

**PA12-077**

SB0353

House	7777, 7852-7854	4
Judiciary	3148, 3200, 3201	3
<u>Senate</u>	<u>2678-2684, 2953</u>	<u>8</u>
		<b>15</b>

**H - 1145**

**CONNECTICUT  
GENERAL ASSEMBLY  
HOUSE**

**PROCEEDINGS  
2012**

**VOL.55  
PART 23  
7514 - 7863**

cd/sg/lg/sd/ev  
HOUSE OF REPRESENTATIVES

599  
MAY 8, 2012

number of other bills that require amendments to be called and will be calling them afterwards.

But for right now, Calendar 219 would be the first -- first bill to add to the consent calendar. Calendar 219. The second is Calendar 455. Third is Calendar 510. Fourth is Calendar 513. And the fifth is Calendar 320.

HB 5148  
SB 62  
SB 61  
SB 353  
SB 320

DEPUTY SPEAKER ARESIMOWICZ:

Thank you very much, sir.

The motion before us is to place the following items on the consent calendar for action later in the day: Calendar numbers are 219, 455, 510, 513 and 320.

Is there objection to the motion? Is there objection to the motion?

Hearing none, those items are placed on the consent agenda for action later today.

Will the Clerk please call Calendar 90?

THE CLERK:

On page 37, Calendar 90, House Bill Number 5022, AN ACT INCREASING PENALTIES FOR VOTER INTIMIDATION AND INTERFERENCE, favorable report by the Committee on Judiciary.

DEPUTY SPEAKER ARESIMOWICZ:

Representative Morin, you have the floor, sir.

cd/sg/lg/sd/ev  
HOUSE OF REPRESENTATIVES

674  
MAY 8, 2012

On page 7, Calendar 219, House Bill Number 5148,  
AN ACT CONCERNING AN ACT CONCERNING COMMUNICATIONS TO  
VICTIMS OF THE CURRENT OPERATION OF A MOTOR VEHICLE  
THAT RESULTS IN DEATH OR SERIOUS PHYSICAL INJURY.  
DEPUTY SPEAKER ARESIMOWICZ:

The distinguished Majority Leader, Representative  
Sharkey.

REP. SHARKEY (88th):

Thank you, Mr. Speaker.

Good to see you up there.

DEPUTY SPEAKER ARESIMOWICZ:

Thank you, sir.

REP. SHARKEY (88th):

Mr. Speaker, this represents the consent calendar  
and for everyone's edification, I will be listing off  
the calendar numbers in numerical order so that  
everyone can follow. I'll try keep it -- and make  
sure that I do it in numerical order. Thank you.

These will be: Calendar Number 90, Number 155,  
Number 219, Number 223, Number 290, Number 320, Number  
338, Number 345, Number 389, Number 430, Number 444,  
Number 455, Number 467, Number 470, Number 475, Number  
481, Number 485, Number 488, Number 489, Number 494,

cd/sg/lg/sd/ev  
HOUSE OF REPRESENTATIVES

675  
MAY 8, 2012

Number 496, Number 497, Number 505, Number 510, Number 513, Number 525, and Number 531.

I move adoption, I move adoption.

And with that, Mr. Speaker, I move adoption of the consent calendar. I move the consent calendar.

(Speaker Donovan in the Chair.)

SPEAKER DONOVAN:

The question before us is on passage of the bills on today's consent calendar.

Will you remark?

If not, staff and guests please come to the well the House. Members take their 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 today's consent calendar by roll call. Members to the chamber please.

SPEAKER DONOVAN:

Have all members voted? Have all members voted?

Please check the roll call board to make sure your vote has been properly cast.

cd/sg/lg/sd/ev  
HOUSE OF REPRESENTATIVES

676  
MAY 8, 2012

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

The Clerk please announce the tally.

THE CLERK:

On today's consent calendar

Total number voting	144
Necessary for passage	73
Those voting Yea	144
Those voting Nay	0
Those absent and not voting	7

SPEAKER DONOVAN:

The consent calendar passes.

Any announcements or introductions? Any announcements or introductions?

Is there any business on the Clerk's desk?

THE CLERK:

A list of Senate bills, Mr. Speaker.

SPEAKER DONOVAN:

Representative Brendan Sharkey.

REP. SHARKEY (88th):

Thank you, Mr. Speaker.

I move that we waive -- waive the reading of the bills and have these items placed immediately on the House calendar.

**JOINT  
STANDING  
COMMITTEE  
HEARINGS**

**JUDICIARY  
PART 10  
3023 - 3355**

**2012**



**Testimony of Kia F. Murrell  
Associate Counsel, CBIA  
Before the Committee on Judiciary Committee  
Hartford, CT  
March 13, 2012**

**SB 353 AAC ATTACHMENTS TO SECURE PAYMENT OF COMPENSATION OWED  
TO THE STATE'S SECOND INJURY FUND**

Senator Coleman, Representative Fox and other members of the Committee, my name is Kia Murrell and I am Associate Counsel at the Connecticut Business and Industry Association (CBIA). CBIA represents more than 10,000 companies throughout the state of Connecticut, but most of our members are small businesses of 50 or fewer employees.

SB 353 allows the Fund to request a writ of attachment against those employers for whom the Fund was required, by order of the Workers' Compensation Commission, to step in and pay benefits to the injured worker. The Fund steps in the uninsured employers shoes because the employer failed to purchase or pay for workers' compensation insurance at the time of the injury. This bill may encourage uninsured employers to participate in and defend claims ultimately reducing the amount of money paid by the Fund.

We believe this bill will have a positive impact on Workers' Compensation costs for Connecticut employers; therefore we support SB 353 and urge the Committee to adopt it.

GEORGE C. JEPSEN  
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 GEORGE JEPSEN**  
**BEFORE THE JUDICIARY LAW COMMITTEE**  
**MARCH 14, 2012**

HB 5427  
SB 353

Good morning Senator Coleman, Representative Fox and members of the committee. I appreciate the opportunity to support several important bills being heard by the committee today. The first bill I would like to support is HB 5431, An Act Concerning the Confidentiality of Information Obtained by the Attorney General During the Course of Antitrust Investigations. I strongly support this proposal and urge the committee to report favorably upon it. This bill amends section 35-42 of the general statutes to permit my Office to use information and materials obtained in antitrust investigations when taking the oral testimony of third-party witnesses during such investigations.

This change is necessary due to the Connecticut Supreme Court's decision in *Brown & Brown v. Blumenthal*, 297 Conn. 710 (2010). In that case, the Supreme Court held that the statutory language prohibiting "public" disclosure of such information precludes my Office from sharing such information with third party witnesses during investigatory depositions, which themselves are confidential under our antitrust laws.

This interpretation puts Connecticut law at odds with existing federal antitrust laws – the very laws upon which our own antitrust laws are based and with which the General Assembly has expressly declared our laws should be consistently interpreted. More importantly, the current prohibition limits my staff's ability to conduct a full and complete investigation, which is what the General Assembly mandates my Office to do prior to instituting a proceeding.

Antitrust investigations inherently involve the examination of complex – and often secret – business relationships and require review and analysis of tens of thousands of documents, communications and other information obtained from multiple parties with knowledge of the issues involved. Understanding the true import of critical documents and communications is the crux of reaching a reasoned determination of whether a violation has occurred. To fully grasp the context, meaning and intent of key documents and communications necessitates talking to witnesses with knowledge of the substance of that information. Under the Supreme Court's interpretation of section 35-42, however, my antitrust attorneys can only ask questions about these important documents, communications and information from the party that provided it to my office, regardless of whether a third party witness was a recipient of the document, took part in the communication or is otherwise familiar with it.

In conducting antitrust investigations, my responsibility as Attorney General is to get it right when making decisions about whether to sue, settle or terminate investigations. My staff's inability to question certain witnesses with knowledge of the documents, communications and information interferes with a full vetting of the issues, raising the specter that these decisions may be made with less than optimal information; that is not in anyone's interest: the public or the subject of the investigation.

The amendment I propose to the Connecticut Antitrust Act poses no incremental burden on those parties providing such information to my office, whether compelled or obtained voluntarily. In fact, the amendment I propose is consistent with the prevailing law governing the U.S. Department of Justice's and the Federal Trade Commission's use of such information in the conduct of conspiracy and monopolization investigations.

I understand that some business groups and lawyers – the same business groups and lawyers who opposed my Office in the Supreme Court case giving rise to this proposal – oppose the bill as currently drafted. I have reached out to those groups to hear their concerns. I plan to meet with representatives from those groups at my Offices tomorrow afternoon. I hope that through these discussions, we can reach a consensus on a potential compromise that addresses their concerns without depriving my Office of the ability to conduct thorough investigations. If no such compromise is reached, however, I would ask the committee to act favorably upon this proposal. In either case, I will keep the committee apprised of any further developments, including any compromise language to consider as a substitute for the current proposal.

The second bill I would like to support today is HB 5427, *An Act Concerning Notice to the Attorney General of Data Security Breaches Involving the Disclosure of Personal Information*. This proposal amends Connecticut's data security breach statute, section 36a-701b of the general statutes, to require persons responsible for certain data security breaches to notify the Attorney General of any breach following discovery of the breach. Under existing law, failure to comply with the data security breach statute's requirement to notify affected consumers constitutes an unfair trade practice. Though the current statute requires my Office to enforce the law, there is no requirement for those responsible for data security breaches to notify my Office upon discovering a breach. The lack of any such notification requirement severely hampers my Office's ability to ensure compliance with the law and, when necessary, prosecute violations. I hope the Committee will act favorably on the bill.

The last bill I would like to testify about today is SB 353, *An Act Concerning Attachments to Secure Payment of Compensation Owed to the State's Second Injury Fund*. This proposal amends section 31-323 of the general statutes to permit the Second Injury Fund to seek writs of attachment from a workers' compensation commissioner against an uninsured employer when it is likely that a Finding and Award will enter against the Second Injury Fund because of the employer's failure to obtain workers' compensation insurance. The Second Injury Fund currently has the right to recover the amount of its award from such employers, but lacks the statutory authority to seek writs of attachment to secure judgments against those employers. Under current law, only claimants are permitted to seek writs of attachment against employers who lack insurance. Because claimants typically receive compensation in such circumstances from the Second Injury Fund, this statute is rarely, if ever, used by claimants.

Thank you once again for all of your efforts. I look forward to working with the committee on these important matters.

**S - 644**

**CONNECTICUT  
GENERAL ASSEMBLY  
SENATE**

**PROCEEDINGS  
2012**

**VOL. 55  
PART 9  
2639 - 2991**

pat/rgd/gbr  
SENATE

40  
May 3, 2012

remiss of me if I didn't thank Senator McKinney for his hard work on this bill as well. He does have Garner Institute in Newtown in his district. We've toured it together a few years ago, and he worked very hard in making this bill a better bill and I wanted to thank his leadership as well. Thank you, Mr. President.

THE CHAIR:

Thank you, Senator. Will you remark further on the bill as amended? Will you remark further on the bill as amended? Senator Coleman.

SENATOR COLEMAN:

Now, Mr. President, may the item be placed on our Consent Calendar if there's no objection.

THE CHAIR:

Seeing no objection, so ordered. Mr. Clerk.

THE CLERK:

On Page 29, that is Calendar 352. It is substitute for Senate Bill 353 AN ACT CONCERNING THE STATE'S SECOND INJURY FUND. Favorable Report of the Committees on Judiciary and Labor and Public Employees.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

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

THE CHAIR:

On acceptance and passage. Will you remark?

SENATOR COLEMAN:

Thank you kindly, Mr. President. The Second Injury

pat/rgd/gbr  
SENATE

41  
May 3, 2012

Fund exists for the purpose of compensating injured workers, workers injured in the course of their employment. And when the employer of the injured worker fails to have workers' compensation insurance in place, when a worker brings a workers' compensation claim, especially if the Second Injury Fund is involved, what happens is that the Second Injury Fund will pay the claim or any stipulated settlement from the funds of the Second Injury Fund.

And what this bill would do is allow the Second Injury Fund to request a writ of attachment from the Workers' Compensation Commissioner for the purpose of seeking reimbursement to the Second Injury Fund from the employer of the injured worker.

The purpose of the attachment would be, in order to reach property of the employer, which would be converted into the value of the claim or the stipulated settlement and would provide reimbursement to the Second Injury Fund, in essence making the Second Injury Fund whole for the payment it has made.

It is a bill that's sought by the Office of the Attorney General. I think it makes reasonable sense, and I would urge the members of the Senate to support the bill. Thank you, Mr. President.

THE CHAIR:

Thank you, Senator. Senator Kissel.

SENATOR KISSEL:

Thank you, very much. Before I even begin, I just want to inquire of Senator Coleman. You spoke on the underlying bill. In my file there's an amendment. I don't know if Senator Coleman is going to be calling this amendment.

THE CHAIR:

Please proceed, sir.

SENATOR KISSEL:

Through you, Mr. President, just a first inquiry as to

pat/rgd/gbr  
SENATE

42  
May 3, 2012

Senator Coleman. I have in my file an amendment. I don't know if you're going to call the amendment or not.

SENATOR COLEMAN:

It is not the intention, my intention to call the amendment on this bill. The amendment has been prepared for another bill and I guess there's some thought it would be more germane if adopted in connection with another bill. Through you, Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you. On the underlying bill there was some questions with some of my colleagues regarding the mechanism of the writ of attachment. Indeed, I was able to practice law back in the day when over my signature, I could create an attachment form and go to the land records and tie up someone's real estate, \$50,000, \$100,000.

Later on, that was found to be unconstitutional. Again, Senator Coleman may recall the days where if you prepared the attachment forms and just had a judge sign off on it, boom, you're off to the races. But it really wasn't an adversarial system where someone spoke on behalf of the landowner.

So with this writ of attachment, is there any kind of process where the employer has a right to participate, perhaps challenge the legality.

I guess the question is, is the writ of attachment that's being discussed in this legislation similar to the process that would be used to seek an attachment in a regular civil litigation here in Connecticut? Through you, Mr. President.

THE CHAIR:

Senator Coleman.

pat/rgd/gbr  
SENATE

43  
May 3, 2012

SENATOR COLEMAN:

Thank you, Mr. President. And again, Senator Kissel poses a very good question. In the bill, I don't see any opportunity for the employer to challenge the issuance of the writ of attachment, so I would say that at least the process that's contemplated by the bill is different than the process that the good Senator refers to whereby an attorney who's drafted a complaint and initiates a legal action can also seek an attachment of property owned by the defendant.

There would be some judicial oversight of that process in Superior Court and an opportunity for the defendant to challenge the writ of attachment.

And although the bill is silent in terms of any opportunity to challenge, I would submit that the Workers' Compensation Commissioner would not issue the writ unless and until he's satisfied that the employer is not covered by any policy of workers' compensation insurance, and that would be the primary basis that the Second Injury Fund, the injured employer and the Workers' Compensation Commissioner would rely upon as a prerequisite to the issuance of a writ of attachment. Through you, Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. And through you, Mr. President, so just so that I have this straight.

The way I envision the mechanics of this moving forward is that there's probably an elaborate procedure to try to get the employer to cooperate and provide the appropriate funding for the workers' compensation claim.

And so my guess is that early on in the system, you know, either the Worker's Compensation Commissioner or other parties would contact the employer, say please provide us with the appropriate information. If you

pat/rgd/gbr  
SENATE

44  
May 3, 2012

don't, then certain further steps will be pursued.

And so my guess is that the employer will have numerous opportunities to either provide the coverage or make an explanation as to, if there was a glitch in the process or something else like that, so that by the time we got to this, part of the proceeding the employer had been afforded ample opportunity to participate and therefore their due process rights would be protected. Would that sort of be a fair recapitulation of what I just heard from Senator Coleman? Through you, Mr. President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Thank you, Mr. President, and through you to Senator Kissel, I do think that is a fair capitulation. I would only add that within the process that takes place before the Workers' Compensation Commissioner, if the notion that the employer is without workers' compensation coverage for his employees, there would certainly be ample opportunity for the employer to refute that, and if the employer was successful in refuting the assertion that he's not providing or she's not providing coverage for the workers, then certainly under those circumstances the writ of attachment would not issue. Through you, Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. And one last question just for my own edification as much as anything else. What kind of property is subject to a writ of attachment, because when I think of attachment, I usually think of realty. But since this is a different legal creature, you know, when you go after wages it's a garnishment.

So I'm just thinking as a practical matter, the writ

pat/rgd/gbr  
SENATE

45  
May 3, 2012

of attachment would be able to be used against what items? Through you, Mr. President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

Through you, Mr. President, most commonly when we speak of real estate, we're talking about a lien, probably a judgment lien field against real estate.

In the context of a writ of attachment, more than likely we're talking about some personal property whether it be vehicles or computers, any property which would be equivalent in value, or approximately equivalent in value to the amount of the claim against the Second Injury Fund. Through you, Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. Is that, in my old law school days that was chattels? Through you, Mr. President.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

I think he's correct again, Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. With that, I'm happy to support the underlying bill and I appreciate the good Senator for his eloquent and insightful responses to my questions.

pat/rgd/gbr  
SENATE

46  
May 3, 2012

THE CHAIR:

Thank you, Senator. Will you remark further on the bill? Will you remark further on the bill? Senator Coleman.

SENATOR COLEMAN:

Mr. President, may I request that this item also be placed on our Consent Calendar.

THE CHAIR:

Seeing and hearing no objection, so ordered. Mr. Clerk.

THE CLERK:

On Page 30, Calendar 381, Senate Bill Number 419 AN ACT CONCERNING RESPONSIBLE PARTY AGREEMENTS AND THE MAINTENANCE OF PROFESSIONAL LIABILITY INSURANCE BY NURSING HOMES, HOME HEALTHCARE AGENCIES AND HOMEMAKER HOME HEALTH AIDE AGENCIES. Favorable Report of the Committees on Judiciary and Human Services.

THE CHAIR:

Senator Coleman.

SENATOR COLEMAN:

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

THE CHAIR:

On acceptance and passage. Will you remark, sir?

SENATOR COLEMAN:

Mr. President, the Clerk should be in possession of LCO 4668. I'd ask that the Clerk please call that amendment.

THE CHAIR:

pat/rgd/gbr  
SENATE

315  
May 3, 2012

Senate Bill 383; page 27, Calendar 280, Senate  
Bill 345. And on page 29, Calendar 352, Senate  
Bill 353.

THE CHAIR:

Okay. All right.

Mr. Clerk, will you please call for a roll call vote on the consent calendar, and the machine will be open.

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:

Have all members voted?

If all members voted, the machine will be locked.

Mr. Clerk, will you call the tally.

THE CLERK:

On today's consent calendar.

Total Number voting	36
Necessary for passage	19
Those voting Yea	36
Those voting Nay	0
Those absent and not voting	0

THE CHAIR:

The consent calendar passes.

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.

First of all, of the matters referred to committee earlier, would move that those items be immediately