I say to you and I respect your concern for that because we basically represent people who are workers in this community. We don't represent the industry, we represent basically workers who are injured people and I don't think that their livelihood is going to be destroyed. I think that their rights to recover from serious injury will be protected. And I hope I tried to answer your question Mr. Hanchuruck.

REP. HALLORAN: If I could just respond to that I suppose it is conceivable I mean anything is possible that United Aluminating might hire more employees directly rather than sub-contract out those people would still be working of course. I mean we can speculate on that I really can't tell you any answer in good faith to that.

What I can tell you is that we know the reality of the situation now is that people who were injured will receive neither Worker's Compensation nor have any rights against somebody who is very much a cause of injury. Of course it has an affect on the Worker's Compensation System. You take, you can't it is out of balance. If this Worker's Compensation would have gotten paid back in all of

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these suits so there is the cost to the system and what we are trying to do is apportion the cost to where we feel it should be. And where it is in almost every other situation aside from this I can't think of any situation.

REP. HANCHURUCK: Boy do I appreciate you guys coming out and testifying today. William Sweeney?

WILLIAM SWEENEY: Sen. Avallone, Rep. Wollenberg, I guess my testimony here just proves that the wheel always comes around. Mr. Wollenberg was a witness in a case that I was trying last week so . . . now I am on the stand.

I am here on behalf of the Connecticut Travellers as well as the Connecticut Criminal Defense Lawyers with regard to three bills, 5827, 5896 and 5895.

Addressing 5827 first, in our opinion this is a good bill and it is a good bill basically for two reasons. One of which is that it removes certain things as in paragraph 9-19 on the first page. It removes that from the statute and we would be in favor of that being removed from the statute not to in any way agree that these aren't items that shouldn't be used in close contact but rather in the realm of this particular statute it is wise to remove them for simplicity as well as effectiveness as far as the statute is concerned.

Certainly a dangerous the way the statute would remain would be what I think most people would recognize outside of the gun to be dangerous weapons and there are clearly statutes that deal with the guns. As far as the (inaudible) and the beebees go they really don't belong in this kind of statute. Furthermore it does require a permit for the items that remain in the statute which we think is important in the sense that it does provide control over possession of those items.

The addition on line 60 regarding the knife is intended cover situations I think primarily that are recreational or other lawful employment but I think it is really geared at the outdoors sportsmen which really again doesn't belong in the statute and those of us who do practice criminal law have seen the situation where some of these people are

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wonderful things have been done. Why haven't the local people implemented them?

ROBERTA MORSE: I have no idea. I think you might be able to talk to your constituency and other people who are Representatives and Senators and find out just exactly why not. I think that is your responsibility, too. Thank you.

SEN. AVALLONE: Dennis O'Brien? Dennis O'Brien?

: He is not here.

SEN. AVALLONE: Thank you. Brian Anderson? And Joyce Wojca.

JOYCE WOJCA: In the interests of time, that is why we are appearing together. My name is Joyce Wojca, and I represent Connecticut Construction Industries Association.

BRIAN ANDERSON: I am Brian Anderson; I represent the Utility Contractors' Association of Connecticut.

JOYCE WOJCA: We would like to go on record in opposition to House Bill 5041, limiting immunity for principle employers. I am not going to repeat some of the previous statements.

But, under current law, a general contractor does have some liability, as it exists today, if the sub-contractor happens to be irresponsible or financially unable to cover Workers' Comp in an injury. With what you are doing in this bill, it is making the principle employer or general contractor the employer of all, and kind of eliminating responsibility from subs.

We get nervous about that, simply because it is going to encourage more fly-by-night sub-contractor obligations. We represent, I represent generals and subs, and Brian does, too. And, it just seems to me that the general is going to have to carry that insurance, because that is how he is going to get out from having any...

I would hope that the Committee would look at this very closely, because it could have serious ramifications as far as employee safety.

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BRIAN ANDERSON: And, as far as the Utility Contractors are concerned, a lot of our people switch between the general contracting and sub-contracting, and there is a real concern that this will encourage principle employers to not hire as sub-contractors firms that provide Workers' Compensation, leaving themselves open to suit by doing so.

Thank you.

SEN. AVALLONE: Thank you very much. Denise Seller? Selner? From CRWA? Bob Crook?

BOB CROOK: Good afternoon, my name is Bob Crook. I am Executive Director of the Connecticut Sportsman's Alliance. I am here today to testify on three bills.

The first one, we are in support of RC 58, RCB 5827, AN ACT CONCERNING DANGEROUS WEAPONS. The bill basically addresses three long-standing problems with the statute. The first is that there is no permitting system, effective permitting system for dangerous weapons. In practice, basically there is... the Chief of Police or the First Selectman grants the permit, but in fact he doesn't grant the permit, because the law is so vague and because of potential liability, they won't issue them.

So, basically, we don't have a state-wide permitting system, and we don't even have a local permitting system for the most part. So, this bill establishes a state-wide permitting system. It should be issued by the town and is good state-wide. It goes along with the procedure similar to the pistol permitting system, which we know as been proven effective.

If the original intent of this statute is to prohibit or control dangerous weapons, particularly those easily concealed and used commonly by criminals, we don't see any reason why bee-bee guns and air rifles are in there. They don't meet that criteria, no more than rifles and shot guns, which are not in the statute. So, we... the bill addresses deleting air rifles and bee bee guns from the section.

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As you well know, most of us that are in this business are municipal and state employees. So we, in effect, work for the same people that you do. It was brought to my attention here that it was a previous bill, 5699, which included the provisions that we would like to see in there.

I would like to know, and I'm not speaking for the association here, who gave those away and put 5894 here. I'd like to know who the person was who compromised this down to an unenforceable law. I think we have a right to know that. I had all kinds of things I wanted to say as an individual. I've been here since 12:30, I've got a babysitter, my wife's teaching a CPR class, and I've got to drive home in the snow. I'm not going to belabor the point. The point is, we can split atoms and we can put a man on the moon -but we have a problem with this law and its enforcement - I find that hard to believe. Thank you. Any questions?

REP. MCCA VANAGH: Any questions? All right. Thank you very much. Joe Tyler. Joe Tyler's not here. Edward Lebel.

EDWARD LEBEL: Yes. My name is Edward Lebel. I'm in support of Bill #5041, AN ACT LIMITING IMMUNITY FOR PRINCIPAL EMPLOYERS UNDER THE WORKERS' COMPENSATION ACT.

I'm a former worker at L'Ambiance at Bridgeport. We need a principal employer bill because we need equity and responsibility for each other. I support changes for people in construction and in other trades for worker benefit. Yes, we trusted our primary employer's work and blueprints through which we were contracted. We relied on their instruction given us by our foremen and they and others paid with their lives because we followed our principal employer's instructions.

Do you suppose we have special hazardous training to build? In essence, don't deprive any families of life, liberty, and the pursuit of happiness when L'Ambiance came down it already took away all of that and more.

The principal employer bill, a reversal of - to our

reform bill of 1986-87 is needed so in any accident we can have compensation contributed equally by principal employer and others involved in projects. Our governing body is for people and by people - not by big business and profit. Principal employers and others shouldn't be above law. We abide by the same laws. Thank you. And I have other good news here that the federal government has recommended as of 4:15 that criminal charges be filed in the collapse of L'Ambiance Plaza today. "The federal Labor Department today recommended that the Justice Department file charges against people involved with the building that collapsed in April, killing 28 men. The state prosecutors ruled out criminal charges last month saying 'a thorough and complete state investigation failed to find sufficient evidence to prove negligent homicide against the contractors.' Congressman Nancy Johnson applauded the government's action saying it was a necessary step. Johnson said state prosecutors had ruled out pressing charges."

Today's news is welcomed by all of us - survivors and victims and families who need help financially. Thank you.

REP. MCCA VANAGH: Any questions on this? Thank you very much. Christy. Chris Sprague. Parker - last name is Parker.

GWENDOLYN PARKER: Gwendolyn.

REP. MCCA VANAGH: Gwendolyn - thank you.

GWENDOLYN PARKER: My name is Gwendolyn Parker. I'm the Lobbyist for Connecticut NOW. And I'm speaking on behalf of that organization.

I believe that others have spoken already about the need for the legislation, Raised Committee Bill 5879, AN ACT CONCERNING FREEDOM OF SPEECH AND ASSEMBLY, so I won't belabor the point in terms of what I see as the positive points of this legislation.

I would like just to mention what I've heard is a prime objection to this bill. Namely, the concern for the rights of the owners of the private property which would be infringed by this bill.

H.B. 5041: LIMITING IMMUNITY FOR PRINCIPAL EMPLOYERS  
UNDER THE WORKERS' COMPENSATION ACT

Remarks of Robert F. Carter, Carter, Rubenstein &  
Civitello, 18 Trumbull St., New Haven, CT 06511  
Before the Judiciary Committee March 4, 1988:

I live in Southbury, my law firm is in New Haven, and I primarily represent workers injured in industrial accidents or with occupational diseases. I represent Henry Turner, who was injured by carbon monoxide poisoning in the PGP plant disaster in Waterbury September 28, 1985; Mr. Turner remains totally disabled. The PGP case, as well as the L'Ambiance Plaza disaster, are perhaps the clearest current examples of why the so-called "principal employer defense" should be modified by House Bill 5041.

The bill would clarify the Connecticut law to bring it in line with virtually all other states, to provide immunity from common law liability only to employers which actually pay the workers' compensation benefits to an injured employee. This is obviously the fair rule, and it should be the rule in Connecticut.

The principal employer defense, as it now exists, is merely a judge-made rule, never passed by the

legislature, which has become a great instrument of legal injustice in Connecticut, and is a great embarrassment to our State. Connecticut General Statutes Sec. 31-291 provides that if an employer contracts out his work to be done, the employer is also liable for workers' compensation payments, along with the subcontractor. This statute goes back to 1913, with the advent of workers' compensation in Connecticut.

From this statute, judges have constructed a judge-made rule that no employee of a contractor or subcontractor doing work for an employer which is part or process of the employer's business can sue the employer for work-related injuries, no matter how gross the negligence of the employer.

Connecticut is in the extreme minority of states in allowing such a judicial rule to be the law. The general rule in this country, in the vast majority of states, is that a worker who receives workers' compensation payments is not allowed to sue the employer who pays him or her the workers' compensation. The theory is that the no-fault speedy payment of workers' compensation is a fair trade-off for the worker, who foregoes his or her right to sue because of it.

The trouble that has occurred in Connecticut is that the principal employer has been given immunity from suit by an injured worker, even when the principal employer pays the worker nothing at all. This is grossly unfair, and puts Connecticut in the extreme minority of jurisdictions. Most states, and the Federal government, adhere to the rule that there is, and should be, no immunity from common law tort liability unless there is actual payment of the workers' compensation benefits.

The situation is particularly outrageous here because the principal employer, usually a general contractor, never pays any workers' compensation except to its own immediate employees. If any subcontractor, or any other employer, fails to pay workers' compensation benefits as required by law to an injured worker, the Second Injury Fund pays the workers' compensation benefits, under Conn. Gen. Stat. Sec. 31-355.

Not only does the principal employer not pay the workers' compensation to a subcontractor's injured worker, the principal employer does not even have to pay additional workers' compensation insurance premiums because of the wholly theoretical, but nonexistent, liability under Sec. 31-291.

So the situation is almost unbelievably unfair: an injured employee of a general contractor can sue "downstream" against a negligent subcontractor; an injured employee of a subcontractor can sue "cross-stream" against a negligent subcontractor. But an injured employee of a subcontractor cannot sue "upstream" against a general contractor.

In the L'Ambiance case, the general contractor, as I understand it, has been fined approximately \$2,500,000 by the Occupational Safety and Health Administration for its violations. The slab lifting subcontractor has been fined approximately the same amount for its violations. If the judicial interpretation of Sec. 31-291 which created the principal employer doctrine is allowed to stand, an injured employee, or the family of a dead employee, will almost certainly be barred from suit against the general contractor.

After L'Ambiance, it should be clear that there is no justification for the principal employer rule as it exists, not in the Connecticut statutes, but in the case law. The Labor Committee and this legislature should exercise its authority to clarify the intent of Sec. 31-291, that only an employer which actually pays the workers' compensation for an injured employee of a

subcontractor would be granted immunity from common law liability. This is the fair rule, and it is the rule in almost every other state in this country.

The reason I say that you should act to clarify the intent of the existing statute, Sec. 31-291, is that this should have been the law all along, if the judges had interpreted Sec. 291 properly. Certainly since the creation of the Second Injury Fund in 1959, after which all employees were guaranteed their workers' compensation benefits by the Fund, if the employer failed to pay the benefits, it should have been clear to the judges that there is no reason at all to allow general contractors or "principal employers" such as PGP to escape common law liability, since they do not have any real liability under Sec. 31-291.

If the law is clarified to express what the judges should have held it to be, at least since 1959, then the clarified law may be constitutionally applied to accidents, such as L'Ambiance and PGP, which occurred before the effective date of the clarifying statute. That is why the legislative history of House Bill 5041

will be so important, and should be carefully entered into the record, so as to provide the proper basis for allowing the clarified law to apply to pending cases.

Robert F. Carter

TESTIMONY  
KYLE L. BALLOU  
STAFF ATTORNEY  
CONNECTICUT BUSINESS AND INDUSTRY ASSOCIATION  
BEFORE THE  
JUDICIARY COMMITTEE  
STATE CAPITOL  
MARCH 4, 1988  
1:30 p.m.

My name is Kyle Ballou. I am a staff attorney for the Connecticut Business and Industry Association (CBIA). CBIA represents approximately 6,300 firms which employ over 700,000 men and women in Connecticut. Our membership ranges from small businesses to large industrial corporations.

CBIA is opposed to HB 5041, limiting the immunity for principal employers under the workers' compensation act.

The bill allows workers injured on the job to go outside the workers' compensation system to sue a principal employer.

A principal employer is one who contracts to have work done for him on or about the premises under his control and such work is part of his trade or business.

The passage of this bill would begin the erosion of the 70-year-old workers' compensation system. The w.c. system was designed to provide immediate compensation to employees injured on the job without having to prove fault or liability.

Presently, a subcontractor finds it in his best interest to police a work area for safety since he will have to pay workers' compensation to those in his employ who are injured. But, if there is another party, i.e., the principal employer, who will

have to pay damages if sued in tort, we believe that the safety incentive is no longer there. Conversely, the principal employer is encouraged to use subcontractors who are uninsured so that the principal can cover the workers' compensation, thus immunizing himself from civil action.

The bill would also apply retroactively to lawsuits still pending. This creates unforeseen liability for defendants presently in court.

We urge you to reject this bill. Thank you.

TESTIMONY

OF THE

UNITED ILLUMINATING COMPANY

Before The Judiciary Committee

Re: Committee Bill 5041

AN ACT LIMITING IMMUNITY FOR PRINCIPAL EMPLOYERS

UNDER THE WORKERS' COMPENSATION ACT

March 4, 1988

Good afternoon, Senator Avallone, Representative Tulisano and members of this committee. My name is Robert Nastri and I am the Labor Relations Manager at the United Illuminating Company. One of my responsibilities is to administer our Workers' Compensation Program. I am here today to testify in opposition to Committee Bill 5041, AN ACT LIMITING IMMUNITY FOR PRINCIPAL EMPLOYERS UNDER THE WORKERS' COMPENSATION ACT.

Presently, a general contractor or a principal employer is immune from work related injury litigation under Section 31 - 291 of the Connecticut General Statutes. This law requires that an employee of a contractor who is injured during the course of his duties shall receive compensation from the principal contractor or employer providing that the work being performed at the time of the injury is a part or process in the trade or business of such principal employer and is performed in, on, or about premises under his control.

We at United Illuminating presently rely on outside contractors to pick up the additional workload that can not be adequately handled by our core workforce. This additional workload occurs as a result of the cyclical nature of the electric utility business. In order to accommodate this fluctuating workload UI secures the services of qualified contractors. If we did not use contractors, we would be required to increase our workforce

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to match the cycles. Consequently, when a cycle is in a down-slope we would need to reduce our workforce. If we did not reduce our workforce at that juncture we would be incurring unwarranted labor and other employee related costs which are ultimately borne by our customers.

The premise of the proposed legislation would be that an injured employee could collect Workers' Compensation benefits from his or her immediate employer and not be precluded from bringing an action against the principal employer. An employee of The United Illuminating Company will be at a disadvantage. He or she will continue to have only Workers' Compensation as the sole remedy for work related injuries. On the other hand, an employee of a contractor would have the opportunity to recover for damages through Workers' Compensation and through a liability action against United Illuminating.

Should this legislation pass the principal employer, UI, would have immunity from liability claims only if we have paid or are paying Workers' Compensation to the injured employee. And even that relatively small possibility of immunity could disappear as the injured employee could choose with whom he will file his claims.

Passage of this bill could have a significant financial impact on UI and in consequence a possible detrimental effect on the rates we charge our customers. The potential impact on the company would come from the increased number

of negligence claims, legal defense costs, the outcome of these claims and additional Workers' Compensation costs.

UI's philosophy has been and continues to be one of commitment to provide a safe work environment for our employees and ensure that they receive all benefits required by the Worker's Compensation Act. UI goes beyond what the Act requires in providing benefits to its employees. For example, UI pays injured employees 100% of their wages for the first six months. This philosophy is transferred to our outside contractors and is demonstrated by the fact that we require that all contractors show proof of liability coverage as well as the minimum statutory Workers' Compensation coverage. Without such proof of coverage the contractor is not allowed to proceed with his work at UI. We also provide in-house supervision and working procedures to outside contractors to ensure a safe working environment.

We are sympathetic to the factors that appear to be behind this legislation and feel that there may be cases where Workers' Compensation should not be the sole remedy. However, we urge you to look beyond the present situation and attempt to find alternatives that not only address the needs of the worker but also take into consideration the potential negative impact legislation of this type may have on the business community in general, on United Illuminating and also on its customers.

I want to thank you for giving me the opportunity to appear before you today and at the same time I urge you to defeat this legislation. If you have any questions, I will attempt to answer them.

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Report of the Prison and Jail Overcrowding  
Commission in accordance with reporting provisions of  
CGS 18-87k.

SPEAKER STOLBERG:

Refer to the Committee on Judiciary.

CLERK:

We have Favorable Changes of Reference, Mr.  
Speaker.

SPEAKER STOLBERG:

There is a list of Favorable Changes of References,  
Representative Balducci, what is your pleasure, sir.

REP. BALDUCCI: (27th)

I move to waive the reading and refer to the proper  
committees.

SPEAKER STOLBERG:

Is there objection? Is there objection? Seeing no  
objection, it is so ordered.

\*\*\*\*\*

PUBLIC HEALTH. Substitute for H. B. No. 5002  
(COMM) AN ACT CONCERNING CHANGES TO THE DEPARTMENT OF  
HEALTH SERVICES STATUTES.

The bill was then referred to the Committee on  
Government Administration and Elections.

LABOR AND PUBLIC EMPLOYEES. Substitute for H. B.  
No. 5041 (COMM) AN ACT LIMITING IMMUNITY FOR PRINCIPAL  
EMPLOYERS UNDER THE WORKERS' COMPENSATION ACT.

The bill was then referred to the Committee on  
Judiciary.

LABOR AND PUBLIC EMPLOYEES. Substitute for H. B.  
No. 5075 (COMM) AN ACT INCREASING THE NUMBER OF

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going to be a victory for her and for the State of Connecticut in the Olympics in Seoul.

So please join in welcoming Margie Gomez.

(Applause)

SPEAKER STOLBERG:

Are there further announcements or points of personal privilege? Representative Zajac.

REP. ZAJAC: (83rd)

Yes, Mr. Speaker. Will the Journal please note that Representative Glenn Arthur will miss some votes in the latter part of the afternoon. He just left because of illness.

Glenn Arthur of the 42nd District.

SPEAKER STOLBERG:

The Journal will so note. Are there further announcements or points of personal privilege? If not, will the Clerk please return to the call of the Calendar.

CLERK:

Page 4, Calendar 246, Substitute for House Bill 5041, AN ACT LIMITING IMMUNITY FOR PRINCIPAL EMPLOYERS UNDER THE WORKERS' COMPENSATION ACT. Favorable Report of the Committee on Judiciary.

REP. ADAMO: (116th)

Mr. Speaker.

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SPEAKER STOLBERG:

Representative Joseph Adamo.

REP. ADAMO: (116th)

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

SPEAKER STOLBERG:

Will you remark? Just a moment, though, Sir. Can I ask that this area be cleared. Representative Adamo, please proceed.

REP. ADAMO: (116th)

Thank you, Mr. Speaker. This bill, Mr. Speaker, will allow contractors, employees injured on the job, or the dependents of contractors' employees killed on the job related accidents, to sue their principal employer. If he is not paying the employees or the dependents workers' compensation benefits for the accident.

The problem in Connecticut that has occurred is that the principal employer as reviewed in immunity from suit by an injured worker, even when that principal employer pays that worker nothing at all. This is grossly unfair and puts Connecticut in an extreme minority of the jurisdictions of most states and in the federal government. They presently adhere

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to a common, the allowance of a common law tort liability unless there is actual payment of some type of workers' compensation benefits.

This situation is particularly outrageous because the principal employer, usually a general contractor, in fact, never pays workers' compensation to its own immediate employees.

If a subcontractor or any employer fails to pay workers' compensation benefits as required by law to an injured worker, the second injury pays the benefits under Connecticut General Statute 31-355.

Not only does the principal employer not pay the workers' compensation benefits to a subcontractor's injured worker, the principal employer doesn't even have to pay the additional workers' compensation insurance premiums because of the wholly theoretical but non-existent liability under Section 31-291.

The situation is almost unbelievably unfair. For example, an injured employee of a general contractor can sue downstream against the negligent subcontractor. An injured employee of a subcontractor can sue cross stream, against another negligent subcontractor. But that same injured employee of a subcontractor cannot sue upstream against the general contractor on that particular job.

This particular bill is extremely important for

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numerous reasons and needs to be passed as soon as possible because of cases I think we're all too familiar with in Connecticut. One, of course, L'Ambiance Plaza where the general contractor has already been found negligent and has been fined in excess of \$2 million.

In a recent case also during Hurricane Gloria, a PGP case, where a factory that employed a security agency to oversee its premises during the hurricane had one guard killed because of carbon monoxide poisoning and one totally disabled.

Under the present reading of the law, under the present application of 31-291, both of these principal contractors could, in fact, be immune from lawsuit. Not because they're paying benefits to the employee, or to that employee's dependents, but because of a misreading, we think, of the statute.

In a recent court case, Barnes v. Northeast Utilities, the Court found in a summary judgment that he was forced to in fact rule in favor of the employer and allow the immunity. But he went on to say that the Court recognizes the validity of the plaintiff's arguments regarding obsolescence of 31-291 and 31-284 since the passage of the Connecticut General Statutes 31-355.

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However, the Court is bound by the statute as written, and cannot become a member of the legislative branch of government and rewrite the statute by judicial fiat that was suggested by the attorney. It may well be that sections 31-291 and 284 be amended to permit suits like this. However, the Legislature must take the action, not the Judiciary, and for that reason, he allowed the judgment to be passed.

Ladies and gentlemen, this is an unfair reading of an existing statute. The language that appears in the file copy was basically drafted by our Chairman of the Board of Commissioners, Commissioner Arcudi. It is acceptable by Commissioner Arcudi, Commissioner Berte and the Chairman of the Board. It is certainly supported by the Trial Lawyers Association. It is most appropriately supported by the AFL-CIO and the Building Trades Council for the State of Connecticut.

Ladies and gentlemen, I urge you support this measure with a yes vote.

SPEAKER STOLBERG:

Will you remark further on the bill?

Representative Emmons.

REP. EMMONS: (101st)

Mr. Speaker, through you, a question to the proponent of the bill.

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SPEAKER STOLBERG:

Please frame your question.

REP. EMMONS: (101st)

Representative Adamo, this is partly for legislative intent and I think also for the Legislature themselves to understand this. In the Committee, when we discussed this bill, it is my understanding that if I were the general contractor and that I had a subcontractor and the subcontractor had employees, if his employees got hurt, the subcontractor is supposed to cover him by workers' comp, and pay for whatever would be the injuries according to the workers' comp. The question is, the general contractor carries workers' comp insurance. If one of his employees is hurt on the job, he would collect benefits under the general contractor's unemployment comp insurance, or workmen's comp, I'm sorry. Is that correct?

REP. ADAMO: (116th)

Through you, Mr. Speaker.

SPEAKER STOLBERG:

Representative Adamo.

REP. ADAMO: (116th)

Thank you, Mr. Speaker. If the general contractor's employee was injured on a job, and he was paying that employee's workers' compensation insurance

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benefits, for his insurance benefits, the general contractor would be liable for that general contractor's employee's injuries, yes.

REP. EMMONS: (101st)

So the general contractor carries the workers' compensation insurance, which covers the injuries of his employees. The employee is injured and he collects workers' comp. Now, can he also go and then sue the principal employer under this bill?

REP. ADAMO: (116th).

Through you, Mr. Speaker. Through you, Mr. Speaker.

SPEAKER STOLBERG:

Representative Adamo.

REP. ADAMO: (116th)

Representative Emmons, the principal employer would in fact be the general contractor. He's certainly not going to sue himself.

REP. EMMONS: (101st)

Mr. Speaker, through you, the principal employer then you consider to be the general contractor and not the owner of the project, who has hired the general contractor.

REP. ADAMO: (116th)

Through you, Mr. Speaker.

SPEAKER STOLBERG:

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Representative Adamo.

REP. ADAMO: (116th)

Thank you, Mr. Speaker, I believe that's correct, Representative Emmons.

REP. EMMONS: (101st)

Well, Mr. Speaker, through you, in another bill that we had before the Committee, the principal employer was deemed to be the owner of the project. If you remember the bill on health insurance coverage, so in essence, I think it makes a big difference if you are, how you define the principal employer.

REP. ADAMO: (116th)

Through you, Mr. Speaker.

SPEAKER STOLBERG:

Representative Adamo.

REP. ADAMO: (116th)

Rather than try to answer the direct question, Representative Emmons, let me try to give you an example that I used earlier in my comments when I brought the bill out.

PGP is a factory who, as a company, hired or subcontracted out for its security services. They hired, let's say, A, B, C security company, and there were certain people who are employees of that company. There are workers' comp benefits, the workers' comp

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benefit premiums were being paid by that security company.

Under the present reading of the law, the company owner, that PGP could literally hide behind this immunity, based on current reading of statute as it sits today, because he in fact is the principal employer. He's the employer that brought the general, the subcontractor to the premises, and he could, in fact, hide behind that. It's not a matter of owner, it's a matter of who the employer is.

REP. EMMONS: (101st)

Well, Mr. Speaker, I will use another for instance on this. Let's say you are a builder. You hire somebody to build, to frame on your house, and that framer hires workers. In the way it's been explained to the Committee process, the worker is hurt. The framers' unemployment comp pays for the injuries of the worker, and now we're saying the worker can leapfrog over to somebody who had originally hired the framer. And it seems to me you're undercutting workers' comp because you're allowing them to move up the stream to finally who is the owner of the property, who would probably never be carrying workers' comp because they don't have, in the true sense of the word, any employees on their payroll.

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REP. ADAMO: (116th)

Through you, Mr. Speaker.

SPEAKER STOLBERG:

Representative Adamo.

REP. ADAMO: (116th)

The owner of the home would not be the principal employer. The framing company or the framer would be the principal employer because he hired the carpenters. The owner of the home is simply the property owner. And not an employer.

And secondly, you couldn't sue unless you could find that person whomever it might be, to have been negligent. We're not just going to sue for the sake of suing. There's no advantage to it. Because if we look at the statutes as they exist today, you have subrogation rights under workers' compensation. A workers' comp can claim all of their money, so there's no real advantage to an employee unless in the case of a L'Ambiance or a PGP, where there's a 30 year old widow or two year old kid and a gentleman who's totally disabled for the rest of his life, to in fact, institute a lawsuit.

There's no room nor reason, nor is this bill aimed at leapfrogging to a homeowner or to cause frivolous suits against builders or principal employers. It's

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really fashioned to read into the law what's read in probably 20 or 30 other states in the United States, that you're immune when you pay the compensation benefits, or for the compensation benefits, but not when you don't at all, and you hide behind the immunity.

REP. EMMONS: (101st)

Through you, Mr. Speaker, where in this particular file does it say that you could only be liable under negligence?

SPEAKER STOLBERG:

Representative Adamo.

REP. ADAMO: (116th)

Through you, Mr. Speaker, I'm sure it doesn't say that, but I'm sure that if we just use some sense of reasoning, you don't just go and sue. Let's say there was no negligence. What do I sue for? For the person being the person that hired me? That's not a legitimate suit. You have to have a cause of action. The cause of action would have to be precipitated by negligence or some charge or failure to follow OSHA standards or something to that effect. You don't simply sue the person for the sake of saying we're going to sue you. You would have to go into the courts and prove some type of negligence, or you wouldn't

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prevail.

REP. EMMONS: (101st)

Well, Representative Adamo, in reading the file, the way I understand it, the principal employer presently is not liable, is immune from liability for any benefits under the workmen's comp act, as long as he pays all the compensation that would have been available under the workers' comp act.

Now, in that case, it makes no difference whether he's negligent or not, he's supposed to pay the benefits. That's the way the file reads, except that we ended up having a 1959, I guess, law, which said the second injury fund would pay the compensation benefits. So I'm trying to get it through you, where in this file are we expanding the ability of an injured employee to sue for something other than workers' comp benefits from another employer.

REP. ADAMO: (116th)

Mr. Speaker.

SPEAKER STOLBERG:

Representative Emmons. I'm sorry, Representative Adamo, you may respond.

REP. ADAMO: (116th)

Thank you, Mr. Speaker. I think I said earlier, Representative that those rights probably exist in

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almost every case except this very narrow one. The subcontractor, let us take an example.

I'm a plumber, working for a subcontractor and I have a general contractor in charge of the job and then there's also electrical contractors on the same job. And as a plumber, I happen to be laying some pipe through an area that is being wired by these electricians. I'm electrocuted. I can collect unemployment, workers' compensation as a result of my subcontractor's workers' comp. The plumbing company. I can sue the electrical subcontractor because he did something wrong and caused me to be electrocuted. But if the general contractor had left a widget in my way that made me fall on that electrical wire and be electrocuted, I can't sue him for whatever reason because of the reading of the law. That's the inequity of the law. And that's what we're trying to correct.

SPEAKER STOLBERG:

Representative Emmons.

REP. EMMONS: (101st)

Through you, Mr. Speaker, when you use the word sue, are you suing for damages or are you suing for workers' comp benefits as it says here, under section 31-293.

REP. ADAMO: (116th)

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Through you, Mr. Speaker.

SPEAKER STOLBERG:

Representative Adamo.

REP. ADAMO: (116th)

You of course would be suing for damages.

SPEAKER STOLBERG:

Representative Emmons, you have the floor.

REP. EMMONS: (101st)

Thank you, Mr. Speaker. Mr. Speaker, I don't really know that anybody's read the file, but the way I read it is not the way it has been explained, and I view it that you are, by making this change, you are undercutting what was the original intent of workers' comp.

But let me ask you another question.

Representative Adamo, if you are a principal employer, and I have workers' comp, let's say I don't have any employees but in my subcontracting out or in my insurance, I'll use an example.

I'm building a road. I have a subcontractor that puts in the road. I have another subcontractor that lays the utilities. I have another subcontractor that's doing the water. I don't employ any of them and I only pay the subcontractors. I have no payroll.

If I went and got workers' comp insurance, would I

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then be immune from payment for any damages under 31-293 because I, in fact, would pay the claims and not have my subcontractor insurance pay the claims?

REP. ADAMO: (116th)

Through you, Mr. Speaker.

SPEAKER STOLBERG:

Representative Adamo.

REP. ADAMO: (116th)

You're absolutely right, Representative Emmons. If the principal employer or the general contractor wanted to go out and buy workers' compensation insurance for four or five other subcontractors' employees at the premiums that they are today, so be it. I guess he could. And once he paid those benefits, yes, he would be immune because he's in fact the person paying the workers' comp benefits.

REP. EMMONS: (101st)

And, through you, Mr. Speaker, would in this instance as I have the workers' comp insurance and I paid the benefits in place of the subcontractor paying it, could the subcontractor be sued?

REP. ADAMO: (116th)

Through you, Mr. Speaker.

SPEAKER STOLBERG:

Representative Adamo.

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REP. ADAMO: (116th)

Yes, I indicated that in earlier comments. You can always sue down or sideways for this crazy law in its present form. You can't sue upward. That's the fault of it.

REP. EMMONS: (101st)

Mr. Speaker, through you, under the intent of workers' comp, were you supposed to be able to sue each individual who might have had some attribution to the damage, or were you only supposed to collect the workers' comp benefit once.

REP. ADAMO: (116th)

Through you, Mr. Speaker.

SPEAKER STOLBERG:

Representative Adamo.

REP. ADAMO: (116th)

I'll give you a better example, Representative Evans. You can --

REP. EMMONS: (101st)

I'm sorry. Excuse me.

SPEAKER STOLBERG:

Excuse me.

REP. EMMONS: (101st)

Mr. Speaker, I just thought he could get my name correct.

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REP. ADAMO: (116th)

I'm sorry.

SPEAKER STOLBERG:

Representative Adamo, may I introduce you to Representative Emmons, both distinguished members of the Chamber.

REP. ADAMO: (116th)

Sorry for the slip of the tongue, Mr. Speaker.

SPEAKER STOLBERG:

No problem.

REP. ADAMO: (116th)

But I was trying to explain something. I'll give you a better example. A police officer is doing traffic as an employee of the Town of Madison, and he's struck down by an automobile. He gets workers' comp under workers' comp from the Town of Madison, and he also can sue the guy that's driving the car. But he has to subrogate the money back to the workers' comp for the Town of Madison, so that is not uncommon in our state law.

Yes, you can go sideways. Yes, you can collect twice, but you have to pay one part of it back to workers' comp.

REP. EMMONS: (101st)

Through you, Mr. Speaker. In the instance that you

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gave, one was not an employer, or in any sense in the employment scheme. Let me use another example.

Supposing you had a work site and a trench was left open by the person, the company that was doing the excavating and the builder did not put over boards that he was supposed to. So two people contributed to a hole in the ground that a worker fell into and broke his leg.

Now, does that worker collect workers' comp from both the excavator and the builder, or can he only collect from one of them?

REP. ADAMO: (116th)

Mr. Speaker.

SPEAKER STOLBERG:

Representative Adamo.

REP. ADAMO: (116th)

Representative Emmons, he would collect workers' comp from his employer, the person who was paying his worker comp benefits and the premiums for those benefits.

REP. EMMONS: (101st)

Thank you, Mr. Speaker. Just one last question. In this file here, I do not see where you are allowed to sue for something other than workers' comp benefits. And I'll just bring you to line 14. It says the

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provisions of this section shall not extend immunity to any principal employer from an action for damages brought by an injured employee or his dependent, under the provisions of section 31-293, which I presume is the workmen's comp statutes.

So all we're saying in this file, basically, is that the principal employer does not have immunity for workers' comp benefits. He could still have any other immunity for other types of damages.

REP. ADAMO: (116th)

Through you, Mr. Speaker.

SPEAKER STOLBERG:

Representative Adamo.

REP. ADAMO: (116th)

We're dealing with one particular section of the state, and that's the particular portion of the statute that provided an immunity from suit to a principal employer. That's all we're doing. Nothing more, nothing less. That's why it's narrow.

REP. EMMONS: (101st)

Thank you, Mr. Speaker. I do not think that that's a correct interpretation.

SPEAKER STOLBERG:

Will you remark further?

REP. SMOKO: (91st)

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Mr. Speaker.

SPEAKER STOLBERG:

Representative Ronald Smoko.

REP. SMOKO: (91st)

Thank you, Mr. Speaker. I think we're making a bit more of this bill than it actually is, and I think the description that Representative Adamo has given is essentially correct, but just for a little clarification.

Workers' compensation is really divided into two sections. One is the workers' compensation law that provides direct benefits statutorily to the injured employee.

Number two, there's something called employer's liabilities, which would make an employer vulnerable to suit from an employee, but only in those instances where normal caution is not exercised on the part of the employer. Essentially, a gross negligence type of situation. If the employee accepts benefits, he waives essentially the common law defenses in those circumstances, Representative Emmons.

All this bill is saying is, if an employer has not been paying workers' compensation benefits to his employee, rather than having that employee eligible only for second injury fund benefits in this situation,

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that employee would also have the right to sue that employer for negligence, which I think is absolutely appropriate in a circumstance like that.

It gets a little complicated, but I think we're making a little bit more of this than it actually should be, and I think we should pass the bill. Thank you, Mr. Speaker.

SPEAKER STOLBERG:

Will you remark further? Representative Radcliffe, of the 123rd.

REP. RADCLIFFE: (123rd)

Mr. Speaker, if I may, through you, to the proponent of the bill.

SPEAKER STOLBERG:

Please frame your question.

REP. RADCLIFFE: (123rd)

Representative Adamo, as I understand the bill as you've explained it, the purpose is to allow for an action directly against a general contractor which would currently be precluded by the workers' compensation statute.

I should like to ask if there was anything in this bill, or any other provision of law that you know of, which would preclude a general contractor, prior to beginning a job, let's say, from having all

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subcontractors sign an indemnification agreement, agreeing to indemnify them from any suit in which event the subcontractor is paying not only for workers' compensation benefits, but also for liability insurance at the same time.

Through you, Mr. Speaker.

REP. ADAMO: (116th)

Through you, Mr. Speaker.

SPEAKER STOLBERG:

Representative Adamo.

REP. ADAMO: (116th)

In response, there's nothing in this file that would provide or prohibit that.

REP. RADCLIFFE: (123rd)

Then may I take it, through you, Mr. Speaker, again to the proponent of the bill, that if this law were enacted and a general contractor wished to pass that liability downstream to the subcontractor, he might do so with an indemnification agreement, thus making the subcontractor liable for both workers' compensation and liability insurance because of this bill. Through you, Mr. Speaker.

REP. ADAMO: (116th)

Through you, Mr. Speaker.

SPEAKER STOLBERG:

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Representative Adamo.

REP. ADAMO: (116th)

Representative Radcliffe, not being an attorney, I am going to struggle to answer that question properly by indicating that I would see little or no advantage to doing so, because right now, for example, with the immunity in place under present statute as it's being read, the subcontractors can be sued by the employee with the exception of the subcontractor who in fact employs that person and pays his benefits.

REP. RADCLIFFE: (123rd)

Through you, Mr. Speaker, the principal employer or the subcontractor employing the workers would be liable for workers' compensation payments at this time. What I'm suggesting in, and if this is designed to help these subcontractors and the workers, it may prove to have exactly the opposite result.

If a general contractor on a job has a subcontractor sign an indemnification agreement, this being the subcontractor who employs the workers, that subcontractor must then pay for insurance premiums not only for workers' compensation, but also to indemnify and to hold harmless the general contractor from this.

I simply would like to know, through you, Mr. Speaker, if there is any provision of law that

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prohibits it. I don't know of any.

REP. ADAMO: (116th)

Through you, Mr. Speaker.

SPEAKER STOLBERG:

Representative Adamo.

REP. ADAMO: (116th)

Through you, Mr. Speaker, I think that we're trying to read something into this or trying to read a flaw into this that really doesn't exist.

That general contractor has to have liability insurance in any case. In any case. He has to have liability insurance to protect himself from suits from the subs or from outsiders or from anyone else. So he has to have the coverage, or should have the coverage, certainly, if he's wise, for liability. He's already exposed to that and would cover himself for it and I think we're just reading again, something additional into the bill.

REP. RADCLIFFE: (123rd)

Through you, Mr. Speaker, may I suggest to the proponent and ask a question, through you, that that's not reading something into the bill. Currently, he does have to have workers' compensation coverage. Currently he does have to have liability coverage. Currently, he is not required to have coverage

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providing that he must indemnify the general contractor for a liability which in fact at the present time does not exist. That liability will only exist if this bill is passed and therefore, could be an increase in the premiums charged to the subcontractor, assuming that the indemnification agreement's in force and effect.

I suggest, Mr. Speaker, that if the purpose of this bill is to assist workers and subcontractors and impose liability against the general contractor, it may in fact be avoided through that same indemnification agreement. I don't think that's reading anything into the bill. That's what the bill says. Through you, Mr. Speaker.

SPEAKER STOLBERG:

Representative Adamo.

REP. ADAMO: (116th)

Through you, Mr. Speaker, I would ask a question to Representative Radcliffe.

SPEAKER STOLBERG:

Representative Radcliffe has the floor. He has posed a question. If your question is a response to his question and helps enlighten the Body, I suppose that's permissible.

REP. ADAMO: (116th)

I will try to frame it in a way --

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SPEAKER STOLBERG:

Sort of a Catch 22 situation, but proceed.

REP. ADAMO: (116th)

I'm sorry, Mr. Speaker. I'll try to frame it in a way that answers the question. And I would say, I guess, as an answer to the question, where in the law does it say, or where in the file copy does it say that the principal employer or the general contractor would have to enter into these indemnification contracts?

REP. RADCLIFFE: (123rd)

Mr. Speaker, if that's a question, the answer is that there is nothing that would require it. My initial question to the Chairman of the Labor Committee was, is there anything that would preclude it? The answer to that was no. I think the real question is whether anything would preclude a general contractor from absolving himself of liability with such an agreement. I think his initial answer was no, and that's the entire purpose of my questions. Thank you.

SPEAKER STOLBERG:

Will you respond further to the bill before us?  
Representative Migliaro of the 80th.

REP. MIGLIARO: (80th)

Thank you, Mr. Speaker. Thoroughly interested in

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this bill, I'd like to pose a question through you, to Representative Adamo.

SPEAKER STOLBERG:

Please frame your question.s

REP. MIGLIARO: (80th)

Representative Adamo, first of all, I hope this bill is here before us because of what happened at L'Ambiance. Is this the reason why the bill is before us, because of the lack of compensation to the survivors of that incident?

SPEAKER STOLBERG:

Representative Adamo.

REP. ADAMO: (116th)

Through you, Mr. Speaker, Representative Migliaro, I couldn't agree with you more. But that's only one incident. I think the PGP case from your district and your area is another similar case, and absolutely, I think those are glaring examples of why this type of legislation is absolutely needed and that those people will not be protected against false bar or false immunity.

REP. MIGLIARO: (80th)

Through you, Mr. Speaker, another question to Representative Adamo.

SPEAKER STOLBERG:

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Please proceed.

REP. MIGLIARO: (80th)

I believe the way I read the file copy, we are finally going into an area where there will be no immunity to a general contractor and my question would be, basically, that if the general contractor was at fault for injuries that occurred to subcontractors, under the present law there's no responsibility. Is that correct? To the general contractor.

REP. ADAMO: (116th)

Through you, Mr. Speaker.

SPEAKER STOLBERG:

Representative Adamo.

REP. ADAMO: (116th)

I understand your question. That's correct. The general contractor under the reading of the existing statute would be immune from lawsuit unless that general contractor was in fact paying the workers' comp benefits.

REP. MIGLIARO: (80th)

Mr. Speaker.

SPEAKER STOLBERG:

Representative Migliaro.

REP. MIGLIARO: (80th)

Members of the House. I don't think we should be

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kicking this thing around. I think it's obvious why the bill is here and I think we should have learned something, that people are entitled, particularly the workers in this State are entitled to protection and compensation and survivors of any workers that are killed in the line of their work, somebody should be held accountable.

And the fact that the contractors at the present time get a free ride and in many cases, they are probably responsible for subcontractors getting hurt, because of the fact that they want to expedite the job because they have payments coming up from the bank at certain quarters and stages of that job, and they don't give a damn about the safety of the subcontractors who work under those conditions.

And we've had a recent accident that proved that and forced these people to work under hazardous conditions, knowing that they can't be held responsible for anything. I think this bill goes a step in the right direction. I really think that there should be no question in anybody's mind on this floor on what we should be doing on this bill and this is supporting it.

The only problem I have, and unfortunately, we should have gone one step further with this bill and incorporated one other group of people who are involved

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in construction and that is, the architects.

The architects in this State, in a recent court decision, because when they lay out the plans for a job for stress and structure and weight such as the Civic Center and other parts, and L'Ambiance, all they do is stamp those plans reviewed. It doesn't say, supervised. And because of that, they're absolved in any responsibility whatsoever.

I think the next step and I would urge Representative Adamo and the Labor Committee, to look into the aspect of either coming out with future legislation that would incorporate these people in the same category as we are with the contractors.

I think what is happening, that a lot of subcontractors who get hurt find themselves and surviving spouses in a position where they've got no income coming in and have to rely on the courts. And lo and behold, the courts say, well, they're immune so you can't go after them. And you can't go after the architects, and you look at yourself and say, who do I go after. Well, that's your problem.

And we saw 20 people give up their life for no reason, no cause and I think this bill would be a tribute to those that they didn't die in vain and that at least we're looking in the right direction to

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protect our workers in the future, I guess no only contractors, but architects as well.

I urge you to support this piece of legislation.

SPEAKER STOLBERG:

Representative O'Neill.

REP. O'NEILL: (98th)

Thank you, Mr. Speaker. Workers' compensation laws in this country go back one heck of a long time, and the workers' compensation law in Connecticut is based on the workers' compensation law in the State of New York, which came out in the early part of the century.

And there was a reason for it, because of the multitude of cases which were coming into the courts and because of the difficult time that the employees had to get compensation for injuries which were incurred on the job.

So the brains and the powers to be at that time came up with an excellent idea called workers' compensation benefits. And this was to benefit the employee. He was to get immediate compensation if he was injured on the job, regardless of who was at fault.

Now, this was a trade-off. This was a trade-off. The employers would always pay. The employers would always pay for any workplace injury, including ones that they did not cause and in return, the workers gave

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up the right to sue.

Now this was the law in the State of Connecticut, and is the law in the State of Connecticut at the present time. And it's withstood all attempts to erode the benefits of employees.

Now, there must have been a heck of a lot of good in this law, because here it is in the year 1988 and the courts have interpreted the law for the benefits of everybody since it came out around 1910. So my question is to Representative Adamo. Is the workers' compensation a bad law?

SPEAKER STOLBERG:

Representative Adamo.

REP. ADAMO: (116th)

Through you, Mr. Speaker, absolutely not, Representative O'Neill. I'm very proud of Connecticut's protection under the workmen's compensation and I think this particular change makes it that much better because we won't become part of the majority of states that doesn't allow this foolish immunity.

REP. O'NEILL: (98th)

Through you, Sir, have the judges and the courts and the Legislatures, and everyone from 1910 to 1988 been foolish in not recognizing of course, this change

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which is coming in now.

SPEAKER STOLBERG:

Representative Adamo.

REP. ADAMO: (98th)

Through you, Mr. Speaker. I think you have to take the reason for the principal employer immunity when it was put into law. I believe it went back to 1959. It was protection for workers where there were subcontractors who weren't carrying workers' compensation and what this Legislature basically said when we put the immunity in place was that we were going to make sure that somebody protects you, and it's going to be the general contractor.

And so long as he does, so long as he does, you're immune from lawsuit. But that mean that the GC, the general contractor was paying for the benefits and paying the benefits. But then we decided to make the law a little bit better because we needed really, to apply universally, and not only in these conditions.

So we put it to statute that whenever an employee found himself not covered by workers' compensation in any case, that those benefits would come through the second injury fund, thus giving everyone protection under law.

Meanwhile, what has happened is that general

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contractors who are being found negligent, are hiding behind an immunity and not paying a single dime to the employee, or the employee's dependents or survivors. That's a flaw in the law. And we're trying to plug that gap and we're trying to give those people a proper cause of action in the courts.

REP. O'NEILL: (98th)

Thank you, Representative Adamo. Through you, Mr. Speaker. I agree with what you said. The second injury fund was to give everyone, the term everyone, equal protection under the law.

Isn't it true that at the present time under the law that an employer and a subcontractor are both jointly and severally bound? They're liable for compensation benefits, aren't they, under the present law?

REP. ADAMO: (116th)

Through you, Mr. Speaker.

SPEAKER STOLBERG:

Representative Adamo.

REP. ADAMO: (116th)

The employer of an employee is bound to carry workers' compensation coverage for that employee. It does not need to be the general contractor, and if the general contractor were hired and had no employees, and

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I think an example like that was given earlier, and that he brought in a group of subs, it would not be the general contractor's obligation to carry workers' compensation, it would be the subcontractor's obligation to carry workers' compensation to protect their employees.

REP. O'NEILL: (98th)

Through you, Sir. That's not what I asked. I asked under the present law, aren't both the principal employer, who would be a general contractor, and the subcontractor, who is the immediate employer, both jointly and severally bound for the payment of the compensation, under the present law.

REP. ADAMO: (116th)

Through you, once again.

SPEAKER STOLBERG:

Could I ask messengers to try and stay on the doors. When the doors are open, there's such a hubbub outside the Chamber that it makes it difficult to hear. Representative O'Neill, had you posed your question, Sir?

REP. O'NEILL: (98th)

Yes, I just asked if it was not true that under the present law, both the prime contractor and the subcontractor are jointly and severally liable for the

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payments for workers' compensation.

REP. ADAMO: (116th)

Through you, Mr. Speaker.

SPEAKER STOLBERG:

Representative Adamo.

REP. ADAMO: (116th)

That's absolutely, I don't believe that is true at all. I believe that the joint and several question comes into liability coverage and not workers' compensation coverage.

REP. O'NEILL: (98th)

Through you, Sir, if I may.

SPEAKER STOLBERG:

Representative O'Neill.

REP. O'NEILL: (98th)

If the sub does not have it, then the prime contractor is bound by it, so it's both jointly and severally at the present time.

Just a question, if I may. Could you please tell me if what I'm going to say now is true or false, or if you'd agree with it. If you don't agree with it, it's up to you.

This principal employer a lot of people say, at the present time, is off scot free when he receives immunity from a worker who has received compensation

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benefits. The cost of these benefits was factored into the contract by his pay, by the principal to the subcontractor, and into the compensation insurance premiums. The principal paid for his own employees, and into the second injury fund.

Now, if this is true, doesn't it subject him to tort liability. Wouldn't that be sort of a double hit upon the prime contractor?

REP. ADAMO: (116th)

Through you, Mr. Speaker.

SPEAKER STOLBERG:

Representative Adamo.

REP. ADAMO: (116th)

I don't believe so, because every employer pays into the second injury fund.

REP. O'NEILL: (98th)

Through you, Sir, I think this is strictly and solely a means of getting at the old deep pocket theory. This is the man up here who was the man in back of it, so let's get him.

Just a question down the line here. Let's take L'Ambiance Plaza, for example, and let's say that the subcontractor did not have the insurance and that he was grossly negligent. What would the cause of action be on the part of a person who was injured?

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SPEAKER STOLBERG:

Representative Adamo.

REP. ADAMO: (116th)

Through you, Mr. Speaker, I believe that I gave an example earlier that if --

REP. O'NEILL: (116th)

Excuse me, Sir. Maybe I read something into it. I beg your pardon, please continue.

SPEAKER STOLBERG:

Representative Adamo.

REP. ADAMO: (116th)

Thank you, Mr. Speaker. Thank you, Representative O'Neill. I think that I gave an example earlier. If the employee was injured as a result of the subcontractor that he in fact was working for, and that subcontractor was paying his workers' compensation benefits, and that person happened to be found negligent, that subcontractor found negligent, that's the end of it. That's where it stops.

I think I gave an example. The plumber working for the general contractor and the electrician working for the general contractor, and by virtue of an error or an inappropriate move by the electrician, the plumber gets electrocuted, he can't go after the GC, but he can sure in heck go after that electrical contractor and then

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subrogate the money back to the workers' comp that he collected.

REP. O'NEILL: (98th)

Thank you, Sir. And through you, Mr. Speaker.

SPEAKER STOLBERG:

Representative O'Neill.

REP. O'NEILL: (98th)

Other than the Nurembourg Trials, will you please spell out for me what laws in the State of Connecticut are retroactive for an incident which occurred a year to two years before.

SPEAKER STOLBERG:

Representative Adamo.

REP. O'NEILL: (98th)

In other words, expos facto law.

REP. ADAMO: (116th)

Through you, Mr. Speaker. I believe that this Chamber just a week ago made a change in the municipal employees' retirement fund that corrected an error we found and made it retroactive to July 1, 1986. I think it's our prerogative as legislators to make that decision.

It would have been a simple matter, ladies and gentlemen, to simply make this change prospectively, but I say to each and every one of you, after we did

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it, I'd like you to go tell the dependents and the spouses and the widows of those people killed in L'Ambiance and PGP, explain why you did it, when the law was readily never meant to give those people an immunity anyway. I couldn't do it, and that's one of the reasons it's the way it is in the bill.

REP.O'NEILL: (98th)

Through you, Sir. It's unfortunate that the law sometimes is very hard and very cold and very cruel. But that's why we have laws, and we have laws that are made at a certain time, and then we have other laws. But to my knowledge as far as criminal law is concerned, or criminal negligence is concerned, an act which is not a crime or criminal negligence at one time cannot be tried for a piece of law which says six years later that it was at that particular time.

And I think if this law passes, that's exactly what you're going to do. Nobody, nobody would say that they are not sorrowful for the individuals who were hurt, but workers' compensation is made for the specific purpose of a trade-off. A trade-off was made when an individual goes to work and there's workers' compensation and the person had been injured. Both the prime and the sub are jointly and severally bound for those payments into workers' compensation.

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I feel that this is strictly and solely a situation where you're getting into the deep theory, whether it's L'Ambiance Plaza, whether it's any single other thing, and you know eventually who's going to pay for it. Everybody in the State of Connecticut is going to pay for it because the premiums are going to be written off and put into every single item you buy, every single contract you make, every single insurance policy you get. You all are going to pay for it, and to have somebody try to plead with us and say, well, how about the poor people who are injured.

We're all concerned for that. Yes, we are, and if you want to pass the law, so be it. I sincerely hope you don't.

But if you do pass the law, for Heaven's sake, in the name of good law, don't make it retroactive. That is abhorrent. Thank you, Sir.

SPEAKER STOLBERG:

Will all members please be seated. Staff and guests to the well of the House. Will you remark further? Representative Krawiecki.

REP. KRAWIECKI: (78th)

Thank you, Mr. Speaker. I want to start with a question, I think, to Representative Adamo.

Representative Adamo, in reading lines 21, 2 and 3

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which is the exception clause, I guess, in the new language it says you know, you can bring this kind of an action unless such principal employer has paid compensation benefits under Chapter 568 which would be your workers' compensation statutes.

Through you, Mr. Speaker, to the best of our knowledge, Representative Adamo, is that allowed?

SPEAKER STOLBERG:

Representative Adamo.

REP. ADAMO: (116th)

Through you, Mr. Speaker, it is my understanding, Sir, that it is.

REP. KRAWIECKI: (78th)

Through you, Mr. Speaker. Can you tell me under what relationship that would be allowed under our existing statutes?

Through you, Mr. Speaker.

SPEAKER STOLBERG:

Representative Adamo.

REP. ADAMO: (116th)

Through you, Mr. Speaker. I'm sorry, I cannot give you a citation.

SPEAKER STOLBERG:

Representative Krawiecki.

REP. KRAWIECKI: (78th)

Thank you, Representative Adamo. That's my understanding as well. I don't think a principal employer who does not have a relationship with an employee, can, in fact, make any compensation payments. There's no legal remedy that I'm aware of under the statutes to allow for that kind of a payment.

Now, I recognize that that's new language and that we're recommending in the future that somebody might be able to make payments, but again, I can't figure out how that will occur, unless, and Representative Radcliffe has left the Chamber, and I suspect what he was talking about before is the direction that we were sort of going in, you know, when he said, can a principal employer enter into an indemnity agreement with a sub.

I'm going to venture a second guess and say that probably under this new law, a whole new breed of contract is going to be established where myself as a principal contractor is going to say to a sub, for any given job, you are now my employee. And as such, you'll fold in under my workers' compensation payments, even though I needn't hire you as a sub, even though I have no employees whatsoever as a general, but I'm going to hire you now as a plumber and I'm now going to have a little side contract that says, I don't care who

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you bring in to be my employees, but I suspect that I'm going to be allowed to enter into those kinds of contracts and as such, kind of do an end around this new statute that we intend to pass, and that's a concern of mine.

I point it out to the Chairman, because I think in either case, you can take it as a correlary either way. Either an indemnity agreement or you can enact a new contract. I'm unaware of any language or any statute that exists at present where a principal employer can make payments against any kind of a compensation claim.

You know, if I'm an employee, I have to go to my employer, who is my sub. My boss. I don't go jumping up above, and you know, you've had a whole conversation about that. It's a real problem. I don't think that language is meaningful at all, and I don't know how you go about making those payments.

The third thing, and I think Representative O'Neill has highlighted it appropriately. The biggest problem I have with this bill is the retroactivity of the bill. I don't know of a single employer, good or bad employer, and remember, you're going to go after all of them now, not just the bad ones that we've been highlighting here. You're going after good and bad generals and you're now going to open up the door and

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say, forever and ever, you know, we can reach back and we can bring a lawsuit against you.

And none of those people have insurance, and notwithstanding the comment that Representative Smoko said that you were maybe making much to do about nothing, I really think it's a serious problem because these people are not going to have this kind of coverage. And even good employers, and by and large this State is full of good employers. They're not bad employers. I mean, they carry the requisite insurance and they do all the things that they're supposed to do. Suddenly we're opening a door and saying, bang, you're elected, you know. You're nominated. We're going to make the lawsuit against you.

And I realize the comment that I'm making, you know, opens up some real doors. I had understood that you were going to offer an amendment, Representative Adamo, so my last question to you is, through you, Mr. Speaker, Representative Adamo, do you in fact have an amendment in your possession which would do away with the retroactivity provision of this statute as recommended?

REP. ADAMO: (116th)

Through you, Mr. Speaker.

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Representative Adamo.

REP. ADAMO: (116th)

Through you, Mr. Speaker. Representative Krawiecki, we discussed at length the question of the retroactivity, and we also discussed it in length, the ramifications that would have on especially those particular matters that I have been discussing in debate, PGP and L'Ambiance, for example. And I really venture to say that the liability question is still limited to those statutes of limitation on liability, I think two years in a general suit and three years where the person was negligent on purpose, or something to that affect, I'm not an attorney, I'm sorry.

So that that's all we're looking at going back, I understand, if I read the statute of limitations properly on liability, two years on general negligence or on a general suit, and three for its purposeful.

And in answer to your direct question about an amendment, there was a strong commitment of the majority of our caucus that we not go forward with the amendment to take out the retroactivity because we felt strongly about protecting the rights for the people affected by L'Ambiance, the people affected by PGP and for that reason, Representative Krawiecki, I do not have that amendment in my possession at this time.

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REP. KRAWIECKI: (78th)

Thank you, Representative Adamo. I think that being the case, I probably am inclined to not support the bill as before the Chamber. I almost am tempted to ask that the bill be passed temporarily so that I can have that amendment drafted because I think it's an integral part of the conversation and I apologize to the Chamber. I had been led to believe that that amendment was going to be offered and I didn't want to waste the LCO office time in drafting a duplicate amendment.

I have to tell you, I think notwithstanding Representative Adamo's comments that we have done some interesting things with product liability and I suspect that an employee who was hurt because of some of those statutes might very well turn around and you have a greater window of time than a two year or three year statute.

I also think that because of the language that's been put into place, it might cause some very interesting conversations as to when a final judgment has been entered under 31-293. I've got to tell you. I think you've got a bigger window than just a two year or three year statute that Representative Adamo would have us believe. I think it could reach back for a

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good long period of time and notwithstanding the fact that we want to do good things, we may be over-reaching and maybe overly broad in what this statute is doing and I suspect it very well may cause some very large problems.

You know, I'd really like to ask the maybe Deputy Majority Leader to consider PTing the bill so that the amendment could in fact be drafted, so that we could at least have a complete debate on the subject. But I make that as a request, and I know other people are interested in debating the bill.

SPEAKER STOLBERG:

Will you remark further? The Chair would point out this debate has been prolonged. There have been at least a couple of instances of repetitiveness. We're going to have to make much more progress than this, unless we plan on going straight for the next 24 hours. We have a long list of major bills on our Calendar. Representative Jaekle.

REP. JAEKLE: (122nd)

Thank you, Mr. Speaker. I know the retroactive nature of this file has been mentioned, but it's probably my main concern with the legislation and I will try not to be repetitive to some of the questions that have gone on before, but I would like to ask a

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couple of questions about the retroactive nature of this proposed law to the proponent, please.

SPEAKER STOLBERG:

Please frame your question.

REP. JAEKLE: (122nd)

Mr. Speaker, thank you. I do understand that there's a general statute of limitations on negligence actions and that's what we'd be talking about, either negligence on the part of an employer, principal employer, or one of his employees that may have resulted in the injury of a subcontractor or a subcontractor's employee, and I suppose that's a three year statute of limitations.

But, the language in this bill says that this immunity would no longer be available for any claims that were brought, and no final judgment had been rendered. So I guess I do want to test how far back this may go, beyond the examples that have been cited which are within the two or three year statute of limitations, and through you, Mr. Speaker, I'd like to know if somebody was injured, an employer of a subcontractor was injured eight years ago and claimed his injury resulted from the negligence of the principal employer's actions, brought suit, maybe three years after his injury, within the statute of

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limitations and our courts being what they are, maybe the matter hasn't gotten a final judgment.

Or I'll even press it further. He lost because this statute was raised as a defense by the principal employer, and he's appealed that case to our Supreme Court, notwithstanding that there have been other precedents. People try to change them.

If this matter, an injury eight years ago, is on appeal to our State Supreme Court, or maybe the Supreme Court of the United States, would the passage of this legislation and it being effective on passage, would that mean that it's prior to a final judgment and the immunity would no longer attach, through you, Mr. Speaker, to the proponent?

SPEAKER STOLBERG:

Representative Adamo.

REP. ADAMO: (116th)

Through you, Mr. Speaker. Representative Jaekle, I believe that yes, it would be. Because the final judgment had not been rendered. Because you brought it through three courts, I believe, the appeals process, into the Supreme Court, and the final judgment had not been rendered, I would say that you're absolutely right. Yes, that particular item could in fact be affected.

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REP. JAEKLE: (122nd)

Thank you. That's what I had thought as well. I'm just asking the basic policy. If I were a principal employer today and this law passes, is it, do all I do as a principal employer hiring subcontracts, get some sort of a blanket liability policy to cover me for this new exposure. Through you, to the proponent, Mr. Speaker.

REP. ADAMO: (116th)

I'm sorry, Mr. Speaker, I did not hear the question.

SPEAKER STOLBERG:

Representative Jaekle, if you would repeat the question, please.

REP. JAEKLE: (122nd)

Thank you, Mr. Speaker. I'm trying, I know we pass laws. I'm trying to relate it down to the real world. There are principal employers and subcontractors and employees for both out there today in the State of Connecticut.

When this law passes, if I'm a principal employer, one way to cover myself, I assume, would be to get a general liability policy to cover me for these type of claims. Is that one protection I should get, or could get, as a principal employer, through you, Mr. Speaker.

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REP. ADAMO: (116th)

Through you, Mr. Speaker, I believe that I answered that question affirmatively before. Yes, I would imagine in most cases, it would be in place already and would not be needed.

REP. JAEKLE: (122nd)

Mr. Speaker, through you, if I obtain that policy today, could I get a policy that would cover me for injuries that might have happened within the last three years from subcontractors employes, employees, or what might have been filed as claims eight years ago with my example. Could I obtain that kind of insurance today, through you, Mr. Speaker.

REP. ADAMO: (116th)

Through you, Mr. Speaker, I think that the Minority Leader has asked a question that he knows the answer to. I would believe that you could not, of course, buy a policy that would give retroactive coverage, no Sir.

REP. JAEKLE: (122nd)

That's my understanding as well. I couldn't swear to it. I suppose LLOYDS of London for some outrageous premium might insure almost anything, but I gather the premium would be outrageous.

I guess that's my biggest problem with the legislation.

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I'll tell you, I was somewhat compelled with the argument of you know, right now you can sue down and you can sue laterally, but you can't sue up. And I gather we're in the minority of states that do that, and that argument had been rather compelling. And I talked to some people about the legislation, indicated my main concern was the retroactive nature of this was just bad law. And I appreciate that there are some fact situations, L'Ambiance Plaza certainly being one, a very hard case and the application of this law, not the proposed law, but current law, has prevented certain lawsuits from happening.

I'll point out that one of the complaints I heard from some of the people involved in L'Ambiance was, they couldn't sue the architects. That law is not being changed by the way. You still can't sue the architects. That's in 31-293. I don't know how somebody missed that, but the problem is, a hard case like that, a lot of sympathy, a lot of appeal to do something for the victims and their families. But you just don't change the law like this.

You don't retroactively change certain laws in such a way that people can't protect themselves. And, Mr. Speaker, with the law being retroactive in nature, which I truly believe is bad law. In fact, if they

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were doing this as criminal laws, it would be unconstitutional. Our founding fathers said, you don't make ex post facto laws. You don't say today, that something you did five years ago was wrong when it was okay five years ago. It's bad law, and that's the worst part of this legislation and until that part is corrected, I don't believe we can be supportive of this in good conscience and maybe it can't even survive a court challenge in its present form.

SPEAKER STOLBERG:

Will all members please be seated. Staff and guests to the well of the House.

REP. ADAMO: (116th)

Mr. Speaker.

SPEAKER STOLBERG:

Representative Adamo.

REP. ADAMO: (116th)

Thank you, Mr. Speaker. Mr. Speaker, as I said earlier, yeah, you can count votes, and yeah you can come forward with a bill like this that probably could have been borderlined and passed this House marginally because the retroactivity question had not been answered. And very frankly, I'm not ready to do that and put these people in jeopardy because I think they have other remedies, especially the cases at hand and I

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will take the advice of my Deputy Majority Leader and the Minority Leader and I would ask that the Clerk please call LCO 3633, and read.

SPEAKER STOLBERG:

The Clerk has an amendment, LCO 3633 designated House Amendment Schedule "A". Will the Clerk please call and read.

CLERK:

LCO 3633 designated House Amendment "A" offered by Representative Frankel et al.

In line 16, delete "AN ACTION FOR DAMAGES" and insert line lieu thereof A CIVIL ACTION"

In line 18, delete "IN WHICH" and insert in lieu thereof "TO RECOVER DAMAGES RESULTING FROM PERSONAL INJURY OR WRONGFUL DEATH OCCURRING"

Delete line 19 in its entirety

In line 10, delete the words "EFFECTIVE DATE OF THIS ACT OR WHICH IS FILED"

In line 24, after "INJURY" insert "OR DEATH"

SPEAKER STOLBERG:

Representative Adamo, what is your pleasure?

REP. ADAMO: (116th)

Mr. Speaker, I move its adoption.

SPEAKER STOLBERG:

Will you remark?

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REP. ADAMO: (116th)

Just briefly, Mr. Speaker. I think this very clearly handles the question of going back to those cases that might have been seven or eight or nine years old. I think that so long as cases are still active, there are methods that make sure they come under the existing statute as we're changing it today, and then we'll protect those people at L'Ambiance as well, and PGP possibly.

But, I do not want to see this bill put in jeopardy. I think it's important to go forward with it as quickly as possible and the proponents have indicated to me that they are comfortable with this particular amendment, that it ought to go forward and it ought to go forward quickly so that we can provide the coverage and the benefits and the protection to the people involved, and I would move adoption of the amendment.

SPEAKER STOLBERG:

Will you remark further on the amendment? If not, all those in favor of the amendment please indicate by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER STOLBERG:

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All those to the contrary nay.

REPRESENTATIVES:

No.

SPEAKER STOLBERG:

The amendment is clearly adopted and ruled  
technical. Will all members please be seated. Staff  
and guests to the well of the House.

Will you remark further? If not, the machine will  
be opened.

CLERK:

The House of Representatives is voting by roll  
call. Members to the Chamber. The House is voting by  
roll. Members to the Chamber immediately.

SPEAKER STOLBERG:

Have all the members voted? Have all the members  
voted and is your vote properly recorded? Have all the  
members voted?

The Chair recognizes members have other duties, but  
the Chair would urge members to stay near the Chamber.  
The machine will not be held open an inordinate amount  
of time. Have all the members voted? Have all the  
members now voted?

If all the members have voted, the machine will be  
locked and the Clerk will take a tally.

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Representative Prague. Representative Prague of the 8th.

REP. PRAGUE: (8th)

Thank you, Mr. Speaker. I would like to be recorded in the affirmative, please.

SPEAKER STOLBERG:

Representative Prague in the affirmative.

The Clerk please now announce the tally.

CLERK:

House Bill 5041 as amended by House "A".

Total number voting	148
Necessary for passage	75
Those voting yea	122
Those voting nay	26
Those absent and not voting	3

SPEAKER STOLBERG:

The bill as amended is passed. Will the Clerk please continue.

CLERK:

Page 5, please, Substitute for House Bill 5931,  
 Calendar 301, AN ACT CONCERNING THE ESTABLISHMENT OF A  
 PILOT RENTAL ASSISTANCE PROGRAM FOR NEWLY CONSTRUCTED  
 RENTAL HOUSING, as amended by House Amendments "A" and  
 "B". Favorable Report of the Committee on Planning and  
 Development.

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GEN. ASSEMBLY  
SENATE

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Calendar 524, Substitute for House Bill 5046. Calendar  
527, Substitute for House Bill 5194. Calendar 528,  
Substitute for House Bill 5263. Calendar page 13,  
Calendar 531, Substitute for House Bill 5283. Calendar  
534, Substitute for House Bill, correction, Calendar  
535, Substitute for House Bill 5759.

Mr. President, that completes the first Consent  
Calendar.

THE CHAIR:

Any changes or omissions? The machine is open,  
please record your vote.

Senator Maloney. The machine is closed. The Clerk  
please tally the vote.

The result of the vote.

36 Yea

0 Nay

The Consent Calendar is adopted.

THE CLERK:

Calendar No. 439, page 4, file no. 261 and 634,  
Substitute for House Bill 5041. AN ACT LIMITING  
IMMUNITY FOR PRINCIPAL EMPLOYERS UNDER THE WORKERS'  
COMPENSATION ACT. (as amended by House Amendment  
Schedule "A"). Favorable Report of the Committee on  
JUDICIARY.

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Senator Spellman.

SENATOR SPELLMAN:

Thank you, Mr. President. I move acceptance of the Joint Committee's Favorable Report and passage of the bill.

THE CHAIR:

Is that in conjunction with...

SENATOR SPELLMAN:

As amended by House "A".

THE CHAIR:

Thank you, do you wish to remark?

SENATOR SPELLMAN:

Thank you, Mr. President. This bill would allow the employees of contractors that are injured on the job to sue for damages the principal employer, or the company that actually hired the contractor that they worked for.

If that principal employer is not paying the employees or the employee's dependents workers' compensation benefits.

By way of background, the legislature originally in passing the Workers' Compensation Act, intended to provide a mechanism, whereby, persons injured on the job would have a speedy right of recovery. They would not be based upon fault. And there was a tradeoff on

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both sides, in terms of the employee being able to obtain a speedy recovery without having to show fault. And in return, there was a limitation with regard to extent of liability, which the employer would face.

Now, when this statute, or statutes were passed, there was a provision in 31-291, which stated that if the immediate employer, the contractor who had taken into employment the injured employee, did not pay the Workers' Compensation benefits. Then the principal employer would be liable to pay those benefits.

In court decisions interpreting this rule, there was, unfortunately, a judicially created immunity, which I do not believe the legislature intended when they passed 31-291.

What happened is that the courts interpreted 31-291 to remove liability on the part of the principal employer regardless of whether or not the principal employer was paying Workers' Compensation benefits.

This, obviously, created a very inequitable situation. One which was contrary to almost every other state in the union. And, also, which placed a principal employer in a position which was contrary to any other third party who was at fault for serious injury.

By way of example; if an employee was injured and

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there was negligence on the part of another subcontractor, whether he was under the employment of his boss or another subcontractor who happened to be on the job site, there is not immunity. They are subject to suit.

If an employee is subject because of a defective, is injured because of a defective product, an employee can sue in product liability.

The long and short of it is that the principal employer received an immunity for which he did not provide any benefit to the employee.

This piece of legislation would remove that liability. The immunity became increasingly, it became increasingly clear that this immunity was not solemnly based in policy when legislature created the second injury fund. The second injury fund was designed to provide workers' compensation benefits in situations where an employer has failed in his obligation under the law, so that the employees would actually be covered.

Once that second injury fund went into place, the situations in which an, a principal employer would ever be paying workers' compensation benefits, became few and far between. Yet, they continued to enjoy the immunity. Court cases have frequently

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mentioned the inequities of this situation. Quoting some particular language, I take from one case where an employee was grievously injured and attempted to recover against the principle employer and the court stated, "the court recognizes the validity of the plaintiff's arguments regarding the obsolescence of Article 31-291 and 31-284 since the passage of Connecticut General Statutes Section 31-355. However the court is bound by the statute as written and cannot become a member of the Legislative Branch of Government and rewrite the statute by Judicial fiat in a manner suggested by the plaintiff.

I think that the inequities of our current situation became patently plain to us last year when we had the tragedy of L'Ambiance Plaza. We had negligence on the part of the principle employer in which criminal sanctions were strongly considered. Yet none of the dependents of those who were killed at L'Ambiance Plaza can receive anything other than the statutory Workers' Comp benefits from their immediate contractor. They cannot recover in any way against the principle employer.

I'm talking primarily in terms of the public policy arguments against the injured employee, but I would also like to make it a point that there is another

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public policy argument to be made in terms of the fact that if this immunity, which I believe is misplaced, is removed and an injured employee is able to sue a principle employer for negligence, the Workers' Compensation carrier who has paid benefits under Workers' Compensation is going to be entitled to a right of subjugation in regard to any recovery which is received through that law suit.

And that makes good sense, because in many of these circumstances the employer is in no way responsible on a full base formula and yet the Workers' Comp benefits are paid without reimbursement to that carrier because of the immunity which has been created by court.

I could go on and on with stories about people who have suffered as a result of this immunity. One of the more tragic ones I'll mention is what is called the PPG Case in which during Hurricane Gloria an employee became stuck on work site, subject to carbon monoxide. He died. Another employee who came to attempt to rescue him, gave him mouth to mouth resuscitation, ended up with permanent brain damage. The employer in that situation was charged with criminal manslaughter in terms of their actions. They rose to the level of criminal actions and yet the family of that deceased and the person who tried to rescue him who was

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permanently brain damaged are unable to recover.

By passing this bill today, I think it will take a long overdue action that will prevent these kinds of inequities in the future. I would strongly encourage everybody in the Circle to vote for this bill. I also ask for a roll call vote, Mr./President.

THE CHAIR:

Senator Daniels, followed by Senator Upson.

SENATOR DANIELS:

Thank you, Mr. President. I just rise for a point of information or some clarity as it relates to this bill and a question to Senator Spellman, through you, sir.

THE CHAIR:

You may proceed.

SENATOR DANIELS:

Senator, could you tell me what are the liabilities for subcontractors under this bill? Let me give you an example. A general contractor hires a subcontractor to do some plumbing work and on this job one of the plumbers gets hurt and he is out for some period of time. And while he is out he is collecting Workers' Compensation. Does he have the right to sue the contractor and also the subcontractor under this agreement?

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THE CHAIR:

Senator Spellman.

SENATOR SPELLMAN:

No. The subcontractor, assuming that he had Workers' Compensation benefits which is included in your scenario would enjoy the liability under Workers' Compensation. However, if there was negligence on the part of the principle employer in the negligence and the accident occurred in the area within his control then the employee would be able to sue him for damages.

SENATOR DANIELS:

Thank you. That answers my question, Mr. President.

THE CHAIR:

Thank you. Senator Upson.

SENATOR UPSON:

Yes, thank you, Mr. President. Both examples that Senator Spellman spoke of involve Waterbury people, greater Waterbury people. 12, for example, L'Ambiance Plaza and of course PPG, I believe both persons, one that was killed and one that was permanently maimed were from Waterbury. The change, I think, is needed.

First of all, let's say before an employee of a subcontractor can sue an employer have to prove negligence and also if they are successful they have to

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pay back the Workers' Compensation. So that there is equity in the system. And there are examples in the system, products liability where you can go around the Workers' Compensation system and also in certain automobile accidents, I believe, you can go after third parties.

So there are exceptions already. I don't feel this is going to be a major problem with insurance companies. And I certainly rise in support of this. I attended a bereavement conference. The first one that I have ever been to, a few weeks ago, at Post College and most of the people there were survivors of L'Ambiance Plaza as well as other people who have other problems from other, shall we say, disasters or just loss of loved ones. And this did come up and even though it is not going to be retroactive, obviously, this will help in the future.

I think this, plus the strengthening of Senator Herbst and her Committee, the Building Inspector's Office and also carrying out some of the other, shall we say, some of the agenda on the Advisory Committee, this will do something to tighten up the problem which this Legislature found existing last year and now has reacted to. Thank you.

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Senator Blumenthal.

SENATOR BLUMENTHAL:

Mr. President, under our rules, specifically Rule 15, I am going to abstain myself from the debate and abstain from voting. Thank you, Mr. President.

THE CHAIR:

The record will so note. Senator Rinaldi.

SENATOR RINALDI:

Thank you, Mr. President. Mr. President, I also would like to rise in support of this bill. I would like to thank Senator Spellman and commend Senator Spellman for the fine, fine job that he has done. Although it is a little bit late for what happened in Waterbury, I think that Senator Spellman should know that there is going to be a lot of people in Waterbury that will appreciate the effort that you put into this bill. And I thank you very much for it.

THE CHAIR:

Further remarks? Clerk please make an announcement for immediate roll call.

THE CLERK:

Immediate roll call has been ordered in the Senate.  
Will all Senators please return to the Chamber.  
Immediate roll call has been ordered in the Senate.  
Will all Senators please return to the Chamber.

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THE CHAIR:

Question before the Chamber is a motion to adopt Calendar No. 439, Substitute for House Bill 5041, File No. 261 and 364 as amended by House Amendment Schedule "A". The machine is open, please record your vote. Has everyone voted? The machine is closed. Clerk please tally the vote.

The result of the vote.

35 Yea

0 Nay

The bill is adopted.

THE CLERK:

Calendar Page 5, Calendar 461, File 166 and 682, Substitute for House Bill 5241, AN ACT REQUIRING MUNICIPAL PLANNING COMMISSIONS TO ADOPT SUBDIVISION REGULATIONS TO INCLUDE PROVISION FOR AGRICULTURAL LANDS THAT ENCOURAGE ENERGY-EFFICIENT LAND USE. (As amended by House Amendment Schedules "A" and "B") Favorable Report of the Committee on APPROPRIATIONS.

THE CHAIR:

Senator Barrows.

SENATOR BARROWS:

Mr. President, I move acceptance of the Joint Favorable Committee's Report and passage of the bill. I think there are two amendments.