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On page 5, Calendar 116, Substitute for House Bill Number 5232, AN ACT CONCERNING HEARINGS BEFORE THE ADMINISTRATOR AND THE EMPLOYMENT SECURITY APPEALS DIVISION UNDER THE UNEMPLOYMENT COMPENSATION ACT.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative --

THE CLERK:

-- favorable report by the Committee on Labor.

DEPUTY SPEAKER KIRKLEY-BEY:

Excuse me, sir.

Representative Zalaski, you have the floor, sir.

REP. ZALASKI (81st):

Thank you, Madam Speaker. Great to see you up there again today.

DEPUTY SPEAKER KIRKLEY-BEY:

Thank you.

REP. ZALASKI (81st):

Madam Speaker, I move for the acceptance of the joint committees' favorable report and passage of the bill.

DEPUTY SPEAKER KIRKLEY-BEY:

The motion before us is acceptance of the joint committees' favorable report and passage of the bill.

Will you remark further, sir?

REP. ZALASKI (81st):

Yes, Madam Speaker.

Will the Clerk please read -- call LCO 4269, an amendment, and I be allowed to summarize.

DEPUTY SPEAKER KIRKLEY-BEY:

Will the Clerk please call LCO 4269?

THE CLERK:

LCO 4269, House "A" offered by Representative Zalaski.

DEPUTY SPEAKER KIRKLEY-BEY:

Thank you.

The Representative has asked leave to summarize.

Is there any objection? Is there any objection?

Seeing none, please proceed, sir.

REP. ZALASKI (81st):

Thank you, Madam Speaker.

This amendment makes the bill better. It's -- we just made some slight changes to the original bill and -- which clarifies the bill a lot clearer. Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Did you move adoption, sir? Mr. Zalaski --

REP. ZALASKI (81st):

I moved -- and I move adoption, sorry.

DEPUTY SPEAKER KIRKLEY-BEY:

Okay.

Is there any remarks on Amendment "A"?

Representative Rigby, you have the floor.

REP. RIGBY (63rd):

Thank you. Good afternoon, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Good afternoon, sir.

REP. RIGBY (63rd):

Madam Speaker, I'd like to thank the Chair of the Labor Committee -- Labor and Public Employees Committee for adopting this amendment, which essentially takes -- takes the bill and improves it, and we appreciate the cooperation with the -- the Commissioner of the Labor Department and his assistance in getting this language adopted. But, essentially, an employer or an employee would have the option of requesting an in-person hearing if they choose so. So it's not mandated that the hearing be conducted by telephone or electronic means. This just gives the ability for someone to present their evidence and their argument in person in front of the -- the arbitrator.

Thank you.

DEPUTY SPEAKER KIRKLEY-BEY:

Thank you.

Will you remark further?

Representative Candelora, you have the floor, sir.

REP. CANDELORA (86th):

Thank you, Madam Speaker.

If I may, just a quick question to the proponent of the amendment?

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Zalaski, prepare yourself.

Representative Candelora, please proceed.

REP. CANDELORA (86th):

Thank you, Madam Speaker.

As I read this, if I'm correct, the change that we're making here today is that the underlying bill was attempting to -- basically, eliminate the ability for in-person hearings and allow the -- the examiner to make that determination of when one may be proper. And what we're doing with this amendment is that when -- if an unemployment hearing is conducted that a party to that hearing, the employee or the employer, could now make a request for an in-person hearing and

-- and the examiner is not allowed to unreasonably deny that request? Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Zalaski.

REP. ZALASKI (81st):

Through you, Madam Speaker, yes, I believe that's correct.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Madam Speaker.

I want to thank the Chairman for bringing out this amendment. I think it does improve upon the bill. I think this is a situation where, as we go forward and continue to find efficiencies in government and make the process easier, while we may be saving money at the state level, I think we need to keep in mind our constituent base and the people that we're servicing, and I think that this amendment goes a long way of allowing employees and employers to still have that ability to request, in the rare circumstances they need to, an in-person hearing for unemployment cases. And so, I'm very appreciative of the amendment, and I hope you could all support it.

Thank you.

DEPUTY SPEAKER KIRKLEY-BEY:

Thank you, sir.

Will you remark further on the amendment that is before us? Will you remark further?

If not, let me try your minds.

All those in favor, please indicate by saying, aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER KIRKLEY-BEY:

Those opposed, nay.

The ayes have it. The amendment is adopted.

Will you remark further on the bill as amended?

REP. ZALASKI (81st):

Through you, Madam Speaker, yes, again, that -- that amendment clarifies that the current law requires that appeals for unemployment benefits eligibility be heard in person and this changes it so that it can be done in -- by telephone or electronic devices, through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Thank you.

Will you remark? Will you remark?

Oh -- Representative Rigby, you have the floor, sir.

REP. RIGBY (63rd):

Thank you. Madam Speaker, if I may, a series of questions for the proponent of the bill as amended.

DEPUTY SPEAKER KIRKLEY-BEY:

Representatives Zalaski, prepare yourself.

Representative Rigby, please proceed.

REP. RIGBY (63rd):

Thank you.

Madam Speaker, under current statute, a -- an employer or an employee has the ability to request an appeal -- appeals hearing to, you know, contest to finding and have a chance to, you know, meet directly with the examiner. And right now the way the law is written, the -- the hearing would be held at a place that's reasonably convenient for both parties, that's current State statute. Through you, Madam Speaker, with -- would the hearing if -- if chosen, an in-person hearing, would it still be held at a location that was reasonably convenient for both parties?

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Zalaski.

REP. ZALASKI (81st):

Through you, Madam speaker, yes, as -- as the same as current law.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Rigby.

REP. RIGBY (63rd):

Thank you. I appreciate the Representative's clarification.

Madam Speaker, the bill, as amended, refers to a telephone hearing and also refers to any electronic means. Through you, what would an -- an example of an electronic means be?

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Zalaski.

REP. ZALASKI (81st):

Through you, Madam Speaker, I think that this bill will cover any new coming -- new technologies. I would imagine it means that it can be done through computers.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Rigby, did you hear that?

REP. RIGBY (63rd):

I did, I did. And so, I just wanted to be certain that an employer or employee might -- wouldn't to be required to use Twitter, Facebook, or some other

means to -- to conduct a hearing. And that -- this just opens up future opportunity for technology as it may develop. And if I'm -- if I'm not mistaken, that's what the Representative responded, through you.

DEPUTY SPEAKER KIRKLEY-BEY:

Thank you, sir.

Representative Zalaski.

REP. ZALASKI (81st):

Yes, through you, Madam Speaker, that's -- that is my -- yeah -- that was my intent, yes.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Rigby.

REP. RIGBY (63rd):

Thank you, one last question.

Through you, Madam Speaker, could there be a situation that would arise from the bill, as amended, that would have the employee coming into a -- requesting the hearing, but have the employer still be representative via telephone? Through you.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Zalaski.

REP. ZALASKI (81st):

Through you, Madam Speaker, I don't believe so. I think that if you requested it be in person that

both of you would have to be in person. That would be my interpretation. Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Rigby.

REP. RIGBY (63rd):

Thank you. I appreciate the answer. That would certainly make the most sense.

And I'd like to urge my colleagues to support this bill, as amended. You know, it's one small convenience that we can give to the business community when, as a legislative body, it seems that we're driven to sometimes make things tougher, more confusing and more expensive. And there is no fiscal impact on our State should this bill become law. I think it might actually result in cost savings. And I know if you're a small business owner, if you have a small auto repair business with 10 employees, it's much more convenient to participate in a hearing via telephone than it is to actually drive in to a -- a location where you might waste three or four hours of your afternoon on the -- on the -- just the meeting itself with the examiner.

And I think this legislation also would make it much easier for the employee to -- to engage in a

negotiation, you know, with the Unemployment Commission. So I urge -- I urge adoption and thank you for the opportunity to speak.

DEPUTY SPEAKER KIRKLEY-BEY:

Thank you.

Representative Noujaim, you have the floor, sir.

REP. NOUJAIM (74th):

Thank you, Madam Speaker. Good afternoon to you.

DEPUTY SPEAKER KIRKLEY-BEY:

Good afternoon, sir.

REP. NOUJAIM (74th):

Madam Speaker, through you to Representative Zalaski, if I may ask, from what I understand during the conversation between Representative Zalaski and Representative Rigby, is that current law right now states that employer and employee at an unemployment hearing, both of them must appear before a referee for an unemployment hearing? Through you, Madam Speaker, am I correct in what I heard?

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Zalaski.

REP. ZALASKI (81st):

Through you, Madam Speaker, yes, line 18 shows in person, so that is correct.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Noujaim.

REP. NOUJAIM (74th):

Thank you, Madam Speaker.

And I certainly hope that somebody from the Labor Department is really listening to this conversation because apparently they have been violating the law all along. Because, Madam Speaker, I have participated in many, many unemployment hearings where somebody is terminated or resigns from his employ and they apply for unemployment, and I, as an employer, carry all my documentations and walked down to the Unemployment Office to sit down before the administrator and to discuss the hearing, only to find out that the employee who was terminated or has resigned his employment is on the phone participating by phone. And furthermore, I also found out that at one time in one incident that employee that that have broken the rules of the company that I terminated was on vacation participating on his cell phone from a vacation resort but the number that he has on his cell phone was a 203 number so, essentially, that person could say that I was in my apartment when he was sitting really on a beach.

So, I think somebody has not been following the law all along and the administrators, obviously, did not understand the law. So, what we are doing in here, Madam Speaker, is we are legalizing -- we are legalizing what should have been illegal in the first place, but it was always done accordingly. So, you have an employer who is taking time from his work, because they believe in what they are doing and they believe that a person was -- left employ on his own or her own and they do not deserve to be receiving unemployment compensation, so that employer is carrying all of the documentation, going down to the Unemployment Office and all along, for the past so many years that I participated in unemployment hearings, many, many employees participated by phone. So, I hope someone from the Labor Department is listening to this conversation, and I hope those -- those hearing officials and the administrators understand and knew that they have been breaking the law altogether.

So, now what we are doing is we're trying to make it easier for an employee to leave his employ, apply for unemployment, go on vacation while he is collecting unemployment at the expense of the

taxpayers and participate by phone, by cell phone. And that's exactly what we are trying to do in here, and I don't know how we can support this -- this language.

Madam Speaker, I cannot support this bill, and I intend to vote no, because what we are doing is we are -- we are enabling people to commit fraud. And that is not fair. It's not fair for employers. It's not fair for the taxpayers. It's not fair for the other employees who work for a company. So, people would be committing fraud more and more if this bill is implemented. I intend to vote no.

Thank you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Thank you, Representative.

Representative Hetherington, you have the floor, sir.

REP. HETHERINGTON (125th):

Thank you, Madam Speaker.

If I may to the proponent. This, through you, Madam Speaker, this bill is all entirely new language, is that -- that correct? Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Zalaski.

REP. ZALASKI (81st):

Through you, Madam Speaker, no. It's not all new language.

REP. HETHERINGTON (125th):

It's not all new --

REP. ZALASKI (81st):

-- as a matter of fact -- as a matter fact, the -- the part that -- what my good friend, Representative Noujaim, may not understand is that it also gives the employer the opportunity to use the phone. Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Hetherington.

REP. HETHERINGTON (125th):

Okay. So this -- this amends present language. I -- I'm afraid I'm missing something. I -- in lines 1 through 9 -- actually, 1 through 11, it describes that the administrator or designated person properly examine the claim, so forth and so forth, and then -- so set forth the provisions of the section for appeal. Then 11 through 16 seem to go back and talk about the administrator promptly examining each claim for a benefit for a week of unemployment, and so forth. 11 through 16 appeared to be a repeat of 1 through 9 in

that the first nine lines provide for the administrator making a determination of the benefits and advising the claimant. And then picking up on 11, it talks about the administrator or examiner shall promptly examine each claim. But I thought that was what was done under 1 through 9.

I'm -- I guess I'm missing something. I'm sorry. But maybe the proponent, if he would, could just straighten out how -- how those are to be read together. Through you, Madam -- Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Was there a question in that, Representative Hetherington?

REP. HETHERINGTON (125th):

Well, I was asking him to explain, yes, how 1 through 9 is read together with 11 through 16. My question is based upon the fact that 11 through 16 seem to describe the process which is -- which is set forth in 1 through 9 and concluded in 1 through 9. So I'm asking if he can explain that to me. Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Zalaski.

REP. ZALASKI (81st):

Through you, Madam Speaker. I -- I just want to make sure that I make it clear. This is not new language. This is language that has been -- this is the way they've been doing this for many years. Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Hetherington.

REP. HETHERINGTON (125th):

Well, I think that I had the benefit of an explanation here, too, which I didn't know and that was that each week was examined on a -- on a separate basis and that's the reason for -- for the initial determination then the on-going determination. So I -- I think that's -- that -- that explains that, which I just didn't understand.

And as far as the appeal goes, just one or two questions, is the appeal totally carried out on an oral basis; that is, there are no -- there are no submissions, no briefs, if you will, no arguments made in -- in document forms, is that right, through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Zalaski.

REP. ZALASKI (81st):

Through you, Madam Speaker, line 17 does say, "based upon evidence or testimony."

REP. HETHERINGTON (125th):

Okay.

REP. ZALASKI (81st):

So I would gather -- I would, not being a lawyer as I've told many in the House many, many times, I would say that that means you could bring, you know, you could bring your own evidence, I'm sure.

REP. HETHERINGTON (125th):

Okay.

REP. ZALASKI (81st):

Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Hetherington.

REP. HETHERINGTON (125th):

Right. Evidence but not -- but not arguments, such as you'd set forth in a brief or in a description of the legal basis for your appeal. I conclude that's right.

The -- the last question I had was, on appeal, does the examiner make a determination -- a new determination of fact, that is, if one set of facts was determined on the initial hearing, does the --

does the officer carrying out the appeal -- who's hearing the appeal, does he or she have the -- have the right to go back and determine the facts differently than they were determined in the original hearing? Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Zalaski.

REP. ZALASKI (81st):

Through you, Madam Speaker, yes, he does.

REP. HETHERINGTON (125th):

Okay.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Hetherington.

REP. HETHERINGTON (125th):

Thank you.

And I thank the representative for his answers. I see he continues to be in good form and having had some practice earlier and so I thank the -- and I thank the proponent and I thank the Speaker. Thank you.

DEPUTY SPEAKER KIRKLEY-BEY:

Thank you, Representative.

Representative Smith, you have the floor, sir.

REP. SMITH (108th):

Thank you, Madam Speaker.

A few questions to the proponent.

DEPUTY SPEAKER KIRKLEY-BEY:

Please proceed.

REP. SMITH (108th):

As I understand the changes to the existing statute, either an employee or an employer can now request this in-person hearing; is -- is that accurate?

Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Zalaski.

REP. ZALASKI (81st):

Through you, Madam Speaker, that is correct.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Smith.

REP. SMITH (108th):

And also then the administrator can request an in-person hearing, as well? Is that accurate?

Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Zalaski.

REP. ZALASKI (81st):

Through you, Madam Speaker, I believe that's correct.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Smith.

REP. SMITH (108th):

And if the administrator requests the in-person hearing, does it have to be at -- at a state facility or can it be somewhere within the district that the employer and employee may reside? Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Zalaski.

REP. ZALASKI (81st):

Through you, Madam Speaker, it has to be somewhere where they both could get to.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Smith.

REP. SMITH (108th):

And these in-person hearings, if they're held outside of the state agency, typically, would it be held a -- at a neutral location or another, say, state agency within the district, or is it totally random as to where they're -- might be held? Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Zalaski.

REP. ZALASKI (81st):

Through you, Madam Speaker, could be any state agency building, I would say.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Smith, did you hear that?

REP. SMITH (108th):

No, I did not. Could you --

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Zalaski, would you repeat your --

REP. ZALASKI (81st):

Yes, Madam Speaker.

I believe that it would be any state building that they could have a meeting in, through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Smith.

REP. SMITH (108th):

Thank you.

And then just finally, looking at the amendment, line 4 talks about the request may not be unreasonably denied. Do we have any standards or qualifications of what that might mean? Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Zalaski.

REP. ZALASKI (81st):

Through you, Madam Speaker, I don't believe so.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Smith.

REP. SMITH (108th):

I'd like to thank the Labor Chair for his answers and thank you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Thank you.

Representative Laviella, you have the floor, ma'am.

REP. LAVIELLE (143rd):

Thank you very much, Madam Speaker. Good afternoon.

DEPUTY SPEAKER KIRKLEY-BEY:

Good afternoon.

REP. LAVIELLE (143rd):

I have just a couple of questions for legislative intent for the proponent, if I may.

Through you, I was curious as to whether there had been a history of demand for conducting hearings

by phone on the part -- either of the employee or the employer? Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Zalaski.

REP. ZALASKI (81st):

Through you, Madam Speaker, yes, there have been.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Laviella.

REP. LAVIELLE (143rd):

Lavielle, thank you.

And the -- so was the only thing standing in the way of satisfying that demand a barrier in statute? Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Zalaski.

REP. ZALASKI (81st):

Thank you.

Through you, Madam Speaker, yes. That's a great question, because that goes right to the meat of what of what this bill is about. That is correct.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Laviella.

REP. LAVIELLE (143rd):

I -- I appreciate that answer. That -- that would then imply, I guess, that -- in this particular case, we have a problem that existed that the bill attempts to address and resolve simply by changing this statute. Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Zalaski.

REP. ZALASKI (81st):

Through you, Madam Speaker, that is completely correct.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Laviella.

REP. LAVIELLE (143rd):

Thank you.

And so is there -- I -- do we -- thereby suggest that not only would it have been impossible to hold these hearings by phone without the bill, but also would there have been any prior resistance on the part of the Employment Security Appeals Division, or was -- was that also something that could -- something that would have been easily accepted without the bill? Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Zalaski.

REP. ZALASKI (81st):

Through you, Madam Speaker, I believe the part of the bill that they needed to change was that too many people were coming in and asking -- too many people were going to the in-person hearings as opposed to doing it by phone, which employers are the ones that really find more satisfying to them. Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Did you hear the answer, madam?

REP. LAVIELLE (143rd):

I didn't. I'm sorry.

DEPUTY SPEAKER KIRKLEY-BEY:

Would you please repeat, Representative Zalaski?

REP. ZALASKI (81st):

Yes, I'd be happy to.

Through you, Madam Speaker, the part of the bill that they wanted it fixed is the part where many people were automatically coming in for a personal -- have to come in in person. Employers are the ones that really would rather do it by phone. Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Laviella.

REP. LAVIELLE (143rd):

And thank you.

And -- but this would present no -- no disadvantage to the employees by having them by phone in the opinion of the good representative? Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Zalaski.

REP. ZALASKI (81st):

Through you, Madam Speaker, that's what the -- the amendment fixed that they still -- they still could have it in -- in in-person hearing, through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

I'm sorry, sir.

Representative Laviella.

REP. LAVIELLE (143rd):

Thank you very much. I appreciate the answers. Thank you for the clarification.

DEPUTY SPEAKER KIRKLEY-BEY:

You're welcome.

Representative Noujaim, you have the floor, sir.

REP. NOUJAIM (74th):

Thank you, Madam Speaker.

Madam Speaker, for the second time.

I would like to apologize to the Chair because I think I made a statement which was not totally accurate previously. And then I asked a question of Representative Zalaski and with all my respect to him, I think he confused me a little bit, and he gave me somewhat of a wrong answer. I asked the question, does current law say that employer and employees must appear in person, and it seems to me the answer was yes. So I went back and I checked in the statute and the current law says that either employer or employee may elect to appear in person, by phone or in writing. So that's what current law is. And -- and I made a statement which was not totally accurate.

But my follow-up question to Representative Zalaski, through you, would this amendment on lines 92 through 94, it says that one of the parties may request a hearing in person. Through you, if one of the two parties request a hearing in person, does this mean that the other party must also appear in person? Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Zalaski.

REP. ZALASKI (81st):

Through you, Madam Speaker, no.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Noujaim.

REP. NOUJAIM (74th):

Thank you, Madam Speaker.

Which means an employee might carry all of his or her paperwork and take the point or the time to come to the administrator's office or the place that was arranged and the employer does not show up but conducted by phone, or vice versa for that matter. So what the bill should say in here is that if one party requests by -- by -- in person, then the other party should comply by that request and also appear in person. So if the employer requests a meeting or a hearing in person, then the employee should adhere to that. And if the employee requests a hearing in person, then the employer should adhere to it, as well.

I very much, very much, probably hope and request if Representative Zalaski would accept this to be as a friendly amendment to this bill, take the bill out now, make the appropriate change in it and bring it back. Then it will be a bill that will be adequate

for everybody and adequate for both employer and employees.

So I am asking, through you, Madam Speaker, if Representative Zalaski, will be accepting the idea of making this amendment and bringing this bill again tomorrow or day after tomorrow which will make it a better bill. And if that is not the case, I still think that this legislation, as we are seeing it right now, does discriminate either against an employer or against an employee, and it's not really fair, because one of them would be taking the opportunity and the time to go to the administrator's office and the other person is not.

So, through you, Madam Speaker, to Representative Zalaski, if this is acceptable, then I would appreciate if could PT the bill and bring it back again. If not, then I intend to vote no on this bill

Thank you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Thank you.

Representative Zalaski.

REP. ZALASKI (81st):

Through you, Madam Speaker, of course, they'd be notified, you know, my personal opinion is no, I

would not recognize an amendment of that type to be in the best interest of this bill, and the reason being is I think people should face their accusers if -- if either the -- if the company would like that person to show in person, then I think that that's the way it should it be. Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Noujaim.

REP. NOUJAIM (74th):

Thank you, Madam Speaker.

And that's exactly what I was asking Representative Zalaski to do and he answered it. So basically he is accepting my request but saying that he would not agree with the amendment. If the employer requested in person then the employee should comply. If the employee requested in person then the employer should -- should comply. And that's exactly what Representative Zalaski said, and that's why I would like to see it amended differently. But if Representative Zalaski does not want to amend it, then I do intend to vote no on the bill.

Thank you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Thank you.

Representative Smith of the 57th, you have the floor, sir -- Davis, I meant to say. I'm sorry, sir.

REP. DAVIS (57th):

Thank you, Madam Speaker.

Through you, to the proponent of the bill as amended, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Zalaski.

Please proceed, sir.

REP. DAVIS (57th):

Thank you, Madam Speaker.

My understanding is there's -- could be as many as 180,000 unemployment claims a month here in the state of Connecticut since -- since the recession has started. And through you, Madam Speaker, how many of these claims usually go to appeal?

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Zalaski.

REP. ZALASKI (81st):

Through you, Madam Speaker, I don't have that information. Apparently, he does, so maybe he could share that with us. I'm not sure. I don't know where he got that figure from because I don't have it. Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Davis.

REP. DAVIS (57th):

Thank you, Madam Speaker.

I don't have that information. I -- I have it from a recent article in the Hartford Business Journal. They mentioned that there's quite a bit of fraud and that the 180,000 claims go through every month. And the reason why asked the bill because I was just wondering how much of an impact it would have on the number of cases that are going be heard in person compared to the number of cases that will be heard through the telephone. But if Representative Zalaski is unaware of the number of appeals that actually take place, I'm sure he can't answer my follow-up question but I'll ask it anyway, of how many of these cases do they expect to be utilizing the electronic method of appeal process rather than in-person process? Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Zalaski.

REP. ZALASKI (81st):

Through you, Madam Speaker.

The Department had told me that they think that they would help them quite a bit with their workload. Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Davis.

REP. DAVIS (57th):

Thank you, Madam Speaker.

And I -- and I noticed in the fiscal note it doesn't mention any cost savings associated with this bill. But through you, Madam Speaker, is it anticipated from his conversations with the Department of Labor that it would, in fact, lead to cost savings for the State of Connecticut? Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Zalaski.

REP. ZALASKI (81st):

Through you, Madam Speaker, I don't think we'll know that fact until we see how many people decide not to come in person.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Davis.

REP. DAVIS (57th):

Thank you, Madam Speaker.

And through you, from his conversations with the Department of Labor, is it expected that this potentially could cut back on some of the fraud cases that we've seen through the -- the current process of in person or other processes needed to appeal unemployment benefit application? Through you, Madam Speaker.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Zalaski.

REP. ZALASKI (81st):

Through you, Madam Speaker, I can't say that I remember the Department ever speaking to me about fraud.

DEPUTY SPEAKER KIRKLEY-BEY:

Representative Davis.

REP. DAVIS (57th):

Thank you, Madam Speaker.

And I thank the kind Chairman for his -- for his answers.

It's certainly a situation where it appears as if this bill could potentially help employers. I've heard from employers that, you know, it's troublesome sometimes for them to actually attend these -- these appeal hearings because it calls them away from their

business, especially when they're a small business owner, and actually they're the, you know, sole individual or one of the only individuals to actually practice in their business and then they have to go and have a unemployment appeals hearing. And sometimes the applicant for the unemployment doesn't even show up, so it becomes quite burdensome for them. So perhaps this bill could help alleviate that pressure on those business owners.

Also a situation where, you know, the State of Connecticut faced about $168 million in unemployment benefit fraud over the last three years and, perhaps, this processes could either alleviate some of that fraud or potentially, as -- as the Representative from Waterbury mentioned earlier that it could potentially lead to greater fraud. So I do have some concerns as far as that goes but, as of right now, based on the debate I've heard, I will most likely be voting for the bill, and I look forward to further debate on the bill.

Thank you, Madam Chair.

DEPUTY SPEAKER KIRKLEY-BEY:

Thank you and I apologize for the name change.

Representative Moukawsher, you have the floor, sir. No.

Will you remark further? Will you remark further on the bill that is before us? Will you remark further on the bill as amended? Will you remark further on the bill as amended?

If not, staff and guests please come to the well. Members take your seats. The machine will be open.

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.

DEPUTY SPEAKER KIRKLEY-BEY:

Have all members voted? Have all members voted? Have all members voted?

Please check the board to see that your vote has been properly cast. The machine will be open and the Clerk -- the machine will be closed, and the Clerk will prepare the tally.

The Clerk will please announce the tally.

THE CLERK:

House Bill 5232 as amended by House "A."

Total number voting 149

Necessary for passage 75

Those voting Yea 138

Those voting Nay 11

Those absent and not voting 2

DEPUTY SPEAKER KIRKLEY-BEY:

The bill, as amended, passes.

Are there any announcements or points of personal privilege? Are there any announcements or points of personal privilege?

Representative Flexer, you have the floor, ma'am.

REP. FLEXER (44th):

Thank you, Madam Speaker. Good afternoon.

DEPUTY SPEAKER KIRKLEY-BEY:

Good afternoon.

REP. FLEXER (44th):

Madam Speaker, I rise for a point of personal privilege.

DEPUTY SPEAKER KIRKLEY-BEY:

Please proceed.

REP. FLEXER (44th):

Thank you, Madam Speaker.

Madam Speaker, we're joined this afternoon by Linda Colangelo who is the education and communications coordinator for the Northeastern Connecticut District Department of Health. Linda is a

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306 – 605

2012

SENATOR KANE: Thank you.

REP. ZALASKI: Next is Sue Garten. Thank you. Thanks for being patient with us.

SUE GARTEN: Didn't take much since I'm number two on the public list.

Good afternoon. Thank you for the opportunity to testify. I'm here in place of Lisa Levy, another attorney at Greater Hartford Legal Aid, to testify in support of House Bill 5232. This makes a few changes to the Personnel Files Act, but changes that are important to make it meaningful. Essentially, these changes give employees timely access to the contents of their own personnel file. Personnel files contain such things as performance evaluations, disciplinary and termination notices.

There are three changes that the bill would make. First, current law says an employer has to allow examination and copying of personnel file if the employee requests it within a reasonable time, but there is no definition or guidance as to what reasonable is, and if the employer delays that truly hinders the employee's ability to timely prepare for an unemployment compensation proceeding or to respond to an imminent disciplinary proceeding. The change that's made in section 1 of the bill would be to change "reasonable time and require the employer to allow copying or inspection of a personnel file of a current employee within three days of a written request and within ten days of a written request for a former employee."

The second change that the bill would make is to give meaning to an existing right. Current law allows employees to put a written response

in their personnel file if they have a dispute with a certain document that's in there. If the employer and the employee can't agree to remove the disputed document, the proposed bill would require employers to advise employees that they have this right to insert their own response in the personnel file.

And the third change that the bill would make is that there is currently no requirement that an employer give documentation of a proposed disciplinary action or termination to the employee. And we've had a number of cases where an employee is shown the document, but not given a copy. This bill does not require the creation of a disciplinary or termination document if none exists. It simply requires the employer to give the employee a copy if one does.

Be happy to answer questions.

REP. ZALASKI: Perfect timing. I might not have reminded everybody that we ask that they limit their remarks to three minutes. You did a perfect job. Thank you.

Are there any questions by the Committee? Representative Miner, okay.

REP. MINER: Thank you, Mr. Chairman.

Two questions. One is when the bill refers to regular business hours, imagining that there might be different shifts that an employee might work, is it assumed that regular business hours would be the regular business hours of a personnel office as opposed to when the employee is normally in work?

SUE GARTEN: I believe it's the -- it describes regular business hours at a location or

reasonably near the employer's place of employment. So, the hours when -- because the personnel law also allows someone to be there from the employer, to be there while the file is examined or copied. So, I think that implies that there would be access when there's somebody from a business office available.

REP. MINER: Okay. And then in the next section, the last sentence says that "the employer shall immediately notify the employee in writing of such employer's intent to terminate such employee's employment."

Should I be concerned about the word "immediately"? It may occur to someone at some point during the day, having been an employer, where you've kind of made that decision in your own mind that that's the direction you're headed. And I have found in the past that it's not unusual to kind of sleep on it.

Is this immediately at the point at which it is drafted or at the -- immediately at the point an employer might immediately intend to terminate?

SUE GARTEN: As written, it's when the final decision is made of intent to terminate, because after that point the person becomes a former employee once the termination is actually undertaken. And then the ten-day as opposed to the three-day access to the personnel file threshold would kick in.

So, the intent of this language, which could be clarified, is to allow that person the rights of a current employee.

REP. MINER: All right. So, I may -- I guess I'll

probably want to talk to somebody about what the intention of this language is versus what the reality of life might be. And I understand the explanation that you just gave me, so, I've got to think about it a different way. Thank you.

Thank you, Mr. Chairman.

REP. ESPOSITO: Is there any set standard of why the three days and the ten days were picked for time? I mean, is that a inflexible time or is that something that can be adjusted as we go through the process?

SUE GARTEN: It seems a realistic time. And for purposes of the ten days, that's a truly meaningful time because in our office we represent many people who are trying to get unemployment compensation benefits and there's a short window before hearings are scheduled because the Department of Labor schedules adjudication hearings very quickly. And it's really important that the employee be able to get quite rapid access before their first hearing with the Department of Labor in order to see what was written about the circumstances of separation.

REP. ESPOSITO: As I read through it, it said that within one year after discharge, and the records may not be readily available at the office. It might be in archive. So, I don't know if that would create a problem for the employer to get the records --

SUE GARTEN: This bill wouldn't change that. Current law says that personnel files have to be kept for one year after separation and medical records for three years after separation. This bill doesn't change that.

REP. ESPOSITO: No, I'm saying if they have to keep them. But if somebody comes back 11 months after they've been discharged and asks for their records, they may not be on premises. They may be stored.

SUE GARTEN: That's why we thought the ten days -- in our experience when they're stored off-site by human resources for a major company, that's usually when it happens. And they tend to be fairly well organized and able to produce them, actually within less than ten days. So, ten days seemed like a realistic outside limit based on our own experience.

REP. ESPOSITO: All right, thank you.

SENATOR PRAGUE: So, thank you for coming in to testify. This bill is really a matter of fairness.

SUE GARTEN: I think so. Thank you, Senator.

SENATOR PRAGUE: Okay.

SUE GARTEN: Thank you.

REP. ZALASKI: Representative Aman has a question for you.

REP. AMAN: Yes. Again, looking at the -- at the timing, in this first section we talk about three business days to get the information. And then we go down to paragraph C and the employer has no -- "must respond within twenty-four hours." And I'm wondering from your experience, is that 24 hours a practical number for an employee -- employer to be able to get out to that retention.

I would think normally they would be. But if someone was discharged on a Friday afternoon,

your 24 hours would be up before the weekend is over. Would you have a problem with making those the same three business days as you have in the paragraph 1, or is there a particular reason why you feel the 24 hours is essential?

SUE GARTEN: Again, Representative Aman, this 24 hours deals with existing documentation. So, it assumes that there already is a paper prepared. Given that, there doesn't seem to be an issue with immediately -- or within 24 hours turning it over. It would be different if it required the preparation of a disciplinary or termination notice in 24 hours, but that's not what it does.

REP. AMAN: I'm just looking at (inaudible) part of the information in a town, you're being disciplined in the Town Manager's office, but the documentation is in the Public Works garage. And the coordination getting -- normally I would think you're right. The manager would be able to slide it across the table and immediately give it to the person, and that was my only real -- as a practical matter, did it work.

And also, what was the reason that you need such a very, very quick turn over for this particular documentation?

SUE GARTEN: So that the person can then immediately go and apply for unemployment benefits. You would be surprised how often people don't understand that they need -- they don't actually need formal documentation in order to apply. Or so that they can take the documentation home over the weekend in the scenario that you're describing and think about what to do on Monday morning, if it's disciplinary rather than a termination.

But a fresh ability to deal with a situation of discipline or termination in a workplace always allows the quickest resolution, which might be best for the employer, if the employee discipline is based on incorrect facts, and for the employee who can promptly decide what they need to do to secure their economic security.

REP. AMAN: Okay, thank you very much. It's one of the things I guess I'll be looking for at it at the time lines to make it not only reasonable for the employee and employer, but something that can be actually implemented and not have another fight going on of, "You didn't respond in the appropriate amount of time." At the same time, no, I cannot see somebody saying, "We're going to wait six weeks before we're going to send you the disciplinary file." That doesn't make any sense at all either.

So, again, thank you very much.

SUE GARTEN: Thank you.

REP. ZALASKI: Thanks for coming today.

SUE GARTEN: Thank you.

REP. ZALASKI: Next is Peter Gosselin. And after that is Nadine Navis, Nevis.

HB 5235
SB 155

PETER GOSSELIN: Good afternoon, honorable Chair persons and members of the Committee. My name is Peter Gosselin. I'm an attorney in private practice, but for the last five years most of my legal practice has been devoted to representing employees in cases involving wage theft. I'm offering my remarks today in support of House Bill 5240, which would amend Connecticut General Statutes 31-72 to make an

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PART 3
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2012

CHAIRMEN: Senator Prague
Representative Zalaski

MEMBERS PRESENT:
SENATOR: Guglielmo

REPRESENTATIVES: Rigby, Aman, Esposito, Hewett, Kiner, Miner, Santiago

REP. ZALASKI: -- this public hearing to order, sort of.

As everybody knows, there's two doors. If there's an emergency, please file out; you know, take your time.

First, we're going to go to the Legislators, Constitutional Officers, Agency Heads, Chief Municipal Elected Officers.

First, we're going to start with Heidi Lane, Carl -- you know Carl -- Gary Pechie.

Thank you.

SB 258	SB 330
HB 5232	SB 183
SB 184	HB 5236
HB 5239	HB 5234
SB 328	SB 180

HEIDI LANE: I'm Heidi Lane. I'm a principle attorney at the Department of Labor. Unfortunately, the commissioner had fully planned on being here today, but he ended up being unavailable. So I am sending his apologies to everyone here.

I'm just going to briefly go through the many bills that we are testifying on today, and we have experts here to answer the questions. We have Carl Guzzardi and Gary Pechie, who can help answer any of the questions that you may have.

So I'm going to start with Senate Bill 258. This is: AN INCREASE IN THE MAXIMUM ALLOWABLE UNEMPLOYMENT COMPENSATION TRUST FUND BALANCE. And in this, basically the proposal seeks to increase the amount of money that can be retained in the Unemployment Compensation Trust Fund so it can support periods -- during recessionary periods, it can support the benefits, the payout. And as of 2014, we -- the federal government is requiring all states to have this type of system in place, so if we ever needed to, we could take advantage of any future interest-free borrowing.

The next bill I'd like to touch on is Senate Bill 330, AN ACT CONCERNING THE EMPLOYERS OF INDIVIDUALS PROVIDING HOMEMAKER SERVICES, COMPANION SERVICES, AND HOMEMAKER-HOME HEALTH AIDE SERVICES. And what this bill does, it seeks to assure that the agencies, the homemaker companion agencies and registries that are providing the home health care services shall be deemed to be the employer, for purposes of wages, overtime and minimum wage, Unemployment, and Workers' Comp Insurance payments. So that's the purpose, basically, of that bill.

5232 is AN ACT CONCERNING HEARINGS BEFORE THE ADMINISTATOR AND THE EMPLOYMENT SECURITY APPEALS DIVISION UNDER THE UNEMPLOYMENT COMPENSATION ACT. And what this does is -- I think as everyone knows, we have two different types of hearings. We have a hearing before the administrator, which is the first level for Unemployment benefits and then the hearing before the Employment Security Appeals Division.

Generally, before the administrator, the first

level, 95 percent of the hearings are already done by phone. So this will just put it in writing that we have the ability to have these in-phone hearings, but we will always permit a claimant to have an in-person hearing at the discretion of the administrator, because we understand that there may be some issues where an individual may not be able to utilize the phone.

Now, before the -- the hearings before the Appeals Division are different in the bill, where it's asking that telephone hearings and other electronic means be available to the Appeals Division. And the reason for that is we are doing some consolidation, and we'll have an office in Middletown.

Now, for the Appeals Division, hearings will be held in the majority of all of the cases; and that, frankly, is the preference in hearings -- in hearings -- hearings held for the claimants. And -- and that's really the bulk of them anyway. But this -- this bill just gives the Appeals Division the opportunity to look into doing some more telephone hearings, if necessary, or other electronic means. And they are looking to some video conferencing.

Senate Bill 183 is AN ACT ADDING MEMBERS TO THE JOINT ENFORCEMENT COMMISSION AND WORKER MISCLASSIFICATION. And this -- this Joint Enforcement Commission has been meeting periodically for the past few years, because you have passed legislation enabling this Joint Enforcement Commission to act on worker misclassification. And what the members have seen is that they would like to add the commissioners of the Department of Consumer Protection and the commissioners of the Department of Insurance, because they also have

living just above the poverty line but without sufficient resources for economic self-sufficiency. This is likely because Social Security, which is what keeps folks above the poverty line, was meant as only one leg of the three-legged stool. Without pensions, our elderly will always be just scraping by.

It's no wonder then that the public is on our side. Polling conducted by Hart Research shows 72 percent of voters believe we should be working to ensure that more workers in our country have real retirement security. And the National Institute on Retirement Security poll found more than 80 percent of Americans believe all workers should have access to a pension plan so they can be independent and self-reliant in retirement.

Clearly now is the time to act. Putting in place a commission to figure out the details on how we can expand retirement security is an important step in the process of rebuilding the middle class.

Thank you.

REP. ZALASKI: Thank you, Sal.

Are there any questions by committee members?

Hearing none, thanks, Sal.

SALVATORE LUCIANO: Thank you.

REP. ZALASKI: Next is Maura Crossin. Hope I said it right; if not, you could correct me. And after that will be a Dana [sic] Evans on deck.

MAURA P. CROSSIN: Good afternoon, distinguished committee members.

HB 5232

My name is Maura Crossin. I'm a second-year law student at Quinnipiac University School of Law. I'm also a lifelong resident of Bridgeport, Connecticut.

I'm a student in the law school's Civil Justice Clinic, which has concerns about Raised Bill No. 5232, AN ACT CONCERNING HEARINGS BEFORE THE ADMINISTRATOR AND THE EMPLOYMENT SECURITY APPEALS DIVISION UNDER THE UNEMPLOYMENT COMPENSATION ACT.

The Civil Justice Clinic regularly represents low-income clients at in-person hearings before appeals referees. We know the importance of these in-person hearings. Given the cursory review at the administrator stage of the application process and standard of review at the Board-of-Review stage, an in-person hearing is often our clients' one and only shot at Unemployment benefits they need to keep from falling deeper into poverty.

For an example of why we believe that this is important to have these in-person hearings be a preference, last week I did an employment hearing -- Unemployment hearing in front of the -- an appeals' referee. And the client was able to actually show the referee what the work that she was doing in her job, how it was affecting her rheumatoid arthritis.

We have three recommendations for the committees' consideration. First, Raised Bill No. 5232 appears to create a presumption against -- against in-person hearings before the administrator; for example, telephonic hearings would be the default. This bill does not appear to do so for an appeals' referee. We agree that there should be no presumption

against an in-person hearing before a referee and request that this be made explicit.

Second, assuming there is no presumption against in-person hearings and a claimant is free to choose one option above the other, Raised Bill No. 5232 does not explain how a claimant, especially a self-represented one, is notified of these options and how he or she indicates a preference. We request that the bill make clear that a claimant applying for a hearing before the appeals' referee must be notified of the option to proceed in person or telephonically, must select one of these two options, and must notify the Appeals' Division if he or she wishes to select the alternative option.

We have clients that come to us after they've already submitted their paperwork, and a -- we request that they be able to change, should they choose a telephone hearing -- come to us after we assess their case, decide that maybe an in-person hearing would be in their better interest, that they be able to change that.

Third, Raised Bill No. 5232 appears to give the administrator the discretion to deny an in-person hearing to a person who requests one. It is unclear whether Raised Bill No. 5232 gives the appeals' referee the same discretion to deny an in-person hearing to a person who requests one. We request that the bill make explicit that the appeals' referee must schedule an in-person hearing when the claimant selects this option.

Thank you for the opportunity to speak today.

REP. ZALASKI: Thank you, so much, for bringing -- coming in and testifying today. We really

appreciate it.

Are there any questions by the committee?

We will look at this and seriously consider some of your things you suggested.

MAURA P. CROSSIN: Thank you.

REP. ZALASKI: And I appreciate you coming in, again.

MAURA P. CROSSIN: Thank you, very much.

REP. ZALASKI: Don't go up to that castle at Sleeping Giant's, carrying that stuff up there.

MAURA P. CROSSIN: I won't. Thank you.

REP. ZALASKI: Next --

A VOICE: (Inaudible.)

REP. ZALASKI: Gillette Castle. I mean --

A VOICE: (Inaudible) no, we're not.

DAVID J. D. EVANS: Afternoon, Chairman Zalaski, and members of the -- the Labor Committee. My name is David Evans. I'm a consultant for Companions & Homemakers.

Companions & Homemakers are -- is here in support of Senate Bill 330. Companions & Homemakers is a 20-year-old, homemaker, companion service providing -- and registered with the Department of Consumer Protection. With ten offices throughout Connecticut, the company cares for over 2700 elderly consumers in their homes or places of residence and employs approximately 2300 people in

DAVID J. D. EVANS: Thank you.

REP. ZALASKI: Next is Susan Bendici. It's long.

A VOICE: (Inaudible.)

REP. ZALASKI: Well, it's only two more pages.

SB 258

SUSAN NOFI-BENDICI: Good afternoon, Representative Zalaski and members of the committee. My name is Susan Nofi-Bendici, and I'm here today to testify about H.B. 5232, the Unemployment hearings.

I'm the Deputy Director at New Haven Legal Assistance, and I represent claimants in Unemployment Compensation proceedings, and I'm speaking on behalf of all of the legal services' organizations in Connecticut.

As Attorney Lane mentioned in the initial presentation, there's two types of hearings. The one we're really concerned about are the -- the referee hearings. Those, in Unemployment proceedings are truly the only in-person hearing that a party gets. That's where they get due process. They can introduce evidence and witnesses and examine evidence against them and cross-examine witnesses.

A party that loses at the referee level can appeal to the board, but the board will not grant another hearing. They don't generally accept any additional evidence, and they -- they rarely overturn a credibility determination made by the referee.

A party losing at the board level can appeal to court, but their -- their review is even more limited, as explained in my written testimony.

They can't even touch the factual findings that are based on credibility and weight of the evidence.

So the referee hearings are really the party's only day in court. Currently they're held in-person because the language in the statute says that they should be held throughout the state in such places as are reasonably convenient for the parties. Under the regulations, they can sometimes be held on the phone; and a small percentage are, and sometimes that makes sense. But in most cases, it can be problematic.

In these Unemployment hearings, the evidence is often documentary, attendance records, written warnings, employer policies, and it's very difficult to examine the evidence being offered against you if you can't see it. And there's no mechanism in place in the regulations for party -- requiring parties to exchange evidence ahead of time, so one can be surprised and not have an opportunity to really address the RC, the evidence against them. And, also, visual evidence is used a lot in these hearings, security camera footage, people taking pictures of workplace conditions with their phones.

We met with the Department of Labor staff earlier this week. They were very sensitive to our concerns and they tried to reassure us that, as Attorney Lane said today, that the telephone should be available but in-person are still the preferred method. The problem is the bill as its written now takes out that language about the hearings being held throughout the state, and once you pull that out, there's nothing in the statute that preserves that right to an in-person hearing.

We don't object to language about telephone and other electronic means; in some cases, that's appropriate and can be convenient for the parties, but we -- we need to keep that language in there to preserve the right to in-person hearings.

And in -- and we also support S.B. 258, the trust-fund bill. It does not solve the current insolvency problem but we think it's an important first step to -- to making sure we don't find ourselves in this situation again in the future.

Thank you, very much, for allowing me to testify.

REP. ZALASKI: Thank you for coming.

Are there any questions? I do.

HB 5232

In your testimony, have you -- and you probably have; I hadn't read it all -- but so you do make some suggestions that you've already made to the -- the Department of Labor as to changes we could make in the present language that we've presented that could address some of your concerns?

SUSAN NOFI-BENDICI: Yeah. We -- we discuss all of the concerns. I -- we -- I didn't have written, proposed alternative language at that meeting but I did attach it to my testimony --

REP. ZALASKI: It's attached --

SUSAN NOFI-BENDICI: -- you have.

REP. ZALASKI: -- here; right?

SUSAN NOFI-BENDICI: Uh-huh.

CONNECTICUT AFL-CIO

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SB184 SB258
SB259 HB5232
HB5234 HB5313

Testimony of Lori Pelletier
Secretary-Treasurer Connecticut AFL-CIO
Before the Labor and Public Employees Committee

March 8, 2012

Good afternoon Senator Prague and Representative Zalaski, and members of the Labor and Public Employees committee. My name is Lori Pelletier and I serve as the Secretary -Treasurer of the Connecticut AFL-CIO, and I am here to testify on behalf of our 900 affiliated local unions who represent over 200,000 union members from all 169 cities and towns.

S.B. No. 154 (RAISED) AN ACT CONCERNING STATE EMPLOYEES AND VIOLENCE AND ABUSIVE CONDUCT IN THE WORKPLACE.

We support this legislation. Workplace violence has been on the rise. Despite all of our best efforts every 16 hours someone dies on the job and nearly 40% of this workplace deaths are attributed to a homicide situation. For women the numbers are staggering. Workplace violence accounts for nearly 80% of women's death on the job. The time is now for protecting workers because in less time than we think a worker will be impacted if we don't.

S.B. No. 180 (RAISED) AN ACT INCREASING PENALTIES ON EMPLOYERS FOR REFUNDS OF WAGES IN EXCHANGE FOR FURNISHING EMPLOYMENT.
We support this bill. Bad employers should be held accountable because they hurt all of those law abiding businesses. This is a simple change and will go a long way to making Connecticut business friendly for those who follow the rules.

S.B. No. 183 (RAISED) AN ACT ADDING MEMBERS TO THE JOINT ENFORCEMENT COMMISSION ON WORKER MISCLASSIFICATION.
We support this bill. Adding the Insurance commissioner and Consumer Protection commissioner make sense. This enforcement commission will ensure that employers aren't cheating the system. This is a good bill.

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SECRETARY-TREASURER
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John McCarthy
Ronald McLellan
Jean Morningstar
James Parent
Warren Pepicelli
Melodie Peters
Michael Petosa
Ronald Petronella
Roberta Price
Robert Proto
Peter Reilly
Carmen Reyes
David Roche
Edward Sasso
Valerie Stewart
William Shortell
Ray Soucy
James R Wallace, Jr
Paul Wallace
Kurt Westby
Anthony Zona

H.B. No. 5232 (RAISED) AN ACT CONCERNING HEARINGS BEFORE THE ADMINISTRATOR AND THE EMPLOYMENT SECURITY APPEALS DIVISION UNDER THE UNEMPLOYMENT COMPENSATION ACT.

The bill was developed by DOL to address its problems dealing with the large volume of claims. It provides two changes in the administration of the law with the hope that they will speed up decisions AND permit the department to redistribute the work load.

1. The eligibility determinations will not require the examiner to have an "in person" interview with a claimant but gives the examiner discretion as to whether it is necessary for as determination. Whether this is an improvement or not from the claimant's viewpoint is difficult to decide. Obviously, many claimants will want to be seen by a live person and make an appeal face to face. It may deprive them of that opportunity. On the other hand, the facts may be such that the ultimate decision really does not require a personal appearance for the decision maker. How much this will speed up determinations is an unknown.

2. The second change is to relocate the work load by removing the practice of having all referee hearings scheduled at the office at which the claim was filed to such place as the administrator believes is reasonably convenient, as well as confirm telephonic or electronic communications. Again, it is difficult to assess the impact of this change because the work load may very considerable from time to time. We have to rely of the good faith of the administrator to be reasonable in making such relocation.

As is not unusual, we can agree that the goals are desirable, but the path is not without potential obstacles.

H.B. No. 5234 (RAISED) AN ACT INCREASING CRIMINAL AND FINANCIAL PENALTIES TO EMPLOYERS FOR FALSE OR MISLEADING DECLARATIONS, STATEMENTS OR REPRESENTATIONS RELATING TO CERTAIN UNEMPLOYMENT COMPENSATION PAYMENTS.

This bill stiffens the penalties employers may face for falsest statements relating to payment of wages on payroll records by changing the penalty from a misdemeanor to a

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PROPOSED SUBSTITUTE LANGUAGE AND TESTIMONY RE HB 5232

AAC HEARINGS BEFORE THE ADMINISTRATOR AND THE EMPLOYMENT SECURITY APPEALS DIVISION UNDER THE UNEMPLOYMENT COMPENSATION ACT

March 8, 2012

My name is Susan Nofi-Bendici, I am the Deputy Director at New Haven Legal Assistance: I also regularly represent clients at their unemployment compensation hearings. I am speaking today on behalf of Connecticut's Legal Services Programs in opposition to HB 5232.

This bill makes changes to unemployment hearings at both the first-level administrator hearings point as well as to appeal hearings before a referee. The first-level hearings are informal and claimants usually participate by telephone, although they can choose to meet with the adjudicator in person. Legal Services would like to see claimants retain their rights to an in-person hearing at the first level - rather than in-person hearings being granted only at the administrator's discretion. However, we recognize that this change would not be a dramatic one.

More importantly, parties who lose a first-level telephone hearing can appeal and have a second chance to make their case. They can appeal and get a *de novo*, in-person hearing before an appeals referee. We object to the proposed changes to the referee hearings because they would effectively eliminate in-person hearings for claimants in much of the state.

Referee hearings are critical because they are the only evidentiary hearings held in unemployment compensation cases. These hearings are where the claimant is afforded due process: where parties can introduce evidence, call witnesses and examine the evidence against them, object to evidence offered by the other party and cross-examine opposing witnesses (Regs., Conn. State Agencies § 31-237g-29). Although claimants and employers have the right to appeal a referee's decision to the higher authority Board of Review, those appeals are on the record only: the Board does not hold hearings on the merits and rarely accepts additional evidence. The Superior Court does not retry the facts or hear evidence in unemployment cases and it cannot disturb the findings of fact when those depend on the weight of the evidence and the credibility of witnesses. Conn. Practice Book § 22-9. The referee hearing is truly the only "day in court" for parties in unemployment proceedings. These hearings are now

held throughout the state at appeals division offices in Bridgeport, Hamden, Hartford, Norwich and Waterbury.

Currently, the vast majority of referee hearings are held in-person. The Appeals Division regulations already allow referees to conduct hearings by telephone (Regs., Conn. State Agencies § 31-237g-29) and in some cases a telephone hearing is adequate, suitable and convenient for the parties. In most cases however, a telephone hearing is not adequate or appropriate. These cases often turn on credibility determinations by the referee, which the Board will generally not overturn. The evidence in unemployment appeals usually includes documents: disciplinary records, employment application, timecards, schedules, vacation requests, employer handbooks, policies, medical records and leave requests. Evidence may also include visual evidence such as photographs or video taken by an employer's security cameras or with a party's cell phone. It is physically impossible for a party to examine this evidence over the telephone. Even if the referee reads each and every document into the record, the parties cannot determine whether these documents are what they purport to be and make meaningful objections if they are not.

The appeals division regulations currently have no requirement that parties submit or exchange evidence in advance of the referee hearing. Almost all claimants in unemployment appeals are self-represented. Jobless claimants representing themselves in an unemployment appeal may not have ready access to a fax machine or the resources to photocopy and mail their evidence in advance of the hearing. The appeals division does not currently offer technology that would allow parties to access the records in their case online, or submit their own exhibits electronically. The appeals division does not offer hearings by video conference. For all of these reasons, the right to an in-person hearing is essential to due process.

HB 5232 would effectively remove the right to an in-person hearing, by deleting the requirement that referee proceedings be conducted "throughout the state in such places as are reasonably convenient for the parties". In its original legislative proposal to OPM, DOL indicated that the appeals division is planning to consolidate offices into a centralized location and that the proposed statutory revision "will remove any implication that there is a preference for in-person hearings". The right to be heard in-person at a centralized office in another part of the state is not meaningful to an unemployed worker who relies on public transportation or who cannot afford the cost of gas to travel to the hearing.

Representatives from Legal Services met with DOL staff, including representatives from the Appeals division, earlier this week. DOL staff were sensitive to our concerns and tried to assure us that their underlying intent was not to discontinue in-person hearings. However, there is nothing in the language of this bill that would preserve a party's right to an in-person hearing. Legal Services strongly feels that language preserving in-person hearings must be affirmatively placed in this proposal in order to protect our clients' due process rights.

We recognize that resources are scarce and that the agency has an obligation to run its operations as efficiently as possible. We recognize that the planned office consolidations will mean an increase in phone hearings and we recognize that the courts and administrative agencies are starting to use video conferencing technology. Therefore, we do not object to the addition of the language "by telephone or other electronic means" to the statute. However, we do object to the remaining proposed changes to Conn. Gen. Stat. § 31-237j(b) and propose the following alternative to Section 2(b) of the proposed bill language:

> (b) The referees shall have state-wide jurisdiction and venue, and referee proceedings shall be conducted throughout the state in such places as are reasonably convenient for the parties **or [(1)] by telephone or other electronic means. [or (2) in person at such locations within the state as designated by the appeals division.]**

By leaving the "reasonably convenient" locations language intact, both employers and claimants may request an in-person hearing at the closest Connecticut Labor Department location in those cases where a phone hearing is inadequate to comport with due process and the requirements of Regs., Conn. State Agencies § 31-237g-29.

Proposed Substitute Language for HB 5232 from Legal Services

Section 2(b):

(b) The referees shall have state-wide jurisdiction and venue, and referee proceedings shall be conducted throughout the state in such places as are reasonably convenient for the parties **or [(1)] by telephone or other electronic means. [or (2) in person at such locations within the state as designated by the appeals division.]**

Testimony Before the Labor Committee from
Maura Crossin, Quinnipiac University School of Law Civil Justice Clinic

Regarding HB 5232

March 8, 2012

Good afternoon distinguished Committee members. My name is Maura Crossin and I am a 2nd Year law student at Quinnipiac University School of Law and a lifelong resident of Bridgeport, Connecticut. I am also a student in the Law School's Civil Justice Clinic, which has concerns about HB 5232, An Act Concerning Hearings before the Administrator and the Employment Security Appeals Division under the Unemployment Compensation Act.

The Civil Justice Clinic regularly represents low-income clients at in-person hearings before Appeals Referees. We know the importance of these in-person hearings: given the cursory review at the Administrator stage of the application process, and standard of review at the Board of Review stage, an in-person hearing is often our clients' one and only shot at the unemployment benefits they need to keep from falling deeper into poverty.

I. No Presumption Against In-Person Hearings Before Referee

HB 5232 appears to create a presumption against in-person hearings before the Administrator (i.e., telephonic hearings are the "default"). The bill does not appear to do so for an Appeals Referee. We agree that there should be *no* presumption against an in-person hearing before a Referee, and request that this be made explicit.

II. Notice to Claimants

Assuming there is no presumption against in-person hearings and a claimant is free to choose one option over the other, HB 5232 does not explain how a claimant (especially a self-represented one) is notified of these options and how he or she indicates a preference. We request that the bill make clear that a claimant applying for a hearing before the Appeals Referee: (i) must be notified of the option to proceed in-person or telephonically; (ii) must select one of these two options; and (iii) must notify the Appeals Division if he or she wishes to select the alternative option.

III. No Discretion to Deny In-Person Hearings Before Referee

HB 5232 appears to give the Administrator the discretion to deny an in-person hearing to a person who requests one. It is unclear whether HB 5232 gives the Appeals Referee the same discretion to deny an in-person hearing to a person who requests one. We request that the bill make explicit that the Appeals Referee must schedule an in-person hearing when the claimant selects this option.

Connecticut Department of Labor

Opportunity • Guidance • Support

Glenn Marshall, Commissioner

Public Hearing Testimony
of Glenn Marshall, Commissioner Department of Labor
Labor and Public Employees Committee
March 8, 2012

Good Afternoon Senator Prague, Representative Zalaski, Senator Guglielmo, Representative Rigby and members of the Labor and Public Employees Committee. Thank you for the opportunity to provide you with testimony regarding ***House Bill #5232 AAC Concerning Hearings before the Administrator and the Employment Security Appeals Division under the Unemployment Compensation Act.***. My name is Glenn Marshall and I am the Commissioner of the Department of Labor.

I am here to speak in support of House Bill# 5232 because it will improve my Department's efficiency while providing essential services to workers and businesses. By law, the Administrator makes an eligibility determination, at a hearing, for unemployment compensation benefits. The hearings may take several forms. In person hearings at the Administrator's fact-finding level are infrequent; however, they tend to be more time consuming. The use of the telephone to conduct the hearings at this level has enabled the Department to streamline its services. The Department has consolidated some of our adjudications offices. Therefore, we are able to assign telephone hearings to those offices that have fewer cases to even out the case load. Looking to the future, the Department would like to streamline its adjudication services further. Such consolidation, streamlining and reassigning of cases would not be possible if the hearings were still held in person. House Bill# 5232 does not take away a person's right to have an in-person hearing. In person hearings will still be held at the discretion of the Administrator.

Currently, appeals from the Administrator's decisions under the Unemployment Compensation Act are heard by Referees in the Appeals Division in proceedings which are conducted throughout the State. In person hearings will still be held in the majority of appeal cases. However, House Bill# 5232 will also permit the Appeals Division to conduct hearings by telephone or other electronic means. Under this proposal, the Appeals Division will also have the flexibility to schedule hearings in other locations if parties do not have the ability to appear in person at a centralized location or by telephone. This too will improve efficiency while providing essential services to workers and businesses.

Thank you for the opportunity to testify today and I am available if you have any questions.

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grandparents to further divide parties here.

But this is not for every situation. This is for those grandparents who, in many ways, have been acting like the parents for various reasons and then get shut off. And in that respect, I think it's a very important step.

Thank you, Senator.

THE CHAIR:

Thank you.

Will you remark? Will you remark?

SENATOR PRAGUE:

Madam President, if there's no objection, I would like to put this on consent.

THE CHAIR:

Seeing no objection, so ordered, ma'am.

Mr. Clerk.

THE CLERK:

On page 12, Calendar 435, Substitute for House Bill Number 5232, AN ACT CONCERNING HEARINGS BEFORE THE ADMINISTRATOR AND THE EMPLOYMENT SECURITY APPEALS DIVISION UNDER THE EMPLOYMENT COMPENSATION ACT. It's amended by House Amendment Schedule "A" and a favorable report of the Committee on Labor and Public Employees.

THE CHAIR:

Senator Prague.

SENATOR PRAGUE:

Madam, thank you, Madam President.

I move the joint committee's favorable report and passage of the bill and concurrent with the House.

THE CHAIR:

The motion is on passage with -- in concurrence with the House.

Will you remark?

SENATOR PRAGUE:

This bill deals with making it possible for people who want to appeal an unemployment compensation claim to do it by phone. Currently, there has to be a meeting with an administrator or somebody from the Labor Department. This expands the opportunity for people to make appeals by allowing them to be done over the telephone.

And it's also easier for employers who may not have the time to go to a meeting with a direct person, but who could do it over the telephone. It's a very good bill both for employees and employers.

THE CHAIR:

Remark further? Will you remark further?

If not, Senator Prague.

SENATOR PRAGUE:

If there's no objection, I would like to put this on the consent calendar.

THE CHAIR:

Seeing no objection, so ordered.

SENATOR PRAGUE:

Thank you.

THE CHAIR:

Mr. Clerk.

Senator Looney, I'm sorry.

SENATOR LOONEY:

(HB 5283)

On page 3, Calendar 240, House Bill 3283; page 3, Calendar 299, House Bill 5437; page 5, Calendar 349, Senate Bill 374; page 6, Calendar 375, House Bill 5440; page 6, 362, House Bill 5011.

On page 7, Calendar 376, House Bill 5279; on page 7, 387, House Bill 5290; on page 8, 394, House Bill 5032; on page 8, 396, House Bill 5230.

Also on page 8, Calendar 398, House Bill 5241; on page 8, Calendar 393, House Bill 5307; on page 9, Calendar 403, House Bill 5087; on page 9, Calendar 406, House Bill 5276; on page 9, 407, House Bill 5484; on page 11, Calendar 424, House Bill 5495; on page 12, Calendar 435, House Bill 5232; on page 13, Calendar 5 -- excuse me Calendar 450, House Bill 5447; on page 14, Calendar 455, House Bill 3 -- I'm sorry -- House Bill 5353.

On page 14, Calendar 453, House Bill 5543; on page 14, Calendar 459, House Bill 5271; on page 15, Calendar 464, House Bill 5344; on page 15, Calendar 465, House Bill 5034; on page 16, Calendar 469, House Bill 5038; on page 17, Calendar 475, House Bill 5550; on page 17, Calendar 474, House Bill 5233; on page 17, Calendar 477, House Bill 5421.

Page 18, 480, House Bill 5258; on page 18, Calendar 479, House Bill 5500; page 18, Calendar 482, House Bill 5106; on page 18, Calendar 483, House Bill 5355; on page 19, Calendar 489, House Bill 5248; on page 19, Calendar 488, House Bill 5321; on page 20, Calendar 496, House Bill 5412.

On page 21, Calendar 504, House Bill 5319; page 21, Calendar 505, House Bill 5328; on page 22, Calendar 508, House Bill 5365; on page 22, Calendar 510, House Bill 5170; on page 23, Calendar 514, House Bill 5540; on page 23, Calendar 517, House Bill 5521.

Page 24, Calendar 521, House Bill 5343; page 24, Calendar 518, House Bill 5298; page 24, Calendar 523, House Bill 5504; page 29, Calendar 355, Senate Bill 418; on page 13, Calendar 444, 5037; and Calendar 507, House Bill 5467.

THE CHAIR:

Senator -- Senator Suzio.

SENATOR SUZIO:

004497-A

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Bills placed on the Consent Calendar on May 9, 2012

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Bills from Senate Agenda Number 3 from the May 9th Senate Session that were placed on the Consent Calendar

HB5304
HB 5342

Good evening, Madam President.

I just want to clarify. I thought I heard the Clerk call House Bill 5034? Is that on the consent calendar?

THE CHAIR:

Do you know what page that is, sir?

SENATOR SUZIO:

No I -- he was reading so fast, Madam, I couldn't get it.

THE CHAIR:
It's -- yes it's 53 -- I don't know.

SENATOR SUZIO:

5034.

THE CHAIR:

5034, yes sir.

SENATOR SUZIO:

I object to that being put on the consent calendar, Madam President.

THE CHAIR:

Okay, that will be removed.

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.

Yes, just seeing that -- ask to remove that item from the consent calendar.

THE CHAIR:

So ordered.

At this time we'll call a roll call vote on the consent calendar.

Mr. Clerk.

THE CLERK:

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

THE CHAIR:

Senator Coleman, we need your vote, sir.

Senator Kissel, Senator Kissel. Senator Kissel, will you vote on the consent calendar please?

All members have voted?

If all members have voted, the machine will be closed.

Mr. Clerk, will you call the amendment -- I meant the tally.

THE CLERK:

On today's consent calendar.

Total Number Voting	36
Necessary for Adoption	19
Those Voting Yea	36
Those Voting Nay	0
Those Absent and Not Voting	0

THE CHAIR:

The consent calendar has passed.

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.

Madam President, I believe the Clerk is in possession of Senate Agenda Number 6 for today's session.