

PA13-309

HB6658

House	8558-8567, 8587-8595	19
Judiciary	3085-3087, 3088-3091, 3100, 3102-3108, 3184- 3185	17
Senate	5434, 5438-5439	3
		39

H – 1174

**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

**PROCEEDINGS
2013**

**VOL.56
PART 25
8346 – 8707**

cjd/lgg/cd/gbr
HOUSE OF REPRESENTATIVES

88
June 1, 2013

Total Number Voting	136
Necessary for Passage	69
Those voting Yea	106
Those voting Nay	30
Those absent and not voting	14

DEPUTY SPEAKER BERGER:

The amendment is adopted.

Representative Aresimowicz.

REP. ARESIMOWICZ (30th):

Mr. Speaker, I rise to move that we pass this bill temporarily.

DEPUTY SPEAKER BERGER:

The bill will be passed temporarily.

Without objection? Without objection.

The Chamber please stand at ease.

(Chamber at ease.)

DEPUTY SPEAKER BERGER:

Will the Chamber please come back to order.

Will the Clerk please call Calendar Number 476.

THE CLERK:

On page 45 of the calendar, Calendar Number 476, HB 6658
favorable report of the joint standing committee on Labor

and Public Employees, Substitute House Bill Number 6658, AN
ACT CONCERNING EMPLOYER USE OF NONCOMPLETE -- NONCOMPETE
AGREEMENTS -- rather.

DEPUTY SPEAKER BERGER:

Representative Ritter.

REP. RITTER (1st):

Good afternoon, Mr. Speaker.

DEPUTY SPEAKER BERGER:

Good afternoon, sir.

REP. RITTER (1st):

I move for the acceptance of the joint committee's
favorable report and passage of the bill.

DEPUTY SPEAKER BERGER:

The motion before the chamber is acceptance of the
joint committee's favorable report and passage of the bill.

Please proceed, sir.

REP. RITTER (1st):

Mr. Speaker, this bill comes to us from the Judiciary
Committee and has been worked on by several legislators in
a bipartisan fashion. I want to thank Representative
O'Neill; and, as always, the ranking member of the
Judiciary Committee, Representative Rebimbas; the chairman
of the Judiciary Committee, Representative Fox, for working
on this.

This bill, essentially, will put some new restrictions on noncompete agreements for employees in certain instances. And I do believe the Clerk is in possession of an amendment, which I will also further clarify this.

Through you, Mr. Speaker.

DEPUTY SPEAKER BERGER:

Yes, sir.

If you could please announce the LCO, sir?

THE CLERK:

Mr. Speaker, LCO Number 7625, designated House Amendment Schedule "A," offered by Representative Fox and Representative O'Neill.

DEPUTY SPEAKER BERGER:

The motion before the Chamber is acceptance of the House Amendment "A."

The Representative seeks leave of the Chamber to summarize the amendment. He seeks leave.

Is there objection to summarization? Is there objection to summarization?

Seeing none, Representative Ritter.

REP. RITTER (1st):

Through you, Mr. Speaker, actually, if I could I'd like to withdraw that particular amendment if that's okay?

Through you, Mr. Speaker.

DEPUTY SPEAKER BERGER:

Okay. Would the Chamber please realize that the good representative would like to withdraw LCO Number 7625.

Is there objection to withdrawing that amendment? Is there objection?

Seeing none, 7625 is withdrawn.

Representative Ritter.

REP. RITTER (1st):

Thank you, Mr. Speaker.

We're back to the underlying bill. And, again, just to reiterate, I know that there may be some questions from the other side where in certain instances limiting the use of noncompete agreements. And for now, we'll entertain some questions from the other side.

Thank you, Mr. Speaker.

DEPUTY SPEAKER BERGER:

On the bill as un-amended, Representative O'Neill of the 69th.

REP. O'NEILL (69th):

Yes, thank you, Mr. Speaker.

Yes and I want to thank Vice Chairman Ritter and Chairman Fox for their cooperation and help in bringing this bill through the process through the Judiciary Committee and through the floor of the House.

Actually, what this bill does is it doesn't really eliminate the use of noncompete agreements, it's designed to provide for a period of time for an employee to review a noncompete agreement and, hopefully, bring it to an attorney to have that person review it along with them so the employee can be fully appraised of what their legal rights are and what their ramifications of a noncompete agreement is.

This is something that arises out of an incident in which a constituent of mine brought to my attention that in a circumstance in which the company that he had been working for many years, he was on vacation, and the company was acquired by another company. And when he returned from vacation, he found that he was presented with a noncompete agreement that required that he, basically, had to agree not to practice his profession within a significant geographical area that had been the main area in which he did, in fact, work and these noncompete agreements typically last for a period of one year.

So for an entire year, he was blocked out from competing. The presentation was made in the context that if you do not sign this agreement right now, right here, that you will be discharged immediately.

And the circumstance, obviously, was something of a

shock to the individual. He had heard before he arrived that the company had been acquired but he had no idea what he was going to face when he walked in the door. So this is an individual who had been, I believe, a sales representative for a company that had been acquired for many years, had been very successful in his chosen field and the area that he was working. And so he was faced with the possibility of immediate unemployment or agreeing to this noncompete agreement.

Unfortunately, after he signed this agreement without the benefit of counsel and without having much of an opportunity to even really think about it, the company began to change his schedule, change his assignments, change his product mix that he was supposed to sell to the point where he was unable to hit all of the targets that they were setting for him. And in a few months, he was discharged from employment but the noncompete agreement continued in effect and he was blocked from being able to seek employment with any of the other companies in the general area where he had been working for most of his professional life so he found himself in that very, very awkward situation.

The choice was to, perhaps, try to challenge the noncompete agreement in court, but that's a very expensive

and time-consuming proposition and so he just waited it out.

After that period of time was when he called me not because he expected anything to be done to try to undo what had happened to him but because he felt that it was fundamentally unfair for an employee to be faced with this kind of situation; that people should be at least given an opportunity to talk to an attorney.

And in my prior experience as an attorney representing people with this kind of an agreement, the routine call would go something like this, Mr. Speaker:

The person would call me up, the potential client, say that they've been handed a noncompete agreement earlier in the day. Could we make an appointment for a conference about that agreement.

And I would say back to them, Well, maybe I can't see you today because the Legislature is in session, but I'll be able to see you over the weekend or in a day or two.

And so they would come a couple of days later and I would ask, How long do you have within which to respond?

And again, the typical situation that I've always seen is, oh, the company said a week or two but please get back to us soon so we know whether or not you're prepared to accept the terms of this noncompete agreement.

And it, typically, would arise in the context of a severance package being offered to the employee as part of either an acquisition or reorganization of a company and so this came as a surprise to me that a company would just hand somebody a document like this at nine o'clock in the morning and say, Sign it or else clean out your desk and we'll escort you off the property -- which is what my constituent was faced with.

And so this proposal that is before us in the form of the underlying bill was designed to try to address that kind of a situation. It is something which has been negotiated, and I've spoken with representatives of the business community who were concerned about it and tried to come up with language that will be able to satisfy as many of their concerns as possible and still provide the employee with adequate time within which to seek legal counsel so that they won't be faced with that kind of a situation.

The language of the underlying bill itself is considered by some to be, perhaps, too broad and so it is my hope that in the not terribly distant future an amendment will be forthcoming. There was one that the vice chair of the committee had called, but it turns out that that was not the correct amendment. But the amendment

that, I hope, is on its way to us will be dealing with a situation that is more specific because, as I'm sure some members of the Chamber know, noncompete agreements need to be supported by some kind of consideration.

You can't just tell someone who is an employee, No you can't -- you have to sign this agreement, no, you can't compete with the company when you leave; you have to be given something, an increase in wages, a promotion, something like that to justify this demand for an agreement. A contract has to be supported by some measure of consideration.

So the amendment, which I hope will be coming soon will narrow it down so that the situation in which this would apply is one where there has been an acquisition of a company and the acquired company employees are asked to sign a noncompete agreement. They are, in effect, perhaps, continuing employees, maybe they are being treated as new hires, but they are people who already have established relationships and careers with that particular company.

And so -- that plus, I believe, the time frame that is set forth in the underlying bill is a ten-day time frame and this was also subject to challenge and question.

Mr. Speaker, at this time, I would like to yield to the Majority Leader.

DEPUTY SPEAKER BERGER:

Representative Aresimowicz, will you accept the yield?

REP. ARESIMOWICZ (30th):

I do, of course, from the great Representative O'Neill over there.

Mr. Speaker, I move we pass this bill temporarily.

DEPUTY SPEAKER BERGER:

The bill is passed temporarily.

Will the Clerk please call Calendar Number 361?

THE CLERK:

On page 12, Calendar Number 361, Substitute House Bill Number 6518, AN ACT CONCERNING STANDARDS OF PROFESSIONAL CONDUCT FOR EMERGENCY MEDICAL SERVICES PERSONNEL, favorable report of the committee of Public Health.

DEPUTY SPEAKER BERGER:

Representative Johnson.

REP. JOHNSON (49th):

Good afternoon, Mr. Speaker.

DEPUTY SPEAKER BERGER:

Good afternoon, Representative.

REP. JOHNSON (49th):

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

DEPUTY SPEAKER BERGER:

cjd/lgg/cd/gbr
HOUSE OF REPRESENTATIVES

117
June 1, 2013

Those voting Nay 6

Those absent and not voting 11

DEPUTY SPEAKER BERGER:

The bill passes as amended.

Will the Clerk please call House Calendar Number 476.

THE CLERK:

On page 45, Calendar 476, Substitute House Bill Number 6658, AN ACT CONCERNING EMPLOYER USE OF NONCOMPETE AGREEMENTS, favorable report of the committee on Labor.

DEPUTY SPEAKER BERGER:

Representative Ritter.

REP. RITTER (1st):

We're back, Mr. Speaker.

DEPUTY SPEAKER BERGER:

Here we are.

REP. RITTER (1st):

I move acceptance of the joint committee's favorable report and passage of the bill.

DEPUTY SPEAKER BERGER:

The question before the Chamber is acceptance of the joint committee's favorable report and passage of the bill.

Please proceed, sir.

REP. RITTER (1st):

And I do believe the Clerk is in possession of an

amendment, and I would ask that the Clerk please call and I be granted leave of the Chamber to summarize.

Thank you, Mr. Speaker.

DEPUTY SPEAKER BERGER:

Yes, sir.

The Clerk is in possession of House Amendment Schedule "B," LCO Number 8496.

THE CLERK:

House Amendment Schedule "B," LCO 8496, offered by Representative O'Neill and Representative Ritter.

DEPUTY SPEAKER BERGER:

Motion -- Representative seeks leave of the motion to summarize the amendment.

Is there objection to summarization? Is there objection?

Seeing none, please proceed, Representative Ritter.

REP. RITTER (1st):

Thank you, Mr. Speaker.

And again, we're back to this the noncompete agreement bill here and, again, I want to thank Representative O'Neill, Representative Rebimbas, and Chairman Fox for the work on this in a bipartisan fashion.

The amendment before us, again -- and I think Representative O'Neill talked about this when we brought

this out earlier -- again, makes some slight changes to noncompete agreements. It really limits this amendment into the context of when there's a merger or acquisition.

So effective October 1, 2013, if you worked at a business, it was acquired by another one or there was a merger of some kind, they would have to -- before making you enter into a noncompete agreement, they'd have to give you notice of seven calendar days to consider the merits of entering into that agreement. However, nothing in this law should be construed to limit anyone's rights they may have in law or in equity.

Through you, Mr. Speaker.

DEPUTY SPEAKER BERGER:

Thank you, Representative.

Will you comment further on House Amendment Schedule "B"? Will you comment further on House Amendment Schedule "B"?

Representative O'Neill of the 69th, sir, you have the floor.

REP. O'NEILL (69th):

Yes, thank you, Mr. Speaker.

Yes, this is the amendment that I had been hoping to see. And I want to thank Representative Ritter and Co-Chair Fox for their work on this and support and urge the

Chamber to support this.

I believe that Representative Ritter has accurately summarized what the amendment does, and it will become the bill so I hope that everyone will support the amendment and, ultimately, the bill.

Thank you, Mr. Speaker.

DEPUTY SPEAKER BERGER:

Thank you, sir.

Will you comment further on the amendment before us?

Will you comment further on the amendment before us?

If not, I will try your minds.

All those in favor of the amendment, signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER BERGER:

Opposed?

The ayes have it.

The amendment is adopted.

Will you comment further on the bill as amended? Will you comment further on the bill as amended?

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

REP. CAFERO (142nd):

Mr. Speaker -- Mr. Speaker.

DEPUTY SPEAKER BERGER:

Yes, sir.

REP. CAFERO (142nd):

Mr. Speaker, as we are proceeding to vote here, it has come to my attention that Representative Miller was on his feet with his button pressed before the call was made, wishing to comment on the bill. I wanted to bring that to your attention and ask for your consideration.

Thank you, Mr. Speaker.

DEPUTY SPEAKER BERGER:

If the Clerk -- if the Clerk, please, could clear the board, the Chamber will reopen debate on the bill as amended, 6658, please.

Representative Miller, you have the floor, sir.

REP. MILLER (122nd):

Thank you. And thank you for your courtesy, Mr. Speaker.

This bill is very dear and near to my heart because I was in a situation where I worked for a company and they sold it. And they offered -- I decided I wasn't going to stay with the company because I knew I'd get fired or laid off within a year or so, once they got to know what I did

for that company. So I told them that I was going to leave. They offered me some money. I said I don't want it, and I started my own business.

And unfortunately for the former company, the biggest customer they had, they got in a fight with. The guy called me up and said, You know, can you take care of me?

I said, Certainly.

And so all of a sudden, you know, I had an automatic big-deal customer that kept trucks busy. And the former owner of the company got a little upset and he attached my home and anything I had of value.

So now I'm middle aged. I got three kids, all looking to go to college, and here I have an attachment to my home. And all of a sudden, I'm out there working at a hotdog stand, selling pretzels at a boat show. I'm doing all these things so I can have income to support my family, all because of the former owner attached my home and was going to try to keep me from going in business.

And again, this is a private sector thing. This is nothing with the State of Connecticut. I don't know why we're involved in this. And I had two or three other friends that went through the same thing.

And the worse thing is when you're -- you have all your assets tied up in court and you're looking to get

income from anywhere you can.

It's an awful, awful thing.

And plus I had this thing in my head about my three kids. I had a mortgage on the home. So tying up an employee at the behest of an employer, who generally are, you know, very wealthy people. I don't think that's the right thing that we should be doing here. I know it's one of my own people that brought this bill out, but I experienced it firsthand. And it stinks.

You can't stop a person from earning a living. Maybe a plumber -- you're in the plumbing business and you decide you don't like to work for the company you're with and you open up your own business. Nobody can prevent you from working, and nobody can prevent you from working in the area that you served. It's that simple and that's by law.

To make a long story short, for four years I was tied up; had difficulty buying equipment. And finally, we went to court and they never showed up.

So they held me up for four years. It cost me a lot of grief. And I just think that it's unfair. Employees, they need to be able to go out there and do work. And they shouldn't have an employer tie them up in any way.

I have friends that have gone through the same situation, and it's not very nice to be in a position where

you are struggling for finances, worrying about your family and have somebody who generally has big bucks tying you up.

So, Mr. Speaker, this is something I believe is something that we should not be doing. This is a private sector type of activity, and I don't think the state government should be involved in this at all. We stick our noses into so many damn things. And I don't think it's fair. And again, we're just out of bounds on this one, in my opinion.

And I want to thank you, Mr. Speaker, for allowing me to give you a little story. Thank you so much.

DEPUTY SPEAKER BERGER:

Thank you, Representative, and sorry for the confusion. My apologies, sir.

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

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

THE CLERK:

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

cjd/lgg/cd/gbr
HOUSE OF REPRESENTATIVES

125
June 1, 2013

DEPUTY SPEAKER BERGER:

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

If all the members have voted, if you can check the
board to see if your vote has been properly cast.

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

Would the Clerk please announce the tally.

THE CLERK:

On House Bill 6658, as amended by House Amendment
Schedule "B"

Total Number Voting	142
Necessary for Passage	72
Those voting Yea	138
Those voting Nay	4
Those absent and not voting	8

DEPUTY SPEAKER BERGER:

The bill, as amended, passes.

Dr. Srinivasan, what purpose do you rise, sir?

REP. SRINIVASAN (31st):

Good afternoon, Mr. Speaker.

DEPUTY SPEAKER BERGER:

Good afternoon, sir.

REP. SRINIVASAN (31st):

**CONNECTICUT
GENERAL ASSEMBLY
SENATE**

**PROCEEDINGS
2013**

**VETO
SESSION**

**VOL. 56
PART 17
5161 - 5482**

SENATOR LOONEY:

Thank you, Mr. President.

Mr. President, Calendar page 15, Calendar 695, House Bill Number 5289, if that might also be added to our Consent Calendar?

THE CHAIR:

Without objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President.

Mr. President, Calendar page 5, Calendar 485, House Bill Number 6602, I'd like to move to place that item on our Consent Calendar, as well.

THE CHAIR:

Without objection, so ordered.

SENATOR LOONEY:

And, Mr. President, Calendar page 8, Calendar 606, House Bill Number 6674, I move to place this item on our Consent Calendar.

THE CHAIR:

Without objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President.

Mr. President, Calendar Page 15, Calendar 696, House Bill Number 6658, I move to place this item also on our Consent Calendar.

THE CHAIR:

Without objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President.

Mr. President, if the clerk would now call -- would now list the items on the Consent Calendar so that we might proceed to a vote on the Consent Calendar before taking up additional items.

THE CHAIR:

Mr. Clerk.

THE CLERK:

Page 2 -- sorry -- House Bill 6672, and then on page 2, Calendar 423, House Bill 5907.

On page 4, Calendar 464, House Bill 5601; Calendar 465, House Bill 6630.

On page 5: 485, House Bill 6602; Calendar 503, House Bill 6635.

On page 6: Calendar 19, House Bill 5903; Calendar 522, House Bill 5598.

On page 7: Calendar 570, House Bill 6486; Calendar 571, House Bill 6492.

On page 8: Calendar 601, House Bill 6490; Calendar 606, House Bill 6674.

On page 10, Calendar 644, House Bill 6363.

On page 12, Calendar 668, House Bill 6362; and Calendar 672, House Bill 548.

On page 15: Calendar 695, House Bill 5289; Calendar 696, House Bill 6658.

On page 16: Calendar 704, House Bill 6692; 705, House Bill 6703.

On page 17: Calendar 706, House Bill 6651.

And on page 21: Calendar 431, Senate Resolution Number 15.

HB 5480

THE CHAIR:

Mr. Clerk, please announce the pendency of 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 on Consent Calendar Number 2 has been ordered in the Senate.

THE CHAIR:

Have all members have voted? If all members have voted, please check the board to make sure your vote is accurately recorded.

If all members have recorded, the machine will be closed and the clerk will announce the tally.

THE CLERK:

The second Consent Calendar

Total Number Voting	35
Those voting Yea	35
Those voting Nay	0
Those absent and not voting	0

THE CHAIR:

Consent Calendar Number 2 passes.

Senator Looney.

SENATOR LOONEY:

Thank you, Mr. President.

Mr. President, I just wanted to review and have we adopted Senate Agendas 3 and 4?

THE CHAIR:

**JOINT
STANDING
COMMITTEE
HEARINGS**

**JUDICIARY
PART 9
2774 - 3140**

2013

well being of Connecticut families and communities. I would welcome any questions.

SENATOR COLEMAN: Are there questions? What did you say your role is at Yale Law School?

AMANDA ALEXANDER: I'm a third year law student there and I founded this Woman Incarceration and Family Law Project that produces resources for parents in prison in Connecticut.

SENATOR COLEMAN: You're the founder?

AMANDA ALEXANDER: Yes, one of the co-founders.

SENATOR COLEMAN: Okay. Congratulations. Good luck.

AMANDA ALEXANDER: Thank you.

SENATOR COLEMAN: Preston Neil. Andrew Bloom. Richard Ohada. Deb McKenna.

DEBORAH MCKENNA: Good evening, Senator Coleman, Representative Fox, Members of the Committee. My name is Deborah McKenna. I am an attorney at Emmett and Glander in Stamford, Connecticut and I practice law in the area of plaintiff's side employment law.

I'm testifying today on behalf of the Connecticut Employment Lawyers Association, which is known as CELA on two bills. First, Section 17 of Raised Bill 667 AN ACT CONCERNING THE ESTABLISHMENT OF BENEFIT CORPORATIONS AND THE LIABILITY OF AN EMPLOYER WHO DISCIPLINES OR DISCHARGES AN EMPLOYEE ON ACCOUNT OF EXERCISE OF CERTAIN CONSTITUTIONAL RIGHTS.

(HB 6667)

And I am also here to testify on behalf of Raised Bill 6658 AN ACT CONCERNING EMPLOYER USE OF NON-COMPETE AGREEMENTS.

First, I'll just briefly tell you a little bit about what CELA is. CELA is a voluntary membership organization whose members are attorneys from throughout Connecticut who devote at least 51 percent or more of their employment related practice to representing employees. As such, CELA attorneys represent individual employees in all types of employment related matters, including but not limited to discrimination actions, wrongful termination claims, claims involving state and federal SMLA.

A substantial part of our members practice involves reviewing and negotiating various types of employment contracts, including severance and non-competition agreements as well as representing employees who have suffered retaliation for exercising constitutional rights in the workplace.

First, I'll address the 6658, the non-competition agreement bill. CELA supports this bill for the following reasons. First, non-competition agreements are standard parts of many sectors of the workforce here in Connecticut but unfortunately not all employers adhere to Connecticut law when drafting such agreement, particularly with regard to whether or not the duration or the geographical limitations of such non-competition agreements are reasonable.

Additionally, some employers try to impose agreements in industries or on employees in their workforce where the non-competition is simply not appropriate, perhaps on the receptionist, when really what you need to do is protect your sales force, or your sales secrets.

What this bill will do is codify the factors that Connecticut courts presently apply in determining whether or not a non-competition agreement is reasonable.

Second, CELA supports this bill because presently there is little recourse for an employee who has entered into such an agreement without first having the benefit of fully understanding how that non-competition agreement will limit their future ability to work, and so by providing that an employer must allow an employee to have at least ten days to have an attorney review the agreement, or at least consult with an attorney about what his or her future obligations would be is a very important provision that doesn't exist now.

And unfortunately, what ends up happening on our side of the practice is that you see folks who have entered into these agreements and didn't understand the full implication, or felt they had no choice but to enter into these agreements and they didn't understand how that would impact their ability to get a job in the future.

Oftentimes, those same employees have lost a job where the non-competition agreement is seeking to be enforced.

I understand my time is up, so I don't know if I have a chance to talk on the second bill, or, I submitted, I provided written testimony as well.

SENATOR COLEMAN: If you can make it quick, you can summarize whatever thoughts you had on your second bill.

(HB6667)

DEBORAH MCKENNA: Sure. I will do that. On Section 17 in regard to how it applies to exercising

your free speech right, first of all, I think I'll just take a moment to briefly respond to the CBIA's testimony, which I believe is on line, in which they seem to forecast all of the horrors that will happen if this bill is passed, such as you will be, an employer will be forced to allow an employee to wear a racist tee shirt in the workplace and have no recourse. That's not what this bill does. That's not what the law provides right now.

What this bill would do is ensure that employees who speak out on a matter of public concern that they learn about through their job, meaning perhaps a police officer who uncovers some sort of misconduct in the police department in the course of his or her duties, or a person who's working as a bookkeeper who discovers malfeasance, financial malfeasance in the course of her job, can speak out and not be afraid that they are going to find themselves being fired for raising those concerns.

I'd be happy to answer any questions.

SENATOR COLEMAN: Are there questions?
Representative Smith.

REP. SMITH: Thank you, Mr. Chair. I was taking a look at the non-compete bill. I don't know, I'm reading the statute. I'm just wondering how this actually helps us because I think you have a right already, don't you, to bring an action if there is a violation in the non-compete clause and the court has to find that it's reasonable in duration and geographic location and there's a bunch of qualifiers out there already.

HB 6658

So what does this bill do for us?

DEBORAH MCKENNA: The qualifiers are there, but what happens in practice now is that you have an employee who has left their employment, usually has been fired in many cases. They go out. They try to find another job. Then the former employer comes after them and sues them to enforce the non-compete. They do so by way of seeking a pre-judgment remedy. So now you're forcing the former employee into court. That employee has to, at present, there is no mechanism for allowing that employee to get attorneys fees or to have any type of recourse if it turns out that that non-compete is unreasonable.

The employee would have to hire a lawyer and go in as a defendant and defend against the action.

What this bill does in addition to codifying what is reasonable, it also allows for an employee to recover damages, or to recover attorneys fees if it's determined that those factors, the reasonableness part of the non-compete doesn't comply with the law.

REP. SMITH: Would they not be able to do that under the CUTPA laws right now?

DEBORAH MCKENNA: I suppose you could bring an action under the CUTPA law although in my experience, I mean, you would have to file another lawsuit. In this case, you would be, in my experience it just hasn't played out that way.

REP. SMITH: Okay, thank you.

DEBORAH MCKENNA: You're welcome.

SENATOR COLEMAN: Any other Members have questions?
Representative Carpino.

REP. CARPINO: Thank you, Mr. Chairman. Just a very common sensical question. What prevents an employee from having someone look at this non-compete agreement before they sign it?

DEBORAH MCKENNA: Oftentimes it's presented in such a way that you just don't have that opportunity. There's no requirement that they give you even 24 hours to take it home and consider it, so it could be in the context of here's your bonus or we're giving you a raise next year, and oh, by the way, please sign this non-competition agreement.

And so there's no, there's nothing that requires an employer to make sure that the employee is fully understanding it. Obviously, if an employee signs something they can argue traditional contract defenses like duress.

But again, the way it works oftentimes is that an employee feels pressured and doesn't feel like they have any opportunity to say I need time to think about that. I have no choice. I have to sign this agreement.

REP. CARPINO: and thank you very much. I haven't made a decision on this, but I do struggle with imposing any additional restrictions on this one potential future employee is faced with many decisions. Their pay, their salary, their bonus schedule, their benefit package where they, too, have to make a decision, don't necessarily have legal recourse at the end, but thank you very much for your position.

DEBORAH MCKENNA: You're welcome.

SENATOR COLEMAN: Representative Smith.

REP. SMITH: Thank you, Mr. Chair, for the second time. Is it your understanding of this bill that the employer would also be able to recover legal fees and costs if in fact the agreement was upheld?

DEBORAH MCKENNA: If you could just give me one moment.

REP. SMITH: And I'm looking at Subsection C there.

DEBORAH MCKENNA: I read it as the language says any person who's aggrieved by a violation of this statute, so I suppose if you read it broadly, if you had an employee, if you had first determined that the non-compete agreement was enforceable and you had an employee who violated the terms of an enforceable non-compete agreement, then you could argue for the employer that they were the person who was aggrieved.

REP. SMITH: All right, thank you. Mr. Chair, I'm just not sure what the intent of this bill is in terms of whether we're looking to provide that right to both employers and employees in the event that there is a breach of a non-compete agreement, and I can't tell by looking at the language of the bill.

So it may be something that the Committee wants to look at if this bill is to go forward in terms of whether it's reciprocal or just intended to provide the employee with an avenue to defend and then recover in the event that the non-compete agreement is not found to be fair and reasonable. Thank you.

DEBORAH MCKENNA: Thank you.

SENATOR COLEMAN: Thank you. Angelo Ziotas.

SENATOR COLEMAN: Thank you. I don't see any other Members seeking to ask questions, so thank you very much for your time and your presentation.

ANGELO ZIOTAS: Thank you, Senator.

SENATOR COLEMAN: Lew Chimes.

LEWIS CHIMES: Senator Coleman, Representative Fox and Members of the Committee. My name is Lewis Chimes. I'm here on behalf of the Connecticut Trial Lawyers Association but I am not here on the certificate of merit issue.

I am the Chairman of the Employment Section of the Connecticut Trial Lawyers Association and I'm here on behalf of two bills that deal with the workplace, which have been recently addressed by Attorney McKenna of the Connecticut Employment Lawyers Association, Raised Bill 6658, which deals with the non-competition agreements and Section 17 of Raised Bill 6667, which is a revision of Connecticut General Statutes 31-51q, the free speech statute.

Since she didn't get into too much detail, I'm going to talk about Section 17 and then if time permits I'll clarify some of the issues relating to the non-competition agreement.

Twenty years ago, or over twenty years ago, Connecticut passed, this Legislature passed 31-51q, which protected employees to speak out on matters of public concern in the workplace. This extended constitutional protections not only to public sector employees, which traditionally had it from the federal 1983 statutes, but to all employees within the State of Connecticut.

in a case called Garsetti vs. Sebalos and what Garsetti did was that it really only applied, any employee who was speaking out in the course of their employment was no longer protected because that was their speech and their duty as an employee.

The problem with that, and the problem of that standard, is that the people in the workplace who most dealt with the controversial issues that we wanted them to feel able to speak out about. The in-house lawyer talking about securities violations or tax fraud. The OSHA, the quality control inspector and a factory talking about possible safety violations, those people whose duty was to report on that stuff no longer had the protection.

Now, last year in two cases before the Supreme Court, the Supreme Court changed the application of 31-51q and incorporated this Garsetti standard.

So what this legislation does, quite simply, is it seeks to bring the 31-51q, the law that has existed and worked in the workplace for over 20 years, back to what it was before these two Supreme Court decisions. And the way we do that is very simple.

We add the language that it shall not be a defense that the employer was acting within the scope of his employment. Quite simply, that unlike Garsetti in our statute would not be, the employee would not lose the protection.

So all we're trying to do is bring it back to what has worked under the statute for the past 20 years.

And so, I'm going to address a couple of things on the non-compete agreement, which is Raised

Bill 6658. I think there was, one of the questions was whether this statute also awards attorneys' fees to employers.

Now the way non-compete agreements that are imposed by employers work, they are generally, there is unequal bargaining power and they are contracts of effusion, meaning you sign this or you get fired.

They also generally, and I would say 95 percent of the ones I've reviewed and I've probably reviewed hundreds of them, they say, if we have to go to court and enforce this agreement, you agree, we have irreparable harm, and you agree we get attorneys' fees.

It doesn't say if we're wrong you get attorneys' fees. So right now, in the world of non-competes, the employer who tries to enforce an over broad agreement who has the resources, can basically force the employee, even if the employer's right, you have to pay for a lawyer and the employee gets no recourse. If he wins, or more likely he can't afford the lawyer and just gives up, even though he has a decent argument that the non-compete agreement is over broad. So I think this is a change.

I also think that the statute, the way that I read the statute and I think was the intent of the statute is, that this only applies to violations of the statute, so that, violations of the statute would mean either they didn't give the ten-day notice, it was unreasonable. So that, I would think the remedies apply to the employee.

Again, in most of these non-compete agreements, the employer provides their own attorneys fees remedy, so I think it does address, I think what Representative Smith talked about. And I

think Representative (inaudible) you raised an issue, well, doesn't the employee have to make this choice just like any other choice like salary and wages and that's very, I would respectfully disagree.

Salary and wages cover what's at the workplace, what's going to happen when you are there, meaning you work there, you get X, you get Y, you get three weeks' vacation. Those are all workplace things. A non-competition agreement addresses what you can't do after you leave.

Now, most of the agreements that we, may I continue? Most agreements that employers will say when they list, this is what you get, they also say you are an employee at will, meaning we, the employer, can fire you at will.

But in a non-competition agreement says, you can't do, you can't work here, you can't work there. It's a very different type of regulation than a statement about wages, benefits or hours or terms of work while you're at this employment. So I do think it's different.

There are some states that outlaw non-competition agreements altogether because, in a workplace because they think they're unfair. And so I think this is not that, but I think this is a reasonable balance that does give some protections to employees who basically have no choice when they're given these options of signing these employment agreements.

So thank you, and does anyone have any questions?

SENATOR COLEMAN: Are there other questions?
Representative Smith.

REP. SMITH: Mr. Chair, thank you. You'll admit, I think, that not all the agreements when we talk about non-compete agreements, are those that are just handed to the employee and say here, sign this or, you know, you're not going to have a job. I understand there are those circumstances in which that occurs.

But I suspect you'll agree with me that there are other situations where you're actually presented this agreement to get the time to review it with counsel, to have counsel involved and agreement where a meeting of the minds has occurred.

And in those situations, I'm looking at the statute, and while I understand your opinion is it just applies to employees or their rights to bring an action, I suspect if you have an arm's length agreement with counsel on both sides, then the violation of the agreement, whether it be by the employee or by the employer, should allow either party to recover under the statute. Would you agree with that?

LEWIS CHIMES: Yeah, I do think the situations you're talking about because I represent, those intend to be very high-level executives or people who have a great deal of bargaining power or pro athletes.

So yes, when the bargaining power is equally sided, represented by counsel and is a sophisticated consumer, I don't think protections in this are as necessary, but I do think that for 90 percent of employees in the workplace, they are.

So I would agree with you that there are situations, I would agree that there are situations where non-competition agreements for employees are appropriate, because people do go

to workplaces and then they, you know, leave, open up down the street and steal the business and that's not fair.

But I do think that in most instances the bargaining power is unequal.

REP. SMITH: So just, I hate to interrupt you but in those situations where you just described where the employee signs an employment agreement represented by counsel. It's a three-year non-compete. Two years later they take off. They have all the information they desired and start a new firm down the street and the employer decides to bring an action to enforce the agreement.

My position under this bill should be that the employer would also be entitled to recover fees, attorneys' fees, costs, just as the employee should be able to recover if in fact there's a violation of the statute as well.

Are they, let me just finish here. In reading the statute that's proposed, I don't think it really helps identify those situations in terms of defining what is reasonable, what is unreasonable, because that always seems to be the case as far as I understand this area of the law, and I certainly don't want to represent I'm an expert, because I'm not.

But there's always the question, well, is the agreement reasonable? Is the radius limited enough? Is the time frame reasonable? You have all these qualifiers that the courts look to and I don't think this bill addresses any of those other than for the court to decide what they already have to decide.

So I'm not sure --

LEWIS CHIMES: I think that this only, that portion of the statute only codifies existing law, which is that the courts have the right to review. I don't think that's any change in the existing law.

I also don't think that, I don't disagree with you that that doesn't give a lot of standards, and I would also say that in this world where everybody works globally, I don't know what the appropriate restricts are. It changes.

There are cases out there, I think this would not, this (inaudible) is not a change in the law. Those cases would apply.

I think at every instance in these situations, both the employer and the employee will have to judge whether, I mean, I do this for a living where people come to me and I say, it doesn't look reasonable to me or it does, but I don't know what a court is going to do, but I can give you my best, unless there's a case where I don't (inaudible).

REP. SMITH: And my, I know we've got to get going, but my point to you is, I think we have to be fair on both sides, which is always something that this Committee is looking to be is, you know, what's good for the employer is good for the employee and vice versa, so I think the bill should reflect that.

LEWIS CHIMES: And I don't disagree. But I think this is an area that historically, again, with the exception of the high-level folks who didn't have the negotiating power, this is an area that has been one sided, typically one sided.

The other thing, I think Representative Smith, you raised is, could you accomplish this by a

CUTPA claim and CUTPA specifically, the case law in CUTPA is an employer/employee dispute is not governed by CUTPA, so it would not be (inaudible).

SENATOR COLEMAN: Are there others with questions?
Representative Fox.

REP. G. FOX: Thank you and Attorney Chimes, it's good to see you. Did you submit written testimony?

LEWIS CHIMES: I did. I did.

REP. G. FOX: You did, okay. I'm sorry, I didn't see it. I was just trying to go through my stuff.

LEWIS CHIMES: (Inaudible) gave it to you.

REP. G. FOX: I'm sure they did. I just didn't get a chance to see it, and if we have questions, I'm sure we can reach out to you, so thank you.

LEWIS CHIMES: Sure. Thank you.

SENATOR COLEMAN: Any others? If not, thank you, Attorney Chimes. Alex Simonetti. Alvin Bingham.

ALVIN BINGHAM: Good evening, Senator Coleman and Representative Fox and the Judiciary Committee. Al Simonetti could not testify tonight because she had another appointment. She was on call for the day, but obviously, you have a lot of people testifying.

I can, Alex was going to talk about the problems with the bill as presented, and I was just going to talk about the ramifications of the lack of contract compliance, but I'll just,

SB 1153

**JOINT
STANDING
COMMITTEE
HEARINGS**

**JUDICIARY
PART 10
3141 - 3485**

2013



**TESTIMONY
BEFORE THE
JUDICIARY COMMITTEE
LEGISLATIVE OFFICE BUILDING
APRIL 1, 2013**

My name is Jennifer Herz and I am Assistant Counsel for the Connecticut Business & Industry Association (CBIA). CBIA represents approximately 10,000 businesses throughout Connecticut and the vast majority of these are small companies employing less than 50 people.

Thank you for the opportunity to submit CBIA's concerns regarding HB 6658 An Act Concerning Employer Use of Noncompete Agreements.

CBIA has specific concerns regarding the implementation of this bill. This bill requires employers to provide employees with a 10-day period to review a non-compete agreement and provides a civil right of action if a party is aggrieved by a violation of the bill. The issue is that the bill also applies that civil right of action – i.e. the right to sue the employer – to issues surrounding the initial 10-day review period. While the right to file a civil action regarding the enforceability of a non-compete agreement is prudent, issues relating to the 10-day review period are distinguishable from being aggrieved by an executed non-compete agreement and should be treated differently. For example, if an employee chooses not to sign a non-compete agreement within the 10-day period that is a very different situation from an employer trying to enforce an executed non-compete agreement against an employee. CBIA respectfully suggests the right of action in subsection (c) of this bill should not apply to claims of action regarding the 10-day review period.

Secondly, CBIA wishes to address the remedies provided under this bill. A cause of action relating to a non-compete agreement is in the unique situation where specific performance is available on an expedited basis. That is, if a court rules in favor of an employee in a non-compete action the employee is immediately made whole by the court order stating the employee may work at the location previously opposed by their employer (specific performance). And, since such cases are heard on an expedited basis (these types of cases can cut the line) the current system is already designed in order to avoid the damages contained in this bill. Therefore, the type of damages and fees prescribed by this bill are unclear and perhaps unnecessary.

Finally, CBIA is concerned that the definition of employee in Section 1 of the bill is extremely broad. An "employee" as currently drafted would include consultants, independent contractors and other types of employment situations far beyond the traditional employee-employer relationship. CBIA respectfully suggests the definition is clarified.

In conclusion, CBIA has specific concerns regarding the application of this bill. First, issues surrounding the 10-day review period are distinguishable from causes of action arising under an

1
2
3
4

executed non-compete agreement and therefore such disputes should be treated appropriately and should not be subject to the same fee and damage provisions. Secondly, a cause of action brought by an employee under a non-compete agreement *currently* requires expedited review in order to avoid the fees and damages provided for in this bill. Therefore, CBIA respectfully suggests the damage and fee provisions included in this bill are not necessary. Finally, the definition of employee as currently drafted is overly broad.

Thank you for the opportunity to offer CBIA's comments.