Legislative History for Connecticut Act

PA13-176

Act Number:	176	**Year:**	2013
Bill Number:	910		
House Pages:	6112-6130		19
Senate Pages:	1064-1093, 4261-4265		35
Labor:	1280-1283,1295-1296,1298-1300,1302-1304, 1375-1377,1381-1382,1386-1388,1389		21
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Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate and House of Representatives Proceedings

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CONNECTICUT
GENERAL ASSEMBLY
HOUSE

PROCEEDINGS
2013

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PART 18
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Absent and not voting 13

SPEAKER SHARKEY:

The bill as amended passes. Will the Clerk please call Calendar number 447.

THE CLERK:

Calendar number 447 on page 18, favorable report of the joint standing Committee on Labor and Public Employees, substitute Senate Bill 910, AN ACT CONCERNING EMPLOYEES ACCESS TO PERSONNEL FILES.

SPEAKER SHARKEY:

The distinguished Chairman of the Labor Committee, Representative Tercyak, you have the floor, Sir.

REP. TERCYAK (26th):

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

SPEAKER SHARKEY:

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

REP. TERCYAK (26th):

Thank you very much, Mr. Speaker. This bill

comes about because of our commitment to making sure that our technical and conforming changes bill was exactly technical. This will also alter -- this will explain some of our present law, possibly make things a little bit easier for one side or another. Employees already have permission to have access to their personnel files.

This sets in statute how many days they have -- the employer has to provide it. And I believe that we've been reasonable with that. Our original bill said three days, now it says we're five. We're going to have an amendment to make it seven just as people asked.

And so I hope that people will join us in voting for the bill when we're done but in the meantime I'd like to call an amendment if I might, Sir. The Clerk has LCO number 5895. If we could call it and I could be granted leave to summarize.

SPEAKER SHARKEY:

Will the Clerk please call LCO 5895 which has previously been designated House -- I'm sorry, Senate Amendment A.

THE CLERK:

Senate Amendment A, LCO 7 -- or 5895 as

introduced by Williams et al.

SPEAKER SHARKEY:

Gentleman -- Gentleman seeks leave of the Chamber to summarize. Is there objection? Is there objection? Seeing none, you may proceed with summarization, Sir.

REP. TERCYAK (26th):

Thank you very much, Mr. Speaker. As I mentioned, this bill started out saying that the employer had three days to produce the records at an employee's request. We were asked to increase that to five days so we did. And now we -- and then there was more discussion and we decided making it seven days won't hurt anybody and if it will make things easier for Connecticut's employers we're in favor of it. Through you, Mr. Speaker. I hope everybody will vote yes. And we've accepted -- I move for acceptance of the amendment.

SPEAKER SHARKEY:

I think, Sir, you stated the move of adoption.

REP. TERCYAK (26th):

Adoption would be the word I was looking for.

SPEAKER SHARKEY:

There's the word.

REP. TERCYAK (26th):

Thank you very much, Mr. Speaker.

SPEAKER SHARKEY:

There's the word.

REP. TERCYAK (26th):

That's the word I was looking for.

SPEAKER SHARKEY:

That's the magic word. Thank you, Sir. The question before the Chamber is adoption of Senate Amendment A. Will you remark? Will you remark? If not, let me try your minds. All those in favor of Senate Amendment A please signify by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER SHARKEY:

Those opposed nay. The ayes have it. The amendment is adopted. Would you care to remark further on the bill as amended?

REP. TERCYAK (26th):

Yes, Mr. Speaker. If I may I would like to remark further on the bill as amended. The Clerk has another amendment, LCO number 6551. And this is to change penalties for violating these statutes from a definite to a may and change the amounts to -- to

being just general around what --

SPEAKER SHARKEY:

Sir, if you could -- if we can just call the amendment first, then we can summarize it.

REP. TERCYAK (26th):

Thank you very much, Mr. Speaker. And don't hesitate to jump in sooner the next mistake I make.

SPEAKER SHARKEY:

Thank you, Sir. Will the Clerk please call LCO 6551 which will be designated House Amendment A.

THE CLERK:

House Amendment A, LCO 6551 introduced by Representative Tercyak et al.

SPEAKER SHARKEY:

The Gentleman seeks leave of the Chamber to summarize. Is there objection? Is there objection? Seeing none, you may proceed with summarization, Sir.

REP. TERCYAK (26th):

Thank you very much, Mr. Speaker. As I was saying before when I shouldn't have been speaking this will change the definite punishments to possible punishments making them may. And it will make it very clear that the proposed possible -- possible consequences are to be no greater than what's proposed

and there was some confusion about that now so this will make the limits clear. With that I hope that everybody will vote yes for this amendment and I move adoption is the correct word?

SPEAKER SHARKEY:

That's fine.

REP. TERCYAK (26th):

Adoption. Thank you.

SPEAKER SHARKEY:

You've got it. The question is on adoption of House Amendment A. Will you remark? Will you remark on House Amendment A? Representative Alberts of the 50th.

REP. ALBERTS (50th):

Thank you, Mr. Speaker. If I may a quick question to the proponent of the amendment.

SPEAKER SHARKEY:

Please proceed, Sir.

REP. ALBERTS (50th):

Thank you, Mr. Speaker. In looking at the penalty that may be assessed of not greater than $500 and references to former employees as well would these be penalties which will be paid for by the employer? Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Tercyak.

REP. TERCYAK (26th):

Thank you, Mr. Speaker. Yes. These -- these would be penalties for not producing the -- the employee's personnel file within the agreed upon and prescribed number of days and they would be borne by the employer who is the one who is being asked to produce the file. The employee is the one who is asking for the file.

SPEAKER SHARKEY:

Representative Alberts. Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker. Would it be possible that a supervisor might be assessed the civil penalties? Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Tercyak.

REP. TERCYAK (26th):

Thank you very much, Mr. Speaker. Through you. No, supervisors do not count as employers under the law. Thank you.

SPEAKER SHARKEY:

Representative Alberts.

REP. ALBERTS (50th):

Thank you, Mr. Speaker. I appreciate the response.

SPEAKER SHARKEY:

Thank you, Sir. Would you care to remark further on House Amendment A? Representative Betts of the 78th. No for Representative Betts. Would you care to remark further on House Amendment A? If not, let me try your minds. All those in favor of House Amendment A please signify by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER SHARKEY:

Those opposed, nay. The ayes have it. The amendment is adopted. Would you care to remark further on the bill as amended? Would you care to remark further on the bill as amended? Representative Larry Miller of the 122nd.

REP. MILLER (122nd):

Good afternoon, Mr. Speaker. I have a couple of questions to the proponent.

SPEAKER SHARKEY:

Please proceed, Sir.

REP. MILLER (122nd):

Through you, Madam -- Mr. Speaker. What happens when an employee looks at his file and finds his supervisor was responsible for him losing his job? Are we opening up this up to a possible reprisal by the employee at -- at the supervisor?

How do we protect people who are just doing their job and may have said that this individual was lacking -- lacks in doing his job and that's why he was canned. So how do we protect the supervisor from getting attacked by the employee? Through you, Madam -- Mr. Speaker.

SPEAKER SHARKEY:

Representative Tercyak.

REP. TERCYAK (26th):

Thank you very much, Mr. Speaker. Through you. Out of all the questions that Representative Miller asked I'll choose to reply to the first one which is what about -- what about supervisor and an employee and possible protection. And when he asked how this is changing it the answer is this changes the present situation not at all.

What this does is make clear the time limits for access to the files that the employees already have. This grants no greater access than the present laws.

It merely codifies the number of days and limits the penalties. Thank you very much. Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Miller.

REP. MILLER (122nd):

Through you, Mr. Speaker. I just was concerned about retaliation for anybody that may have said something derogatory about the employee. He -- maybe he's still working there and maybe he has something in his file that said he's got a warning on -- on a particular incident. So not -- I'm just concerned that there could be some problems.

God knows we -- you know we had a shooting at the lottery office a number years ago over a disgruntled. And it happens all the time throughout the country. So I'm just concerned that we've got to protect those people who may have done their job by putting a warning in the employee's file or maybe they found them stealing and they -- they canned the guy.

So I just want to make sure that nobody gets injured because the employee now has the right to look at that file and see who's -- who's in there and what's in there. Thank you, Mr. Speaker.

SPEAKER SHARKEY:

Thank you, Sir. Would you care to remark further on the bill as amended? Representative Smith of the 108th.

REP. SMITH (108th):

Good afternoon, Mr. Speaker, and thank you.

SPEAKER SHARKEY:

Good afternoon, Sir.

REP. SMITH (108th):

Just a few comments about the -- the bill as they -- as proposed and the amendments that have been adopted already. This is a -- a consequence really of an agreement worked out between both sides of the aisle in which you know -- you know some concerns were raised during the committee meeting process that the employers were perhaps required to disclose the file too quickly without adequate time to comply with that. Those concerns were addressed in the amendment, now full seven days.

There was also some concerns about the penalties that it was an automatic penalty and now it's a discretionary penalty with the Labor Commissioner that may be imposed if there's a clear failure to comply. In my -- it's my position, Mr. Speaker, that an

employee should have access to their personnel file in fact it's their file.

So when they request it they're given access to it. It just had to be within a reasonable time. There was one other concern that I had with the language of the bill as it was drafted. It does require that the employer allow the right to inspect during regular business hours at a location or at a reasonably near the former employer's former place of business which in my mind might have created a problem. We have situations where employers move out of the State of Connecticut.

So instead of requiring the employer to come back to the State just to allow the employee to inspect I proposed some language change and in that regard, Mr. Speaker. The Clerk has an amendment. It is LCO 6400. Would you please ask the Clerk to call it and I be allowed to summarize.

SPEAKER SHARKEY:

Will the Clerk please call LCO 6400 which will be designated House Amendment B.

THE CLERK:

House Amendment B, LCO 6400 as introduced by Representative Smith.

SPEAKER SHARKEY:

The Gentleman seeks leave of the Chamber to summarize. Is there objection? Is there objection? You may proceed with summarization, Sir.

REP. SMITH (108th):

Thank you, Mr. Speaker. And what this amendment does it basically allows the employer and the employee to agree upon a mutual location where the employee can inspect the personnel file. If the location cannot be agreed to then it would simply be mailed within the 10 day period that's already set forth in the statute. I think this is a friendly amendment here, Mr. Speaker, and I move the adoption.

SPEAKER SHARKEY:

Thank you, Sir. Would you care to remark further on House Amendment B? Yes, Representative Tercyak.

REP. TERCYAK (26th):

Thank you very much, Mr. Speaker. Yes, as Representative Smith mentioned this is the product of a lot of work back and forth. And while some of us think that this amendment is sort of like wearing suspenders with a belt, what the heck, we're the Labor Committee and we're working hard to bring people together. I encourage everybody to support the

amendment and the bill. Thank you very much, Mr. Speaker.

SPEAKER SHARKEY:

Thank you, Sir. Would you care to remark further on House Amendment B? If not, let me try your minds. All those in favor of House Amendment B please signify by saying aye.

REPRESENATATIVES:

Aye.

SPEAKER SHARKEY:

Those opposed, nay. The ayes have it. The amendment is adopted. Would you care to remark further on the bill as amended? Representative Betts.

REP. BETTS (78th):

Thank you very much and good morning, Mr. Speaker. Through you --

SPEAKER SHARKEY:

Good afternoon, Sir.

REP. BETTS (78th):

Through you, I'd like to ask the proponent a couple of questions please.

SPEAKER SHARKEY:

Please proceed, Sir.

REP. BETTS (78th):

To the Chairman, I'm not that familiar with this bill. Is this a widespread problem in the State of Connecticut? Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Tercyak.

REP. TERCYAK (26th):

Through you, Mr. Speaker. This was not presented to us as a widespread problem throughout the State of Connecticut. This was presented to us as a concern where some clarity of the present rules would be useful. That is why this does not expand employees' rights at all but merely clarifies the present situation. Thank you very much, Mr. Speaker.

SPEAKER SHARKEY:

Representative Betts.

REP. BETTS (78th):

Thank you very much. And is the Chairman aware -- or what other states have a similar provision or are there any other states around this country that have a similar provision as the one we have now? Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Tercyak.

REP. TERCYAK (26th):

Thank you very much, Mr. Speaker. And in answer to the Representative's first question the answer is no, the Chairman is not aware.

SPEAKER SHARKEY:

Representative Betts.

REP. BETTS (78th):

I'm sorry. I missed that last part. If the good Representative could answer it. The answer is no there -- I didn't hear the last part.

SPEAKER SHARKEY:

I believe -- I believe the answer was no, he's not -- no he's not aware of --

REP. BETTS (78th):

Thank you. Thank you very much. And is it -- is my understanding correct that State and municipal employers are exempt from this requirement? Through you, Mr. Speaker.

SPEAKER SHARKEY:

Representative Tercyak.

REP. TERCYAK (26th):

Thank you very much, Mr. Speaker. Through you, I'm first trying -- I'm hesitating on this because the vast majority of government employees are unionized and have rules in their union contracts that will --

that will decide on -- on this issue. So it was not our intention to exempt anybody. Again we are clarifying present law and that is as good as I can do on that one. Thank you very much, Mr. Speaker.

SPEAKER SHARKEY:

Representative Betts.

REP. BETTS (78th):

Thank you very much and I thank the Representative for his answers. I rise based on the answers I've heard -- I rise to support the employees' rights to be able to have access to their files but I have yet to either hear or read a case being made here where this is a serious problem. And it concerns me as to what message it sends to employers in this State.

And it seems like it's one more thing we keep just saying to them when we're in competition with other states to try and keep companies here as well as recruit companies this is just one more additional thing that in my mind just says what more can you do to give me a reason to consider not feeling welcomed or want to stay here. I'm really troubled by it.

As the Representative said, it's designed to really clarify or prevent. I could say that about a

lot of things around here. I'm not sure -- I'm not sure -- I'm just not convinced of a need or the benefit for doing this. And for that reason, Mr. Speaker, I will be opposing it. Thank you so much.

SPEAKER SHARKEY:

Thank you, Sir. Would you care to remark further on the bill as amended? Do you care to remark further on the bill as amended? If not, staff and guests to the well of the House. Members take your seats. The machine will be opened.

THE CLERK:

The House of Representatives is voting by roll. The House of Representatives is voting by roll. Will members please return to the Chamber immediately.

(Deputy Speaker Sayers in the Chair.)

DEPUTY SPEAKER SAYERS:

Have all the members voted? Have all the members voted? Please check the board to see if your vote has been properly cast. Have all the members voted? Have all the members voted? Please check the board to see if your vote has been properly cast. If all the members have voted then the machine will be locked and

the Clerk will take a tally. The Clerk will announce the -- Representative Kupchick, for what purpose do you stand, Madam?

REP. KUPCHICK (132nd):

Yes, Madam Speaker. I'd like my vote to be noted in the negative.

DEPUTY SPEAKER SAYERS:

Thank you. The Clerk will record the vote in the negative.

The Clerk -- okay. The Clerk will announce the tally.

THE CLERK:

Substitute Senate Bill 910 as amended by Senate A and House A and B.

Total Number Voting	135
Necessary for Adoption	68
Those voting aye	102
Those voting nay	33
Absent and not voting	15

DEPUTY SPEAKER SAYERS:

The bill passes. Will the Clerk please call Calendar 523.

THE CLERK:

Madam Speaker, on page 49 of today's Calendar, HB6702

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An immediate roll call vote has been ordered in the Senate. Immediate roll call vote in the Senate. All Senators, please return to the Chamber.

THE CHAIR:

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

Mr. Clerk, will you please call a tally.

THE CLERK:

Senate Bill Number 188.

Those Voting	34
Necessary for Passage	18
Voting Yea	33
Nay	1
Absent, not voting	2

THE CHAIR:

Bill passes.

Mr. Clerk.

THE CLERK:

On Calendar Page 18, Calendar Number 237, Substitute for Senate Bill Number 910, AN ACT CONCERNING EMPLOYEE ACCESS TO PERSONNEL FILES.

THE CHAIR:

Senator Osten.

SENATOR OSTEN:

Thank you, Madam President.

Madam President, I move acceptance of the joint committee's Favorable Report and passage of the bill.

THE CHAIR:

Motion is on passage. Will you remark?

SENATOR OSTEN:

Thank you, Madam President.

The Clerk is in possession of LCO Amendment Number 5895. I move the amendment and seek leave to summarize.

THE CHAIR:

Mr. Clerk.

THE CLERK:

LCO Number 5895, Senate Amendment "A."

THE CHAIR:

Senator Osten.

SENATOR OSTEN:

Thank you, Madam President.

This bill here is allowing employees access to personnel files, and in the amendment, it changes from "five" business days to "seven" business days in Line 4, and in Line 42, strikes out "statement" and inserts "documented disciplinary action, notice of termination or -- or of performance evaluation."

THE CHAIR:

Will you remark --

SENATOR OSTEN:

Move --

THE CHAIR:

-- further?

SENATOR OSTEN:

-- adoption.

THE CHAIR:

Motion is on adoption.

Will you remark further? Will you remark further?

Seeing none, all in favor of the amendment, please say Aye.

SENATORS:

Aye.

THE CHAIR:

Opposed?

Amendment is adopted.

Senator Osten.

SENATOR OSTEN:

Madam President, I move the bill to the Consent Calendar.

THE CHAIR:

Seeing an objection, I guess not.

SENATOR OSTEN:

I tried.

THE CHAIR:

But good try. Thank you, very much.

Will you remark further? Will you remark further?

Senator Welch.

SENATOR OSTEN:

I -- I move a passage of the bill --

THE CHAIR:

It --

SENATOR OSTEN:

-- as adopt --

THE CHAIR:

It has been.

SENATOR OSTEN:

The amendment.

THE CHAIR:

Senator Welch.

SENATOR OSTEN:

Okay.

THE CHAIR:

Thank you.

SENATOR WELCH:

Thank you, Madam President.

One of the -- one of my biggest struggles here is we're -- we're taking a term that is, I think, well-known and well used, not just in this area but in many areas of the law, and that is "reasonableness." It's a term that gives leeway, allows deference for various circumstances that -- that might come up, and we're replacing it with a time certain. And -- and I guess that concern me. I can think of a number of instances where an employer might not be available to comply with this law.

And, if I may, through you, Madam President, ask a question of the proponent, just --

THE CHAIR:

Please --

SENATOR WELCH:

-- to either -- either confirm my fears or assuage them.

THE CHAIR:

Please proceed, sir.

SENATOR WELCH:

Thank you, Madam President.

So under this proposed bill, I wonder how it would work if you had a small business with maybe just a handful of people, and the owner of the business is the one that does everything and maintains all the files, and he or she is on vacation for a week. And a request comes in, and the seven days go by because that person wasn't there to produce the files. Would he or she be in violation of this law as its proposed today?

Through you, Madam President.

THE CHAIR:

Senator Osten.

SENATOR OSTEN:

By the scenario that is described by the gentleman, no, because it's seven business days, so if the employee -- employer comes back from that week vacation, they would have the weekend plus two more days to comply with the law.

THE CHAIR:

Senator Welch.

SENATOR WELCH:

And -- and fair enough. So -- but -- but then would I be correct in understanding that if it was seven business days, it was a ten-day trip, it was a two-week trip, then -- then we have a scenario where there could be a violation?

Through you, Madam President.

THE CHAIR:

Senator Osten.

SENATOR OSTEN:

I'm sorry; I lost you part way through that. If you could repeat that for me, please?

SENATOR WELCH:

Sure. Let's change the one-week vacation to a two-week vacation, where you have ten business days. Would he or she then be violating or in violation of this law?

Through you.

THE CHAIR:

Senator Osten.

SENATOR OSTEN:

I -- if you're talking about a small employer of, say, five employees, is that the size business that, through you, Madam President, you will be talking about?

THE CHAIR:

Senator Welch.

SENATOR WELCH:

It could be five, it could be ten, it -- it, you know, it could be fifteen. I just -- it's small just because in those types of businesses, you tend to have one person who controls a lot of things.

Through you, Madam President.

THE CHAIR:

Senator Osten.

SENATOR OSTEN:

Sure; understand completely. I'm just trying to get the idea of the size of the business. Thank you, very much for the clarification. And I would say that should the employer not be in to accept receipt of that, then the person would not be in receipt of that notice until they come back.

THE CHAIR:

Senator Welch.

SENATOR WELCH:

Okay. Thank you, Madam President.

I appreciate the answer, and then I'll take that, that that is then the legislative intent that we're talking about here. And -- and I really appreciate that.

Notwithstanding, I could think of some other scenarios where I personally would find more comfort in using the term reasonableness to give us appropriate leeway, I think, to some business owners beyond the one that we just described. And -- and I think for those reasons and primarily those reasons, I will not be supporting this bill at this time.

Thank you, Madam President.

THE CHAIR:

Thank you.

Will you remark? Will you remark?

Senator McKinney.

SENATOR McKINNEY:

Thank you, Madam President.

Madam President, if I could, through you, a quick question to the proponent of the bill.

THE CHAIR:

Please proceed, sir.

SENATOR McKINNEY:

Thank you.

Senator Osten, recently I had a constituent ask what the rules were regarding asking a personnel file from a former employee and in talking to caucus counsel was told that the standard is upon written notice they have to reply within a reasonable amount of time. I subsequently learned that the Department of Labor has interpreted in its regs a reasonable amount of time is thirty days. And if you don't comply within thirty days, they can issue a $300 fine and an order to pursue.

And so I guess my question, Madam President, through you, is: Since the statute doesn't -- that -- that we're -- that we would be amending here to go from a reasonable amount of time to, I think it's either seven or ten days -- since the statute doesn't specifically speak to a fine, I understand the existing practice of DOL, through the regulations, that the fine is discretionary on their part. And I guess my question, through you, is: Is that, would that still be applied, even after we go from a reasonableness date to a more specific date?

Through you, Madam President.

THE CHAIR:

Senator Osten.

SENATOR OSTEN:

This -- this is silent as -- as to a fine, and that would be up to the Department of Labor, if they so chose to have this discretionary fine.

Through you, Madam President.

THE CHAIR:

Senator McKinney.

SENATOR McKINNEY:

So thank you, Madam President.

So then through, through you, in the hypothetical examples of a, you know, a small-business owner who might take a two-week vacation or the large, multi-international corporation, where it might take seven days just to get to the right human resources person, if a person seeking personnel files were to make a complaint, through you, Madam President, as you understand it, there would be discretion within the Department of Labor as to whether or not there would be a fine applied?

Through you, Madam President.

THE CHAIR:

Senator Osten.

SENATOR OSTEN:

Through you, Madam President, that is my interpretation.

THE CHAIR:

Senator McKinney.

SENATOR McKINNEY:

Thank you.

Thank you, Senator; appreciate it.

THE CHAIR:

Thank you.

Will you remark?

Senator Kissel.

SENATOR KISSEL:

Thank you, very much, Madam President.

A question, through you, and -- and this is spurred by the conversation that you just had with Senator McKinney.

If we amend the underlying statute, does that necessitate the Department of Labor to change their underlying regulations as it pertains to a fine? Because it strikes me that we have a construct, a statutory construct; it's got this reasonableness test, which has been interpreted to be thirty days. And then the Department of Labor has latitude to either probably just issue a warning or just waive it or issue a $300 fine.

If we -- and -- and this may not be specific to the Labor Committee, but maybe some of the attorneys can answer this, and to assist you -- when we change the underlying statutes, does that require a change in the underlying regulations such that those regulations would be then sent over to us, Regulations Review Committee, so that they could review it?

And -- and the, what I'm thinking is $300 may be appropriate if you boot it on a thirty-day reasonableness test; now we're bringing it much tighter, seven days. And if it's seven days, maybe $300 is -- is a bit exorbitant, given the quick turn-around time that we're demanding of these businesses. And when the Department of Labor, since we've changed it now from essentially thirty days to seven, that they should reconsider their underlying regulations and then come back to us, via the Regulations Review Committee, so that we can have final muster as to whether their proposed fines and penalties are appropriate, given the new time construct.

Through you, Madam President.

THE CHAIR:

Senator Osten.

SENATOR OSTEN:

So I found a lawyer standing behind me and asked the question, and my understanding is that statute always trumps the regulation, and the regulation, any regulation change is required to come back through this, through Regulation Reviews.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you, very much.

So, through you, I just -- I think it's important -- and through the Chair to Attorney Quinn, perhaps, when we change a statute, does that require a change in the regulation that has been promulgated under the previous statutory construction? In other words, we have a statute that trumps; the Department now promulgates regulations under that statute. We're changing the statute. Can they just sit back and still rely on their underlying regulations or are they required to reconsider those regulations and come back to us?

Through you, Madam President.

THE CHAIR:

Senator Osten.

SENATOR OSTEN:

Again, I would go back to my understanding is any time we pass a statute that requires a change in regulation, that the statute trumps those regulations. And the regulation is, according to Senator McKinney's earlier question, discretionary in nature, anyways.

That fine is not given out on a, it's not a, it's not a requirement; it's a -- it's discretionary. And any changes in those regulations has to come back through us, so this may require changes in those regulations, and any changes that would be required would have to come back through us.

THE CHAIR:

Senator -- Senator Kissel.

SENATOR KISSEL:

Thank you, very much.

So, through you, I understand if they change the regulations, it's got to come back to us. But my question is: Do they have to change the regulations? And what I'm sort of hearing is because the underlying regulation is a fine or no fine, but it's discretionary, that they might be able to just sit on that regulation and not revisit the regulation, even though we've changed the statute.

Through you, Madam President.

THE CHAIR:

Senator Osten.

SENATOR OSTEN:

One minute, Madam President.

THE CHAIR:

The Senate will stand at ease, a moment.

(Chamber at ease.)

THE CHAIR:

Senator Osten.

SENATOR OSTEN:

Yes.

THE CHAIR:

The Senate will come back to order.

SENATOR OSTEN:

Thank you, Madam President; sorry about that.

They -- this -- this statute does not require a promulgation of any regulation, so it's not going to require them to change that regulation or come back to us with a regulation, but it trumps whatever they're following in policy.

And -- and my interpretation of this is it -- and having not heard from the Department of Labor -- that there is not a fine in this right now for any, for any business.

THE CHAIR:

Senator Kissel.

The Senate will stand at ease.

(Chamber at ease.)

THE CHAIR:

The Senate will come back to order.

Senator Kissel.

SENATOR KISSEL:

Thank you, very much.

Our staff has actually researched this, through you, Madam President, and it's our understanding that the current policy by the Department of Labor is that if one is found not in compliance of providing this

information after 30 days, they pretty much as a matter of course issue $300 fines.

And so my concern is, is that if we're shortening that time frame to seven days, will they continue as a matter of course to issue $300 fines, because along the lines of what Senator Welch was concerned about, and others, we are greatly shortening the time frame, much more likely to trip up employers. I appreciate your interpretation of the notice. I'm not so sure the Department of Labor is going to look at it that way, because there's different kinds of notice; there's personal notice; there's constructive notice.

So I just, at this point, I'm sort of reduced to one question. Is it your belief that it'll be the practice of the Department of Labor, based upon past practices, that they will automatically issue $300 fines if someone is found not to have provided the information after seven days, provided this -- this bill gets passed into statute?

Through you, Madam President.

THE CHAIR:

Senator Osten.

SENATOR OSTEN:

No. It's my -- not the interpretation of this being, of this that they would issue an immediate $300 fine.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you, very much, Madam President.

And that could, that -- that is going to impact whether I vote for this or against it, and I just need to know why. Why do you think that they have automatically issued these penalties after thirty days but then when we reduce it to seven days, they're

going to exercise greater discretion in waiving fines and fees?

Through you, Madam President.

THE CHAIR:

Senator Osten.

SENATOR OSTEN:

Give me one minute, if you wouldn't mind --

THE CHAIR:

Senate --

SENATOR OSTEN:

-- Madam President.

THE CHAIR:

The Senate will stand at ease.

(Chamber at ease.)

SENATOR OSTEN:

Thank you, Madam President.

THE CHAIR:

Senator Osten.

SENATOR OSTEN:

Madam President, through you to -- to the good gentleman, it's my interpretation and my assessment that the Department of Labor does not have the authority to, through this statute, through fining a business; that is my interpretation, if they -- so if the Department of Labor would like to see us look at that sort of activity, that they would then have to come back to us.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you, very much.

I'm confused now, more than ever. I -- I don't understand if the Department of Labor under the statute previously, as it is on the books now, has been issuing fines of $300 and that -- that the statute trumps, that if we change the statute and they choose not to change their regulations, why would we believe that there would be no more fines involved?

This is the way I look at it; let -- let me just encapsulate my understanding of the law right now. (A) I'm not convinced they have discretion. I haven't seen any statutory or regulator underpinning or cite that shows that they have discretion; (B) our research has indicated that they uniformly, as a matter of course, issue $300 fines; and so, (C) if we change the thirty-day interpretation of the word reasonable to seven days, I don't see that (a) they have discretion to change their policy; (b) if they choose not to change the underlying regulation that they will then feel compelled to issue $300 fines upon a finding of failure to meet the seven-day requirement.

And to me, that's too Draconian; that's just too tough on -- on folks that have to provide this information, and it's going to be a gotcha kind of thing and it's going to be a trap. And I think that, you know, I can see changing it from thirty days to two weeks; I just can't see changing it from thirty days to seven business days. To me, people are going to get jammed up on this, and $300 here, $300 there; I don't want to see us go in that direction.

So I need some assurance, Madam Chair, through you, Madam President, that (A) what's the cite; what's the authority that shows that the Department of Labor has discretion? Can you cite us the regulation? And -- and (B) if they, if they've had a custom and a policy

of imposing this fine, why would we think that that would change if we changed the time frame?

Through you, Madam President.

THE CHAIR:

Senator Osten.

SENATOR OSTEN:

Okay. I'll -- I'll -- through you, Madam President, to the good gentleman, granted, I'm new at this, but my understanding on previous review of different statutes is that there has to be in the statute a requirement of a certain fine. This statute here before you today does not require a fine to be presented towards any business. I don't see where they have the authority in this statute, as a result of this, to -- to issue a fine. They may have a regulation, but this statute would trump whatever the past practice has been.

Through you, Madam President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you, very much.

I don't want to belabor this. I really appreciate the -- the answers of Senator Osten. I've actually had great pleasure working with you prior to you wearing the Senate position, right now, on a variety of labor issues. So I -- I don't have any more questions.

This is my belief, though, founded upon the advice of our good counsel and our research, that there are statutes that allow the Department of Labor to enforce statutes that affect that department. They have that authority. They exercise that authority in different ways. Sometimes, I guess, it would be injunctions; sometimes it would be inspections; sometimes it would

be fees and fines. I don't have any doubt that they have, that we've given them that kind of authority.

I also think that as we promulgate statutes, that to the extent they feel that they need to refine the map of their authority, they promulgate regulations. And in the course they -- of promulgating regulations, those regulations come over to us through Regulations Review and then we pass our judgment on those proposed regulations.

And once upon a time, probably over ten years ago, I sat for two years on Regs Review, whole giant process. We can send them back to the drawing board; come back with more refined regulations. There's a real inter-reaction between the Legislature and the various departments as far as, well, we think this should have a fine; we don't think this should have a fine. So my -- my feeling as to how this is going to play out in reality is this: We're going to change the statute. They're going to sit on the regulation because they have one in place.

That regulation was created under the authority of the underlying statute. There is nothing to compel them to go and revise that statute. The thought process would be it's worked in the past, it attaches to this notice requirement, to this delivery of the information. Nothing has changed. The only thing the statute does is change the time frame for compliance. They have the authority to impose compliance. They have a tradition of fining $300. I don't have any doubts that as a practical matter that's going to continue. I don't see anything here to give me an assurance that that's not going to continue, other than the -- than -- than the good Senator's interpretation, but I just don't look at it that way nor does my counsel feel that that's the way that we interpret it on -- on this side of the aisle.

So along the lines of what Senator Welch was saying, then what is reasonable? What is reasonable in the business community for big businesses and small businesses? And along the lines of what Senator McKinney said, I -- I have enough life experience now to know, if it's a small business, people go away and things get set aside. And who wants to get jammed on

a $300 fine from the Department of Labor because you just didn't happen to get this to somebody in two weeks? Likewise, in large corporations, especially if they have offices located in different cities within the State of Connecticut -- I mean, I've heard stories where different offices are served different papers.

In -- in fact, we have a representative from the Attorney General's Office. We had a bill before us in the last few years where people were serving various Attorney Generals' Office through the State of Connecticut and they weren't making their way into the Hartford office in time. And the Attorney General's Office of Connecticut was getting jammed up on getting appearances filed in a proper time frame. And we had to go and revisit that, and -- and we know that's true; that's a real thing.

Well, if that happens to our own Attorney General's Office, that happens to large, multinational corporations or even corporations with a variety of offices here in Connecticut. That is a very likely scenario, because things need to get to the legal department or the human services department or wherever in this vast corporation, and two -- and seven days, bam, that's gone. And it, and that, and the Department of Labor will not blink in issuing that $300 fine to a large corporation; bam, that's just going to just deliver in the mail. And it'll happen over and over and over again.

So I -- I appreciate where we're going with this, and to my mind, if I'm waiting for this information, I think thirty -- thirty days in this day and age is probably too long, but I think that seven days in too short. I'm -- I'm concerned about the various interpretations of the fine; $300 may not seem like a lot, but I -- I think that there's too many gray areas with this right now for me to feel comfortable in supporting the bill that's before us.

I certainly support -- I -- I have not seen so much unanimity coming out of the Labor Committee in years, and I think that's a testament to the hard work of the Co-chairs there working with Ranking Members, and I really appreciate it. But for the variety of reasons that I've set out here this evening, I'm just, I'm not

able to support the bill. And maybe down the road these issues will be clarified, but for now, I just can't.

Thank you, Madam President.

THE CHAIR:

Will you remark? Will you remark?

Senator Kane.

SENATOR KANE:

Thank you, Madam President.

And, through you, I have a couple questions to the proponent of the bill.

THE CHAIR:

Please proceed, sir.

SENATOR KANE:

Thank you.

To Senator Osten, what -- if you could give me the scenario why and/or how or when an individual would require the need to see their personnel file?

Through you.

THE CHAIR:

Senator Osten.

SENATOR OSTEN:

Thank you, Madam President.

On any case that they might need to see their personnel file, Senator Kane?

THE CHAIR:

Senator Kane, for clarification on your question, sir.

SENATOR KANE:

I'm sorry; what? Through you, Madam President, what was the answer?

THE CHAIR:

No. No. No, she would like a clarification on your --

SENATOR KANE:

Well --

THE CHAIR:

-- question, sir.

SENATOR KANE:

Okay. My question is: For what reason would an individual need to see their personnel file?

Through you.

THE CHAIR:

Senator Osten.

SENATOR OSTEN:

There could be a variety of reasons they might need to see their personnel file. But for this particular piece of legislation, what this was talking about was as a result of a documented disciplinary action or a termination or an evaluation that was negative in nature.

THE CHAIR:

Senator Kane.

SENATOR KANE:

Thank you, Madam President.

I guess the reason for my question is: Is -- is this a situation of a termination or is this a situation where a person has been disciplined a number of times? I'm trying to understand the situation that the personnel file would be required by the individual.

Through you.

THE CHAIR:

Senator Osten.

SENATOR OSTEN:

Thank you, Madam President.

This piece of legislation talks about, in particular, a termination. But if a person was disciplined to the level of needing to collect Unemployment and had to have an Unemployment hearing, this is where this leads to the ten, the ten days for a current employee or the seven days from a terminated employee -- excuse me -- the opposite, exactly the opposite way. That's what this is referring to.

So a normal person, who's in a, in a -- a place of employment might need to see their personnel file for a variety of reasons, just to see what's there, but this does not address that.

THE CHAIR:

Senator Kane.

SENATOR KANE:

Thank you, Madam President.

I -- I guess the reason I ask is -- and I don't expect you to know this off the cuff, but hopefully being the Chair of Labor, maybe you have some knowledge of it -- in a disciplinary situation or in a termination, during those instances, are -- is the employee given access to their personnel file at that time so that they would have knowledge of these instances ahead of time, let's say?

Through you.

THE CHAIR:

Senator -- Senator Osten.

SENATOR OSTEN:

Well, I don't know that Chair of Labor gives me information on that, but through life experience, no.

SENATOR KANE:

Okay.

THE CHAIR:

Senator Kane.

SENATOR KANE:

And then it, I guess my question, ultimately -- and I've -- I've taken you down a bit of a path -- but the reason I'm getting to this path is I am an employer, as -- as you may or may not know, and typically when a person leaves or is terminated, it's always been understood in, and through businesses that typically the information you would give out to a prospective employer would be their length of service, their time of service and nothing truly derogatory, if you will, because of possibility of a lawsuit or, you know, something to that effect. So that's why I'm curious why, if -- if I'm right (A) number one, that employers are only allowed to give dates and times versus what's actually, could be in the file, and then if that's the case, then why the need for what's in that personnel file if that wouldn't be given to a prospective employer to begin with.

Through you.

THE CHAIR:

Senator Osten.

SENATOR OSTEN:

Thank you, Madam President, and I thank the good gentleman for the question.

This generally would not be information that the employee, the terminated or suspended employee may need for a prospective, new employer, but it may be for action to get back to that employment that they were terminated or suspended from or to receive Unemployment benefits, where they would have to then challenge the case that the employer may have.

THE CHAIR:

Senator Kane.

SENATOR KANE:

Thank you, Madam President.

I thank the Chairman of the Labor Committee for her answers, and I appreciate that clarification.

Thank you.

THE CHAIR:

Thank you.

Will you remark?

Senator Welch.

SENATOR WELCH:

Thank you, Madam President, for the second time.

I've listened to this debate, and -- and I think there are some points that just need some clarification, based on the discussion that we've had so far.

We're talking about amending Section 31-128b or changing it, and that section, in and of itself, does not talk about a penalty. But Section 31-69a does talk about the penalties for violating the exact section that we're talking about. And, essentially, it's not discretionary; in fact, any employer shall be liable to the Labor Department for a civil penalty of

$500 for the first violation -- so it's a little bit more than the $300 number we were, we were using earlier -- and each subsequent violation would be a thousand dollars, which in my mind makes it all the more important that we stick to a standard like a reasonableness, which is flexible, which allows for the Department of Labor to have some discretion as to the whys when they don't have a discretion as to the actual award of the fine.

So I think, with this information, Madam President, I -- I will not be supporting this bill, and I would encourage the rest of the Circle to -- to reject this.

Thank you.

THE CHAIR:

Thank you.

Will you remark? Will you remark?

Senator Kelly.

SENATOR KELLY:

Thank you, Madam President.

I have a couple of questions for the purposes of legislative intent.

THE CHAIR:

Please proceed, sir.

SENATOR KELLY:

Thank you.

Through you, to the proponent.

In Lines 4 and 13, it indicates receipt of written notice. Does that written notice include electronic communication?

Through, you, Madam President.

THE CHAIR:

Senator Osten.

SENATOR OSTEN:

For legislative intent, no, it would not.

THE CHAIR:

Senator Kelly.

SENATOR KELLY:

With regards to the receipt, is the receipt -- who -- well, whom is the person that -- that -- what's the date of the receipt; is it when it's sent by the employee or is it when it's received by the employer?

Through you, Madam President.

THE CHAIR:

Senator Osten.

SENATOR OSTEN:

The intent would be when the employer receives said -- said written request.

THE CHAIR:

Senator Kelly.

SENATOR KELLY:

And with regards to the employer, who -- what person in the employer would be the proper person to receive such written notice?

Through you, Madam President.

THE CHAIR:

Senator Osten.

SENATOR OSTEN:

The person that is responsible for keeping of the personnel files.

Through you, Madam President.

THE CHAIR:

Senator Kelly.

SENATOR KELLY:

With regards to Line 22, it talks about a disciplinary action. What is a disciplinary action?

Through you, Madam President.

THE CHAIR:

Senator Osten.

SENATOR OSTEN:

Disciplinary action is an action imposed on an employee that could be suspension of time with or without pay or a termination.

THE CHAIR:

Senator Kelly.

SENATOR KELLY:

Through you, Madam President.

Is it limited to those suspension and termination?

Through you, Madam President.

THE CHAIR:

Senator Osten.

SENATOR OSTEN:

That would be the legislative intent.

THE CHAIR:

Senator Kelly.

SENATOR KELLY:

With regards to Line 40 and 41, it talks about performance evaluation. And in that regard, it talks about if the employee is not happy with whether it's a termination or where any disciplinary action. You mentioned before negative in nature, but if I had a performance evaluation that was good, but I'm the employee and thought it should be excellent, from my perspective, if I'm the employee I could view that as being negative. Would that be encompassed under the -- the purposes here of a performance evaluation?

Through you, Madam President.

THE CHAIR:

Senator Osten.

SENATOR OSTEN:

Thank you, very much, Madam President.

Through you, on this, it would be an -- an employee who was a current employee not a terminated employee on the, on the performance evaluations, and it would be ten days, ten business days. And it would be a performance evaluation that the employee disagreed with.

THE CHAIR:

Senator Kelly.

SENATOR KELLY:

Okay. So that could be from, the perspective is from the employee's viewpoint?

Through you, Madam President.

THE CHAIR:

Senator Osten.

SENATOR OSTEN:

Through you, Madam President, that is accurate.

THE CHAIR:

Senator Kelly.

SENATOR KELLY:

I would just like to say thank you to the proponent of this bill. I am very happy with her answers and I appreciate her effort.

Thank you.

THE CHAIR:

Thank you, very much.

Will you remark? Will you remark?

If not, Mr. Clerk, will you call for a roll call vote. 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 have voted, the machine will be closed.

Mr. Clerk, will you please call a tally.

THE CLERK:

Senate Bill Number 910 as amended by Senate "A."

Total Number Voting	34
Those voting Yea	22
Those voting Nay	12

Absent, not voting 2

THE CHAIR:

The bill is passed.

Senator Looney.

SENATOR LOONEY:

Thank you, Madam President.

Madam President, before moving to a vote on the Consent Calendar, want to take up another item that needs to be amended and then referred to another committee, and that is Calendar Page 25, Calendar 305, Senate Bill 1081.

THE CHAIR:

Mr. Clerk.

THE CLERK:

On Page 25, Calendar 305, Substitute for Senate Bill Number 1081, AN ACT CONCERNING RECYCLING AND JOBS, Favorable Report of the Committee on Environment, and there are amendments.

THE CHAIR:

Senator Meyer.

SENATOR MEYER:

Thank you, madam.

I move acceptance of the committee's joint and Favorable Report and move passage of the bill and the opportunity to briefly summarize.

THE CHAIR:

The motion is on adoption of the bill. Will you remark, sir?

SENATOR MEYER:

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Thank you, sir.

Mr. Clerk.

THE CLERK:

On page 37, Calendar 237, Substitute for Senate Bill Number 910, AN ACT CONCERNING EMPLOYEE ACCESS TO PERSONNEL FILES. It's been amended by Senate Schedule "A." It's a Favorable Report of the Committee on Labor and Public Employees.

THE CHAIR:

Senator Osten, good afternoon.

SENATOR OSTEN:

Good afternoon, Madam President.

Madam President, I move acceptance of the Joint Committee's Favorable Report and passage of the bill as amended by the House.

THE CHAIR:

The motion is on acceptance and passage in -- in contingent -- in conjunction with the House.

Will you remark?

SENATOR OSTEN:

Madam President, this bill has already been passed by the Senate. It was sent down to the House and was amended. And I'm recommending that we accept the amendment as it has been voted on by the House.

And what that amendment does is, in setting a -- a civil penalty for any violation in a particular case, the labor commissioner shall consider all factors which the commissioner deems relevant, including but not limited to the level of assessment necessary to ensure immediate and continued compliance, the character and degree of the violation, and any prior violation of such employer.

THE CHAIR:

Will you remark further?

Senator Markley.

SENATOR MARKLEY:

Thank you, Madam President.

I simply rise to say that this is a bill that was, I thought, not too bad to begin with, improved at the committee level, and further improved at different points down the way in terms of addressing concerns that were brought to us by representatives of business.

It -- people are entitled to see a copy of their personnel files. It was pointed out to us that sometimes that was not done in a timely way for people that were disputing dismissal and so forth. And this was an attempt to put a time limit, and a time limit that businesses could live with. I think the -- the chair of the committee has done a good job of trying to respond to concerns that were brought to her attention. I thank her for that good work. And I will support this bill.

THE CHAIR:

Will you remark further? Will you remark further?

Senator Welch.

SENATOR WELCH:

Thank you, Madam President.

If I may, just a few questions to the proponent of the bill.

THE CHAIR:

Please proceed, sir.

SENATOR WELCH:

Thank you, Madam President.

So if my memory serves me correct, this is a bill that was

put forth in this Chamber not too long ago. And some changes were made possibly as a result of some of the issues that came to light during that debate.

And if I may, through you, Madam President, inquire of Senator Osten what -- what's different about the bill today than from a week or so ago when we first debated it?

THE CHAIR:

Senator Osten.

SENATOR OSTEN:

Thank you very much, Madam President.

And through you, this -- what this did was it -- it allowed that it -- it changed so that it was not a shall. It -- it -- the Labor Department "may" impose a civil penalty. It allows them to not necessarily penalize an employer four of five hundred dollars. It's not greater than so it could be less than.

It also allowed that -- that the commissioner would -- it -- it required that the commissioner of labor -- of the Department of Labor would consider all factors, not just -- it -- it laid out some of those factors.

Through you, Madam President.

THE CHAIR:

Senator Welch.

SENATOR WELCH:

Thank you, Madam President.

I thank Senator Osten for considering those issues that arose in here, taking them to heart, and working on making a better bill.

Thank you, Madam President.

THE CHAIR:

Thank you.

Will you remark? Will you remark?

SENATOR OSTEN:

Madam President, seeing no objection, I would move --

THE CHAIR:

Senator, we will have a roll call vote on that, seeing an objection.

SENATOR OSTEN:

Oh, okay.

THE CHAIR:

Thank you.

Mr. Clerk.

SENATOR OSTEN:

I would ask for a roll call.

THE CHAIR:

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:

Mr. Clerk, could you announce the roll call vote again, please.

Thank you.

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:

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

Mr. Clerk, will you please call the tally.

THE CLERK:

Senate Bill Number 910,

Total Number Voting	33
Necessary for Adoption	17
Those Voting Yea	25
Those Voting Nay	8
Those Absent and Not Voting	3

THE CHAIR:

The bill has passed.

Senator Looney.

SENATOR LOONEY:

Thank you -- thank you, Madam President.

Madam President, if the next item that we had marked, House Bill 6416, might be passed temporarily.

And if we'd call as the next item ready for action, I'd like to mark Calendar page 29, Calendar 182, Senate Bill 1000, from the Education Committee, to be followed by Calendar page 32, Calendar 298, Senate Bill 1130, from the Commerce Committee.

Thank you, Madam President.

THE CHAIR:

Thank you.

Mr. Clerk.

JOINT
STANDING
COMMITTEE
HEARINGS

LABOR AND
PUBLIC EMPLOYEES
PART 4
1078 - 1422

2013

CHAIRMEN: Senator Osten
Representative Tercyak

VICE CHAIRMAN: Representative Santiago

MEMBERS PRESENT:
SENATORS: Markley

REPRESENTATIVES: Esposito

SENATOR OSTEN: Good afternoon, everybody.

This is the public hearing of the Labor and Public Employees Committee for Thursday, March 14, 2013, opening up at 3:30.

Just as a reminder, all the rules that are -- that govern us in the General Assembly govern us when we leave the General Assembly and, therefore, they also govern you. So the same timeframes exist as have always existed, a three-minute timeframe for testimony, and we expect that everybody will be respectful of each other.

We have three bills before us today that we're accepting testimony on and we have no public officials to speak today.

So our first person in -- do you have any comments?

Our first person to speak today is Eric Gjede from CBIA.

SB 910

ERIC GJEDE: Good afternoon -- is this on? Yeah. This is really right, front, and center here. You guys are even better-looking committee from close up.

So I'm here today to testify in opposition to Senate Bill 910. And this is the same bill that was in the committee at the beginning in the last year and I'm going to -- my comments today are going to largely echo the CBIA's position in the past on this bill.

And the reason for our opposition really centers on the timelines that are placed in the bill of three days for a current employee's written notice and a ten-days for former employees.

The problem with the timelines is they actually create problems with the rest of the existing statute and I would like to give you some examples. Especially with the three-day timeline; that -- that's where the real problem comes in. Because there is no guidance as to when or -- or method to prove the -- the -- when the notice was actually received by the employer.

In the past, the committee has tried to address that by requiring that the notice to -- that they'd like to inspect the personnel file is made by first class mail with return receipt. And that way, especially with the short deadline like three days, it allows everyone to be on notice as to when the employer received it so they know when their deadline expires and when they may potentially become liable under this -- excuse me, under the statute.

Another issue with the bill especially, again, with the three-day deadline, is it doesn't address who needs to receive the notice that the employee would like to inspect their personnel file. And this is important, especially in a larger company when an employee would like to see their file, submits a request to a supervisor who is unaware of the -- the timelines in this statute, and doesn't pass it on -- along timely

to the HR Department.

And then the company now has become liable and potentially subject to penalty under this bill, and of no fault of their own so.

Another issue is that the -- the deadlines are almost -- are -- are really impractical in a sense of -- of how an employer would be able to comply with providing these documents. A lot of businesses keep their personnel records, especially older portions of the records, in off-site facilities, and, you know, it would be next to impossible for these businesses to figure out where in that off-site facility these documents are located, get them, and bring them back to provide them for the employee's inspection.

Finally, another aspect of the bill that's problematic is the fact that disciplinary action is not defined and it's actually pretty subjective. You know, one person considers a discipline action
-- disciplinary action, it could just be a coaching suggestion to another.

I'd like to give an example. You know, let's say a supervisor emails an employee and says, you know, you need to do a better job of getting here on time. And some may consider that a disciplinary action, especially if it happens repeatedly and eventually leads to a firing.

But if the employer hasn't from day one on all these notices provided the employee with an opportunity to respond as this new language requests, then again, they become liable under the bill and that could be a problem.

We would like to -- (inaudible) would like to suggest if you are looking to define within a

reasonable time in the current statute, we would suggest 30 days may be more appropriate and we would also ask that the request to inspect documents be delivered by first class mail with return receipt just to make sure all employees know when the employer actually received the employee's request as required under the bill.

But moreover, we really think that the current law has been adequately protecting employees and it actually has been working so well that it hasn't been modified since 1980, and we think the Labor Department is doing a pretty good job in this respect, and as such, we -- we are hoping you do not move this bill forward.

I'm happy to take any questions.

SENATOR OSTEN: No questions? No questions?

Thank you very much, Eric.

ERIC GJEDE: All right.

SENATOR OSTEN: Joan Orowson from Backus Hospital is next, followed by Lisa Levy.

JOAN OROWSON: Good afternoon, Senator Osten, and Representative Tercyak; I hope I'm saying that correctly, and everyone else of the Representatives from the committee.

I'm here, I'm the Director of Patient Business Services from Backus Hospital in Norwich, Connecticut, and I would like to request --

Joan E. Orowson. Yes.

I would like to request your support in opposing the raised Bill Number 1074, which is AN ACT CONCERNING WORKERS' COMPENSATION AND LIABILITY

JOAN OROWSON: Thank you. Thanks.

SENATOR OSTEN: The next is Lisa Levy followed by Paul, it's not Chace, I'm sorry. I know I'm not saying your last name correctly. I apologize.

Go ahead, Lisa.

SB1075

LISA LEVY: Good afternoon, Senator Osten, Representative Tercyak, and members of the committee.

I'm an attorney at Greater Hartford Legal Aid. I am here to speak today in support of raised Bill 910 which seeks to amend the Connecticut Personnel Files Act.

At legal aid we represent low-income workers who are often illegally terminated or disciplined. Many apply for and depend on unemployment compensation benefits. These workers need timely access to their personnel files in order to effectively advocate for unemployment compensation and other legal rights.

RB 910 sets a time limit of three business days for employers to allow their current employees to inspect and make copies of their personnel files. Under current law, while employees have the right to inspect their files, there is no timeframe for compliance.

The bill also requires companies to allow former employees to inspect and copy their personnel records within ten business days, if the request is made within one year after they leave the job. And that last part, the one-year part, is not a change to the current statute.

Finally, the bill requires an employer who

documents a disciplinary action, including a discharge, must give a copy of that document to the employee within -- within time limits.

These measures are sorely needed so that workers are not disadvantaged in unemployment compensation and other legal rights proceedings. Workers are only given about five days' notice before their unemployment compensation hearings, so they must have quick access to their files. In our experience, many employers impose discipline or a discharge, but then refuse to allow the employees to inspect the document or to provide them with a copy.

Timely access to the file is critical so the worker can write a prompt abuttal to the alleged disciplinary violation, which under current law, becomes a part of the file and a later unemployment compensation proceeding may prove favorable or corroborative to the -- to the employee.

In discharge cases, timely access to the file is even more crucial. There is no requirement in the present law on the employer's duty to provide the file. The bill requiring that the employer must provide a copy of the file to the former employee within ten business days, can result in timely submission of the disciplinary history or lack thereof or other documents that may provide evidence of the actual reason for discharge and provide helpful to an employee in a -- in a discharge, excuse me, in a unemployment compensation proceeding.

Secondly, we submit support for Senate Bill 1075, AN ACT CONCERNING CONSTRUCTION SERVICES AND THE REPORTING OF NONWAGE PAYMENTS. This bill holds persons/entities that perform construction services accountable for reporting certain wage

I thank you for your consideration, and our proposed language and fact sheet is attached to the testimony.

SENATOR OSTEN: Thanks so much, Lisa.

Are there any questions for Lisa?

Senator Markley.

SB910

SENATOR MARKLEY: When you say that a unemployed worker is given only five days' notice before a compensation hearing, is that a hearing that they expected to have? Or in other words, is that a case of being informed that something you thought you were going to get anyways is now going to be brought to a hearing five days from the time that you're notified?

LISA LEVY: This is in regard to an unemployment compensation appeals hearing.

SENATOR MARKLEY: Uh-huh.

LISA LEVY: So the worker knows they're going to have this hearing, but does not have notice of exactly when it's going to occur. Say the worker has won at the first level and the employer appeals. Then it gets kicked up to the unemployment compensation appeals division, and there is a delay. But the worker doesn't know when the -- the hearing is going to take place exactly. But he or she will get only up to about five days' of notice.

And I can tell you from personal experience because I've been litigating these -- these matters for many years. And truly we only get about five days if we're lucky; maybe another day or so of -- of notice. It's typically less than a week.

SENATOR MARKLEY: But you do know that the -- that the hearing is coming even before the notice actually arrives.

LISA LEVY: Yes, yes. Yes, we do. Yes, we do.

SENATOR MARKLEY: So you could -- you could assume that you needed to prepare for the hearing even if you don't know what the date is going to be.

LISA LEVY: Oh, absolutely, and if the person is lucky enough to have an attorney, which many people are not in these cases, because not everyone can come into our -- within our income guidelines and not everyone can get served by us, as you know.

If the person has an attorney, the attorney is able to jump, you know, to be proactive and seek to get the file. But if the person is by himself, then it makes it very difficult because they may not know of their legal rights and they are, you know, quite frankly, in much less of a -- an effective position when they seek to get the file.

SENATOR MARKLEY: Thank you.

SENATOR OSTEN: Representative Santiago.

REP. SANTIAGO: Hello.

LISA LEVY: Good morning.

REP. SANTIAGO: So, even though you know you have a hearing coming and you can start preparing for -- without receiving a actual notice giving you the exact date, there's really nothing that says even though you start early without having that notice, that they actually have to give you that information before -- before the time of the

hearing date, even though you don't know.

So -- or is there anything that says that they have to give it to you within a certain amount of time?

LISA LEVY: So, okay. Excuse me, so under current law the -- there's no time limitation. The employer upon request of a former employee, and we're talking about former workers if we're at the point of unemployment comp, or we could be talking about suspended workers, but we'll put that to the side.

Former workers have the right to request their personnel file up to one year after they are separated, but there's absolutely no time limit --

REP. SANTIAGO: That's my question.

LISA LEVY: -- in the statute. There is no time limit. And what we've seen even at legal aid, you know, where the employer knows that somebody is represented there is -- there are many situations where an employer will delay giving the file and just not give the file. Sometimes we don't have the file at the time of the hearing, and it's difficult.

REP. SANTIAGO: You answered my question. Thank you.

LISA LEVY: Okay. You're welcome.

SENATOR OSTEN: Are there any other questions?

Representative Tercyak.

REP. TERCYAK: Thank you very much.

In your testimony you mentioned Connecticut case SB 1075

So it's a -- it's an easy fit.

SENATOR OSTEN: Yes, Representative Esposito; your turn.

REP. ESPOSITO: Thank you, Ma'am.

SENATOR OSTEN: You're welcome.

REP. ESPOSITO: Currently you said there is no time limit for the discharged employee or disciplined employee. So the three days is -- would be new to the system (inaudible)? SB 910

LISA LEVY: Yes, the three days for the current employee and the ten business -- and these are business days. Three business days for the current employee, ten business days for the discharged employee.

REP. ESPOSITO: Is -- is there some reason why, I mean, three business days seems awfully cumbersome on the employer. I mean, I'm not trying to say that's it not important for the employee to get his -- his records, but three business days still seems like a short time.

I know you made your reference earlier that sometimes they're not notified of their workers' comp hearings until a week before. I -- I was at the workers' comp commission was a lot more effective -- efficient than that and I thought they notified the parties, you know, at least a couple of weeks in advance.

LISA LEVY: This is the -- the unemployment compensation, not -- not the workers' comp.

REP. ESPOSITO: I'm sorry, unemployment comp.

LISA LEVY: That's okay. Okay.

REP. ESPOSITO: I mean, I -- I agree with the intent of the bill, but I think the three business days is a little constrained and I -- I think it's something that we might want to look at. But I understand your reasoning of it. I was just wondering why it was three for current and ten days for a previous employee.

LISA LEVY: Okay. I would -- respectively I would disagree with the perception that the three business days is cumbersome. We're talking about a current employee and in most cases, in just about every case that I can ever think of, when you have a current employee, the file is kept either -- if not on site, then very easily obtainable.

Take a -- an employment situation like a big box store, a J. C. Penney or, you know, a Walmart. The file may not be necessarily be on site, but it is very easily obtainable electronically. Nowadays, people just can scan and email the contents of the file.

And in some cases, the employee may not want to look at the entire file. He or she may just want to look at a portion of it. If there's a problem with wages, what they've received, they may just want to look at their wage records. If there's a problem with a performance evaluation, they may want to look at that only.

But I -- I think, I mean, in my personal opinion, I think it's a reasonable expectation that the current employee should be able to have access to his file within three business days.

REP. ESPOSITO: Thank you.

Thank you, Ms. Chairman.

LISA LEVY: Thank you.

SENATOR OSTEN: Thank you.

Are there any further questions?

Seeing none, thank you very much.

LISA LEVY: Thank you very much.

SENATOR OSTEN: Paul, you're next followed by David MacDonald.

Oh, how do you say your last name?

PAUL CHAUSSE: Chausse.

SENATOR OSTEN: Chausse, I'm sorry. I just couldn't remember how to say it. I apologize.

PAUL CHAUSSE: Good afternoon, cochairs and committee members.

My name is Paul Chausse. I am the revenue cycle director of Lawrence and Memorial Hospital. And for almost 20 years Lawrence and Memorial Hospital has operated under a system which we negotiate contracts with insurance companies or preferred provider organizations in all arenas, including workmen's comp. SB 1074

Basically our charges are set based upon cost with a small markup. For example, take a drug. We're marking that up over average wholesale price 15 to 30 percent. When we get in our reimbursement from Fairpay, we're seeing less than 50 cents on the dollar. Simple math, that doesn't cover costs.

WRITTEN

HONDA

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March 14, 2013

Senator Osten & Representative Tercyak
Labor and Public Employees Committee
Room 3800, Legislative Office Building
Hartford, CT 06106

Re: Opposing Senate Bill 910.

Dear co-chairs Osten & Tercyak and members of the Joint Labor and Public Employees Committee:

Thank you for the opportunity to share our concerns with you regarding SB 910. Honda prides itself as being a company society wants to exist, and strives to treat our employees fairly and with respect. While we understand the desire of the committee to improve employee access to their personal files, the three day turnaround provision in this bill is simply unworkable for Honda.

In addition to the 106 employees working at our Parts Center and Zone Office in Windsor Locks Connecticut, Honda currently employs over 26,000 people nationwide. All of our official employee personal files are located at our headquarters in Torrance, California. Additionally, these files are not always centrally located, with different departments, such as payroll, maintaining their own files. Our human relations department works diligently to process and ship requests for these files in a timely manor, however that can not always happen within the three day window required by this bill. We ask that employers continue to be given "a reasonable time" to process these requests. The current language recognizes that what is reasonable for one company may not always reasonable for another despite their best efforts.

Thank you for your time and consideration. For more information on Honda's presence in Connecticut or our value to America please visit www.hondainamerica.com.

If you have any questions, please don't hesitate to contact me.

Sincerely,

Craig Orlan

Craig Orlan
State Relations Analyst
Honda North America, Inc.

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Testimony of Eric W. Gjede
Assistant Counsel, CBIA
Before the Labor Committee
Hartford, CT
March 14, 2013

Testifying in Opposition to SB-910
An Act Concerning An Employee Access To Personnel Files

Good Afternoon Senator Osten, Representative Tercyak, and members of the Labor and Public Employees Committee. My name is Eric Gjede and I am assistant counsel at the Connecticut Business and Industry Association (CBIA) which represents more than 10,000 large and small companies throughout the state of Connecticut.

CBIA opposes SB-910 because it imposes significant administrative burdens on the business community. Furthermore, it subjects all employers to a significantly increased threat of penalties and litigation.

CBIA takes issue with several aspects of the bill as it is currently drafted:

1. Employers will be penalized if they do not provide the contents of a personnel file within a specified number of days from the receipt of a written request from an employee. However, there is no way to determine the date the employer received the request. If the request is mailed to the employer, unless a return receipt is requested, neither party knows when their deadline expires or whether the employer has even "received" the notice.
2. The bill also does not address which person at a business needs to receive the written. If the employee sends their notice to a supervisor who is unaware of the timeline in this bill, and they fail to timely pass along this notice to the appropriate person, then the business is in violation of the law and subject to penalty.
3. The three and ten day deadlines are, in most circumstances, impossible for businesses to comply with due to personnel shortage and document location. Employees providing HR functions in small companies often have many other duties to perform. Asking them to disregard other duties to comply with this short time frame means other responsibilities go unfulfilled. HR professionals in larger businesses often have off-site document storage. They also may have pieces of an employee's personnel file stored in multiple locations which makes them difficult to compile in time. For example, an employer may have performance evaluations stored with an employee's immediate supervisor, while disciplinary actions may be stored with the HR department.
4. Disciplinary action is not defined, and is therefore completely subjective. What one person deems an email containing a "coaching suggestion" may be considered a written "disciplinary action" by another. If the employer fails to provide a copy of that email upon request, or notify the employee they have a right to provide a response statement, they could be in violation of this law.

If the committee is looking to defined "within a reasonable time" in section 31-128b, then the business community would suggest 30 days is a more appropriate timeframe to comply with the requests to inspect and copy for both current and prospective employees. Additionally, we would also suggest the written requests be delivered by first class mail with return receipt to ensure all parties know when the employer actually received the employee's written request.

However, even with the suggested modifications, the business community is concerned about SB-910 because it imposes new legal liability on the shoulders of Connecticut businesses. Requiring an employer to provide a copy of any "documented notice of termination" as required in section 1, or the opportunity for an employee to "submit a written statement explaining his or her position" on a notice they are being terminated, as required in section 2, is only inviting future litigation for employers that are unaware of these obligations.

The protections provided to employees under the current law have been working so well that they have not needed to be modified since 1980. The labor department has been able to enforce the current law and go after the "bad" employers refusing to provide personnel documents when requested.

We urge the committee to oppose SB-910 because the employees are already sufficiently protected under the current statute.

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Greater Hartford Legal Aid

March 14, 2013

Testimony In support of House Bill RB 910 - An Act Concerning An Employee's Access To Personnel Files and SB 1075 – An Act Concerning Construction Services and the Reporting of Nonwage Payments

Good afternoon, Senator Osten, Representative Tercyak, and members of the committee. My name is Lisa Levy and I am an Attorney at Greater Hartford Legal Aid, Inc. I am here to speak in support of R.B. 910, which seeks to amend the Connecticut Personnel Files Act, Conn. Gen. Stat. § 31-128a et seq. At Greater Hartford Legal Aid, Inc. we represent low wage workers who are often illegally terminated or disciplined. Many of these workers apply for and depend on unemployment compensation benefits and some file discrimination, or other complaints of unlawful conduct by their employers. These workers need timely access to their personnel files in order to effectively advocate for unemployment compensation, respond to groundless discipline or a discharge notice, or withstand a challenge by employers to discrimination complaints.

R.B. 910 sets a time limit of three business days for employers to allow their current employees, after request, to inspect and make a copy of their personnel files. Under current law, while employees have the right to inspect their personnel files, there is no time frame for compliance. The bill also requires companies to allow former employees to inspect and copy their personnel records within ten business days, if the request is made within one year after they leave the job. Finally, the bill requires any employer who documents a disciplinary action, including termination, to give a copy of that document to the employee who has been disciplined or fired.

These measures are sorely needed so that workers are not disadvantaged in unemployment compensation and other employment proceedings. Unemployed workers are only given five days notice before their unemployment compensation hearings, so they must have quick access to their personnel files. In our experience, many employers impose discipline or issue a discharge, but then refuse to allow the employees to inspect the documentation or to provide them with a copy. Timely access to the file is critical so that the worker can write a prompt rebuttal to the alleged disciplinary violation, which under current law, becomes a part of the personnel file. The bill's provision that the employer must provide the employee with a copy of documented discipline within one business day after its imposition will enable the employee to make an expeditious rebuttal statement that may reduce the chances of further unwarranted discipline, discharge, or negative performance evaluations.

In cases of job termination, timely access to the personnel file is even more crucial. Under current law, there is no time requirement on the employer's duty to provide the file after a request by a former employee. The bill's requirement that the employer must provide a copy of the personnel file to the former employee within ten business days of the request can result in timely submission of an accurate disciplinary history or lack of disciplinary history, performance

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United Way

evaluations, or other documentation that may be favorable to the worker at an unemployment compensation hearing.

Also in the case of job termination, employees should be provided with any documentation of their discharge immediately so that they can respond to the notice while still on the employer's premises or, in the case of a termination to take effect prospectively (such as at the end of the business day or week), while still employed. Many of our clients are given only an oral notice of termination or, if there is a written notice, the employer often refuses to provide a copy. By requiring that if there is a documented notice of discharge, the employer must provide this document to the employee immediately, RB 910 can assist the employee in promptly rebutting management's reason for the termination, thus ensuring that a timely and accurate statement is made in the worker's personnel file. This documentation can provide necessary corroborating evidence at an unemployment appeals hearing or other agency proceeding of the actual reason for termination of the worker.

Finally, even when an employer provides documentation of discipline, discharge or a negative performance appraisal, workers often have no knowledge of their right to submit a statement disagreeing with the action and stating their own position. R.B. 910 ensures that workers will have written notice of this right on any documented disciplinary action, notice of discharge or performance evaluation.

Thus, R.B. 910 provides protections to the rights of the working poor and all employees in seeking to obtain unemployment compensation benefits, restoration of back pay in a discrimination or wage action, or other relief to which they are entitled under the employment laws. We therefore respectfully urge the Committee to take favorable action on R.B. 910.

We also submit comments on SB 1075, An Act Concerning Construction Services and the Reporting of Nonwage Payments. This bill holds persons/entities that perform construction services accountable for reporting all non-wage payments made to construction services providers, in excess of $600.00 per year to the Commissioner of Revenue Services who in turn reports such payments to the Administrator of the Unemployment Compensation Fund. We would support this concept and add language in the bill requiring employer accountability for violating state wage and hour laws.

Wage theft is a term that is used to describe what happens when an employer fails or refuses to pay for work performed by an employee. This can include the failure to pay the minimum wage, overtime, or the amount of wages that are due. Wage theft has a particularly devastating effect on low wage workers. Examples include dishwashers who worked 12 to 14 hour days but were paid less than the minimum wage and no overtime; painters whose employer failed to pay them for the last two to three months of work; domestic workers and personal care attendants required to work 80 hours a week or who were on call 24 hours a day but received as little as $2.00 to $3.00 an hour for their work. Legal Services runs the Stamford Day Laborer Clinic and has seen cases where workers put in weeks of physical labor only to not be paid at all by their employers.

The current state statute must become more of a deterrent for employers engaging in wage theft. Although Conn. Gen. Stat. §31-72 allows for an award of double damages in cases of wage

SB 910

FACTS about Amendments to the Personnel Files Act

CT's Personnel Files Act, CGS 31-128a et seq, protects the confidentiality of personnel files except in limited circumstances. It also however, gives the employee certain rights to access these files.

CT's Personnel Files Act currently:

- enables employees to inspect the documentation in their files
- gives the employee the right to request that the employer correct inaccurate information in the file
- allows an employee to submit a written memo for the file rebutting the employer's position on, for example, an incident of discipline or a negative evaluation.

While these provisions are crucially important to employees, employers don't always comply with them. Employment advocates find frequent violations of the provisions requiring copies of written discipline or discharge notices to employees. Advocates also frequently encounter situations when employers refuse to give employees access to their files, or delay access unnecessarily. In more egregious cases, confidential information from a discharged employee's file to a prospective employer is disclosed without the employee's consent.

This proposed language:

- Provides that an employee can inspect their own personnel file within 3 business days of a written request;

- Provides that a former employee may inspect their personnel file within 10 business days of a written request if such request is received within one year of separation;

- Provides that a copy of any documented disciplinary action be given to the employee within one business day of imposition;

- Provides that a copy of any documented discharge or intent to discharge notice, be provided to the employee immediately upon imposition.

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CONNECTICUT

TESTIMONY OF
NATIONAL FEDERATION OF INDEPENDENT BUSINESS (NFIB)
BY
ANDY MARKOWSKI, CONNECTICUT STATE DIRECTOR
REGARDING

***SB-910,* AAC AN EMPLOYEE ACCESS TO PERSONNEL FILES;**
***SB-1074,* AAC WORKERS' COMPENSATION AND LIABLITY FOR HOSPITAL SERVICES;**
***SB-1075,* AAC CONSTRUCTION SERVICES AND THE REPORTING OF NONWAGE PAYMENTS**

BEFORE THE
LABOR & PUBLIC EMPLOYEES COMMITTEE
MARCH 14, 2013

A non-profit, non-partisan organization founded in 1943, NFIB is Connecticut's and the nation's leading small-business association. In Connecticut, NFIB represents thousands of members and their employees. NFIB membership is scattered across the state and ranges from sophisticated high technology enterprises to "Main Street" small businesses to single-person "Mom & Pop" shops that operate in traditional ways. NFIB's mission is "To promote and protect the right of its members to own, operate, and grow their businesses." On behalf of those small- and independent- job-providers in Connecticut, I offer the following comments:

NFIB/Connecticut has series concerns with SB-910 and opposes the bill as currently drafted. While on its face this legislation may appear to simply permit employees and former employees the right to copy their personnel files and requires employers to provide copies of any documented discipline in their personnel file, NFIB is concerned that there could be far greater implications from this legislation, such as the potential erosion of "at will" employment in Connecticut. This legislation is unnecessary, could result in additional litigation for businesses, and particularly for small businesses that do not have a full-time human resources staff, compliance would be unduly burdensome. For example, what happens if the owner is on vacation and can't allow a former employee to inspect or copy their personnel file within three business days? The "reasonable time" under existing law is a much more flexible and business-friendly standard.

Small business owners know that their employees are their most valuable resource, and they work hard to train and retain employees by creating a comfortable workplace and rewarding them for a job well done. However, government rules and regulations are making labor issues more complicated than ever, and SB-910 is yet another example of this.

CONNECTICUT

It is important to note that small business operate differently than large businesses; they do not have human resources department to track the changing standards and mandates that impact their workforce and workplace. NFIB urges the legislature to simplify employment laws and processes for small businesses, eliminate burdensome mandates and prevent the expansion of cumbersome regulations that punish the small businesses that create the majority of Connecticut's jobs. Provision such as those contained in SB-910 run contrary to this goal, opening up employers to the potential for increased frivolous litigation, and potentially hampering the ability of small businesses to make legitimate personnel decisions.

NFIB/Connecticut supports the intent behind SB-1074. Connecticut's small businesses are already burdened with the high costs associated with workers' compensation insurance, in addition to rising unemployment costs, and high taxes. Medical costs are obviously a major driver of workers' compensation costs to small employers, and employers and carriers should be able to negotiate with medical providers over charges. Further adding to employers' workers' compensation costs makes it difficult for small businesses to focus on job retention and growth.

NFIB/Connecticut opposes SB-1075. This legislation is unnecessary and will further burden small businesses engaged in the broad array of "construction services" as defined in the bill. Small business owners continuously cite problems complying with burdensome government regulations, including "paperwork", and specifically cite "state and local paperwork" burdens. (See 2012 "Small Business Problems & Priorities", NFIB Research Foundation). In 2012, this problem ranked 16th among all small business problems, up five places since 2008, and nearly 20% of all small business owners deemed this problem as "critical". This problem equates to time and out-of-pocket costs for a small business owner. For example, consider the case of a subcontractor who worked for a general mechanical contractor; they would have to delineate material and labor costs, and even fabrication labor if the general buys something (like a tank or metal stand) from someone who fabricates those things. This would create a paperwork nightmare for small businesses that would have to breakdown payments to essentially ever vendor and as such this bill would have far reaching implications for many small businesses.

Thank you for your consideration of NFIB's comments.

National Federation of Independent Business – CONNECTICUT
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TESTIMONY OF
JENNIFER JENNINGS
EXECUTIVE DIRECTOR
BEFORE THE
LABOR COMMITTEE
MARCH 14, 2013

The Connecticut Heating & Cooling Contractors Association (CHCC) submits the following comments *opposing* **SB-1075**, An Act Concerning Construction Services And Nonwage Payments:

CHCC opposes this bill because our contractors are concerned that this legislation could have broad implications for our industry as well as others involved in the construction services industry. Specifically, CHCC opposes legislation that creates yet another burdensome and unnecessary requirement on HVAC contractors and other related businesses. This legislation amounts to unneeded financial reporting. In our industry, contractors already file 1099 documentation when applicable. The increased costs of compliance required under this legislation would simply be passed on to consumers. Furthermore, why is the construction industry being singled out? This legislation amounts to another anti-competitive building obstacle to fostering growth in jobs and the attraction of out of state businesses to move here.

CHCC would like to note that we are supportive of attempts to address those who are working "under the table" while also collecting unemployment. We would be very supportive of finding and penalizing individuals and businesses that are attempting to "Double Dip" the system by receiving unemployment benefits and working "side jobs". We would like to join the Commissioner and the Administrator of the Unemployment Compensation fund on that solution, but SB-1075 is not the way to do that.

CHCC also *opposes* **SB-910**, An Act Concerning Employee Access To Personnel Files:

CHCC opposes this bill because it raises far more questions than answers, and will unduly burden small HVAC contractors who don't have human resources staff at their disposal. The "three day" requirement contained in line 4 of the bill is especially onerous. The lack of a definition for "disciplinary action" also puts contractors in a difficult position. Does correcting an apprentice on a job site who installed something incorrectly count as disciplinary action? What if repeated corrections are necessary? What if such corrections are to ensure compliance with OSHA requirements, or building code requirements? Must every conversation that takes place in the field now be documented if it could even remotely be considered disciplinary action?

Thank you for your consideration of our comments and CHCC urges the Committee to take no action on the two aforementioned bills.

CHCC is a trade association whose objectives are to strengthen and further trade relations, attract, educate and train necessary manpower, represent members at all levels of government and review and establish quality standards and procedures. The association represents over 125 Heating & Cooling Companies in Connecticut.