

<b>Act Number:</b>	09-101	
<b>Bill Number:</b>	6185	
<b>Senate Pages:</b>	2588-2594, 2621-2622	9
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<b>Committee:</b>	Labor: 130-131, 167, 172- 173, 193, 194, 219, 222	8

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GENERAL ASSEMBLY  
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Those voting Nay 0

Those absent and not voting 0

THE CHAIR:

The Consent Calendar is adopted. Mr. Majority  
Leader.

SENATOR LOONEY:

Thank you, Mr. President. Mr. President, a few  
more items to be marked "go." First, Calendar page  
29, Calendar 249, House Bill 6185. Calendar page 35,  
Calendar 424, Senate Bill 1045. Calendar page 36,  
Calendar 429, Senate Bill 940. Thank you, Mr.  
President.

THE CHAIR:

Thank you, sir. Mr. Clerk.

THE CLERK:

Turning to Calendar page 29, Calendar Number 249,  
Files number 49 and 285, House Bill 6185, AN ACT  
CONCERNING PENALTIES FOR VIOLATIONS OF CERTAIN  
PERSONNEL FILE STATUTES as amended by House Amendment,  
Schedule "A". Favorably Reported, Committee on Labor  
and Judiciary.

THE CHAIR:

Senator Prague.

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SENATOR PRAGUE:

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

THE CHAIR:

Please proceed.

SENATOR PRAGUE:

Thank you. What the bill before us does is to oppose penalties on employers who violate the Certain Personnel Files statutes. The Clerk has an Amendment, Mr. President, it's LCO 7525. Would he please call and I be allowed to summarize?

THE CHAIR:

The gentle lady has sought leave to summarize. Mr. Clerk, would you please call the Amendment?

THE CLERK:

LCO 7525, which will be designated Senate Amendment, Schedule "A". It's offered by Senator Prague of the 19th District, et al.

THE CHAIR:

Senator Prague.

SENATOR PRAGUE:

Mr. President, I'm very pleased to bring this

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Amendment --

THE CHAIR:

Senator Prague, would you please move adoption of the Amendment?

SENATOR PRAGUE:

Thank you, Mr. President. I move adoption.

THE CHAIR:

Will you remark?

SENATOR PRAGUE:

I'm very pleased to bring this equal pay for equal work before this Chamber.

Even in this day and age, there are women doing the same work as men who don't get paid the same wages. This bill clarifies that women will get paid the same wages that men get paid for doing the same work.

There was a Supreme Court case, called the Ledbetter case, that acknowledged the fact that women were not getting paid the same as men, but by the time Ms. Ledbetter brought her case before the Supreme Court, the time frame within which the issue had to be before the Court had run out.

This Amendment extend the time from one year to

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two years and if the pay discrepancy was deliberate on the part of the employer, it extends that time frame to three years.

So I am delighted that this Amendment is before us. I'd just like to repeat what Governor Ribicoff said. His famous quote was "If you want a good job done, you get a woman to do it." I just want to remind this Chamber of that little remark and that this Amendment that's before us is very important to just make sure that women are paid the same as men. Thank you.

I would like to yield to Senator Caligiuri.

THE CHAIR:

Senator Caligiuri, do you accept the yield.

SENATOR CALIGIURI:

I do, Mr. President. Thank you very much. And I'd like to thank Senator Prague for the yield and for her work on this issue. You know, Senator Prague said when you want to get something done, ask a woman. Well, when I want to get anything done, I ask Senator Prague. And I'm so grateful to be able to work with Senator Prague on this bill and this Amendment. This Amendment is substantially similar to something that

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Senator Prague and I worked on together in the Labor Committee, which was passed unanimously in Labor, and later by the Judiciary Committee. And Senator Prague did an excellent job summarizing the Amendment, so I won't go on and on. Except to say that because of Senator Prague's leadership and the leadership of a number of other people, we're going to be able, by passing this Amendment and, ultimately, the underlying bill, strengthen our equal pay laws for women, to strengthen them and bring them closer to the federal standard that's being pushed for in Washington, in a way that is fair and balanced, and, ultimately, provides protection to folks who are discriminated against on the basis of gender, impermissibly.

It is unfathomable to me, that in today's day and age, we would have a circumstance where that would be true. And yet, we know from the statistics that that continues to be true. And I think the Amendment and the work that's reflected in it will strengthen our laws to give us a stronger hand and a better position as a state. And it will give individuals discriminated against in this fashion, a much stronger basis for which to pursue their rights and justice.

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And for that, I thank Senator Prague and Senator Guglielmo, the ranking member on Labor for their work and I would urge adoption. And I would yield back to Senator Prague. Thank you, Senator.

THE CHAIR:

Senator Prague, on the Amendment.

SENATOR PRAGUE:

Through you, Mr. President. Thank you, Senator Caligiuri. If there are no comments and no objections, I'd like to put this on Consent.

THE CHAIR:

Senator Prague, before we do that, we still have an Amendment before us.

SENATOR PRAGUE:

Yes, right. Thank you for reminding me. I'm so into this bill!

(Laughter.)

THE CHAIR:

In time, Senator. Will you remark further on the Amendment? Will you remark further? If not, the Chair will try your minds. All in favor, signify by



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saying Aye.

SENATORS:

Aye.

THE CHAIR:

All opposed Nay. The Ayes have it. The  
Amendment is adopted. Remark further, Senator Prague.

SENATOR PRAGUE:

Now, Mr. President, if there's no objection, I'd  
like to ask that this be put on Consent.

THE CHAIR:

On the bill as adopted -- as amended, would you  
remark further? If not, motion is to put this bill on  
the Consent Calendar. Without objection, so ordered.

SENATOR PRAGUE:

Thank you.

THE CHAIR:

Mr. Clerk.

THE CLERK:

Turning to Calendar page 35, Calendar Number 424,  
File Number 595, Senate Bill 1045, AN ACT CONCERNING  
RESPONSIBILITY FOR HOSPITAL "NEVER" EVENTS, Favorable  
Report of Committee on Public Health and Insurance.

Clerk is in possession of Amendments.

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Clerk might call the second Consent Calendar.

THE CHAIR:

Mr. Clerk.

THE CLERK:

A roll call has been ordered in the Senate on the second Consent Calendar. Will all Senators please return to the Chamber? An immediate roll call has been ordered in the Senate on the second Consent Calendar. Will all Senators please return to the Chamber? Mr. President, there are two items placed on the second Consent Calendar, beginning on Calendar page 29, Calendar Number 249, House Bill 6185 and Calendar page 36, Calendar 429, substitute for Senate Bill 940. Mr. President, those items placed on the second Consent Calendar.

THE CHAIR:

On the second Consent Calendar, the machine is now open.

THE CLERK:

The Senate is now voting by roll call on the Consent Calendar. Will all Senators please return to the Chamber? The Senate is now voting by roll call on the second Consent Calendar. Will all Senators please

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return to the Chamber?

THE CHAIR:

Senator Prague. All Members have voted. The machine will be closed. Will the Clerk please announce the tally.

THE CLERK:

The motion is on adoption of Consent Calendar Number 2.

Total Number Voting	36
Those voting Yea	36
Those voting Nay	0
Those absent and not voting	0

THE CHAIR:

Consent Calendar is adopted. Mr. Majority Leader.

SENATOR LOONEY:

Thank you, Mr. President. Mr. President, I would move for suspension for immediate transmittal to the House of Representatives of any items voted on in the Senate today requiring additional action in the House.

THE CHAIR:

Without objection? So ordered.

SENATOR LOONEY:

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Those voting Nay 0  
Those absent and not voting 11

SPEAKER DONOVAN:

Bill as amended passed. Clerk, please call  
Calendar Number 92.

THE CLERK:

On page 5, Calendar Number 92, House Bill Number  
6185, AN ACT CONCERNING PENALTIES FOR VIOLATIONS OF  
CERTAIN PERSONNEL FILES STATUTES, favorable report of  
the Committee on Labor and Public Employees.

SPEAKER DONOVAN:

Representative Ryan.

REP. RYAN (139th):

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

SPEAKER DONOVAN:

Question is on acceptance of the Joint  
Committee's favorable report and passage of the bill.  
Will you remark?

REP. RYAN (139th):

Yes. Thank you, Mr. Speaker. The personal files  
act in the Connecticut Statutes is state law that  
imposes certain requirements on employees who keep

employee personnel and medical records. And it requires the employee's personal written consent if an employer is going to disclose any part of those records to anyone. And the employer almost -- also must allow employees access to their records when they require it.

And the Department of Labor has noticed that there has been many cases where the employees are denied access to their personnel files. And they feel that a civil penalty would allow the department to more timely, more rigorously be able to enforce the law, which is why this bill is in front of us. In the Screening Committee, in its infinite wisdom, did find an area where we can improve upon the bill. So the Clerk has LCO Number 5218. May he call and I be allowed to summarize?

SPEAKER DONOVAN:

Will the Clerk please call LCO Number 5218? Would ask the Clerk, and I -- nevermind. Would be designated House Amendment Schedule A. Sorry.

THE CLERK:

LCO number 5218, House A, offered by  
Representatives McCluskey and Olson.

SPEAKER DONOVAN:

The Representative seeks leave of the Chamber to summarize the agreement. Is there objection to summarization? Is there objection to summarization? If not, Representative Ryan, you may proceed with summarization.

REP. RYAN (139th):

Thank you, Mr. Speaker. Basically, the amendment says in line 22 after 57, in search after 50 -- 563a, and once -- part -- Chapter 557 refers to employment regulation, which obviously, the bill deals with. And since the bill also deals with violations of the personnel file statutes, we felt it important to also include those statutes, which is why chapter 563a is included. And I ask my colleagues to vote in favor of this amendment. I move for adoption.

SPEAKER DONOVAN:

Thank you, Representative. The question before the chamber is on adoption of House Amendment Schedule A. Will you remark on the amendment? Remark on the amendment? Remark on the amendment? Hearing none, all those in favor of adoption of resolution -- of the amendment, please signify by saying, aye.

REPRESENTATIVES:

Aye.

SPEAKER DONOVAN:

All those opposed, nay.

The ayes have it. The amendment is adopted.

Remark further on the bill as amended? Remark further  
on the bill as amended? Representative Noujaim.

REP. NOUJAIM (74th):

Thank you, Mr. Speaker. Good afternoon,  
Mr. Speaker.

SPEAKER DONOVAN:

Good afternoon, Representative.

REP. NOUJAIM (74th):

Mr. Speaker, during the committee meetings, we  
asked several questions about this bill, and the  
amendment that Representative Ryan has presented made  
the bill better.

In our opinion, employees are entitled to receive  
the files, and employers are also required to maintain  
those files for certain a period of time. We do see  
the need -- we do not see the need to oppose this  
bill. We think that employees are entitled to receive  
their files if they ask for them for whatever reason  
they need to do so, and, therefore, Mr. Speaker, I  
rise in support of this bill. Thank you, Mr. Speaker.

SPEAKER DONOVAN:



Thank you, Representative. Will you remark on the bill as amended? Remark further on the bill as amended? Remark further on the bill as amended? If not, staff and guests please take their seats -- come to the well of the House. Members take their seats, the machine will be opened.

THE CLERK:

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

SPEAKER DONOVAN:

Have all the members voted? Have all the members voted? Members, please check the board to determine if your vote has been properly cast. If all members have voted, the machine will be locked. The Clerk will take a tally. The Clerk will please announce the tally.

THE CLERK:

House bill 6185, as amended by House A.

Total Number Voting 141

Necessary for Passage 71

Those voting Yea 140

Those voting Nay 0

Those absent and not voting 10

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SPEAKER DONOVAN:

The bill as amended passed. Clerk, please call  
Calendar Number 96.

THE CLERK:

On page 6, Calendar 96, House Bill Number 6184,  
AN ACT PRESERVING GOOD CAUSE FOR LATE FILING OF  
CERTAIN UNEMPLOYMENT COMPENSATION APPEALS, favorable  
report of the Committee on Labor and Public Employees.

SPEAKER DONOVAN:

Representative Ryan.

REP. RYAN (139th):

Thank you, Mr. Speaker. Mr. Speaker, I move for  
acceptance of the Joint Committee's favorable report  
and passage of the bill.

SPEAKER DONOVAN:

The question is on acceptance of the Joint  
Committee's favorable report and passage of the bill.  
Will you remark?

REP. RYAN (139th):

Yes. Thank you, Mr. Speaker. This is a bill  
that will provide any person who has the ability to  
pay -- file late unemployment compensation appeals if  
the person can show good cause, as currently defined  
in regulations. This bill would also require

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chamber, please.

SPEAKER DONOVAN:

Will the Clerk please call Calendar 9 -- Calendar Number 92.

THE CLERK:

On page 45, Calendar 92, House Bill Number 6185,  
AN ACT CONCERNING PENALTIES FOR VIOLATIONS OF CERTAIN  
PERSONNEL FILE STATUTES, favorable report by the  
Committee on the Judiciary.

SPEAKER DONOVAN:

Good afternoon, Representative Kevin Ryan.

REP. RYAN (139th):

Thank you, Mr. Speaker. I move the acceptance of the joint committee's favorable report and passage of the bill in concurrence with the Senate.

SPEAKER DONOVAN:

The question is acceptance of the joint committee's favorable report and passage of the bill in concurrence with the Senate. Will you remark, sir?

REP. RYAN (139th):

Yes. Thank you, Mr. Speaker. This bill was before us previously as a House bill in which we attached House Amendment A. It went to the Senate where they added Senate Amendment A. I'd ask the

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Clerk to call the amendment. It's LCO 7525 and I be allowed to summarize.

SPEAKER DONOVAN:

Will the Clerk please call LCO 7525, which is designated Senate A.

THE CLERK:

LCO 7525, Senate A offered by Senators Looney and Prague.

SPEAKER DONOVAN:

The Representative seeks leave of the chamber to summarize the amendment. Is there objection to summarization? If not, Representative, you may proceed with summarization.

REP. RYAN (139th):

Thank you, Mr. Speaker. This amendment promotes equality in the workplace. It provides written legislation for how to report or deal with wage inequality. It makes it easier for victims to report the wage discrimination, see it become -- and see it can become remedied.

The amendment works to ensure that women earn equal pay for equal work performed and holds employers accountable by including more than sex as a factor in determining an employee's salary. This law would

strengthen the state law by providing an enhanced state enforcement law for employees discriminated against on the basis of gender.

The amendment expands possible employee defenses against gender wage claims; permits rather than requires a court to order awards when an employer is found to violate the law; extends the period to make a claim of discrimination from one to two years following a violation; expands the whistleblower protections to include those who testify or assisted in a gender wage proceeding; permits possible compensatory and punitive damages for violations of the whistleblower protections; and repeals the \$200 fine for each wage discrimination violation, or for retaliatory action against an employee bringing a gender wage complaint.

The bill also -- the amendment, excuse me, also specifies that an employee or employees can bring a civil action on his or her own without going to the Labor Commissioner or if the Labor Commissioner declines to bring the action. It also allows an employee or employees to ask the court for legal and equitable relief in addition to other remedies.

The bill allows a court to award back pay

compensatory, punitive damages and claims brought by either the Commissioner or the employer or group of employees. And I ask -- I move for adoption.

SPEAKER DONOVAN:

The question before the chamber is adoption of Senate Amendment A. Will you remark on the amendment? Representative Noujaim.

REP. NOUJAIM (74th):

Good afternoon, Mr. Speaker.

SPEAKER DONOVAN:

Good afternoon, sir.

REP. NOUJAIM (74th):

Mr. Speaker, several years ago back in the 80s, I was hired by a company in Torrington to be a materials manager. I came to the company and the company was in existence for more than 200 years. Never once, in their existence, that company had a female for a manager or a female in a supervisory position.

About four months after I began working for that company, we had an opening for a managerial position and I hired a female. And I think I became the hero of that corporation because everybody said, you know, Selim Noujaim is hiring a female to work and this was, like, unprecedented for that -- good afternoon,

Mr. Speaker.

Deputy Speaker McCluskey in the Chair.

DEPUTY SPEAKER McCLUSKEY:

Good afternoon.

REP. NOUJAIM (74th):

How are you? We changed speakers all of the sudden. You're doing the heavy load again.

Thank you, Mr. Speaker. So what I was saying is, I was working for a company and never in the experience of that company or the history of that company they had a female in a supervisory position or in a managerial position. But when I came to that corporation, we had an opening and I hired a female to work for me in a managerial position and I was the hero of that corporation, Mr. Speaker.

It did not last very long, but nevertheless. So I truly believe in equal pay for equal work for a female versus a male and to me it does not really matter whether the person is a female, a male, African-American, white, whatever the case might be, religion -- to me, I am blind to all of this stuff. But I do have several questions that I would like to



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ask about this piece of legislation if I may, through you, Mr. Speaker, to Representative Ryan.

DEPUTY SPEAKER McCLUSKEY:

Please proceed, sir.

REP. NOUJAIM (74th):

Representative Ryan, we have legislation that came before us in the Labor Committee and I would like to extend my gratitude to you because we worked on it. We worked on it for a great deal of time. We reached a compromise and then we sent it in from the House to the Senate on a vote of 140 to nothing and -- which means it passed unanimously, which means I support it myself as well.

It went up to the Senate. The Senate decided to make an amendment to it and send it to us. Unfortunately, for me, I was not aware that the amendment was coming until a few minutes ago, so I am reading it and I wanted to ask some questions about it, if possible, to Representative Ryan.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan, please prepare yourself.

REP. NOUJAIM (74th):

Mr. Speaker, is he prepared?

REP. RYAN (139th):

As much as I'm ever going to be.

REP. NOUJAIM (74th):

To Representative Ryan, in line 11 of the amendment, it says, if an employee can demonstrate, I would like to request a clarification for that word "can demonstrate," what vehicle the employee would have to demonstrate. Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, well, I have to actually look at the entire sentence. It says, can demonstrate that his or her employer discriminates on the basis of sex by paying wages to employees at the employees' business at a rate less than the rate at which the employer pays wages to employees of the opposite sex at such business for equal work on the job, the performance of which requires equal skill effort and responsibility, which are performed under similar working conditions. Such employer must demonstrate that such differential in pay is made pursuant where into a -- a seniority system, a merit system, a system which measures earnings by quality or quantity of production or a differential system based

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on the bona fide factor other than sex, such as education training or experience.

Basically it would allow -- somebody would have to be able to come in, look at the wage records, look at job description, see the job descriptions are comparable, that the people of both sex are being paid by the same amount, which will be, obviously, it could be assessed by looking at the wage records of the company. And that's how that would be demonstrated, sir.

DEPUTY SPEAKER McCLUSKEY:

Representative Noujaim.

REP. NOUJAIM (74th):

Thank you, Mr. Speaker and through you, Mr. Speaker, I did read, obviously, this entire sentence. I have it highlighted and I have several other questions to ask on it, but let us say, I give you a synopsis and I would like Representative Ryan to give me an answer.

So let's say that, Representative, let's say a female decided that she would want to bring in a discrimination against an employer. So that word, "can demonstrate" -- how? What is the vehicle? What would that employee suspect? Through you, Mr.

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Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, the person would file a complaint with the Labor Commissioner if they felt they were being discriminated against because of their gender and I believe I responded on how they can demonstrate that by the bookkeeping, by the job description. That would be how she would illustrate or show, demonstrate that she has been treated unfairly in this or he has treated, for that matter, unfairly in this work situation.

DEPUTY SPEAKER McCLUSKEY:

Representative Noujaim.

REP. NOUJAIM (74th):

Thank you, Mr. Speaker. And that's great. That's exactly the answer that I wanted so that we could go to the next question. So in my opinion, from what Representative Ryan has said in here, that an employee suspects that she was discriminated against. So she would want to go and apply to the Commissioner for a hearing.

So I go from here to line 14 and 15, so it says

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such business for equal work on a job. And if I may ask, if a man employee lifts one more pound than a female employee, on the job, let's say the man employee is lifting a case that is 21 pounds and the female employee is lifting a case that has 20 pounds in it. Would that be, according to Representative Ryan's analysis, equal work on the job? Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, if the job requires lifting of cases, I don't know if anybody goes out and actually weighs them, but if there -- if it was a job requirement and the gentleman was lifting cases and a woman was lifting cases, and for some reason the man was getting paid more than the woman, if they're doing the same type of work, that would be discrimination.

DEPUTY SPEAKER McCLUSKEY:

Representative Noujaim.

REP. NOUJAIM (74th):

Thank you, Mr. Speaker. And Mr. Speaker, I am out in the business world everyday and I know that usually they do, and then they measure the cases and

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they weigh them and they say this case weighs X amount and this case -- like I give you an example, per se, a company that says, what can Brown do for you? I don't want to mention the name, because I don't want to be publicized, but the company that says, what can Brown do for you, they come to our place of work every day and if we have a case that is 75 pounds or more, we must pay -- put a label on it that says 75 pounds.

So if the male employee can lift that 75 pounds and put it on the truck and the female employee is unable to lift that 75 pounds on the truck, I mean, I tell you what we do, we usually lift it and put it on the truck ourselves for her, but in that case, would this be equal jobs? Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

That would be determined by the job description.

DEPUTY SPEAKER McCLUSKEY:

Representative Noujaim.

REP. NOUJAIM (74th):

Thank you, Mr. Speaker. So if the job description says, you go to a company, you knock on the door and any case that you carry, you will take it

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up and put it on the truck, and the female employee say I cannot lift that case, would that be that the female employee is doing less of a job? Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, that would be for a Labor Commissioner to decide if it was an equivalent job. I mean, that's still part of current law. We're just trying to make it easier for someone when there -- discrimination has been disclosed or exhibited to be able to get reparations for that discrimination. So the kind of scenario he's depicting would be something that a Labor Commissioner would decide because that's current law and being in effect now.

DEPUTY SPEAKER McCLUSKEY:

Representative Noujaim.

REP. NOUJAIM (74th):

Thank you, Mr. Speaker, and through you, Mr. Speaker, I am looking at this and if I am understanding correctly, line 14 is underlined, so obviously this is a new -- in the amendment, not so

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much in current law. I mean, it could be in current law, but it's basically in the amendment, underlined, which means it's updated for this amendment, Amendment LCO Number 7525. Through you, Mr. Speaker, am I correct?

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Yes. Through you, Mr. Speaker, that's true. That one line is, but it's in the context of an entire paragraph and you have to take the entire paragraph into total because it does make some changes that will make it easier for that individual to prove discrimination under these circumstances.

Taking just a couple lines out doesn't say that that is not current law, because it is current law. It's when you go further into the paragraph and it shows how that person can use this information to better demonstrate that that person has been discriminated against on the base of gender.

DEPUTY SPEAKER McCLUSKEY:

Representative Noujaim.

REP. NOUJAIM (74th):

Thank you, Mr. Speaker and through you, Mr.



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Speaker, number one, I appreciate Representative Ryan's answer. But on line 4 -- 15, it also says the word "effort" in there and to me, effort is -- anybody can do an effort. I don't know what effort would result. It may not result in anything. It may result in a great deal of -- enough impact.

So through you, Mr. Speaker, I would like to ask for a definition of that word "effort," which is underlined. Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

I think, through you, Mr. Speaker, I think it means the determination that an individual puts into their work. It could be physical effort, it can be mental effort, it can come under a great deal of categories. It's the amount of determination that that individual is invested -- invests in the job that he or she is doing.

DEPUTY SPEAKER McCLUSKEY:

Representative Noujaim.

REP. NOUJAIM (74th):

Thank you, Mr. Speaker and through you, Mr. Speaker, if I may move to line 21, line 21 says -- and

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I will say three words and I have three questions to ask, one about every word; education, training and experience.

So in education, let us say that both candidates have a bachelor's degree, same thing, they graduated from the same school. They have the same grades. They graduated with honors. Everybody is happy, but the male employee took one additional course, one additional course, three credit course and that's it. Would that mean that the male employee is more educated than the female employee? Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Yes.

DEPUTY SPEAKER McCLUSKEY:

Representative Noujaim.

REP. NOUJAIM (74th):

Great. Thank you, Mr. Speaker and through you, Mr. Speaker, the word "training," again on line 21. So let us say that both of them have the same training. They went through the same courses and everything and the male employee decided to take what

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is called train the trainer. I teach train the trainer. It's a great, great thing.

So let's say the male employee took a train the trainers program, which is a two-day program. Would this mean that the male employee is more qualified than the female employee? Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, I'm having trouble hearing the individual, but I think the -- I can kind of figure out what the question was.

This particular part of the bill talks about if these things are equivalent in any way, that the -- that any kind of differential in the pay would be because of the sex dissemination, but if they're all equivalent, the person should be paid the same. If there's a difference in one of these three categories, then that would be a basis for a difference in pay.

DEPUTY SPEAKER McCLUSKEY:

Representative Noujaim.

REP. NOUJAIM (74th):

. Thank you, Mr. Speaker. I think Representative Ryan did not really hear the question appropriately.

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That's why I did not receive the appropriate answer for it.

So by training, I mean if they have the same qualifications, but one of them took just one training course, one more public speaking course, does this mean that the male employee is more qualified than the female employee? Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

If he has more, that's more education and more training, so that would make a difference. Thank you.

DEPUTY SPEAKER McCLUSKEY:

Representative Noujaim.

REP. NOUJAIM (74th):

Thank you, Mr. Speaker. So to qualify, then if they go before a hearing, to a hearing before the Commissioner and that male employee said, I understand that we have the same training, we have the same thing, but in addition to that, I took one more course in public speaking, so I am more qualified. Does this mean -- would this be an accurate assumption? Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, I think that would be up to the Labor Commissioner who is assessing the case to make that determination, but like I said before, if he's -- if especially if it's vital to the job that they're performing and it's -- and one more speaking course adds to the ability of that person to be able to perform their functions, but another person who hasn't taken that course, that would be a reason for that person to be possibly be paid a little bit more.

DEPUTY SPEAKER McCLUSKEY:

Representative Noujaim.

REP. NOUJAIM (74th):

Thank you, Mr. Speaker and through you, Mr. Speaker, in the same line, when we talk about experience, we -- if they have the same type of qualification and they have been on the job for the same period of time, but the male employee had discussions with other employees about what to do on the job in a case in point when something happened. And would this mean that the man employee can go to the Commissioner and say, well, you know, Commissioner, in my Defense, I was talking to XYZ

employee for a period of ten minutes and they told me that I can do this, I can do this, but I can't do this, therefore, I have more experience. Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, I'll make up an answer because I have no idea what you just asked me. I think what he was saying was if some individual has worked at a particular job for a longer period of time, over an extended period of time, would therefore, that allow him to be paid more because of that experience. I think that was the whole thing at the end, with yadda -- some more and some more, whatever, and then answer to the question would be yes.

DEPUTY SPEAKER McCLUSKEY:

Representative Noujaim.

REP. NOUJAIM (74th):

Thank you, Mr. Speaker. I'm going to rephrase and I'm going to speak very slowly just to make sure that Representative Ryan understands.

DEPUTY SPEAKER McCLUSKEY:

Please pay attention, Representative Ryan.

REP. NOUJAIM (74th):

Thank you. And Mr. Speaker, by the time we are done with this, Representative Ryan is going to lose about three pounds -- up and down, up and down.

DEPUTY SPEAKER McCLUSKEY:

Continue with your question, Representative Noujaim.

REP. NOUJAIM (74th):

Thank you, Mr. Speaker. Through you, Mr. Speaker, allow me please to repeat the question. Let us say as a synopsis, that you have two employees who have the experience, but one of the employees, who happens in this case to be the male employee, had a side conversation with some other employees and cited for them an example on the job. Something happened on the job and they gave him a little advice.

Could he go to the Commissioner and say, well, I have little more, because I spoke with somebody and they gave me this advice, and therefore, I have more experience than the female employee? Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, even the slower version wasn't -- I think I understand what you're asking. I am not sure if I can make that determination, because of a conversation he's had with somebody else that one individual feels they have more experience than the -- the male has more experience than the female, I think that would be up -- a determination made by the employer.

Unless I'm really -- I'm having, I think, difficulty understanding the concept that he's trying to convey in essence here, and I -- but I think that's what he's saying and I think in that case, the employer could decide that that person did have more experience based on that, if it's more than just a conversation.

DEPUTY SPEAKER McCLUSKEY:

Representative Noujaim.

REP. NOUJAIM (74th):

Thank you, Mr. Speaker. Mr. Speaker, I think Representative Ryan is not giving himself enough credit. He did understand and he answered it well, so I am very, very pleased with his answer. I think what I'm trying to point in here is that we have some vague



language in here that it could be interpreted either way. And that's what I'm trying to demonstrate that that Commissioner is going to end up making decisions that may go either way and this would be open for interpretation. I just want to make sure for legislative intent to ask those questions.

I'm not trying to give Representative Ryan a hard time, although I have my right to do so, I just want to make sure that we put it in a point and clarify it accordingly.

Now the most important point, Mr. Speaker, let us say that there is -- the female employee elects to file a claim to the Commissioner. They go before the Commissioner. The Commissioner hears it and the Commissioner finds that there is no base for the female employee to bring in this claim against the employer. Is the employer entitled for any compensation here because of the time and effort and the damages and loss of time on the job? Through you, Mr. Speaker,

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, I believe that in the

bill it does say that the individual, if they bring a complaint in good faith, that they are in no way -- I'm just trying to find that language. That they are not to be punished if they in good faith brought forth a complaint that they thought was valid. And if it did turnout that it was not valid, I don't believe the employer is entitled to any kind of compensation to make up for that.

And I'm just trying to find -- maybe by the time I answer the next question, I'll actually find the location in the bill to be able to give you a more -- but I'm pretty sure that's in the bill, if I remember my reading.

DEPUTY SPEAKER McCLUSKEY:

Representative Noujaim.

REP. NOUJAIM (74th):

Thank you, Mr. Speaker. I'm sure Representative O'Brien would be able to lend a hand in explaining it to Representative Ryan, but I did find it. I know where it is, Mr. Speaker.

On line 87 of the amendment, it says, when an individual is affected by application of a discriminatory compensation decision or practice, wouldn't an individual also mean an employer? Through

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you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, I'm still trying to assess so I can give the correct answer to Representative Noujaim.

I believe that individual in that that particular place -- just trying to read it through quickly, since I also just got this amendment. That individual, I believe, is the employee in this particular case. And as I look at it some more, if I find I'm wrong -- incorrect about that, I'll be happy to let you know. Thank you.

DEPUTY SPEAKER McCLUSKEY:

Representative Noujaim.

REP. NOUJAIM (74th):

Thank you, Mr. Speaker. Mr. Speaker, essentially, I intend to support the amendment. I mean the amendment makes it a situation where an employee who is -- who feels that he is discriminated against may very well ask for a hearing. I support that. I respect that.

As an employer myself, I will do all I can to

ensure that my employees are well taken care of, because a happy employee is an employee who works for the company and does a great job. But Mr. Speaker, I want to give you an example. It may not be a hundred percent applicable, but I'm going to give you an example before I close.

As part of my comments, and this is a life example, I have an employee whom I terminated for willful misconduct. It happened to be a male employee, not a female employee. So the employee, and it is within his right, he applied for unemployment compensation. So I went to the public hearing. I drove all the way up to East Hartford, applied for the public hearing and I presented my case. The judgment came that the employee was denied unemployment compensation. Again, it was with his right that he filed an appeal. So I had also to defend that appeal, because I felt that my right was the fact that the employee violated the rules of the company and the laws of the -- of Connecticut.

I also listed precedents as to how I believe that employee committed a willful misconduct. I looked up statutes and by cited precedent. So I had to go up again and apply for it, or go in to try to deny it, to

appeal it. So I went to the appeal. The judge again, denied the claimant, in this case, the employee, and said the employee was terminated in a just fashion.

So the employee, to his claim, was denied. He asked for an opinion of the board. Again, it is with his own right. So the board went back and judged and said that it was -- the judgment was upheld, meeting that I still won the case. Four weeks later, again with his -- within his own right and within the statute, he applied, he filed a motion to reopen. Again, the employee was denied, because I did my job and I did it well.

But in all of these cases, Mr. Speaker, I had to put a great deal of time, effort and travel. So even though the employee was denied an employment, that employer, in this case happened to be -- I happened to be the supervisor, that employer put a great deal of time and work into it and that's not fair. So if we are going to look at an employee who is going to judge against a company or an employer, then the employer should also be receiving some compensation, regardless of that compensation, in order for it to be equal and fair and equitable in our laws.

But what that in mind, Mr. Speaker, I have read

this amendment. I know it adds to it. I wish I knew about it for it came down, then we would have discussed it and then would have voted on it without wasting time and without asking questions for clarification. We could have done the clarification outside, but thank you, Mr. Speaker. I appreciate your indulgence.

DEPUTY SPEAKER McCLUSKEY:

Thank you, sir, for your remarks.

The distinguished gentleman from Woodstock, Representative Alberts, you have the floor, sir.

REP. ALBERTS (50th):

Thank you, Mr. Speaker. If I may, several questions to the proponent of the amendment.

DEPUTY SPEAKER McCLUSKEY:

Please proceed, sir.

REP. ALBERTS (50th):

Thank you. Lines 11 through 13 hypothesize the demonstration by the employee of -- that their employer is discriminating and I just -- I think this goes to the heart of the amendment and I just want to make sure that I understand the intent. As I read this amendment, is it not correct that the burden of the amendment, basically, if this amendment were to

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pass and go to the bill and the bill was favorably voted on, the burden is on the employer to prove that their compensation system is not discriminatory? Is that not correct? Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Yes. Through you, Mr. Speaker, and I hope Representative Alberts will indulge me for a second, because I just wanted to finish answering Representative Noujaim's question, as I did find the -- that portion of the amendment that answers his question about what would happen to an employee if they put in a claim that didn't hold up and that's in lines 30 to 34, just to give him that reference, because I promised I would do that when I found it and I just found it.

And Representative Alberts' question, I believe it's the employer who has the records, who has the job descriptions as part of their work policy, would have the wage records. So while if the employee did feel that they're being discriminated against, the employer would have the evidence to show that they weren't being through the records that I just mentioned.

DEPUTY SPEAKER McCLUSKEY:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker. But would -- it would basically be the responsibility of the employer to justify their system of compensation that it is not discriminatory. Is that not correct? Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, I believe it would be to their benefit to do that.

DEPUTY SPEAKER McCLUSKEY:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker. Line 20 refers to bona fide factors and it continues on to line 21, other than sex, such as education, training or experience. Are there any other examples of bona fide factors that come to the mind of the proponent that may have been thought of while the legislation was being crafted, but may not have been included? Through you, Mr. Speaker.



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DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, I think the purpose of the bill was to, kind of, make those a little more explicit than they were in current law and I think that this has been fleshed out and this is what -- the end result.

DEPUTY SPEAKER McCLUSKEY:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker, but then in line 21, those three characteristics that are given; education, training or experience, those are not necessarily the only three bona fide factors from the perspective of the proponent of the amendment. Is that not correct? Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

I think the hope is that they have thought of everything, but I guess they're leaving a little wiggle room in case there's something else they haven't considered that they -- could be placed in

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there as well.

DEPUTY SPEAKER McCLUSKEY:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker and I appreciate the gentleman's response.

Looking at line 30, it discusses, apparently, actions that employer shall not engage in. And we have listed here discharge, expel or otherwise discriminate. Can the proponent give an example of other actions which might cause discrimination from his perspective? Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, I think what they're saying here, as I just mentioned to Representative Noujaim, if an individual does feel that they have been treated unfairly and they make a complaint and they're doing it not be capricious, but really making a good-faith complaint that they feel, from some information they've received that they're not being paid at the same level that other people that are working for, and it's based upon their sex, that the

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employer can't take any kind of action against them because of the complaint, such as lowing their wages even further, giving them less hours, firing them, or anything of that nature. And to somehow seek retribution against the individual because they've made a complaint when they felt that they were treated unfairly.

DEPUTY SPEAKER McCLUSKEY:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker and I appreciate the response in the reduction of hours. I was also contemplating suspension from work activities or lack of promotion. Would those be two additional areas that the gentleman might consider as potential sources of discrimination? Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, I think those would be two good examples. Thank you.

DEPUTY SPEAKER McCLUSKEY:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker. Lines 44 on describe the process as it's envisioned to work in terms of an employee who believes that they've received less than the wage to which they're entitled to. I'm wondering, as I read this, it looks like there's no restriction on the number of claims that an employee could make for -- as a grievance action that -- and is that not correct? Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, I would agree with Representative Alberts. I do not see any place where there would be limited, but I think just good sense will tell you that if you repetitively made the same claim and it wasn't considered to be valid, that that would not be a good practice, but if for some reason you did find that you were discriminated once and went back to work for a while and then somehow the discrimination kind of seeped back into the work situation, you'd be allowed to make another complaint. I think this is a practicality of it -- would limit the applications of this law in those cases.

DEPUTY SPEAKER McCLUSKEY:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker. I guess I'm concerned that there's a potential here that without a limitation on number of complaints, which I can understand the rationale for not doing that. You might find that, you know, there's six complaints. The commissioner might find that those six complaints aren't are valid and if the seventh complaint might indeed be determined to be problematic and in violation.

But I can also envision a case where you can run into someone who is a habitual filer of complaints and perhaps, the filing of the complaints becomes the person's education or the person's activity for the day and may fall into, sort of, a category of being a nuisance. There isn't, in this amendment, or in the -- there isn't in this amendment any anticipation of such a category, a nuisance category, is there?

Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, I would have to agree

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with -- I don't believe that there is. I think that just by -- I think I said earlier, I think just the fact that you want to work in a good workplace that individuals wouldn't hope -- though I can't -- and I -- you can't paint everything with a broad brush.

I'm sure there's some individual or there that might make a nuisance of themselves, but I think it would be a rarity and it would have to be handled in a good fashion if that should occur. Keep in mind, too, that they're going to a Labor Commissioner with each of these complaints and I think the State, in the form of the Labor Commissioner, would take some action if they felt that these were being repetitive, that they had no validity and would make that known to the individual at that time.

DEPUTY SPEAKER McCLUSKEY:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker. In line 53, and I believe other references here talk about compensatory damages in the event that the violation is found to be intentional or committed with reckless indifference. Does the amendment address what the compensatory damages could potentially be? Through you, Mr.

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Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, I think, I believe it would be comparable to what the person may have lost in pay. That's why there is no defined amount. If they found there was some kind of pay differential, that could be part of it. It would be in a civil action that would be taken on behalf of the individual by the Labor Commissioner and I think, you know, all those different factors would take into account what that amount might be, and it will be determined in a civil court.

DEPUTY SPEAKER McCLUSKEY:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker. There is a broad category in line 78 of punitive damages. Is there any speculation, or maybe something stronger than speculation, any knowledge that the proponent might have of what punitive damages might consist of if in a particular situation? Through you, Mr. Speaker.

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Representative Ryan.

REP. RYAN (139th):

I have no examples here. Again, I think it would be determined by a court. It would have to be something that would be brought forth and substantiated whatever it amount might be put forth and be deemed to be, by the judge, to be an amount that would -- should be allocated for such an offense.

DEPUTY SPEAKER McCLUSKEY:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker. Lines 54, 79 and 101, at a minimum, have the phrase "reckless indifference," and I'm not familiar with what that phrase means. For the purposes of legislative intent, can the proponent of the amendment better describe what reckless indifference would be?

And the references here are to the employees or employees' rights under section 31-75. So any clarification, I would appreciate. Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):



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Yes. Through you, Mr. Speaker, I believe what they're saying here is, individual violates the law, doesn't really care that the purse -- that they are doing it, kind of doing it irresponsibly on several occasions and don't seem to in anyway acknowledge that they're making this mistake.

DEPUTY SPEAKER McCLUSKEY:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker. Would ignorance of the law be one of those categories? Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, I don't think ignorance of the law would be allowable under this category. I think as an employer, they'd be well aware of the fact that they should be treating their employees equally other than the scenarios we've already talked about. And there shouldn't be any difference in how an employer is -- employee is treated, excuse me. How an employee is treated because of their gender.

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Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker. Let me rephrase that.

If an employer is ignorant of the law, would the proponent consider that reckless indifference?

Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, I just think that's a different category. If they don't know about the law -- well, maybe a judge might determine that if they didn't -- couldn't -- didn't bother to find out what the law was, that could be kind of reckless indifference, if they just didn't think enough about it to even know what the -- what -- how they should be treating their workers. I guess the judge could make that determination in that kind of a category.

DEPUTY SPEAKER McCLUSKEY:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker. I thank the proponent of the amendment for his responses. I think it's -- it is disappointing this time and day that we have to

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continue to work on these issues. It's a very important issue and I appreciate his work on this.

Thank you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Thank you, sir, for your remarks.

Will you remark further on house amend -- Senate Amendment Schedule A? The honorable ranking member of the Finance Committee, Representative Candelora, you have the floor, sir.

REP. CANDELORA (86th):

Thank you, Mr. Speaker. If I may, some questions to the proponent of the amendment.

DEPUTY SPEAKER McCLUSKEY:

Please proceed, sir.

REP. CANDELORA (86th):

Thank you. I see overall what the intent that trying to do here is, sort of, loosen up our sexual discrimination statutes and maybe make it a little bit easier for an employee to bring a suit and we provided defenses that an employer may be able to assert.

In lines 18 through 19 reference a seniority system, a merit system and a system which measures earnings by quantity or quality of production. Do we have definition of what a system mean -- what a system

is? Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, I believe just it's -- I'm sure there is a definition. I think most people's -- most work establishments have some kind of seniority system on someone being paid according to the longevity of their workplace there. Merit systems might be, for example, teachers who are -- go out and get so many continuing ed credits, or who have made -- or any kind of worker who may have made some kind of -- done something such as met a sales quota or something of that nature, which also, I guess, would take if -- of number three; measures earnings by quantity or quality of production, paying off by a commission or like I said, a meeting of sales quota of some type.

I think those will, kind of, be the entities. I think in the workplace, these term -- this terminology has been in place for a very long time and I think people know what the terms mean.

DEPUTY SPEAKER McCLUSKEY:

Representative Candelora.

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REP. CANDELORA (86th):

Thank you, Mr. Speaker. And through you, I imagine when this case is being -- a case is being litigated, the reason I ask the question, system, would it require an employer to have these practices in writing? What type of formalities would they need to put in place? Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, I'm sorry. Could you just one more time, repeat the question. I missed the term that came before "in writing." What was it you'd like to see in writing? I'm sorry.

DEPUTY SPEAKER McCLUSKEY:

Could you please repeat your question, representative Candelora?

REP. CANDELORA (86th):

Thank you, Mr. Speaker. I guess I understand what the term "seniority" are and "merit" is, and I think all of us understand that practice. I go back to my question of system in this reference. Would a system require that something be in writing? Can it be something that's casual? Through you, Mr. Speaker.

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DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, I think in today's workplace, most of these things, for legal reasons, if not for any other, are put into writing, that there are workplace policies that, I think, individuals are required, I think, I believe, to have in writing so that workers can find out and know what the conditions are under which they are working, and the employer's, the managers know what kind of rules they're supposed to be enforcing in the workplace. So I think they would be in writing. Yes.

DEPUTY SPEAKER McCLUSKEY:

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Mr. Speaker. Through you, are there any state laws or regulations that require these systems be in writing? Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

If you give me one second, I will ask that question.

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Excuse me, Mr. Speaker. Through you, yes there are, I've been told.

DEPUTY SPEAKER McCLUSKEY:

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Mr. Speaker. So in order for an employer to be able to assert a defense based on seniority or a merit system, or a system which measures earnings by quantity or quality of production or a differential system based upon a bona fide factor other than sex, such as education, training or experience. Those items would have to be in writing in order for them to assert this defense. Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

That is my understanding from the answer I just received.

DEPUTY SPEAKER McCLUSKEY:

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Mr. Speaker. I guess I was hoping not to get that answer because we are -- Connecticut is

made up of many small businesses and I -- many of them, I know, don't have these particular items in writing. And on a personal level, anecdotally, especially with part-time employees, we kind of sit down in a room and we go through who should get a 25 cent raise or a 50 cent raise and there isn't a lot of thought put into, necessarily, what type of system other than they've been there for maybe six months or a year and I think a lot of businesses do that on a rolling basis, especially jobs that are part-time. So I'd be concerned with how this would then be applied, how an employer would be able to defend themselves when they're hiring part-time employees, seasonal employees, employees for day care or things of this nature, and they haven't given this a lot of thought.

Now this may -- statute very well may leap upon them, because we're giving more teeth to an employee to bring a sexual discrimination lawsuit. I don't necessarily have a problem with that, but we're really putting the employer on an unfair, equal footing for the fact that we're, I guess, by inference requiring now that their wage policies be put into writing. And I would hazard to guess that most businesses don't put their wage policies in writing.



So I think that it would probably be more helpful if an employer would be able to assert defenses, bona fide defenses that may be verbal, that could be established as an ongoing practice. Because I have to believe that those employers don't seek to discriminate against their employees based on sex. I have to believe that most employers want to treat their employees fairly, want to have a good working environment. I certainly believe that employers that don't and want to discriminate, we certainly should set up a system to catch those employers, but I think by requiring these wages to be put in writing, we're casting a net a little bit further and maybe inadvertently catching employers and giving employees a tool to possibly harass or annoy an employer when it may not be justified. So I'm deeply concerned about the way that those defenses may be, or the lack that an employer would have to assert those defenses.

And through you, Mr. Speaker, in lines 21 through 25, as I read this, the employer is only allowed to assert these defenses if they comply with sections A and B, and do I read that correctly? Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

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Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, basically this part of the bill is the part of the bill that was the -- I'm sorry, the amount that was the original bill's intention. This part of the bill is actually there to help employees, because keep in mind, these -- this is currently against the law. Gender discrimination is currently against the law. This amendment, the intension of this amendment was to expand possible employer defenses against gender wage claims. So this part of the bill is actually to help the employer in his defense against possible claims by allowing these issues to be looked at when it's trying to be determined whether there actually has been any discrimination.

DEPUTY SPEAKER McCLUSKEY:

Representative Candelora.

REP. CANDELORA (86th):

Thank you, and through you, Mr. Speaker, in the line, said bona fide factor defense shall apply only if the employer demonstrates that such factor complies with A and B as I read this. To me, I read that as limiting language. I understand that we're

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enumerating particular defenses in lines 18 through 19. Am I correct as I read this that those defenses that are numerated in lines 18 and 19 and 20 cannot be asserted until the employer first proves lines 21 through 25? Am I correct in reading that? Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, I think if -- and if those circumstances where, maybe, there's a reason for there to be sexual preference in a job, for whatever that might be, that if it's determined that the job does not require that, then you -- I guess the answer to your question is yes.

First you want to assess whether there's a need for a certain sex in a particular job in the first part, in lines 23 and 25. And if there really isn't, then you can go to the other criteria to determine if the -- there's been a violation.

DEPUTY SPEAKER McCLUSKEY:

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Mr. Speaker. So I guess then now

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that -- I'm starting to understand this a little bit better, I think, now. When it -- when we referenced said bona fide factor in lines 21, that defense is only modifying the defense listed in lines 23 through 21. So that an employer would not be required to prove A and B if they're asserting a defense of a seniority system, a merit system or a system which measures earnings by quantity or quality of production. Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, I'm sorry. I missed the first part of his question, so I'm not really clear on what it is exactly he was asking.

DEPUTY SPEAKER McCLUSKEY:

Will the gentlemen please repeat the question.

REP. CANDELORA (86th):

Thank you, Mr. Speaker. What I just -- I wanted to make sure is, as I read lines 21 through 25, there's some hoops that an employer would need to jump through in order to assert in a defense. But those hoops that they need to jump through, which would be proving that the bona fide factor defense is not based

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upon, nor derived from a sexual based differential in compensation and as job-related inconsistent with business necessity, that those proof requirements would only come into play if the employer is asserting the defense outlined in item number 4, on line 20.

Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, I believe 4 is a separate entity. First, again, as I said before, these categories A and B would be if for some reason the job had to be gender-based. If it was determined that they had to be gender-based, then the previous applications would not necessarily have to apply if that's the case. Hopefully, that answers his question. I'm not -- I can't say I'm 100 percent clear on that, but I believe that would answer.

DEPUTY SPEAKER McCLUSKEY:

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Mr. Speaker. I think we're getting there and just to be clear, and through you, Mr. Speaker, as a hypothetical, if an employer has hired

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an individual and is paying that individual and this woman is paid \$10 an hour and you -- there's a male employee that's being paid \$12 an hour. And the female employee brings a discrimination claim against the employer and the employers says, well, the male employee was working for me for ten years. The female employer just started working for me a year ago. And the employer would assert that defense. In that scenario, the employer would not be required to prove -- well, I guess sections -- lines 21 through 25 of the bill, which has his proof requirement for a bona fide factor defense, would not come into play in that hypothetical. Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

In that example, I would agree.

DEPUTY SPEAKER McCLUSKEY:

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Mr. Speaker. And moving to how the bona fide factor defense shall apply, in line A, we have a requirement that the employer demonstrate that such factor is not based upon a drive from a sexual

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based differential in compensation. The one item I'm troubled with is the word not and how an employer proves a negative. It's my understanding, and just my history of law, it's impossible to prove a negative, so how would an employer be able to assert this defense? Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, this particular language was written by an attorney. I'm not an attorney, so I will defer to that individual as to assuming that there, that must be possible since he put this language in here to do that.

DEPUTY SPEAKER McCLUSKEY:

Representative Candelora.

REP. CANDELORA (86th):

I guess, through you, Mr. Speaker, could you think of a hypothetical, maybe, that an employer would be able to prove that the policy is not based or derived on a sex based differential in compensation? Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

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REP. RYAN (139th):

Through you, Mr. Speaker, could he just repeat? Again, I think I missed the line that you referred to begin with and that probably would be helpful for me. Let me start there and ask you to repeat the question.

DEPUTY SPEAKER McCLUSKEY:

Representative Candelora.

REP. CANDELORA (86th):

Sure. Thank you, Mr. Speaker. In lines 23 through 24, it's number A, where the order for the employer to assert a defense, they need to prove this negative. And I'm just wondering if the proponent of the amendment might have a hypothetical that could demonstrate how an employer would be able to prove a negative. Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, nothing is coming to my mind at this particular time. Then again, I'm not the author of this so I -- that individual may have a case in mind. I just -- nothing is coming to my mind. If I think of something, I'll be happy to offer it.

DEPUTY SPEAKER McCLUSKEY:



Representative Candelora.

REP. CANDELORA (86th):

Thank you, Mr. Speaker. And I guess I'm troubled by that particular provision. Again, I understand the intent of this bill. I know what it wants to do. We're raising the bar here and I don't necessarily feel it's inappropriate to raise that bar, but I'm troubled at how an employer would be able to achieve their goals in business with the way this statute is currently written.

I'm thinking -- I hate to use this example, I'm thinking of a bar as maybe, such as Hooters or something where they have a policy of hiring female waitresses, they may want to be able to assert lines 20 through 21. And I think that's kind of what this provision is here for our certain positions that may be the female oriented or male oriented, yet the employer would completely be without the ability to assert that defense. So I'm not sure, going forward, how this would actually play out and I'm concerned that employers now that, who truly, bona fide need to hire a male or a female, how they're going to be able to do this without subjecting themselves, possibly, to a lawsuit.

And I guess I'll move on, but if maybe we could figure out how that could be answered, it would be appreciated because I think this is significant enough in this legislation.

And through you, Mr. Speaker, in lines 53 through 56, we are adding a provision here, a heightened provision of punitive damages when an employer is reckless or commits reckless indifference. Is there any type of limitation to punitive damages in this provision? Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, I was, again, I think the circumstances of the case would make or dictate that, the pay differential between the male and the female individuals. And I think the judge would have to make that determination based on the evidence brought before him or her.

DEPUTY SPEAKER McCLUSKEY:

Representative Candelora.

REP. CANDELORA (86th):

Thank you. And through you, Mr. Speaker, do we have statutes that dictate how a court awards punitive

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damages? Is it to the total discretion of the judge or the hearing officer, or do we have some site of -- sort of criteria where the punitive damages need to be compensatory to the violation? Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, I will try to get that answer because I have no knowledge of it, but maybe somebody in the room does and I can get you that in one second.

DEPUTY SPEAKER McCLUSKEY:

The chamber, please, stand at ease.

(Chamber at ease.)

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, my understanding is there does not appear to be such a document, that it is usually up to the judge, again, based on what is brought before him in the case.

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DEPUTY SPEAKER McCLUSKEY:

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Mr. Speaker. And does this statute, as written -- as I read this, I know there's some references to the Superior Court, would a case be brought through CHRO and through the administrative process or would an action -- could an action be brought directly to the Superior Court? Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through this -- my understanding of what this bill does is, it allows the employee to bring it to the Labor Commissioner and the Labor Commissioner, if it thinks it's a good case, can bring it to the court. If for some reason the Labor Commissioner does not work with the employee, the employee or the employees have the right to bring it directly to -- bring to similar action themselves.

DEPUTY SPEAKER McCLUSKEY:

Representative Candelora.

REP. CANDELORA (86th):

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Thank you, Mr. Speaker. In lines 99 through 101, we're differentiating between how long, I guess, a cause of action could be brought. We're extending this, the cause of action from a one-year to a two-year, and then where there is an intentional or reckless -- committed an intentional or reckless indifference, we're extending that statute of limitations to three years. Through you, Mr. Speaker, what is the policy reasons behind that?

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, I'm looking at the testimony. I do not see -- obviously, I think it's been felt that in some cases one year was an inadequate amount of time. That people came to a realization, possibly it might be a period of time before they realize that there is a pay differential and they're extending that period of time so somebody can take action if, for example, they find out after they've been working in a place for over a year that they're not being paid the same as everybody else, that they can take action on it.

DEPUTY SPEAKER McCLUSKEY:

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Mr. Speaker and I guess, it just strikes me a little odd that we're going to be differentiating between statute of limitations when we're already allowing punitive damages to be asserted in a discrimination case for reckless indifference or for an intentional violation. It would seem that that would be enough in order for -- in order to remedy that wrong.

I would think if somebody is being intentionally discriminated upon or recklessly discriminated upon, I would think that that individual would certainly know it and would be more apt to bring an action sooner. I think that extending the statute of limitations out, potentially, it doesn't do any of us a good service because the cases get stale. And so I just question the -- why we really want to make that distinction.

And I guess, I would go back to my final point that I have an amendment on this bill that I'm not going to call, but I am concerned with this bona fide factor and how it is applied. I think that an employer, as drafted, it will be possible for them to -- in order for them to assert a defense when they

need to hire an individual based on their gender. And I think that we'll probably be needing to revisit this in the future.

I think that, of course, gender discrimination is deplorable in the workplace and we certainly should give our residents and employees the opportunity to be able to assert those defenses, but I think this bill has really gone too far. I think we haven't thought through the ramifications of how an employer would be able to defend themselves.

Number one, in order to assert a defense, as I'm hearing, the defense is going to need to be in writing, which practically speaking, many employers don't have these policies in writing. And number two, we have a requirement where an employer is going to be required to prove a negative. And in my experience, that's not something -- I guess that's something that's foreign to legal jurisprudence. So I don't know how an employer would be able to defend themselves when I think this Legislature legitimately wants to carve out those defenses.

So I would hope that, maybe, in future years, we work toward cleaning up these defenses so that everybody is on an equal playing field. Thank you.

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DEPUTY SPEAKER McCLUSKEY:

Thank you, sir, for your remarks.

Will you remark further Senate Amendment Schedule A? The distinguished Minority Leader, Representative Cafero, you have the floor, sir.

REP. CAFERO (142nd):

Thank you, Mr. Speaker. Mr. Speaker, a few questions to the proponent of the amendment.

DEPUTY SPEAKER McCLUSKEY:

Please proceed, sir.

REP. CAFERO (142nd):

Thank you, Mr. Speaker. Representative Ryan, just to follow-up on Representative Candelora's questions, I want to direct your attention back, if I may, to lines 11 through 34, actually, and in particular, frankly, the double negative, if you will, that Representative Candelora pointed out. And here's my concern. My concern is that the way this bill is written, and by the way, let me preface my remarks by saying that it is my understanding that we will not, as a State, tolerate discrimination based on a whole number of factors, not the least of which is gender. And that is something, I think, everyone in this chamber supports, has voted for and firmly believes



in. And that should also apply most definitely to how a person earns their living and how they're compensated. So the idea and thought behind this bill is 100 percent right on. It is 100 percent fair and equitable.

As a spouse of a woman who has worked in a large corporation for 28 years, as a father of a daughter who is working in the business world, I would expect nothing less and will fight like heck to make sure these principles are upheld. But when we do that, we have to be careful that in putting forth these checks, balances, systems or procedures by which we ensure that fairness and justice is taking place, we don't want to create another injustice.

In this particular case, it seems to me that a person who works for any size employer can make a complaint saying that, in my example, she, a woman, is being discriminated against because she is a woman and thereby, as evidence of that, not being paid the same amount as a coworker doing the same job who happens to be male. Is my basis for a complaint, in my hypothetical, accurate as dictated in this bill? Through you, Mr. Speaker.

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Representative Ryan.

REP. ROY (119th):

Through you, Mr. Speaker, again, if the difference in pay is not for one of the reasons stated in lines 18 to 22, I believe that would be the case.

DEPUTY SPEAKER McCLUSKEY:

Representative Cafero.

REP. CAFERO (142nd):

But through you, Mr. Speaker, for someone to bring the complaint, they don't have to allege whether or not any of these things exist or not exist, that's up to the employer to bring up. I guess what I'm asking in the real-world, if somebody is a female and says -- can file a complaint against their employer, no matter what size, and say, I'm not being paid the same amount as my male counterpart who's doing the same job and therefore, I'm lodging a complaint against my employer. Is that, frankly, the only basis by which a law -- a complaint needs to be made?

Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. WRIGHT (77th):

Yes. Through you, Mr. Speaker, going back to the

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lines we've been talking about earlier, if the employee can demonstrate that he's been discriminated against. So the person who's bringing the complaint is expected to be able to do that at some point in time, demonstrate that there is that discrimination. So they should have something to back them up before they make that complaint.

DEPUTY SPEAKER McCLUSKEY:

Representative Cafero.

REP. CAFERO (142nd):

Through you, Mr. Speaker, isn't it true that that simply could be, say, a copy of a payroll sheet or two pay stubs, one that says, Mary Brown makes \$10 an hour for being a cashier and John Smith makes \$12 an hour for being a cashier. We both do the same job. John Smith makes \$2 more an hour from -- than me. And I believe it's based on sex discrimination, gender discrimination, and therefore, I'm filing a complaint. Would that be sufficient enough evidence to file the complaint? Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, that would be --

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that's -- that could be occurring now, quite honestly. This doesn't make any change in that aspect. Somebody can make that type of complaint now. And as I mentioned earlier, this bill is, kind of, trying to tighten up those scenarios on how an employer can help better defend themselves against gender wage claims by -- with some of the language that's in the bill. But what you're kind of citing is something that could be occurring right now. This bill will not change that.

DEPUTY SPEAKER McCLUSKEY:

Representative Cafero.

REP. CAFERO (142nd):

So under this bill and as you indicate, current law, someone could make a complaint against their employee as I've indicated. Now for an employer to defend him or herself -- for an employer to defend him or herself they would have to say, wait a minute. The reason I'm paying John Smith more than Mary Brown is because John Smith has been here longer than Mary Brown. We have a seniority system. Would that be an adequate defense and at that point, would the complaint be dismissed? Through you, Mr. Speaker.

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Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, that would be my understanding.

DEPUTY SPEAKER McCLUSKEY:

Representative Cafero.

REP. CAFERO (142nd):

Thank you and through you, Mr. Speaker, if that was not the case, but could the employer also say, well, the recent high-paying jobs meant more than Mary Brown is because John Smith does a better job than Mary Brown. He has a series of other reviews and we based his price -- or wage differential on merit and that's why John Smith makes more than Mary Brown.

Would that be acceptable defense under the bill?

Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, that would be my understanding.

DEPUTY SPEAKER McCLUSKEY:

Representative Cafero.

REP. CAFERO (142nd):

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Thank you and through you, Mr. Speaker, if that was not the case could the employer also say, well, the reason I'm paying John Smith more than Mary Brown is because John Smith does a better job than Mary Brown. He has a series of better reviews and we based his, price, or wage differential on merit and that's why John Smith makes more than Mary Brown. Would that be an acceptable defense under the bill? Through you Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you Mr. Speaker, that would be my understanding, again.

DEPUTY SPEAKER McCLUSKEY:

Representative Cafero.

REP. CAFERO (142nd):

And through you Mr. Speaker, could the employer also say, well the wage differential is not based on seniority. It's not based on merit, but I'd pay John Smith more than Mary Brown because John Smith produces 20 percent more widgets that Mary Brown does during an eight-hour day, and therefore, he's being paid a higher wage based on the quantity and quality of his

work. Would that be an adequate defense? Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, again, I would agree with him.

DEPUTY SPEAKER McCLUSKEY:

Representative Cafero.

REP. CAFERO (142nd):

And in those cases, does the line in number 23 -- let me ask you this, does the -- in line 23, where it says, parens capital A, close parens, is not based upon or derived from a sex based differential in compensation. Does that A apply to number 4 of the defenses or to all of the defenses? Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, looking at this a little more carefully, since bona fide factor is listed under number 4, then bona fide factors is defined. I believe it goes back to number 4.

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DEPUTY SPEAKER McCLUSKEY:

Representative Cafero.

REP. CAFERO (142nd):

Thank you, Mr. Speaker. I thank the gentleman for his answer. So going back to my hypothetical where John Smith makes \$12 an hour and Mary Brown makes \$2 an hour -- excuse me, \$10 an hour, if the employer is not paying that differential based on seniority, is not paying that differential based upon merit, is not paying that differential based upon how much quantity or quality the particular individual has, but say, is based -- basing that price differential because when he hired John Smith, John Smith had five more years at another company doing whatever he was doing. And though he was hired after Mary Brown, he has more experience in the industry. Would that be a bona fide defense to paying John Brown more than Mary Smith? Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, I believe that could be. Yes.

DEPUTY SPEAKER McCLUSKEY:



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Representative Cafero.

REP. CAFERO (142nd):

And that is all well and good, as well, except here's the rub, that would fall into, I believe, the category number 4 of the exceptions. Would you agree with that, my hypothetical? Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, I would say that that would come under the area of experience. Yes.

DEPUTY SPEAKER McCLUSKEY:

Representative Cafero.

REP. CAFERO (142nd):

And through you, Mr. Speaker, before being that that defense now falls under category 4, it seems as if there is a prerequisite to even raising that defense as enumerated in line 23, that that is quote, not based upon or derived from a sex based differential in compensation. Is that correct?

Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, could I just ask the good Minority Leader to repeat his question to make sure I answer the right question.

DEPUTY SPEAKER McCLUSKEY:

Would the gentleman please repeat your question, sir.

REP. CAFERO (142nd):

Sure. In the hypothetical I gave that as you characterize related to experience, you indicated that that would fall under exemption 4 or defense number 4 as listed in line 20. Is it my accurate reading of the bill before us that before you can even assert defense number 4, in my by example, the experience defense, you have to prove that it is not based upon or derived from a sex-based differential and compensation. In other words, a prerequisite to using defense number 4 is enumerated in line 23. Is that correct? Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, I believe what you say is correct.

DEPUTY SPEAKER McCLUSKEY:

Representative Cafero.

REP. CAFERO (142nd):

And I thank the gentleman for his answer, but now let's back up a second. Remember my hypothetical, John Brown and Mary Smith. John Brown makes 12 bucks an hour, Mary Smith makes 10. Based on that fact alone, with documentation of a payroll sheet or pay stubs, Mary Smith can now bring a big in a complaint against the employer. That's what this law says and according to Representative Ryan, that's what our current law says.

Now, the employer wants to defend him or herself. If they simply reply, well, of course, John Smitten -- John -- oh, I forgot the names, now. John Brown has been here longer than Mary Smith. According to Representative Ryan, in the language of this bill, that's enough, that's all he's got to say. He's successfully defended the complaint.

In scenario two, if the employer says, the reason I pay John Brown more than Mary Smith is because John Brown has performed better as documented by these performance evaluations, that's all he has to say. He successfully defended his case.

In scenario number three, if the employer says

the reason I pay John Brown more than Mary Smith is because John Brown produces 20 percent more widgets than Mary Smith in an eight-hour shift, that's all he has to say.

But in scenario number 4, if the employer says, well, the reason I pay -- pay John Brown more than Mary Smith is because John Brown had ten years of experience in the industry, Mary Smith doesn't, that does not fall under the category of seniority. It does not fall under the category of merit. It does not fall under the category of productivity, and therefore, it falls under another category for which this bill requires that before you can make that defense, the employer has to prove that it is not based or derived from a sex based differential in compensation.

And frankly, ladies and gentlemen, I believe that language is the "how long have you been beating your spouse clause." How do you disprove that? How do you prove that, maybe, Mary Brown wasn't deprived of having ten years more experience in the industry because the industry was biased towards women? What is it that that employer now has to do based upon the language here?

Now, you might be saying, oh, Cafero, now you're mincing words and you're picking. This could happen at a corner deli, a pizza shop, a gas station, an insurance agency. You have employers, good decent employers who are now subject to lawsuit as they currently are, but have we made it difficult for them to even defend? In fact, in the case, in the fourth scenario that I give, have we made it almost impossible? How would you disprove a negative?

And once again, ladies and gentlemen, in our desire to do the right thing, when we're not careful about how we draft this legislation, it has unintended consequences. And what turned out or started off to be an intent to provide protections for employees and appropriate defenses for employers could have a very different consequence. A disgruntled employee can make, and one might argue, is incited to make a complaint against their employer because the law in which they're availing themselves of makes it almost impossible for the employer to defend against. And what do you bank on when that happens?

You know, in the long run, the employer might win this case, but he or she probably doesn't have the time, patience or money to fight it, so chances are,

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I'll get a bit of a settlement, or some such thing.  
That is the concern I have the way the bill is  
written, not the intent of the bill, but the potential  
consequence of the bill. Thank you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Thank you, sir, for your remarks.

Are there any more comments on Senate Amendment  
Schedule A? Will you remark further on Senate A? If  
not, I will try your minds. All those in favor of  
Senate A, signify by saying, aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER McCLUSKEY:

All those opposed, nay.

REPRESENTATIVES:

No.

DEPUTY SPEAKER McCLUSKEY:

Chair is in doubt. Chair is going to order a  
roll call. Will staff and guests please come to the  
well of the House. Will the members please take your  
seats. The machine is open.

THE CLERK:

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

Senate Amendment Schedule A by roll call. Members to the chamber.

DEPUTY SPEAKER McCLUSKEY:

There's a problem with the machine. We will reopen it shortly.

Have all the members voted? Have all the members voted? Will the members please check the board to determine if your vote is properly cast. If all the members have voted, the machine will be locked. And will the Clerk please take a tally. Will the Clerk please announce that tally.

THE CLERK:

On Senate Amendment Schedule A.	
Total Number Voting	144
Necessary for Passage	73
Those voting Yea	110
Those voting Nay	34
Those absent and not voting	7

DEPUTY SPEAKER McCLUSKEY:

Senate A is adopted.

Will you remark further on the bill as amended?  
Will you remark further on the bill as amended?  
Representative Miller of the 122nd, sir, you have the floor.

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REP. MILLER (122nd):

Thank you, Mr. Speaker. A question to the proponent of the bill as amended.

DEPUTY SPEAKER McCLUSKEY:

Please proceed, sir.

REP. MILLER (122nd):

An employee -- not an employee, but an applicant for a job fills out an application, that application is filed in the potential employee's file with the rest of the employee's records. Inadvertently, some information pertaining to his medical history is exposed to the press. Would the employer be liable for any damages if a lawsuit was brought up? Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, my understanding is -- okay. You're going to the underlying bill that we voted on a couple weeks ago. Is that what he's -- to what that -- to what you're referring to?

If -- I don't know if personnel files, if your medical records would be kept there, if they would be kept separately because they are medical files and



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would be -- if it would apply, and they'd be under lock and key in a different location. But I believe that if those -- if you did happen to keep them all together and it did include your medical records, and those were revealed to some one, you would be liable to a civil action, because you should be responsible to keep those things in a manner so that information can remain confidential.

DEPUTY SPEAKER McCLUSKEY:

Representative Miller.

REP. MILLER (122nd):

Thank you, and through you again, Mr. Speaker, to Representative Ryan, the employee that exposed this record, rather than get -- go through a firing procedure, retired. Does that change the status of the potential employee's lawsuit as he's still, of the employer, still liable? Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, if the individual retires, he had been an agent at the time that the information was leaked or released, I believe the company would still be liable for the fine, no matter.

what capacity the employer was in at the time that it was realized.

DEPUTY SPEAKER McCLUSKEY:

Representative Miller.

REP. MILLER (122nd):

And thank you, and through you, even though this gentleman was never hired, but his application for employment was -- well, let me put it this way, the potential employer did not hire this individual because of the information that was leaked out. So again, is there a liability on the part of the town -- well, I shouldn't say town -- on the company or the former employee? Through you, Mr. Speaker.

DEPUTY SPEAKER McCLUSKEY:

Representative Ryan.

REP. RYAN (139th):

Through you, Mr. Speaker, I believe that information, even if it wasn't a hired employee -- even if the individual wasn't hired would still be -- need to be kept confidential and they would still be liable in that particular case, but I can check, double-check on that answer and get back to you while you're asking another question.

DEPUTY SPEAKER McCLUSKEY:

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Representative Miller.

REP. MILLER (122nd):

I can wait and I'll call it. Thank you very much.

DEPUTY SPEAKER McCLUSKEY:

Thank you, sir, for your remarks.

Will you remark further on the bill as amended?

Will you remark further on the bill as amended? If not, will staff and guests please come to the well of the House. Will the members please take your seat. The machine will be open.

THE CLERK:

The House of Representatives is voting by roll call. Members to the chamber. The House is taking a roll call vote. Members to the chamber, please.

Speaker Donovan in the Chair.

SPEAKER DONOVAN:

Have all the members voted? Have all the members voted? If all members voted, please check the roll call board and make sure your vote has been properly cast. If all the members have voted, the machine will be locked and the Clerk will take a tally. The Clerk,

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please announce the tally.

THE CLERK:

House Bill 6185 as amended by House A and Senate  
A in concurrence with the Senate.

Total Number Voting	144
Necessary for Passage	73
Those voting Yea	142
Those voting Nay	2
Those absent and not voting	7

SPEAKER DONOVAN:

The bill as amended its passed.

Any announcements or introductions?

Representative Guerrero.

REP. GUERRERA (29th):

Thank you, Mr. Speaker. For a point of personal  
privilege.

SPEAKER DONOVAN:

Please proceed, sir.

REP. GUERRERA (29th):

Thank you, Mr. Speaker. I'd just like to take a  
few moments of the members' time here. Today is a  
bittersweet day for, personally, for myself, and I say  
that because we are losing somebody today that has  
been in this chamber for many years and that is

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you.

REP. FONTANA: Thank you very much, Representative Ryan.

REP. RYAN: Thanks. Next is John McCarthy from the Department of Labor. He'll be followed by Theresa Younger.

JOHN MCCARTHY: Thank you very much. John HB 6186 HB 6190 SB 80  
McCarthy, Connecticut Labor Department. SB 223 HB 6334  
Thank you very much for raising four bills HB 6189 HB 5177  
for the Department and I would like to speak  
in favor of raised Bill 6184, preserving good  
cause for a late filing of certain  
unemployment appeals.

The Department has for many years provided a good cause for late filing in unemployment compensation law for claimants and for employers on any appeal that they might make. Recently, there have been a couple of Superior Court cases that question the good cause applying to 31-273, which is the section that has to do with overpayments. They questioned it because that particular section doesn't contain an explicit reference to good cause. So this bill would provide that reference, and we would continue to provide good cause for late filing for claimants and employers in all matters including those having to do with overpayments.

The second bill is raised Bill 6185, an act concerning penalties for violations of certain personnel file statutes. We ask favorable action on 6185.

We receive complaints from individuals alleging violations of the personnel file statute, which provides access to their personnel files.

This bill will allow us to apply a civil penalty to enforce the law in a timely fashion.

It's often very important that individuals apply a civil -- it's often important individuals gain access to their records in a timely fashion as the law provides. We believe the potential for civil penalty will help move these matters forward.

Also raised Bill 6186, an act protecting the integrity of Conn-OSHA investigations, we ask favorable action. The Connecticut Occupational Safety and Health Act enforces health and safety in the public sector and provides consultation in the public and private sector. We have a federal-state agreement under OSHA. And a condition of that agreement is that we adopt all federal OSHA standards, health and safety wise, which we do through Chapter 54 through the regular process of the regulations review committee.

Federal law provides confidentiality in federal OSHA investigations, under the federal FOI statute; therefore, they don't have a federal regulation or standard for us to adopt in Connecticut. What we are seeking is to have the some protections for investigations in Connecticut activity.

Witnesses must be afforded the same protection from disclosure as complainants already enjoy. If you file a complaint, you may choose to have your name kept confidential. If you add someone to the complaint, similarly, they may choose to be confidential, but often witnesses are brought to bear in a case and are afraid to come forward unless they also can exercise the right of confidentiality.

the community clubs or to any other areas that offer, it's free. They say just come in, and we have experience people who can help you do it. So one form is going to do it for them, you think?

LINDSAY FARRELL: I mean, if they don't frequent, you know, the AARP or the library or those communities centers on a regular basis, then maybe they don't know about that free --

REP. NOUJAIM: What about if they read the newspaper? Do they read the newspaper, do you think, or do they listen to the radio?

LINDSAY FARRELL: I mean it's not up to me to speculate on their personal habits of accessing information. But if you are handed a piece of paper, you know, when you get your W-2 or that information is posted on the wall, then that's one more way that some more people might see it. You know, it's not a hard thing to do to post --

REP. NOUJAIM: So if they don't listen to the radio and they don't read the newspaper, they'll be able to see the form on the wall?

LINDSAY FARRELL: My hope is that they will.

REP. NOUJAIM: Okay. Thank you.

REP. RYAN: Any one else have any questions?

Thank you. We appreciate you coming in.

Next is Kia Murrell. And she'll be followed by Priscilla Dickman.

KIA MURRELL: Good afternoon, members of the committee.

To make this easy, and, given the little time I have to talk about them all, let me just

SB 80    SB 113    SB 223  
SB 805    HB 5177    HB 6185  
HB 6189



there are a lot of things that would be nice if employees took advantage of, but it's not the responsibility of the employer to serve it up to them on a silver platter. And if everyone that took advantage of earned income tax credit, actually, filed and got money, I think you'd find that that would create other problems for you because I don't know that we'd be in a position from a federal or state government standpoint to support and give the money when it's due.

So I'd urge that you reject this measure, as well, as a burden on employers from an administrative standpoint and, quite frankly, diversion from the public policy interest of this committee, which is representing, and, obviously, working towards anything that helps employees but not something that would help, you know, people without -- sorry, a connection between what you want to do and what they're likely to do behavioral wise.

House Bill 6185, personnel files, yeah, personnel file statutes. I told Mr. McCarthy from the Department of Labor, and I'll, obviously, say to the committee as well, the personnel files -- the Personnel Records Act is pretty complex as far as what it requires employers to do, you know, the maintenance of the record, the disclosure of the record, the view and inspection of the record. Employers are already burdened with having to make sure that they do all those things right in order to avoid offending this law. When you increase penalties, establish penalties where they don't ordinarily exist or do anything else to make this law more burdensome, you basically put employers in a position where they have to constantly keep abreast of what's happening and then they have to hope and pray that no one files a complaint because, in their, opinion it was done

incorrectly.

This law doesn't do anything to say -- to specify or clarify the existing law and then make it clear that you would be subject to fines if you do some aspect of that law wrong. All it says is we want to have enforcement authority so that, in case you do it wrong, we can hit you with a penalty. And I just don't know, you know, however many employers that you hear may be offending this law, I think they're probably a small fraction in comparison to the overall numbers of employers in the state. So I don't know that imposing a potential fine against every one that makes some technical violation of this complex law is well-advised at this point so we'd urge rejection.

The last bill -- and I apologize. My title doesn't convey what the actual bill is. It's the gender and wage report bill. I understand the reason why the Permanent Commission on the Status of Women has requested it. Obviously, in the course of their work, you know, fighting for gender equality, having access to information and data about gender is important. But when you require an employer to report on that information, you also, by virtue of disclosure of that information, the possibility of it being disclosed under FOI and a variety of other contexts, you now create a situation where it may cause additional scrutiny of wage reports that could, ultimately, lead to increase litigation and complaints.

HB6189

I think that the Fair Pay Acts that were recently approved on the federal level, the paycheck fairness act, the Lilly Ledbetter and all the other ones, they're meant to go after the spirit of what public policy is

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TESTIMONY OF

*THE CONNECTICUT MESSENGER COURIER ASSOCIATION  
 THE CONNECTICUT COALITION OF PROPERTY OWNERS  
 THE GREATER DANBURY CHAMBER OF COMMERCE  
 THE LUMBER DEALERS' ASSOCIATION OF CONNECTICUT  
 THE MILFORD CHAMBER OF COMMERCE  
 THE NORTHWEST CONNECTICUT CHAMBER OF COMMERCE*

BEFORE THE  
 LEGISLATURE'S LABOR & PUBLIC EMPLOYEES COMMITTEE  
 4:00 PM, TUESDAY, FEBRUARY 17, 2009  
 ROOM 1E, LEGISLATIVE OFFICE BUILDING

HB6184  
HB6185

Good afternoon. My name is Marshall R. Collins. I am appearing in my capacity as Counsel for Government Relations for the aforementioned six organizations (the "Organizations"). Collectively they represent more than 4,000 employers of approximately 130,000 men and women in Connecticut.

**SB 113 AAC Unemployment Compensation.** This proposal would allow individuals collecting unemployment compensation ("u/c") benefits, which are 100% funded by employers, to work part-time without reducing their benefits. SB 113 provides a disincentive for employees to return to full time work. U/C was intended to help those individuals who are out of work through no fault of their own. If an individual chooses to work part time, why should they then receive u/c benefits? What incentive is there for an individual to return to work full time if they can receive the same amount of income by working part time and collecting u/c benefits? At the same time, if the bill would become law, would the employer's charge for the layoff be reduced when the individual takes part time work? The Organizations oppose the bill.

**HB 6184 AAC Preserving Good Cause For Late Filing Of Certain Unemployment Compensation Appeals.** There should be more rather than less certainty regarding the time period for filing appeals. Employees and employers should operate under the same time restrictions. This bill has no positive effect and it unnecessarily extends the time period for taking an appeal. It subjects employers to additional and unnecessary exposure. The Organizations oppose the bill.

**HB 6185 AAC Penalties For Violations of Certain Personnel File Statutes.** This proposal would subject employers to civil penalties beyond the existing \$300 fines for failure to grant employees access to their personnel files. The Organizations believe that the existing penalties are adequate and that encouraging litigation for such violations only further contributes to Connecticut's reputation as a less than desirable place to do business. The Organizations oppose this proposal.

Taken together or individually, these three proposals do nothing to improve the business climate in Connecticut. They are a further disincentive for employers to create or maintain jobs in our state. Consequently, the Organizations respectfully request that **SB 113 and HB 6184 and HB 6185 not be favorably reported.**

This completes my testimony. Thank you for your consideration.

To: Rep. Kevin Ryan, House Chair and,  
 Sen. Edith Prague, Senate Chair

HB6190

SB80

SB223

From: John A. McCarthy, CTDOL

HB5177

HB6189

HB6334

Testimony for Public Hearing 2-17-09

CTDOL Bills approved by Governor's Office and OPM

We thank you for raising these department bills for public hearing and respectfully request favorable action on them.

R.B.# 6184, AA Preserving Good Cause for Late Filing of Certain Unemployment Appeals.

We respectfully request favorable action on RB# 6184.

The department has a long history of affording good cause for late appeals of unemployment decisions. ( good cause is defined in sec. 31-237g-15 of the Regulations of Connecticut State Agencies).

Specific authority for this regulation is contained in sec.31-249h of the Connecticut General Statutes.

This bill will ensure that good cause for late appeals is preserved.

Two Superior Court Decisions have questioned the application of good cause to appeals of overpayment decisions made pursuant to sec. 31-273.

This bill will ensure that appeals of overpayment decisions will continue to be afforded good cause for late filing.

R.B.# 6185, AAC Penalties for Violations of Certain Personnel Files Statutes.

We respectfully request favorable action on RB# 6185.

In some cases of complaints received by the department alleging violations of chapter 563a, Personnel Files, access to the files as provided by law was denied.

This bill will allow the department to apply a civil penalty to enforce the law in a timely fashion.

It is often important that individuals gain access to their files in a timely fashion, as chapter 563a provides.

The potential that civil penalties will be applied will cause the process to move more expeditiously.

R.B.# 6186, AA Protecting the Integrity of CONNOSHA Investigations.

We respectfully request favorable action on RB# 6186.

Through the Connecticut Occupational Safety and Health Act (CONNOSHA) the department enforces health and safety standards in the public sector and provides health and safety consultation in both the public and private sector.

CONNOSHA is governed by a federal state agreement.

A condition of the agreement is that Connecticut adopt all federal OSHA health and safety standards. We adopt these pursuant to chapter 54, the Connecticut regulatory process.

Federal law provides certain confidentiality protections to federal OHSA in it's enforcement activity.



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Connecticut Business & Industry Association

**Testimony of Kia F. Murrell  
Assistant Counsel, CBIA  
Before the Committee on Labor and Public Employees  
February 17, 2009**

**H.B. 6185 AAC Penalties for Violations of Certain Personnel Files Statutes**

I am Kia Murrell, Assistant Counsel at the Connecticut Business and Industry Association (CBIA) which represents the interests of more than 10,000 companies across the state, the vast majority of which are businesses of 50 or fewer employees.

H.B. 6185 AAC Penalties for Violations of Certain Personnel Files Statutes amends the Connecticut Personnel Records Act to allow the Department of Labor to assess civil penalties of \$300, \$600 or \$1,000 on employers who violate certain provisions of the Act.

The Connecticut Personnel Records Act (C.G.S. §31-128a-h) grants employees the right to inspect their individual personnel records and employers must make those records available. The Act also prescribes the manner of personnel record inspection, the requirements for maintaining those records, the limited authorized disclosure of such records and the disposal of records.

Given the complexity of the Act and its dictates on employers, we are not aware of any pattern or practice by employers to thwart the law. However, in the event of violation, even the slightest infraction of the law may lead employers to incur significant penalties under this legislation. At a time when many employers are struggling to compete in a difficult economic, legislative and regulatory environment, any legislation that increases business costs and administrative burdens is ill-advised.

Therefore, we oppose this legislation and its imposition of additional fines and penalties on employers.

For the aforementioned reasons, CBIA urges the committee to **Reject H.B. 6185.**