

Act Number: 09-068

Bill Number: 964

Senate Pages: 1968-1996, 2006-2007 **31**

House Pages: 4634-4638 **5**

Committee: Judiciary: 3202-3205, 3222 **5**

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bill and I'm -- I'm glad we're moving this forward and
I appreciate the Judiciary Committee's (inaudible).

THE CHAIR:

Thank you, Senator Kane.

Will you remark? Will you remark further on
Senate Bill 1089 as amended by Senate A?

Senator McDonald.

SENATOR McDONALD:

Mr. President, if there's no objection might this
item be placed on the Consent Calendar?

THE CHAIR:

Motion on the floor to place the item on Consent.

Seeing no objection, so ordered sir.

Mr. Clerk.

THE CLERK:

Calendar page 11, Calendar Number 491, File
Number 713, Senate Bill 964, An Act Concerning the
Connecticut Anti-Trust Act, favorable report of the
Committee on Judiciary. Clerk is in possession of
four amendments.

THE CHAIR:

Senator McDonald.

SENATOR McDONALD:

Thank you, Mr. President. Mr. President, I move

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acceptance of the Joint Committee's favorable report and passage of the bill.

THE CHAIR:

Acting on approval and passage of the bill, will you remark further, sir?

SENATOR MCDONALD:

Yes, Mr. President. Mr. President, this bill would increase the maximum civil penalty that a court could impose on someone found in violation of our anti-trust statutes. It would allow an individual to have a penalty assessed against him or her up to \$100,000 and any business entity would be potentially liable for a violation of up to \$1,000,000.

Also, Mr. President, this bill makes it clear that any information provided to the Attorney General in the conduct of an anti-trust investigation, whether that information is provided voluntarily or in compliance with a subpoena, would be kept confidential by the Attorney General during the course of that -- that investigation. And in the context of that information that was being provided, both the documents themselves and the content of the information would be considered confidential.

THE CHAIR:

Thank you, sir.

Will you remark further on Senate Bill 964? Will you remark further?

Senator Frantz.

SENATOR FRANTZ:

Thank you, Mr. President. I rise, I think, in favor of the bill and have a question for the proponent, through you.

THE CHAIR:

Senator McDonald.

SENATOR MCDONALD:

Proceed, Senator Frantz.

SENATOR FRANTZ:

Thank you, Mr. President. Senator McDonald, the question I have for you is does -- when you are talking about an individual being guilty of anti-trust behavior or activities, I'm trying to think of an example of what you might be talking about specifically. And part B, are you talking about an individual acting in the capacity of their corporate responsibility? They could be fined separately in addition to the corporate fine that could be assessed for anti-trust behavior? Thank you.

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Senator McDonald.

SENATOR MCDONALD:

Thank you, Mr. President. Through you, well it would be any individual who failed to comply with the anti-trust statutes that was subject to a subpoena or providing material information to the Attorney General that was conducting the investigation could be found liable if they are in violation of the underlying provisions of the anti-trust act.

THE CHAIR:

Senator Frantz.

SENATOR FRANTZ:

Thank you and just as a follow up, through you, Mr. President, so we're not talking about say a local group of individual sole proprietors in the landscaping business, for example, trying to get together to increase the prices, we're talking more about corporate situations, larger companies?

THE CHAIR:

Senator McDonald.

SENATOR MCDONALD:

Thank you, Mr. President. I haven't given the matter a great deal of thought, I suppose individual sole proprietors, if they illegally combine and

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intertwine information for the purposes of fixing prices could be the subject of a investigation by the Attorney General for anti-trust violations.

THE CHAIR:

Senator Frantz.

SENATOR FRANTZ:

Thank you very much, Senator.

And thank you, Mr. President.

THE CHAIR:

Thank you, sir.

Will you remark further on Senate Bill 964?

Senator Fasano.

SENATOR FASANO:

Thank you, Mr. President. Mr. President, through you to Senator McDonald.

THE CHAIR:

Senator McDonald.

SENATOR FASANO:

Through you, Mr. President, the documentation that the Attorney General would have to keep confidential, would that include documentation which is otherwise FOI-able through other sources? Through you, Mr. President.

THE CHAIR:

Senator McDonald.

SENATOR MCDONALD:

Through you, Mr. President, I don't think I fully appreciate the -- the question, if Senator Fasano might help me with it.

THE CHAIR:

Senator Fasano, could you please repeat your question?

SENATOR FASANO:

Thank you, Mr. President. If the Attorney General were to secure documentation in the course of his investigation, and as I understand the provision, that documentation shall be kept confidential. If that documentation was otherwise FOI-able through other agencies, would that requirement of confidentiality still have to be kept by the Attorney General? Through you, Mr. President.

THE CHAIR:

Senator McDonald.

SENATOR MCDONALD:

Through you, Mr. President, if the -- I'm not certain how the information would be obtained otherwise, because normally the FOI Act only applies to public agencies and in most instances the

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information that would be provided to the Attorney General would be from private entities who were complying with a subpoena or -- or voluntarily providing information to the Attorney General.

If the information did come from a public source and was in the possession of the Attorney General in the context of a anti-trust investigation, I would -- could only conclude that to the extent it was contained in the investigative file of the Attorney General it would be considered confidential for purposes of the anti-trust provisions.

THE CHAIR:

Senator Fasano.

SENATOR FASANO:

Thank you, Mr. President. I have no further questions. Thank you.

THE CHAIR:

Will you remark further on Senate Bill 964?

Senator McKinney.

SENATOR MCKINNEY:

Thank you, Mr. President. Mr. President, I believe the Clerk is in possession of an amendment, LCO Number 6695. I ask that he call the amendment and seek leave to summarize.

THE CHAIR:

Mr. Clerk.

THE CLERK:

LCO 6695, which will be designated Senate Amendment Schedule A, is offered by Senator McKinney of the 28th District, et al.

THE CHAIR:

Senator McKinney.

SENATOR MCKINNEY:

Thank you, Mr. President. I move adoption of the amendment.

THE CHAIR:

Please proceed, sir.

SENATOR MCKINNEY:

Thank you, Mr. President. Colleagues, this amendment deals with the Attorney General's office and our handling of whistle blower complaints. Just as the underlying bill deals with the Attorney General's authority over anti-trust laws and enforcement of anti-trust laws, what this amendment calls for is the transfer of two employees who work in the Office of Attorney General, who handles -- who handle whistle blower complaints to the Office of the State Auditors of Public Accounts.

It simply takes the whistle blower unit in the Attorney General's office and moves that unit into the State Auditor's of Public Accounts. Why do we want to do that? We want to do that because there is a perception out there, and many who have made whistle blower complaints have said to me that they felt intimidated by making whistle blower complaints because the agency and office that they have to file their complaints with, the Office of the Attorney General, is the same office that also represents the agencies who the whistle blowers are complaining about.

Now the Attorney General's office, obviously, has said and I believe it's true that they have constructed Chinese walls so that one part of his office can defend agencies against whistle blower complaints and one part of his office can help enforce the whistle blower complaints. But it's simply a situation that we've let go on too long. We simply should not have one agency be the agency that prosecutes whistle blower complaints and defends against them. It doesn't make any sense, it sends a bad perception. And people who have made those whistle blower complaints themselves have said that

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they have felt intimidated about coming forward with complaints because of this situation.

I think this is one of many steps we could take to improve our whistle blower statutes. This obviously is a step that doesn't cost us any money, because it simply transfers the unit from one agency to another, and given our fiscal constraints and our deficit, I think right now we're resigned to trying to take steps that don't cost us any more money.

I think this is common sense. I think it's a good step in the right direction, one of many we've made over the years on whistle blower complaints, Mr. President, and I would urge adoption. And ask that when we take the vote, we take it by roll call. Thank you.

THE CHAIR:

Thank you, sir. Roll call vote will be noted.

Senator Slossberg.

SENATOR SLOSSBERG:

Thank you, Mr. President. I was just wondering if I could ask a couple of questions to the proponent of the amendment.

THE CHAIR:

Senator McKinney.

Senator Slossberg, please proceed.

SENATOR SLOSSBERG:

Thank you, Mr. President. I was wondering I -- I see here in Section B, the Auditors of Public Accounts may make application to a panel of three superior court judges -- could you explain Section B and what the purpose is there?

THE CHAIR:

Senator McKinney.

SENATOR MCKINNEY:

Thank you, Mr. President. Yes, Mr. President, through you to Senator Slossberg. This is essentially replacing the Auditors of Public Accounts and their roles regarding whistle blower complaints with what is now our statutory law for the Attorney General. It's the exact same process under which the Attorney General's office would operate, but now it would be the authority and role of the Auditors of Public Accounts. Through you Mr. President.

THE CHAIR:

Thank you, sir.

Senator Slossberg.

SENATOR SLOSSBERG:

Thank you. Through you, Mr. President, if I may,

in -- in Section B, this actually looks like new language not just supplanting language, and speaks about the issuance of making application to a panel of three superior court judges for the issuance of a subpoena whenever the subpoena is necessary. And so I was wondering if the proponent of the bill could just explain that particular provision.

THE CHAIR:

Senator McKinney.

SENATOR MCKINNEY:

Thank you, Mr. President, though you. Senator Slossberg, it's an excellent question. The Attorney General's office in prosecuting whistle blower complaints has subpoena power. It's inherent in the Office of the Attorney General. It is not inherent for the State Auditors of Public Accounts. In order to properly protect whistle blowers they need the subpoena power. This gives the State Auditors of Public Accounts, for purposes of the whistle blower unit which would be moved under their direction, the same subpoena authority that the Attorney General has. Through you, Mr. President.

THE CHAIR:

Senator Slossberg.

SENATOR SLOSSBERG:

Thank you and -- but this requires them -- this just doesn't give them direct subpoena power, this requires them to go into court to a panel of three superior court judges to actually get that subpoena. It doesn't directly transfer subpoena power. Am I reading that correctly?

THE CHAIR:

Senator McKinney.

SENATOR MCKINNEY:

Well, through you Mr. President, this is how the Attorney General, if he were prosecuting a whistleblower complaint, would go to the court through a three judge panel as I understand it, to get the subpoena power. Certainly we wouldn't want the state auditors to simply issue subpoenas, we want them to be reviewed by a three judge panel to make sure that everything with the subpoena complies with what is required under the law and, therefore, the subpoena could be issued.

THE CHAIR:

Senator Slossberg.

SENATOR SLOSSBERG:

Thank you, Mr. President. Through you, and I

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thank the Senator, the proponent, for his answers on that.

Moving into the other section, I apologize, I don't have the line numbers for this particular amendment. It states further on though that, if the Auditors of Public Accounts determine that such personnel action was in retaliation for such employees or contractors disclosure of information, the auditors can issue that determination to the human rights referee.

Through you, to the proponent, shouldn't some sort of a court be making that determination whether the personnel action was in retaliation? Who would be making that determination? Through you, Mr. President.

THE CHAIR:

Senator McKinney.

SENATOR MCKINNEY:

Thank you, Mr. President. I think the section -- I want to make sure of the section, Senator Slossberg, you're talking about would be Section C2, is that correct? Through you, Mr. President.

THE CHAIR:

Senator Slossberg.

SENATOR SLOSSBERG:

Yes, it would.

SENATOR MCKINNEY:

Senator Slossberg, what -- what this section is determined to do is to improve the whistle blower complaint process. Currently under the law, as I understand it, the Attorney General has the right to intervene. Let me just check and make sure that's correct.

Thank you, Mr. President. I'm sorry, I wanted to make sure that when I answer your question I answer it correctly.

Through you, Mr. President, Senator Slossberg this language here actually mirrors a whistle blower protection bill that's currently before us. I believe it has been supported by the Attorney General and I don't know where it stands in our committee process or on our calendar. It is different though in one respect, in that it includes a -- a third party to make a determination, the Chief Human Rights Referee, rather than what our current law is, which is the Attorney General's office. Through you, Mr. President.

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Senator Slossberg.

SENATOR SLOSSBERG:

Thank you, Mr. President. And as the Attorney General -- if this personnel action was determined to be in retaliation and determined by the auditors to be in retaliation, that determination goes to the Chief Human Rights Referee. In those circumstances, who would represent the employee? Through you, Mr. President.

THE CHAIR:

Senator McKinney.

SENATOR MCKINNEY:

Through you, Mr. President, my understanding, and I want to thank our counsel for helping us, under the -- this is not different than under the current law. Under the current law the Attorney General is not allowed to represent an employee in a retaliation case, so this would mirror what happens under current law. Through you, Mr. President.

THE CHAIR:

Senator Slossberg.

SENATOR SLOSSBERG:

Thank you, Mr. President. I thank the proponent for his answers. I believe I had just one other

question, and that was going back to earlier in the bill when there is language -- I have on line 30, I don't believe that's the same line -- in Section A there is language -- the second time that the Attorney General -- is deleted and the Auditors of Public Accounts is inserted; it says the Auditors of Public Accounts shall have the power to summon witnesses, require the production of any necessary books, et cetera.

THE CHAIR:

Is that a question ma'am?

SENATOR SLOSSBERG:

Yes, I just want to make sure that the proponent is clear as to where I'm -- to what area I'm referring.

THE CHAIR:

Senator McKinney.

SENATOR MCKINNEY:

Through you, Mr. President, yes, Senator Slossberg, I believe you're referring to the line that starts on Line 29 of my file copy with the word "the," deletes Attorney General, and says, the Auditors of Public Accounts shall have the power to summon witnesses, et cetera. Is that the question?

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THE CHAIR:

Senator Slossberg.

SENATOR SLOSSBERG:

Yes, that is correct. Thank you. To the proponent, just one final question is with regard to that particular sentence, could you please just share what that particular sentence means?

THE CHAIR:

Senator McKinney.

SENATOR MCKINNEY:

Thank you, Mr. President. Through you, my understanding is that this is our current law, but instead of it being done by the Attorney General's office, it is now the Auditors of Public Accounts. And then Subsection B, which we discussed earlier, is the process by which the whistle blower complaints are brought forward. So again, we're just taking the existing law where the Attorney General has the power to summon witnesses, et cetera. and giving that power to the Auditors of Public Accounts. Through you, Mr. President.

THE CHAIR:

Senator Slossberg.

SENATOR SLOSSBERG:

Thank you, Mr. President, and I thank the proponent for his answers. My understanding is that actually current law is that the Attorney General does have the power to summon and that's what is in that particular section, in Section A starting on line 29. And my concern is that Section B that's been added here is actually an additional step that the auditors would be required to take that the Attorney General currently has the authority to subpoena and to summon witnesses, as in line 30, and now Section B would add an additional step there.

I -- you know -- I thank the proponent for his answers -- and I appreciate them. The reason that I ask the questions is because I think this is indeed a very important area in our law that -- that is flawed, and we have some -- some issues there that need to be addressed. However, I believe that the amendment in front of us it does not have all the answers, I think that we need to be continuing to work on it. I don't think it really represents the reality of how whistle blower complaints currently work and it does not -- there are a number of areas where this would just not -- this would actually make the process more complicated, as opposed to simpler.

I hope that as we go forward we will continue to work on this issue, and indeed, I think we're very close to some sort of agreement on this particular proposal. But I don't believe that this particular amendment is the answer, so I would oppose this amendment.

Thank you, Mr. President.

THE CHAIR:

Thank you, Senator Slossberg.

Senator McKinney.

SENATOR MCKINNEY:

Thank you, Mr. President. Mr. President, I want to thank Senator Slossberg for her questions and her concern. I'm sorry that she does not agree, but let me just state that we would be giving a new power to the State Auditors of Public Accounts, that's clearly what we're doing here. And we are transferring an agency, a division within an agency of the Office of the Attorney General, and moving it to the State Auditors of Public Accounts.

What Subsection B does is provides a protection. We're giving a new power to the auditors, that is an extraordinary power to subpoena, we've seen how that power has worked within our own very legislature. And

this protection is that a three judge panel, the very branch of government and people who we trust to be the arbiters of fairness and of application of our laws, would be a check on making sure the power given to the Auditors of Public Accounts is used correctly and is not unchecked.

I think that's a good positive step that most of us would agree upon. But let me just say what's going on here, we need to protect whistle blowers. We need to make sure that people feel that they can come forward to talk about what's going on in -- if they're seeing something wrong in state government. And right now there are people out there who will testify at public hearings and have testified that they feel uncomfortable or worse blowing the whistle, because the very person, the very office, they have to make the whistle blower complaint to is the same office who's defending the person they're complaining about.

And I dare say if you just brought this to the public community test, most people, regardless of the district, would say, what? You don't go to Attorney A and say I want to sue senator so and so, and then Attorney A, says well that's good let's go sue them and by the way, I represent them too, but don't worry,

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you know, we've got two people in my office and they'll never talk to each other. We put up this big wall, we call it a Chinese wall it's so big. We'll never talk to each other, don't worry, trust me, you can talk to me. We go out to lunch together, we work together on other things, we see each other in the office, in the elevator we say hi, but trust me.

It just doesn't make sense. It doesn't make sense. And we've been working for years and I'm been trying for years. I've supported every -- I think every bill the Attorney General's brought out to enhance whistle blower protections. And -- this is not about the Attorney General, because the Attorney General has done an excellent job at trying to build in whistle blower protections but it is an inherent conflict, it is an inherent conflict. This would never be allowed to happen in private practice, never. But we let it go on in our office of the Attorney General, which is the largest law firm, I think, probably in the State of Connecticut.

So this is a modest step and I don't think anybody in this circle would have one bad thing to say about the Auditors of Public Accounts, extraordinary individuals in that office. I'd be okay giving them

the power without the check of the three judge panel, but that is an extra protection for the system against subpoena power, which is a pretty extraordinary power and we've had debates about that subpoena power in other context as well. So everybody here is familiar with that.

So I would hope that the majority would reconsider and support this amendment, because I think it's the right way to go. Thank you, Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much, Mr. President. I stand in support of the amendment as well. I appreciate the questions that Senator Slossberg made and certainly my support of the amendment is not a disparagement or should not be interpreted as one as to the good works done by the attorneys in the Attorney General's office. Nonetheless, in one of my roles as a co-chair of Program Review and Investigations, it was brought to our attention, I know that my friend and colleague Senator Guglielmo was a strong supporter of looking into the entire issue regarding whistle blowers, and indeed we are embarking upon that study. And in

chatting with both auditors that we have here in the building, just a few floors down below us, Auditors Jaekle and Johnston, they're supportive of the inquiry as well.

My reason for supporting this at this time is that just this week unions throughout the state of Connecticut will be voting on the W-hat's known colloquially as the "SEBAC agreement" with the Rell Administration. And as part of that agreement there's a retirement incentive program as well as other things, and assuming that that rolls forward, there will be a diminution to some extent of state employees. And yet, they will still have missions that are characterized in our statutes. There is a bright line test that most positions are not to be filled going forward, and so given those financial constraints that we know we are going to facing and our state employees are going to be facing, and knowing how dedicated they are to the wellbeing of the people of the state of Connecticut, there may occur times where they have got to blow the whistle.

And we don't want them to hesitate in doing that, in pointing out how our state government can be done -- worked more appropriately, more efficiently

and more honestly for the best interests of the people of the state of Connecticut. Whether it's merely a perception or reality, it's my view that there is at this time, because of the perception of that large Attorney General's office where all the attorneys work under that overall umbrella, that despite the best interests of the wall that exists, the Chinese wall as Senator McKinney pointed out, that there is the perception -- there is the perception, even though it may not be reality, but it is the perception by many state employees that that wall can be either circumvented either intentionally or accidentally. And that has a chilling effect on their propensity to come forward and to speak out. And we -- it is incumbent upon us to facilitate their speaking out, because ultimately if they feel comfortable in speaking out, we'll be able to route out injustices and problems and inefficiencies and that is all in the best interest of the people of the state of Connecticut. And for that reason, Mr. President, I strongly support the amendment. Thank you, sir.

THE CHAIR:

Thank you, sir.

Senator Guglielmo.

SENATOR GUGLIELMO:

Thank you, Mr. President. I also rise in support of the amendment. It's been pretty well stated by Senator McKinney and Senator Kissel. I think it's a systemic problem, I don't think anybody has any problems with the Attorney General or the Attorney General's office. It just doesn't make any sense the way the structure is set up. If -- I was involved in two cases with whistle blowers or constituents, and that one case I accompanied the whistle blower into the Attorney General's office and he was surprised that we were going into the same office, as the law firm basically, that was going to be defending the state agency.

It intimidates potential whistle blowers there's no question, and who knows better about what's going wrong in state government than the front line of state employees. And I'll tell you any of you, whether you vote for this amendment or not, if you know any of the representatives from the state employee unions who actually represent the members, talk to them about this problem. I'll guarantee you that they have had a problem with the structure of the whistle blower unit the way it's set up.

Thank you, Mr. President.

THE CHAIR:

Thank you, sir.

Senator Prague.

SENATOR PRAGUE:

Thank you, Mr. President. Mr. President, Senator Guglielmo and I worked with one of his constituents who was a state employee who had a huge problem as a whistle blower with the way her case was handled at the Attorney General's office. I think Senator McKinney is on the right track, but I don't think it is comprehensive enough. I think next week when the full bill comes out of GAE and makes substantial changes, including some of the suggestions that Senator McKinney has in his amendment, that we will be -- we will have a better system on the books. I totally agree at this point that state employees have a terrible time when they try to protect the state agencies, when they become whistle blowers, they're totally discouraged. Besides that they don't even have attorneys to represent them.

So the bill that we will be discussing next week will handle a lot of these concerns, and at the moment I'm not going to vote for Senator McKinney's

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amendment, even though it is a good amendment, it's just not enough.

So thank you, Mr. President.

THE CHAIR:

Thank you, ma'am.

Will you remark further on Senate Amendment A?

Will you remark further on Senate Amendment A?

If not, Mr. Clerk, please call for a roll call vote. The machine will be open.

THE CLERK:

Immediate roll call has been ordered in the Senate, will all Senators please return to the chamber. An immediate roll call has been ordered in the Senate, will all Senators please return to the chamber.

THE CHAIR:

Have all Senators voted? If all Senators have voted, please check your vote. The machine will be locked. The Clerk will call the tally.

THE CLERK:

The motion is on adoption of Senate Amendment Schedule A.

Total number voting	35
Those voting yea	12

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Those voting nay 23
those absent and not voting 1.

THE CHAIR:

Senate Amendment A fails.

Will you remark further on Senate Bill 964?

Senator McDonald.

SENATOR MCDONALD:

Mr. President, if there is no objection might
this item be placed on the Consent Calendar.

THE CHAIR:

Motion is on the floor to place the item on
Consent, seeing no objection so ordered.

Mr. Clerk.

THE CLERK:

Calendar page 13, Calendar Number 526, File
Number 9, House Bill 5023, AN ACT REQUIRING HEALTH
INSURANCE COVERAGE FOR WOUND CARE FOR INDIVIDUALS WITH
EPIDERMOLYSIS BULLOSA, favorable report of the
Committee on Insurance and Appropriations.

THE CHAIR:

Senator Crisco.

SENATOR CRISCO:

Thank you, Mr. President. I move to accept the
joint committee's report and passage of the bill.

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Calendar.

THE CLERK:

Immediate roll call has been ordered in the
Senate on the second Consent Calendar. Will all
Senators please return to the chamber. Immediate roll
call has been ordered in the Senate on the second
Consent Calendar. Will all Senators please return to
the chamber.

Mr. President, those items placed on the second
Consent Calendar begin on Calendar page 2, Calendar
150, Substitute for Senate Bill 895; Calendar page 10,
Calendar Number 466, Senate Bill 1028; Calendar 468,
Substitute for Senate Bill 1089; and Calendar page 11,
Calendar 491, Senate Bill 964.

Mr. President, that completes those items placed
on the second Consent Calendar.

THE CHAIR:

You can announce the Consent Calendar sir.

THE CLERK:

The Senate is now voting by roll call on the
Consent Calendar. Will all Senators please return to
the chamber. Immediate roll call has been ordered in
the Senate on the Consent Calendar. Will all Senators
please return to the chamber.

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THE CHAIR:

Senator McLachlan. Senator Slossberg. Thank you.

All Senators have voted. Please check your vote. The machine will be locked. The Clerk will call the tally.

THE CLERK:

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 passes.

Senator Looney.

SENATOR LOONEY:

Yes, thank you, Mr. President. Mr. President, just another change in calendar marking, an item on the foot to be removed. Mr. President, Calendar page 48, Calendar 129, Senate Bill 775, if that item might be removed from the foot and marked PR.

THE CHAIR:

Motion is to remove item from the foot. Seeing

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Those voting Nay 9
Those absent and not voting 15

SPEAKER DONOVAN:

The Resolution is adopted.

The Chamber will please stand at ease.

(Chamber at ease.)

SPEAKER DONOVAN:

Will the House please come back to order, and the Clerk please call Calendar Number 611.

THE CLERK:

On Page 26, Calendar Number 611, Senate Bill Number 964 AN ACT CONCERNING THE CONNECTICUT ANTITRUST ACT. Favorable Report of the Committee on Judiciary.

SPEAKER DONOVAN:

Representative Gerry Fox.

REP. FOX (146th):

Thank you, Mr. Speaker.

I move for the acceptance of the Joint Committee's Favorable Report and passage of the bill.

SPEAKER DONOVAN:

The question is acceptance of the Joint Committee's Favorable Report and passage of the bill.

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Will you remark, sir?

REP. FOX (146th):

Thank you, Mr. Speaker. This Bill provides a clarification to our existing antitrust act. Specifically, under current law, any information that is provided to the Office of the Attorney General in compliance with a subpoena is not accessible to the public and is exempt from disclosure under the Freedom of Information Act. That is the current law.

However, what happens is, oftentimes individuals or corporations will voluntarily provide information, and there is a question as to whether or not that information that is voluntarily provided to the Office of Attorney General pursuant to an investigation, is also protected, and what this bill does is, it makes it clear that information that is voluntarily provided to the Office of the Attorney General in the course of an investigation, that the confidentiality of that information will be protected just as if that information was provided pursuant to a subpoena.

In addition, what this bill does is it raises the civil penalties for violations of the antitrust laws and for failure to comply with an antitrust subpoena.

These limits of civil liability have not been

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changed according to the testimony since 1973, and what it does is, it increases those amounts to put us in line with other states, and I urge passage of the bill.

SPEAKER DONOVAN:

Will you remark further on the bill? Remark further on the bill? Representative O'Neill.

REP. O'NEILL (69th):

Yes, thank you, Mr. Speaker, and I would concur with the Vice-Chairman of the Judiciary Committee's explanation of the bill, and would only add that I believe that in many ways the support for the bill came from the business community, which I believe was hoping that they would be able to do a voluntary production of documentation to the Attorney General rather than be put in the position where they had to be responding to a subpoena in order to provide the Attorney General with information upon which they could conduct an investigation.

So that what we may well be looking at here is a situation where people are trying to voluntarily comply with our laws and make information available to the Attorney General and we will be making this easier.

And also, that it appears that part of the impetus for this change is a relatively recent court case where the court found our laws to be somewhat unclear so the need, therefore, for us to clarify them.

So I would urge support by the Chamber of the bill.

Thank you, Mr. Speaker.

SPEAKER DONOVAN:

Thank you, Representative.

Will you remark further on the bill? Will you remark further on the bill?

If not, staff and guests please 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, please.

SPEAKER DONOVAN:

Have all the Members voted?

Have all the Members voted?

If all the Members voted, please check the roll

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call board to make sure your vote has been properly
cast.

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

Will the Clerk please announce the tally.

THE CLERK:

Senate Bill Number 964 in concurrence with the
Senate.

Total Number Voting.	133
Necessary for Passage	67
Those voting Yea	133
Those voting Nay	0
Those absent and not voting	18

SPEAKER DONOVAN:

The bill passes.

Will the Clerk please call Calendar Number 264.

THE CLERK:

On Page 35, Calendar Number 264, House Bill
Number 5894 AN ACT ESTABLISHING A "MOVE OVER" LAW IN
CONNECTICUT. Favorable Report of the Committee on
Judiciary.

SPEAKER DONOVAN:

Representative Tony Guerrero.

REP. GUERRERA (29th):

**JOINT
STANDING
COMMITTEE
HEARINGS**

**JUDICIARY
PART 10
2971 - 3296**

2009

Statement
The Connecticut Business & Industry Association
&
Insurance Association of Connecticut

Judiciary Committee

March 6, 2009

SB 964, An Act Concerning The Connecticut Antitrust Act

The Connecticut Business and Industry Association (CBIA) and the Insurance Association of Connecticut (IAC) strongly support the concept contained within SB 964, An Act Concerning The Connecticut Antitrust Act. However, that support is tempered by our reservations concerning the scope of confidentiality protections afforded to all information provided to the Office of the Attorney general, regardless of its source.

SB 964 will ensure that any documents submitted to the Attorney General's office voluntarily are afforded, in theory, the same level of protection provided documents subpoenaed in connection with an antitrust investigation. (See C.G.S. §35-42.) Affording protections against public disclosure to voluntarily produced documents will permit companies to be able to work willingly and cooperatively with the Attorney General's office. There exists a shared goal between business and the state to encourage cooperation with state investigations, because such cooperation provides unquestionable efficiencies and savings for both parties.

Due to current events, however, the actual scope of protection provided by SB 964 is unclear. Indeed, SB 964 adopts the same standard established in subdivision (d) of Sec. 35-42, which states that documents furnished "shall be held in the custody of the Attorney General, or the Attorney General's designee, and shall not be available to the public." The meaning of the second clause, however, "shall not be available to the public" is currently under great scrutiny and was argued before the Connecticut Supreme Court in the matter of Brown & Brown, Inc. v. Richard Blumenthal, Attorney General. (288 Conn. 646, 2008). In Brown & Brown, a business intended to provide documents to the Attorney General's office in response to a state antitrust subpoena. A question arose what protection will be provided by the Attorney General's office to documents that were to be furnished that contained trade secrets and other confidential information. The Attorney General's office took the position that Sec. 35-42 places only limited restrictions on his ability to disseminate such information. Furthermore, the Attorney General's office claimed that the inclusion of the term "public" in the statute permits his office to show or share such information with anyone he chooses in the course of the investigation. The lower court actually determined because the statute uses the term "public" the legislature did not intend to prohibit the Attorney General's ability, on his own initiative, to disclose the information as he deems necessary. (Mem. Dec. at 447) Under this rationale, and echoed during the argument before the Connecticut Supreme Court, the Attorney General's office could share proprietary information with a business's competitor if the Attorney General feels it benefits his investigation. For example; if Coke provided the Attorney General's office, either under subpoena or

voluntarily pursuant to SB 964, its secret formula, the Attorney General's office would not be precluded from sharing it with Pepsi if the office deemed it would assist its investigation. We do not believe this was the intent of the legislature in adopting the provisions of Sec. 35-42. Without clarification, however, that same standard could be applied to voluntarily disclosed documents if SB 964 is enacted.

Additionally, the lower court declared that the limitations of Sec. 35-42 only apply to the physical custody of the subpoenaed documents, the Attorney General's obligation to keep them within his possession, and his obligation to return them to the persons who provided them once his need for them has expired. The lower court concluded the protections afforded by Sec. 35-42 do not extend to copies of any documents that are in the possession of his office and provided to any other party.

The scope of protection advanced by the Attorney's General and the lower court in the matter of Brown is not what the legislature intended in adopting Sec. 35-42. Sec. 35-42 was intended to provide protections to information while expediting the investigation process. To read it any other way will only slow down the investigatory process while parties seek protective orders from the court prior to complying with a subpoena. Such an interpretation will do nothing to encourage voluntary compliance with an anti-trust investigation conducted by the Attorney General's office.

Since the Supreme Court only ruled on procedure and not the underlying issue of document privacy, CBIA and IAC strongly urge that as this bill moves forward that strong legislative intent be included detailing the scope of protection

afforded all documents given to the Attorney General's office during an antitrust investigation. This will afford protections to proprietary information and encourage cooperation between the Attorney General's office and private industry.

RICHARD BLUMENTHAL
ATTORNEY GENERAL



55 Elm Street
P.O. Box 120
Hartford, CT 06141-0120

Office of The Attorney General
State of Connecticut

*TESTIMONY OF
ATTORNEY GENERAL RICHARD BLUMENTHAL
BEFORE THE JUDICIARY COMMITTEE
MARCH 6, 2009*

I appreciate the opportunity to support Senate Bill 964, An Act Concerning the Connecticut Antitrust Act.

This legislation protects the confidentiality of information voluntarily provided to my office as part of an antitrust investigation in the same manner as subpoenaed documents.

Under current law, any information provided to my office in compliance with a subpoena is not accessible to the public and exempt from disclosure under the Freedom of Information Act. In many instances, information that is voluntarily provided -- and the name of the person providing such information -- cannot be similarly protected from disclosure. Yet, often that information may be as critical -- or even more critical -- to a pending investigation as subpoenaed information. Current law also limits my office's ability to protect information obtained through informal interviews of witnesses who have evidence that may be of material assistance to my antitrust investigations -- only depositions and transcripts are expressly protected from disclosure.

This proposal will encourage more businesses to voluntarily provide the Attorney General's office with documentary and testimonial information on anti-competitive practices.

Just recently, several companies willingly agreed to submit to informal interviews as part of an ongoing antitrust investigation, provided such information would remain confidential. Under the current antitrust law, we were unable to provide such assurance -- and indeed some of the information could readily be discloseable under the Freedom of Information Act.

Senate Bill 964 also increases the civil penalties for violations of antitrust laws and for failing to comply with an antitrust subpoena to account for the erosion of inflation. The current penalties were established in 1973. Inflation since then has made the 1973 penalties completely inadequate. For example, a \$500 civil penalty is hardly a deterrent to a corporation for ignoring a subpoena. The penalties included in this measure would make Connecticut's civil penalties similar to other states such as New York, Illinois and Florida.

I urge the committee's favorable consideration of Senate Bill 964.