

PA 14-159

HB5453

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**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

**PROCEEDINGS
2014**

**VOL.57
PART 9
2693 - 3043**

Employees, Substitute House Bill 5453, AN ACT
CONCERNING EMPLOYERS AND HOME CARE WORKERS.

DEPUTY SPEAKER MILLER:

Representative Tercyak, you have the floor, sir.

REP. TERCYAK (26th):

Thank you very much, Madam Speaker.

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

DEPUTY SPEAKER MILLER:

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

Representative Tercyak, you have the floor, sir.

REP. TERCYAK (26th):

Thank you very much, Madam Speaker.

This is a good bill, but we've had some suggestions that we've listened to and made it even better. The Clerk has an amendment, LCO Number 4493. I would ask the Clerk to please call the amendment and I be granted leave of the chamber to summarize.

DEPUTY SPEAKER MILLER:

Will the Clerk please call LCO 4493, which will be designated House Amendment Schedule "A."

THE CLERK:

House Amendment "A," LCO 4493, as introduced by
Representative Becker.

DEPUTY SPEAKER MILLER:

The Representative seeks leave of the chamber to summarize the amendment. Is there objection to summarization? Is there objection to summarization?

Hearing none, Representative Tercyak, you may proceed with summarization, sir.

REP. TERCYAK (26th):

Thank you very much, Madam Speaker.

This law deals with live-in domestic workers who are hired by an agency. This is not for live-in domestic workers who are hired by an individual or that individual's family independently. The present law will not change for those workers. However, for the people hired by an agency, federal law is changing. Connecticut's law has been more generous than federal law for agency-employed live-in domestic workers. If we don't change Connecticut's law instead of all live-in domestic workers hired by an agency experiencing an increase in pay, which is welcomed, they will have their pay in some instances tripled. And while I'm in favor of people getting raises, I

don't think we were intended to be tripling people's pay.

So to do this, we will looking -- the difficulty is about sleep time. People are guaranteed a break of eight hours for sleep time, guaranteed actually five hours to be able to sleep. Under the bill, should that be interrupted, you will be paid for that time that it is interrupted. You will not be paid for the sleep time should you not be having to perform any duties there. This will still be a good raise for the workers and it will conform Connecticut law the federal law. Thank you very much, Madam Speaker. I move acceptance of the bill.

DEPUTY SPEAKER MILLER:

You move adoption, sir.

REP. TERCYAK (26th):

That's the word I wanted, adoption, not acceptance. I move adoption. Thank you.

DEPUTY SPEAKER MILLER:

The question before the chamber is adoption of House Amendment Schedule "A." Will you remark further on the amendment? Will you remark on the amendment?

Representative Smith.

REP. SMITH (108th):

Madam Speaker, you've been up there a long time.

DEPUTY SPEAKER MILLER:

I have, sir.

REP. SMITH (108th):

Well, thank you for doing such a great job. I do have a few questions to the chairman of the Labor Committee, if I may, on this amendment.

DEPUTY SPEAKER MILLER:

Representative Tercyak, please prepare yourself to respond, sir.

Representative Smith, you have floor, sir.

REP. SMITH (108th):

Thank you, Madam Speaker.

So I do appreciate the explanation because I did have concerns as to whether or not this would apply to someone like myself if I wanted to hire a home health care aid to -- for my mom or my dad and help them through the night, it appears based on the comments that I heard so far that this bill would have nothing to do with that, assuming that they were not employed by a third-party agency. Is my understanding correct? Through you, Madam Speaker.

DEPUTY SPEAKER MILLER:

Representative Tercyak.

REP. TERCYAK (26th):

Through you, Madam Speaker, yes.

Thank you, Madam Speaker.

DEPUTY SPEAKER MILLER:

Representative Smith.

REP. SMITH (108th):

So for those who not hired through the third-party agency, as I just described, are they still obligated then to pay for 24-hour care or can they engage in separate agreements that would just restrict the amount of pay that one would make. Through you, Madam Speaker.

DEPUTY SPEAKER MILLER:

Representative Tercyak.

REP. TERCYAK (26th):

Thank you very much, Madam Speaker.

The most important part of the question I thought was the word "still" and the answer is the people who are hired by an individual or their family who are not employees of an agency will still be working under the same conditions and laws as they were prior to the passage of this. Nothing will change for them. Thank you very much, Madam Speaker.

DEPUTY SPEAKER MILLER:

Representative Smith.

REP. SMITH (108th):

And I thank the chairman for his answer. I was looking at some of the language set forth in lines, we'll go 87 through 92, and it talks about individuals will receive at least five hours of sleep time and if the sleep people is more than eight hours, only eight hours will be excluded and I'm wondering if the chairman can explain is what is meant by that language, through you, Madam Speaker.

DEPUTY SPEAKER MILLER:

Representative Tercyak.

REP. TERCYAK (26th):

Thank you very much.

What that means is should an employer say it's been a hard day, I won't -- and at 10 o'clock at night, I won't be looking for you again until 7:30 in the morning, it doesn't mean that that person just lost some pay from what they were expecting. They can count on 8 hours will be exclude and if an employer wants to tell them to take a little longer at night or it's okay to take a nap in the afternoon, that's fine. It doesn't change their availability. That won't

actually change their availability according to the law. Thank you, Madam Speaker.

DEPUTY SPEAKER MILLER:

Representative Smith.

REP. SMITH (108th):

Madam Speaker, just so I make sure I understand. So if a worker were to sleep 10 hours, the home health care provider or the agency would -- would have an exemption for 8 hours, but still would be obligated to pay those additional two hours about the eight. I'm not sure that this is a great question, but if the chairman understands my question, I'll try that. Through you, Madam Speaker.

DEPUTY SPEAKER MILLER:

Representative Tercyak.

REP. TERCYAK (26th):

Thank you very much, Madam Speaker.

Through this bill, the employer, the household person and the domestic worker can make an agreement not to be paid for hours of sleep. That agreement cannot be for more than 8 hours regardless -- in terms of pay regardless of any other agreements about sleep. They're only able -- allowed to deduct eight hours of pay and in those eight hours, the person is supposed

to be able to get five -- at least five uninterrupted hours in a row of sleep. Thank you very much, Madam Speaker.

DEPUTY SPEAKER MILLER:

Representative Smith.

REP. SMITH (108th):

I think I understand it now. So even if an employee were to sleep 12 hours on the job, they would still get paid for -- well, they get an exemption for eight and then anything above the eight, they would still get paid for. I think I'm accurate in that statement. I think the chairman explained it well enough, but just so we're all sure that this doesn't change -- there is only an exemption for eight hours, anything above the eight hours, the employee is still bound to be paid despite whatever agreement is made between the parties. Is that accurate? Through you, Madam Speaker.

DEPUTY SPEAKER MILLER:

Representative Tercyak.

REP. TERCYAK (26th):

Thank you, Madam Speaker.

Yes, through you.

DEPUTY SPEAKER MILLER:

Representative Smith.

REP. SMITH (108th):

Thank you, Madam Speaker.

And I noticed also that if the period of sleep is interrupted at all, there are certain requirements where the person who is being taken care of would not be able to deduct the full eight hours and if the chairman could just go through those and explain to the chamber in what situation if the sleep is interrupted, would the person who is being taken care still be obligated to pay for the full eight hours. Through you, Madam Speaker.

DEPUTY SPEAKER MILLER:

Representative Tercyak.

REP. TERCYAK (26th):

Thank you very much, Madam Speaker.

And the answer is no. They will not be required to pay for the full eight hours of sleep unless they were kept so busy during that eight hours that they did not have five interrupted hours in a row to be able to sleep. Should somebody call on their domestic worker, for example, in hour one and need two hours -- and need two hours of help, that would still leave five hours uninterrupted that that the person could

sleep; therefore, the person would only have to pay for the hours worked. Should it extend beyond the three hours and into the five hours minimum set aside for sleep, then yes, the employee will be eligible for eight hours pay for the entire period. That does not include a five-hour rest period. Thank you very much, Madam Speaker. Through you.

DEPUTY SPEAKER MILLER:

Representative Smith.

REP. SMITH (108th):

The Chairman explains it so much better than I'm asking the questions and I do appreciate that. The -- I guess the last question I have, I see it's tied into the federal labor standards act and it becomes effective, I guess -- and I just want to be sure -- once that Act becomes effective on the federal level. Is that how I understand is my understanding correct? Through you, Madam Speaker.

DEPUTY SPEAKER MILLER:

Representative Tercyak.

REP. TERCYAK (26th):

My understanding is that the reason this will take effect on January 1, 2015, is to conform with the

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new federal regulations. Thank you very much, Madam Speaker.

DEPUTY SPEAKER MILLER:

Representative Smith.

REP. SMITH (108th):

Thank you, Madam Speaker.

And I'm just looking at lines at 92 through 96 and the reason I had the question, I do see where the chairman can pick up January 1, 2015, as the effective date, but as I'm reading lines 92 to 96, it talks about being effective on or after the effective date of the United States Department of Labor's final rule (inaudible) application of the Federal Fair Labor Standard Act. I interpret that to mean that that act is out there, it hasn't yet become official, hasn't become law yet, but if it law already and that law takes effect January 1, 2015, then I'm mistaken. But if it's not law yet, my understanding is this bill if it's passed will take effect upon the passage of the federal rule. I just want to be sure my understanding is correct. Through you, Madam Speaker.

DEPUTY SPEAKER MILLER:

Representative Tercyak.

REP. TERCYAK (26th):

Thank you very much, Madam Speaker.

Yes, the gentleperson's understanding is correct.

Thank you.

DEPUTY SPEAKER MILLER:

Representative Smith.

REP. SMITH (108th):

Thank you, Madam Speaker.

And I thank the Chairman for his answers. I think he's help clarify what this bill does. This actually is a good bill. It ties this into federal law. It does a clamp, so to speak, on how much on would have to pay especially for somebody who is working around the clock. As we know, there are many people who need around the clock care. If they were to be paid or have to paid 24 hours and for sleep time and everything else that goes with it, most people would not be able to afford it. This bill sets forth some exemptions, some provisions wherein sleep hours are all set. There are some requirements that a bed has to be provided and a room has to be provided. If the sleep is interrupted such that the person working doesn't get at least five hours worth of sleep, the he or she would get credited more for the work actually performed.

So I think this works both ways. It protects the person being taken care of. It protects the worker to make sure that they're probably accounted for and paid. So I urge my colleagues to support it, as well, and I thank the chairman for his answers.

DEPUTY SPEAKER MILLER:

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

If not, let me try your minds.

All those in favor, please signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER MILLER:

All those opposed, nay.

The ayes have it. The amendment is adopted.

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 the members please take their 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 MILLER:

Have all members voted? Have all members voted?
Will the members please check the board to determine
if your vote is properly cast?

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

Will the Clerk please announce the tally.

THE CLERK:

House Bill 5453 as amended by House "A."

Total number voting	147
Necessary for passage	74
Those voting Yea	147
Those voting Nay	0
Those absent and not voting	4

DEPUTY SPEAKER MILLER:

The bill as amended is passed.

Will the Clerk please call Calendar Number 409.

THE CLERK:

Yes, Madam Speaker, on page 24, House Calendar
409, favorable report of the joint standing committee
on Insurance and Real Estate, Senate Bill Number 9, AN
ACT REQUIRING CERTAIN DISCLOSURES FOR LONG-TERM CARE
INSURANCE POLICIES.

DEPUTY SPEAKER MILLER:

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003459

And Calendar 517, House Bill 5305, move to place on the Consent Calendar.

THE CHAIR:

So ordered, sir.

SENATOR LOONEY:

And Calendar 512, House Bill 5386, move to place on the Consent Calendar.

THE CHAIR:

So ordered, sir.

SENATOR LOONEY:

Thank you, Madam President. Moving now to Calendar Page 20, where there are two items. The first, Calendar 527, House Bill 5592, move to place on the Consent Calendar.

THE CHAIR:

So ordered, sir.

SENATOR LOONEY:

And the second, Calendar 528, House Bill 5453, move to place on the Consent Calendar.

THE CHAIR:

So ordered, sir.

SENATOR LOONEY:

Thank you, Madam President. Moving to Calendar Page 21 where there is a single item, Calendar 531, House Bill 5299, move to place on the Consent Calendar.

THE CHAIR:

So ordered, sir.

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Calendar 500, House Bill 5547.

On Page 18, Calendar 507, House Bill 5530.

On Page 19, Calendar 512, House Bill 5386.

Calendar 514, House Bill 5521.

Calendar 516, House Bill 5500.

Calendar 517, House Bill 5305.

On Page 20, Calendar 527, House Bill 5592.

Calendar 528, House Bill 5453.

On Page 21, Calendar 531, House Bill 5299.

Calendar 533, House Bill 5290.

On Page 22, Calendar 541, House Bill 5456.

Calendar 539, House Bill 5294.

On Page 24, Calendar 551, House Bill 5588.

Calendar 552, House Bill 5269.

On Page 25, Calendar 564, House Bill 5489.

Calendar 562, House Bill 5446.

(HB5466)

On Page 26 --

THE CHAIR:

Hold on. Okay. Sorry. Please proceed.

THE CLERK:

On Page 26, Calendar 568, House Bill 5434.

Calendar 569, House Bill 5040.

Calendar 566, House Bill 5535.

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SENATOR LOONEY:

If we might pause for just a moment to verify a couple of additional items.

Madam President, to verify an additional item, I believe it was placed on the Consent Calendar and Calendar Page 30, on Calendar Page 30, Calendar 592, Substitute for House Bill 5476.

THE CHAIR:

It is, sir.

SENATOR LOONEY:

It is on? Okay. Thank you. Thank you, Madam President. If the Clerk would now, finally, Agenda Number 4, Madam President, Agenda Number 4 one additional item ask for suspension to place up on Agenda Number 4 and that is, ask for suspension to place on the Consent Calendar an item from Agenda Number 4.

THE CHAIR:

Seeing no objection, so ordered, sir.

SENATOR LOONEY:

Thank you, Madam President, and that item is Substitute House Bill Number 5566 from Senate Agenda Number 4.

Thank you, Madam President. If the Clerk would now, if we might call for a vote on the Consent Calendar.

THE CHAIR:

Mr. Clerk. Will you please call for a Roll Call Vote on the Consent Calendar. The machine will be opened.

THE CLERK:

An immediate Roll Call has been ordered in the Senate.

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An immediate Roll Call on Consent Calendar Number 2 has been ordered in the Senate.

THE CHAIR:

If all members have voted, all members have voted, the machine will be closed. Mr. Clerk will you please call the tally.

THE CLERK:

Consent Calendar Number 2.

Total number voting	36
Necessary for adoption	19
Those voting Yea	36
Those voting Nay	0
Those absent and not voting	0

THE CHAIR:

The Consent Calendar passes. Senator Looney.

SENATOR LOONEY:

Thank you, Madam President. Two additional items to take up before the, our final vote on the implementer. If we might stand for just, for just a moment.

The first item to mark Go is, Calendar, to remove from the Consent Calendar, Calendar Page 22, Calendar 536, House Bill 5546. If that item might be marked Go.

And one additional item, Madam President, and that was from Calendar, or rather from Agenda Number 4, ask for suspension to take it up for purposes of marking it Go, that is House Bill, Substitute for House Bill 5417. Thank you, Madam President.

THE CHAIR:

Seeing no objection, so ordered, sir.

SENATOR LOONEY:

**JOINT
STANDING
COMMITTEE
HEARINGS**

**LABOR AND
PUBLIC
EMPLOYEES
PART 3
1048 – 1548**

2014

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hac/gbr LABOR AND PUBLIC EMPLOYEES
COMMITTEE

March 11, 2014
2:00 P.M.

CHAIRMAN: Representative Tercyak

MEMBERS PRESENT:

SENATORS: Holder-Winfield, Osten

REPRESENTATIVES: Santiago, Markley, Smith,
Esposito, Kiner, McGee,
Miner

REP. TERCYAK: -- to our Labor and Public Employees
Committee Public Hearing.

We'll begin with Legislators and state agency
heads and municipal officials. And while we
should not use the three-minute clock, don't
think we're not paying attention to how long
you're talking, folks.

Let's start with our distinguished Commissioner
of the Department of Labor, Sharon Palmer,
please.

And is Senator Looney in the room yet? No?
Okay.

Representative Cafero? Very good. Okay.
Thank you.

COMMISSIONER PALMER: Well, good afternoon,
Representative Tercyak.

REP. TERCYAK: And members of the Committee.

COMMISSIONER PALMER: And members of the Committee.

REP. TERCYAK: Thank you.

COMMISSIONER PALMER: (Inaudible) this would be.

SB243 SB249
SB318 SB320
HB5315 HB5346
HB5452 HB5453
HB5454

I understand you have a long agenda today, so I'll try and be brief.

There are a number of bills that we just weigh in on and hopefully some folks will be here to ask questions. First is Senate 243, eligibility for unemployment.

There are number of areas where we have trouble with this bill. First of all, it changes the law so the employer is no liable for the first \$2,000 that an employee earns. It used to be \$500. The proposal is to raise to \$2,000.

That charge amount would come out of the pooled cost and the result would be that all contributory employers essentially would be paying for the non-charge benefits and not the employer directly responsible for the unemployment, so we believe it should remain at -- \$500.

Section two of this bill proposes a change to the absenteeism provision. That's been changed twice; modified in 1995 and 2004. We don't think it needs to be done again.

Section three creates a taskforce to study the methods that DOL and labor departments in other states utilize to determine whether an individual is engaged in reasonable efforts to find employment.

This is being studied right now by the Feds and we think it's premature for us to study it at the same time because it may result in a -- in a conflict, the conformity problem with federal law.

Senate Bill 249 promoting retirement savings. We very much support the concept of

We think that the employee, if something like this was taken and should be authorized by the employee. It allows for electronic pay stub instead of paper. No controls about how the employer has to allow access to those records, how those records are provided to the employees.

If -- if the employee were given a choice -- bottom line, if the employee were given a choice, we can -- we can see that being offered and perhaps employees moving to this thing over time, but not allowing it to be done without employee buy-in. And 5346, workforce investment boards. We do support this bill. We think that these are areas that -- that should be studied and we'd like to do that collaboratively with our WIBs. So we think the date should be pushed out a bit because it is a short timeframe.

5452, community service and unemployment benefits. Just briefly, it's not -- again, not in conformity with federal law. We're not allowed to do that under federal law.

5453, employers and home care workers. We don't have an official position here. I think -- I think that we can work on this.

The language is not good at this point, but we'd be willing to work with the proponents of the bill to craft some appropriate language.

And lastly, I think this is the ninth one. 5454, apprenticeship ratios. It's underlining the apprenticeship program, quite frankly, and weakening it and we don't believe that should be changed. And that's it.

REP. TERCYAK: Thank you very much, Commissioner.

Are there any questions?

Yes, Representative Miner.

REP. MINER: Thank you, Mr. Chairman. Good afternoon, Commissioner.

I -- I wasn't able to quickly jot down the bill numbers that you felt were in conflict with federal law. Could you give me those bill numbers again, please?

COMMISSIONER PALMER: Sure. 320, (inaudible), and the second is (inaudible), 5453.

REP. MINER: And -- and did you also indicate that 243 may have a conflict as well, or no?

COMMISSIONER PALMER: 43? No. No.

REP. MINER: So --

COMMISSIONER PALMER: The only problem with that one is that everybody has to pay (inaudible).

REP. MINER: So, if I could, Mr. Chairman, if you could maybe provide us before the next meeting with the -- whatever it is, it's a state, I mean, a federal law or federal regulation that shows the conflict?

And -- and let me just ask you, barring that conflict being resolved in some way, are you philosophically opposed to the underlying concepts of these bills or is the Agency opposed to looking at different options?

COMMISSIONER PALMER: I don't think (inaudible) with the teams, see what we think.

REP. MINER: Well, that would be helpful. You know,

I think it was about two months ago, maybe even closer to three months ago, you and I were sitting in another hearing room and I think there was this revelation that, in fact, some 28,000, I think, Connecticut residents had lost federal unemployment benefits.

I think it was reported in one of the local newspapers that that number may actually have approached 38,000 by the end of February. And at that time, we had a conversation about what kind of forward-looking initiatives the agency was looking to put in place or have a conversation about.

And I'm -- I'm struck by the notion that there seems to be a lot of opposition on the part of the Department of Labor for a whole host of reasons toward looking at anything differently than the way we've looked at them in the past.

In fact, I think we had a conversation about the dilemma that we had here in the State of Connecticut that many of these people had been unemployed for a period of time.

And just the portrait that that paints to an employer, that, you know, we haven't really done anything in some cases to influence their decision making to look at a job that certainly may be beneath them, but yet employment.

Can you point to anything on this agenda, maybe with the exception of the close relationship that you have with the workforce investment boards?

Is there anything here that you do support?

COMMISSIONER PALMER: That's a loaded question, if I ever heard one.

REP. MINER: I -- and -- and --

COMMISSIONER PALMER: And I'll try and answer it.

REP. MINER: With all due respect, I intended it to be loaded, because we've been at this now for about four years.

COMMISSIONER PALMER: Unfortunately, these measures are very negative measures. And so, the answer that I'm giving -- in my opinion, are negative measures, as far as improving the system.

And that's why there's a negative response, if I can be very, very open about it.

We have undertaken a number of initiatives to try and improve the system. We're not always perfect at it, but we are constantly working and working very hard to improve the services to the people of the State of Connecticut. And quite frankly, it's an insult to say that we're not.

REP. MINER: Well, certainly, through you, Mr. Chairman, certainly you have a right to your opinion, Commissioner.

But unless I'm wrong, we're back out looking to borrow, I think it's \$100 million, from the federal government to make unemployment compensation payments again.

COMMISSIONER PALMER: That's correct.

REP. MINER: So those things are indicators to me that we're not headed in the right direction. I -- I do not mean it as an insult. I wish you wouldn't take it as a personal insult or an insult toward the Agency.

But something's got to change because the numbers are going in the wrong direction and I'm -- I'm certainly willing to listen to any idea that somebody might have.

I mean, this is the Labor Committee and I am vested in trying to improve the employment situation, as I'm sure you are.

But it -- it certainly doesn't appear to me, based on whether it's the financial condition of the unemployment fund, the debt that we have settled, businesses big and small with as a result of this very negative economic climate.

We haven't changed the dime here one bit and I'm just -- I'm offering you, I guess, an opportunity to try and work through some of these issues.

Maybe there's something in it, some kernel of hope in some of these bills, that you've been advised are against federal law that we could kind of mold them into something that wouldn't be against federal law, yet might provide people some hope.

COMMISSIONER PALMER: Well, let me talk about the issue that you just mentioned.

I did not testify about that particular issue. It is a huge issue.

We have a -- an employment security board that has just agreed to take on this issue. It has all the players at the table. It has CBAA. It has business representatives. It has labor representatives.

They have all agreed that we need to study the

current UI system and come up with some things that make it work better.

So that, it has begun and we expect that to function up until next session and come up with some provisions for next session. As you know, the UI fund is a rainy day fund that has not been funded well enough. Government does not fund it, employers fund it, and I'll just leave it at that.

REP. MINER: Thank you, Mr. Chairman.

REP. TERCYAK: Thank you.

Any further questions?

Representative Smith, please.

REP. SMITH: Thank you, Mr. Chairman, and good afternoon, Commissioner.

COMMISSIONER PALMER: Good afternoon.

REP. SMITH: You know, your last comment is the comment that I think kind of hits home with me, and that is, you know, the unemployment fund may be underfunded, but it is on the backs of the employers.

And one of the bills on today's public hearing, I don't -- I don't know if you support it or you do not. It's the last one on the agenda, 5314, which is -- would basically allocate some of these so-called surplus money to pay down and/or pay off the borrowed money from federal government, which costs have been put on the backs of our employers for the past couple of years.

I guess my first question to you is, first of

followed by, if she's here, Representative Patricia Billie Miller, followed by Representative Whit Betts.

So here we go. Representative Becker is here. I see representative Betts. Representative Billie Miller might want to get ready and come down.

Thank you. Any time you're ready.

Sir, welcome.

REP. BECKER: Good afternoon, Mr. Chairman and ranking member Smith and other members of the Labor Committee.

REP. TERCYAK: Thank you. Before you get going, may I ask is this Julianne Roth with you? No --

REP. BECKER: This is an employee of Julianne Roth. I will introduce her in a moment.

REP. TERCYAK: Please.

REP. BECKER: Thank you.

I'm Brian Becker from the 19th District. I'm here to testify on Raised House Bill 5453, AN ACT CONCERNING EMPLOYERS AND HOME CARE WORKERS.

I've submitted my written testimony to you. Bottom line is that there's an upcoming change in federal law effective January 1, 2015 that will double the cost of live-in home care effective January 1, 2015.

And without a change in Connecticut law to make it consistent with federal law, we run the risk of tripling that cost here in our state. So I just want to put that out there, just at the

table.

This -- this issue was brought to my attention by Julianne Roth, the person the good Chairman mentioned, who's a constituent of mine and also the owner of Companions For Living in West Harford.

Julianne was unable to be here today because she's at an out of town business conference. So sitting next to me is Elaine Reid, the director of client services for Companions for Living.

And if I could, I'd like to see the rest of my time to Elaine to testify and to answer your questions.

Thank you, Mr. Chairman.

REP. TERCYAK: Thank you. Welcome, Elaine.

ELAINE REID: Thank you. Good afternoon.

I'm here to support Raised House Bill 5453, AN ACT CONCERNING EMPLOYERS AND HOME CARE WORKERS.

The intent of this important bill is to help seniors remain independent in their homes versus being forced to move into a nursing home.

Services are offered to clients to bring -- with arranging of services from companionship all the way to hospice care, and everything in between.

Without these services, many, if not all, of our seniors could be forced to move into a nursing home. A minimum wage and overtime companionship exemption to the Fair Labor

Standards Act has been in place since 1974.

Last year, President Obama signed an executive order to remove the exemption. This change is scheduled to take effect January 1, 2015, and will increase the cost of home care.

The increased cost of home care resulting from the elimination of the companionship exemption is exacerbated in Connecticut because of Section 31-76b of the current statutes, which come into play.

The federal law allows for sleep and mealtime breaks to be allowed as non-paid time. However, this Connecticut Statute requires that meal and break times must be considered as paid time.

If the worker must remain on the work premises, this Statute proposes an impossible scenario in home care industry for employees who live with their clients.

In effect, employees will be paid for sleeping during their time off because they are -- must be present in case they're required to assist their client overnight.

Raised Bill 5453 excludes up to eight hours that a live-in employee is sleeping as long as the employee gets a minimum of five hours of uninterrupted sleep and the interrupted time is considered paid.

Including sleep time means increasing the number of overtime hours by an additional 56 hours per week. The annual cost in Connecticut for live-in services as of today is \$73,000 a year.

With the elimination of the federal exemption, the average industry cost for live-in services will rise to \$146,000, which is double.

If Connecticut's law defining hours worked to include sleeping time remains unchanged, the cost in our state will triple to \$225,000 a year. As you might imagine, this is a cost prohibitive scenario for most individuals who require home care...

As a comparison, the annual average cost of a nursing home today is \$144,000. Home care offers one-on-one care in a setting that most people prefer. A two-fold increase in the -- is hard enough to -- for any of us to swallow.

If the rates are to increase three-fold, it will exhaust seniors' life savings in a much more rapid rate and force many people to go into Title 19 or into a nursing home.

I implore you to pass Raised Bill 5415 for the sake of our seniors, our taxpayers. Eliminate sleep time as paid time for homeworkers.

I thank you for your time and consideration.

Questions?

REP. TERCYAK: Thank you very much. Are there any questions?

No?

I have a couple questions about what's going on presently, before any changes are made.

Are people paid under the present law for sleep -- for their nighttime now?

ELAINE REID: They are not paid for sleep currently,
under the present law.

REP. TERCYAK: Presently, they can be required to be
present should they need to be used, but there
is absolutely no payment for that time when
they are not allowed to be leaving the
premises?

ELAINE REID: If they are, they must get five hours
of uninterrupted sleep and any -- if they were
woken up twice in a night, for example, they
would be paid for that time. But the five
hours gets blocked off.

A VOICE: Mr. Chairman (inaudible) one second.

ELAINE REID: The companion exemption makes it so
that they're not paid for that time. It's 16-
hour workday, versus 24 hours.

REP. TERCYAK: So under the present companion
exemption, what present law says is that
somebody can be required to be present in the
house, not running an errand or --

ELAINE REID: Right.

REP. TERCYAK: -- anything else.

ELAINE REID: Right.

REP. TERCYAK: In case they're needed for work.

ELAINE REID: Right.

REP. TERCYAK: But they are not -- and that can be a
requirement of holding the job for -- would
make hours paid separately from those hours
that count towards sleep, should they sleep,
but that they are given no pay, no remuneration

for the hours that that they are there unless somebody -- for the hours they are -- the eight hours they are required to be there in order to maintain employment unless somebody calls on them to perform personal or whatever services?

ELAINE REID: They're -- they're present, but they're not technically on the clock. It's their time.

REP. TERCYAK: And the change that's proposed would be -- would require them to be paid as if they working usual hours during what is now counted as sleep time?

ELAINE REID: There is two -- two things here. Right now, the -- the current law requires that a person, as of 2015, will get paid overtime. So a work week, if they were talking about a full work week, it's 168 hours.

We're subtracting the 56 hours for sleep, which means a balance of 112 hours. That's the current operation of how live-in home care services are provided. The 112 hours now will have that additional 56 hours added, and that's where it doubles.

Because right now, no -- no one is paying that overtime unless there is a facility that's involved within the services that are provided.

So it's really a double hit because they're having to pay the -- the extra, the -- which is 72 hours of overtime starting as 2015 and then the additional 56, which is the Connecticut Statute.

We want to have us be in compliance with the federal, to have that match. That's what we're looking for because the cost implications are -

- are disastrous.

REP. TERCYAK: So Connecticut law that now doesn't require that to be paid because of federal changes will require it to be paid, but the federal law won't?

What -- I'm still a bit confused here.

ELAINE REID: The current statute is that with the companionship exemption, overtime is not applied unless a person works in a facility. That's where you have the overtime. So it's very limited.

So when we're talking about home care, there's no overtime. As of 2015, overtime will come into effect. That overtime will become -- right now will be 72 hours.

If we add the Connecticut Statute on top of it, it brings it to a total of 112 hours of overtime. So you have your base pay and 112. That cost is -- is substantial and overwhelming for a family to be able to afford, especially given the testimony that you heard earlier today. We're not prepared for it.

REP. TERCYAK: And the remedy that you're looking for to make sure that we're all understanding it, including me, is you're not asking for people to be paid something during what's called sleep time when they're required to be there and not have that count towards their -- towards when they will earn overtime, for them to be paid nothing during that time that they're -- which could be called sleep time when they're on call in case needed?

ELAINE REID: Correct.

REP. TERCYAK: Thank you very much. That's getting -- that's clear. Thank you.

Yes, Representative Becker.

REP. BECKER: Mr. Chairman, yes. Just to be clear, the federal regulation right now does say what you just said, which is they -- they are not entitled to pay, by agreement, with their employer, if they get at least five uninterrupted hours of sleep time, for whatever the sleep period is defined, up to eight hours.

Any time they actually work, they would be paid for during that. If they were interrupted, they would be paid. That is how the federal regulation scheme works right now -- the regulatory scheme works right now.

REP. TERCYAK: And what the feds are switching to is if you are required to be present and not allowed to leave, you would have to be paid whether you work -- whether you're asleep or awake? No?

REP. BECKER: No. No. That's not (inaudible).

REP. TERCYAK: (Inaudible).

REP. BECKER: The -- the feds are changing the exemption for home care workers. There was an exemption from having to pay them overtime.

So that exemption is going away, which will require overtime pay for home care workers. And unlike under the federal regs, where there can be an agreement not to pay for sleep time, Connecticut law requires that.

When you marry the two together, rather than doubling the cost of home health care, we would

be tripling it only in the State of Connecticut, because it's the Connecticut law - it's the combination of Connecticut law with the change in federal law.

REP. TERCYAK: What's Connecticut law now?

REP. BECKER: The Connecticut law now is 31-76b, and that requires pay -- it does require pay for sleep time.

REP. TERCYAK: So presently, people are being paid for sleep time? Wait -- wait --

REP. BECKER: I don't know the answer to that. I could tell you that the law says that they should be paid --

REP. TERCYAK: I imagine whatever's going on is close to what the law actually says, regardless of what we think the law says.

REP. BECKER: Right.

REP. TERCYAK: Are people right now being paid for sleep time?

REP. BECKER: They should be, just not overtime.

ELAINE REID: If -- they're -- they're paid for what's called a daily rate for their services that meets the -- the standards of Connecticut law as well as the federal law.

REP. TERCYAK: And daily rate will not be allowed in the future?

ELAINE REID: What we're saying is that if we're having to pay overtime on that -- that amount, it -- it is a substantial hit. It takes the rate and essentially doubles for -- for the industry.

REP. TERCYAK: Will daily rate be allowed to be paid in the future?

ELAINE REID: Yes, it could still.-- could still be.

REP. TERCYAK: So then --

ELAINE REID: Right.

REP. TERCYAK: -- the daily rate wouldn't be -- overtime wouldn't apply to a daily rate.

ELAINE REID: It does apply.

REP. TERCYAK: It's the daily rate.

ELAINE REID: It's about the number of hours that person works. The workweek is -- would 168 hours at current.

REP. TERCYAK: So you're saying that there is no daily rate, it's paid by the hour, and you're saying there's a daily rate, it's not paid by the hour.

Doesn't seem that way, too?

ELAINE REID: Mm-hmm.

REP. TERCYAK: Okay. Well, thank you very much for bringing this dilemma in front of us. I suspect that what you're worried about is certainly not the intention. I can't tell yet whether that's what the result will be.

Thank you.

Yes, Representative?

REP. BECKER: If I just could -- I understand that in the State of Connecticut, we have a shortage

of these workers, but we want to attract more qualified people into this industry.

That is part of that. The Legislature enacted a statute allowing these folks to unionize so that they can get better wages.

I'm in favor of that. I voted for that legislation. I want to make it clear that we want that to happen.

But the -- with the -- this change in law, the sticker shock, you know, it's going to double the cost literally over night, from 12/31/14 to 1/1/15, and to see that triple overnight just seems to be too much in one fell swoop.

And that's -- that's the reason why this legislation was brought forward.

REP. TERCYAK: Thank you very much.

If I understood, the Commissioner of Labor's objection to this bill was mostly concentrated on bad language that would be unclear about what it would be accomplishing, not about -- she was not denying that there could be concern over what federal laws would be bringing about if we didn't change Connecticut law, but more about the language, so I suspect this something that will be discussed further.

Thank you very much for bringing it in front of us.

REP. BECKER: (Inaudible) the same conversation with her earlier today.

REP. TERCYAK: I encourage you to keep having it with her instead of me. Thank you very much.

REP. BECKER: Thank you, Mr. Chairman. I will.

ELAINE REID: Thank you. Thank you.

REP. TERCYAK: I'm sorry. Wait, wait, wait, wait, Representative Miner has a question, although I'm sure I asked earlier and he said no. It's okay.

REP. MINER: I'll be gentle.

Am I correct that there may be some state budget implication to this as well or is this only private pay?

ELAINE REID: Yes. If -- if the cost does triple, we will certainly see that they rate of Title 19 will increase because of funds being taken away from families quicker.

But also, the concern to the Connecticut Home Care Program, which currently pays \$180 a day, that -- they won't be able to work with under the guidelines of these -- to this bill and -- and this statute, the Connecticut statute.

REP. MINER: And -- and so theoretically, even for those that are private pay, I can only imagine that you go through the money quicker and then you end up on the state and federal --

ELAINE REID: Absolutely.

REP. MINER: -- list before too long. Thank you.

ELAINE REID: Thank you.

REP. TERCYAK: Representative Smith.

REP. SMITH: Mr. Chairman, thanks again.

Isn't there a movement throughout not only the state, but the country to actually provide more services at home than in the traditional home health care facility?

ELAINE REID: Yes. That's primarily what we do. But we provide those services, those currently, in homes as well as in facilities. We are where people live.

And many -- many families have their family in a facility, for example. But assisted living can only do so much.

We're for family. We're there for every daily living to empower a person to be as independent as possible regardless of their limitations.

We want to create a quality of life an honor that person's wishes. We are all going to age and we can't avoid it and we have to share a destiny and we need to -- we need to do something about it.

REP. SMITH: Well, I was hoping you wouldn't remind us of that fact, but --

ELAINE REID: Sorry.

REP. SMITH: -- but it is life and reality, so.

But, you know, you -- you pointed out something to me that I was not aware of. You know, when I think of home health care aids, I think of people going to the house and providing their service, which, naturally you do.

I was not aware of the fact that you go into facilities and provide the same type of services. It's interesting. So -- and those facilities, as opposed to the home, do you also

have home health care aids that stay overnight?

ELAINE REID: We do.

REP. SMITH: You do?

ELAINE REID: We do. And they are -- they are paid for their overtime in accordance to the law.

REP. SMITH: Say that again?

ELAINE REID: They are paid overtime in accordance to the law the way the current Statute stands.

REP. SMITH: Okay. Thank you.

ELAINE REID: You're welcome. Thank you.

REP. TERCYAK: Any others?

No? Thank you very, very much.

ELAINE REID: Thank you.

REP. TERCYAK: Okay. Is Representative Patricia Miller here?

If -- then, Representative Betts, please come on and join us while we look -- while somebody looks for Representative Patricia Miller and Representative Srinivasan. (Inaudible).

REP. BETTS: Good afternoon, Mr. Chairman.

REP. TERCYAK: Thank you. Good afternoon. Please be --

HB 5314

REP. BETTS: Congratulations again, Senator, and ranking members.

Thank you for the opportunity to testify. I'm going to be brief on my remarks and just read a

you're speaking so that we can get it all correct.

Welcome.

THOMAS FALIK: With your permission, Mr. Chairman, my name is Tom Falik and the next four speakers will be representing the Connecticut Association of Home Care Registries.

Sylvia is going to go first, addressing House Bill 5453 and I'm sitting next to her to help out if there is any problems with questions.

And if it would be helpful to clear up some of the questions from the earlier testimony on this bill, I'm available to do that also.

SYLVIA VERONNEAU: Good evening, Representative Tercyak and other distinguished members of the Labor and Public Employees Committee.

My name is Sylvia Veronneau. I'm the Director of Client Services for Hands on Care and Home Sweet Home Care, agencies which focus their daily mission on providing those individuals within our aging population and with disabilities with options that empower them to remain independently in their home, for as long as possible.

I'm here today to support Raised Bill 5453, AN ACT CONCERNING EMPLOYERS AND HOME CARE WORKERS, with certain modifications.

The bill provides that when an employee works for 24 hours in an employer's home, up to eight hours of sleeping time can be excluded from the definition of hours worked.

Under current federal law, hourly and live-in

employee-caregivers in Connecticut have been generally exempted since 1974 from the minimum wage and overtime requirements of the Federal Fair Labor Standards Act, through the companionship and live-in exemption contained in the FLSA.

However, under new FLSA Regulations, effective January 1, 2015, these two exemptions will be substantially limited for consumers and completely eliminated for third-party employee-based homecare agencies. This will enormously increase the cost of home care in the State of Connecticut.

The current and new FLSA regulations provide that in calculating hours worked by live-in caregivers, sleep time, mealtime, and other periods of free time from all duties can be excluded from the hours worked.

The current CT Section 31-76b does not include such an exemption, but H.B. 5453 creates such an exemption, which is a step in the right direction.

But we would propose the following modifications to 5453 to clarify and enhance its provisions.

One, it would be simpler for CT consumers if the hours exempted followed the FLSA regulations so that our consumers would not need to know and qualify under two different rules for the same subject matter.

Two, if the FLSA regulations are not adopted in CT, H.B. 5453 should be broadened to cover mealtime and other periods of complete free time and duties. FLSA does that.

Three, the change proposed by bill to section 31-76b should not be limited to employees on duty at an employee's private home.

This would exclude live-in caregivers placed by agencies, because the agency does not own the home.

It would also exclude live-in care provided to elderly individuals in care facilities. The changes to the FLSA regulations are already going to cause havoc amongst caregivers.

Most consumers will not be able to afford to pay overtime.

To avoid paying overtime, they will have to replace their current live-in caregivers with three live-in caregivers, each working two to three days, which is very confusing on our elderly population and financially devastating for live-in caregivers that are used to working a much longer schedule.

H.B. 5453 is not passed -- if not passed, another 56 hours of overtime will be thrown into that mix, requiring four replacement caregivers instead of three.

It should also be remembered that currently live-in caregivers are provided with free room and board while working in the home of their client, which makes this bill a very fair solution for caregivers.

Failure to pass this bill would also cause seniors who would prefer to stay at home to now face exhausting their life savings at a much quicker rate and transition at a much quicker speed into the Title 19 process and much more expensive care facilities.

The home care industry, as we know, and our clients are currently facing many new challenges and we are asking for your support and advocacy on behalf of those we serve daily.

I encourage you to please consider the points mentioned today and pass 5343 with the suggested modifications, for the sake of our taxpayers.

Eliminate sleep time; mealtime, and free time from the definition of hours worked. I thank you all today for your consideration and your time.

Any questions?

REP. TERCYAK: Perfectly timed.

Any questions? Thank you very much.

SYLVIA VERONNEAU: Thank you.

REP. TERCYAK: Okay. Great. Next up, Maggie and John, correct?

MAGGIE DRAG: Correct.

REP. TERCYAK: Maggie first, then John? Okay.

HB 5313

MAGGIE DRAG: Good evening, Representative Tercyak and other members of the Labor and Public Employees Committee. Thank you for the time to testify on this important issue.

My name is Maggie Drag and I am the owner of Euro-American Connections, LLC, a home care registry located in Berlin, Connecticut.

I was testifying last year and English is my second language. So if I stumble or if you

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hac/gbr LABOR AND PUBLIC EMPLOYEES
COMMITTEE

2:00 P.M.

REP. MINER: Thank you.

MAGGIE DRAG: I just want to add to that -- that our solution that Tom will be presenting, that will satisfy both the consumers, the recipients of the care, and also, you know, the care providers.

So we'll be happy to present those solutions.

REP. TERCYAK: Thank you very much. Okay.

MAGGIE DRAG: Thank you.

REP. TERCYAK: Yeah. John Shulansky. Welcome, sir. Begin when you're --

HB5453
HB5527

JOHN SHULANSKY: Good evening, gentlemen. Thank you very much for your time this evening.

My name is John Shulansky and I am a partner and owner of EldersChoice of Connecticut. We are registered with the Department of Consumer Protection as a Homemaker Companion Agency and were classified as a Registry, and we're also registered with the Department of Labor as an Employer Fee Paid Employment Agency, because that's technically what we are more than anything else.

EldersChoice refers trained individuals to provide extended live-in non-medical care support at home for the frail elderly and adults with chronic illnesses.

I appear before you today to speak in opposition of House Bill 5313. The principal impacts of this bill are threefold.

One, they reduce consumer choice. Two, they

I think most importantly, you've heard testimony today about the Fair Labor Standards Act.

What I am to emphasize is the United States Department of Labor has spent since 2008 investing changes to the Fair Labor Standards Act.

When they promulgated their original draft proposals, it took them 18 months to accept comments. They receive 50,000 comments and finally issued the final regulations in the fall of 2013 to be -- to become law in January of 2015. That gives you an idea of the scope and extent of these regulations, which are over 350 pages long.

The short answer is that if an individual is a direct care worker, and that means working directly for the family, they are exempt under certain conditions from the Fair Labor Standards Act, and that is the only way an individual is exempt, if they are a direct care worker.

There will be no other exemptions going forward after January 1. And the U.S. Department of Labor has identified that there is a specific need. As Maggie mentioned in the Florida Statutes, other states have identified the same issue.

There are good best practices that we need to consider here. I also want to comment briefly on 5453, which establishes timekeeping roles and the calculation of sleep time.

Again, this is not a bad bill, but it is not in harmony with the FLSA regulations, and I want

to encourage that the state try to avoid having different regulations from the federal regulations.

Most of us are small businesses and it's very hard for us to advise consumers on being compliant with both the federal law and the state law when they may be in conflict.

You actually have bills before you to -- before this Committee, for example we'll hear about this in Bridgeport on Thursday, 5527 has a different set of sleep rules. It says seven hours, not five hours, not six hours, not eight hours.

So we've got a lot of different proposals here. What's most important is that there is a way for us to address this collaboratively with the Department of Aging, with the Department of Social Services, with the Department of Labor, the Department of Consumer Protection.

And we need to consider this -- the need for a comprehensive solution here.

I'll be glad to answer your questions.

REP. TERCYAK: Thank you.

Anyone have any questions?

Okay. Thank you very much.

Tom, want to wrap it up? And we're looking for an answer here.

THOMAS FALIK: Okay.

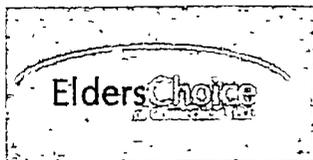
Well, my name is Tom Falik and I am here representing the Connecticut Association of

HB 5313

**JOINT
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**LABOR AND
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PART 4
1549 – 2033**

2014



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**TESTIMONY OF JOHN D. SHULANSKY TO THE LABOR AND PUBLIC EMPLOYEES
 COMMITTEE — MARCH 11, 2014**

HB 5453

Distinguished Chairmen and members of the Committee:

My name is John Shulansky. I am a partner in EldersChoice of Connecticut, LLC that is registered with the Department of Consumer Protection as Homemaker Companion Agency and classified as a Registry; and, registered with the Department of Labor as an Employer Fee Paid Employment Agency. EldersChoice refers trained individuals to provide extended live-in non-medical care support at home for the frail elderly and adults with chronic illnesses.

I appear before you today to speak in opposition of HB-5313. The principal impacts of this bill are to:

- reduce consumer choice;
- increase consumer cost; and,
- raise costs to the State, as consumers in need of basic support more rapidly spend down assets and accelerate eligibility for Medicaid and placement in a nursing home.

This is wrong. We provide an important choice to the consumer. A choice that assures compliance with State regulations for non-medical care to assure consumers have adequate rights and protections. Our mission is to provide an optimal quality of life for the frail elderly at home and avoid a more restricted and institutional living environment.

Should this bill become law, I will be forced to call these individuals my employees, which they are not. These caregivers work for the family, and should this bill become law, businesses like mine will have to close. And...consumers will be left with two choices: hire a caregiver who is paid by an Agency, or hire a caregiver on the underground market.

Hiring a caregiver through an Agency will increase the costs to the consumer by as much as 60 percent for overtime; so as a frail individual needs more help with cooking, dressing, toileting, and basic activities of daily living, the cost increases exponentially. Alternatively, the frail elderly will be exposed to a series of different caregivers every day or two.

Labor and Public Employees Committee
Testimony by John D. Shulansky
March 11, 2014

Hiring a caregiver online, by word of mouth, or through local advertising is risky at best. The consumer has none of the benefits of state regulations – regulations to which both Agencies and Registries must and do comply, including background checks and other important consumer protections.

This bill is also in direct conflict to changes in the US Department of Labor Fair Labor Standards Act effective January 1, 2015. These revisions took over two years to issue following many years of analysis and nearly 50,000 public comments to the original draft regulations. As a result of these significant efforts, live-in direct care workers are the ONLY home care workers exempt from FLSA. The US DOL recognizes that these live in direct care workers fill a specific need that requires special treatment in the law. HB-5313 vacates these new Federal findings developed after years of analysis.

Today, you also are hearing testimony on HB-5453, which in part establishes timekeeping rules and particularly the calculation of sleep time. This bill is flawed, because it is not in harmony with the new FLSA regulations, which addresses sleep and all sorts of timekeeping issues. For the most part, we are small businesses and compliance with conflicting Federal and State regulations is especially burdensome. Further, the State bill places significant recordkeeping burdens on individuals without relief contained in Federal law.

There are alternatives. Many states have comprehensive approaches to non-medical home care that offer examples of best practices. These are our most frail of citizens. They also are the largest and fastest growing component of our demographic. They have few advocates. We owe more to the elderly and infirm of our state and want to work collaboratively with the Departments of Consumer Protection, Labor, Aging and Social Services to craft a comprehensive solution.

Thank you for your time and consideration.



Testimony to the Labor and Public Employees Committee

Submitted by Mag Morelli; President, LeadingAge Connecticut

March 11, 2014

Regarding

- House Bill 5313, An Act Concerning Homemaker Services and Homemaker Companion Agencies
- House Bill 5453, An Act Concerning Employers and Home Care Workers

LeadingAge Connecticut is a membership organization representing over 130 mission-driven and not-for-profit provider organizations serving older adults across the continuum of long term care. Our members are sponsored by religious, fraternal, community, and municipal organizations that are committed to providing quality care and services to their residents and clients. Our member organizations, many of which have served their communities for generations, are dedicated to expanding the world of possibilities for aging.

On behalf of LeadingAge Connecticut, I would like to submit the following testimony regarding House Bill 5313, An Act Concerning Homemaker Services and Homemaker Companion Agencies and House Bill 5453, An Act Concerning Employers and Home Care Workers

House Bill 5313, An Act Concerning Homemaker Services and homemaker Companion Agencies

LeadingAge Connecticut has not taken a position on this bill which would designate a homemaker-companion agency, registry or homemaker-home health agency as the employer of individuals providing certain services to consumers for the purposes of unemployment compensation, wages and workers' compensation, and remove liability for such individual's personal injuries arising out of and in the course of employment from the consumer. We would, however, like to raise various issues that might arise as a result of this bill, including the question of whether this proposal might take away an option for consumers who are seeking to choose the appropriate home and community based service for themselves or a loved one. Ensuring consumer choice within the long term care system is a tenet of the state's long term care plan. In addition, the requirements proposed in this legislation are all costly undertakings for the agencies and would no doubt cause an increase in the referral charge. And finally, these changes might also affect other wage and hour laws and exemptions which should be taken into consideration when reviewing this bill.

Navigating the options for homemakers, companions, and direct caregivers can be a very confusing process for consumers and we support every effort to make that decision making process easier and more transparent for consumers. State law currently requires homemaker service and homemaker-companion agency registries to notify a consumer within seven days of providing a referral or placement, that he or she may be considered the employer of the homemaker or companion and thus responsible for withholding applicable taxes or making other payments. We supported this legislation which was passed in 2011 because we thought it would serve a vital role in providing consumers with

the information needed to make an informed decision regarding employment of long term care workers and caretakers in their homes.

House Bill 5453, An Act Concerning Employers and Home Care Workers

This bill appears to be an attempt to conform state law with current U.S. Department of Labor regulations concerning payment for sleep time when an employee is on duty for twenty-four hours or more, however the bill is limited to employees working in an employer's home, whereas the federal regulation applies to all employees working twenty-four hours or more, regardless of the place or the employer.

LeadingAge Connecticut has some concerns with the changes to the definition of "employee" in the bill. The proposed definition would include "any individual employed in domestic service in or about a private home." This definition is inconsistent with the definition of employee in Section 31-58(f) of the Connecticut General Statutes, which specifically exempts any domestic employee who is exempt under federal law, such as companions employed directly by an individual. The new definition in this bill would negate the companion exemption applicable to individual employers (as opposed to agency employers) and we believe could have negative consequences for aging individuals and employed companions.

Please note: An excellent consumer guide entitled, "What Consumers Should Consider When Hiring a Personal Caregiver," was prepared collaboratively by The Home Health Legislative Workgroup of the Connecticut General Assembly and The Connecticut Association for Healthcare At Home and can be found at cthealthcareathome.org.

Thank you for this opportunity to provide this testimony.

Respectfully submitted by Mag Morelli, President, LeadingAge Connecticut

LeadingAge Connecticut, 1340 Worthington Ridge, Berlin, CT 06037 (860)828-2903
mmorelli@leadingagect.org

Good morning Representative Tercyak, Senator Holder-Winfield and the other distinguished members of the Labor Committee.

My name is Christine Skelly and I am here today to support Raised Bill 5453. I would like to speak about the impact that treating sleep time as paid time would have on families who have loved ones needing live-in help. My mother's name is Alma Brigham, she is 87 years old and has advanced dementia. She has lost many capabilities over the several years, including the ability to plan her day, make a meal, dial the phone, drive a car, understand that even though it's dark outside at 5 pm, it's not time to go to bed or often, even to speak a clear and coherent sentence. Even though she is severely impaired in many ways, she knows her family and remains a loving mother to her children and grandchildren. She has a sense of what is going on and the terrible losses she has suffered. This leads to times of panic when she is alone or if she happens to wake up at night simply because she is just so lost without someone there to guide her. She needs 24 hour care to be safe in her own home. We realized this when about one year ago, she woke up in the morning and felt disoriented and left her apartment in search of help. A neighbor saw her and called the police and at that point we knew, she could no longer be alone even for short periods of time. The most ironic part of her illness is she is in excellent physical health. She does not use a walker or cane and has more physical stamina than many caregivers who are much younger than her. While this creates more of a burden on her family, we are committed to keeping her in a home setting and giving her a sense of independence. She does not need the more hands on clinical care that many in nursing homes require.

My parents were hard working, honest people who knew how to stretch a dollar and were always great role models for their children, but they never had high paying jobs or the chance to create much financial security for themselves. Like many in their generation, their main form of savings was to build equity in their home. My mother became a widow at the age of 64 and continued to work until age 67 in a clerical job. She was able to build a modest IRA balance for herself. She sold her house 3 years ago and we thought that money, along with her retirement savings would be enough to provide for her needs. Until the need for live-in care became clear, she would have had enough to last the rest of her life, due to her frugal ways. Today, her sole source of income is Social Security which provides approximately \$1400 per month while the cost of her apartment, food, utilities and live-in care exceeds \$10,000 per month. She has only enough left to pay for 2-3 months of care. We have applied for help through the CT Home Care Program for Elders, Title 19 and the VA but none of it has been approved yet. We will be absolutely devastated if we are forced to do an emergency Title 19 placement in a nursing home because funds run out before she is approved for benefits. We feel this would be very detrimental to her physical and emotional wellbeing. If the new sleep time requirements for caregivers had been in place, we would have been in this situation much sooner and without significant increases in available benefits, none of the current programs would be sufficient to cover the costs of the care that she and so many others need to remain in a home setting. I urge you to pass this bill so we can continue to keep our mother in her home. Thank you.

My name is Diane Lowe. I am here to support Raised Bill 5453.

Both my parents each require a full time live-in caregiver. Years ago when my mother was diagnosed with dementia it was our promise to her that she would remain in her home. Within a few months my father who has a long history of heart issues was diagnosed with lung cancer. It was his wish to have the mass removed. After surgery he never returned to his active self. A phone call was made to our family's agency, whose managers set my mind at ease and sent us Sandra. We were not able to only have one caregiver due to the attention my mother needed. Needless to say, having two full time caregivers within a few years all the money my parents ever saved for was no longer. I can't imagine if the cost per caregiver had been triple for the two caregivers. In less than a year my parent's entire life savings would have been gone. November 2013 my mother was placed on Title 19. Regardless, I have kept my promise and my parents are still in their home.

I want to stress to you the importance of the continuity in caregivers. A few months ago both of my parent's caregivers took a weekend off. That weekend when I made a visit to see my parents, my father in tears looked at me and said "I want to go home". I explained to him he was home and he was O.K. It took no time at all to realize that because of the two new faces in the house he thought he was somewhere else. My dad refused to function until Sandra finally returned to him. As soon as he saw her, his face lit up and asked for his favorite oatmeal. The relationship that both my parents have with their caregivers is exceptional. The point of this statement is to show you that without the excellent caregivers provided to our family by Companions for Living my parent would not be home, and without question would not still be alive.

My parents are not the only people in this situation. I hope that consideration you will pass Raised Bill 5453. My father, a retired firefighter, and my mother a stay home mom, deserve to be at home as well as many other seniors do. Please don't take the only quality of life they have left by forcing the cost of care so high that they cannot afford stay home, but must move to a nursing home instead.



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TESTIMONY IN SUPPORT OF RAISED BILL NO. 5453

An Act Concerning Employers and Home Care Workers

Good morning Representative Tercyak, Senator Holder-Winfield and the other distinguished members of the Labor Committee.

My name is Julianne Roth. I am the proud owner of Companions for Living, a home care agency that provides a level of independence regardless of a person's limitations. We empower a person to live as independently as they choose by honoring and maintaining their quality of life.

When I launched my company almost 10 years ago, my mission was, and remains, to help seniors and create jobs in Connecticut. I have the good fortune to say that I have done both. My company services many seniors throughout the state and currently employs over 100 people. Last year I was honored to serve the State of Connecticut as a member of the Aging in Place task force.

I'm here today to support Raised Bill 5453, *An Act Concerning Employers and Home Care Workers*. The intent of this important bill is to help seniors remain independent in their own homes, versus being forced to move into a nursing home.

Home care, and particularly live-in home care, is an essential service provided by over 300 companies like mine in Connecticut. Home care allows individuals to remain in their own home, by providing an extra pair of hands to assist with daily living. Services are offered to clients with needs ranging from Companionship to Hospice care, and everything in between. Without these services many, if not all of these individuals would be forced to move to a nursing home.

A minimum wage and overtime "Companionship Exemption" to the Fair Labor Standards Act has been in place since 1974. Last year President Obama signed an Executive Order to remove the exemption. This change is scheduled to take effect on January 1, 2015, and will increase the cost of home care.

The increased cost of home care resulting from the elimination of the companionship exemption is exacerbated in Connecticut because Section 31-76b of the current statutes comes into play. The federal law allows for sleep and meal time breaks to be allowed as non-paid time. However, this CT statute requires that meal and break times must be considered as paid time if the worker must remain on the work premises. This statute poses an impossible scenario in the home care industry for employees who "live-in" with their clients. In effect, employees would be paid for sleeping during their time off because they must be present in the case that they are required to assist their client overnight. Raised Bill 5453 excludes up to 8 hours that a live-in employee is sleeping, as long as the employee gets a minimum 5 hours uninterrupted sleep. Any interrupted time is considered as paid time.

It is important to consider that while a live-in employee is working, they LIVE with their client, receiving free room and board. It is also important to note that meal times and down time are considered as paid time under Raised Bill 5453.

My agency has tried to keep prices as low as possible for seniors, most of who are on a fixed income. In fact, even with increased labor costs I have not raised the rates of my company's services in the eight and a half years we have been in business. We are being forced to raise our rates due to the overtime we are required to pay. Including sleep time means increasing the number of overtime hours by an additional 56 hours per week. The average annual cost in Connecticut for live-in services today is \$73,000. With the elimination of the federal exemption, the average industry cost for live-in services will rise to \$146,000 (double). If Connecticut's law defining "hours worked" to include sleep time remains unchanged, then the cost in our state will triple to \$225,000. As you might imagine, this is a cost-prohibitive scenario for most individuals who require home care.

As a comparison, the annual average cost of a Nursing Home is \$144,000. Home care offers one-on-one care, in a setting that most people prefer. A two-fold increase in cost is a hard enough pill to swallow. If the rates are to increase three-fold, seniors will exhaust their life savings much more quickly, and be forced onto Title XIX and into a nursing home.

We must also consider the consequences to the State of Connecticut's Homecare Program for Elders (a program that is funded by CT tax dollars to pay the home care costs of those who cannot afford it). The current reimbursement rate for live-in companion care is \$180 per day. At a minimum wage of \$9 per hour, the employees will receive a wage of approximately \$200 per day. If sleep time is considered paid time, that rate now becomes \$300 per day. These wages do not include taxes, insurance, or overhead that increases the cost even more. Even if the program were to receive a rate increase, I fear that there isn't enough room in the budget to increase the rates enough to include those additional 56 hours of overtime. There is no way to make that math work. What will happen to all of the seniors who require those services in order to be safe in their homes?

I implore you to pass Raised Bill 5453, for the sake of our seniors and our taxpayers. Eliminate sleep time as paid time for home care workers. I thank you for your time and consideration.



Public Hearing Testimony of
Sharon Palmer, Commissioner
Department of Labor
Labor and Public Employees Committee
March 11, 2014

Good Afternoon Senator Holder-Winfield, Representative Tercyak, Senator Markley and Representative Smith and members of the Labor and Public Employees Committee. Thank you for the opportunity to provide you with testimony regarding House Bill No. 5453, AAC Employers and Home Care Workers. My name is Sharon Palmer and I am the Commissioner of the Department of Labor.

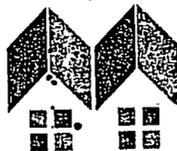
The proposed bill seeks to allow employers and individuals who care for individuals in their home to exclude an eight hour sleeping period from wage calculations. I believe the bill's intent is to amend our statute in accordance with recent amendments to federal law. The language of the proposed bill, however, does not achieve that goal. The Department of Labor is willing to work with the proponents of the bill to craft appropriate language.

Thank you for the opportunity to provide this testimony. I am available to answer any questions you may have.

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Dedication *BEYOND* Expectation

TESTIMONY IN SUPPORT OF RAISED BILL NO. 5453

An Act Concerning Employers and Home Care Workers

TESTIMONY OF SYLVIA VERONNEAU, ON BEHALF OF HANDS ON CARE AND THE CONNECTICUT ASSOCIATION OF HOME CARE REGISTRIES IN SUPPORT OF BILL. 5453

Good afternoon, Representative Tercyak, Senator Holder-Winfield and other distinguished members of the Labor & Public Employees Committee.

My name is Sylvia Veronneau, I'm the Director of Client Services with Hands on Care and Home Sweet Home Care, agencies which focus' their daily mission on providing those individuals within our aging population and those with disabilities with options that empower them to remain independently in their homes, for as long as possible.

I'm here today to support Raised Bill. 5453, *An Act Concerning Employers and Home Care Worker*, with certain modifications. This Bill provides that when an employee works for 24 hours in an employer's home, up to eight (8) hours of sleeping time can be excluded from the definition of "Hours Worked".

Under current Federal law, hourly and live-in employee-caregivers in Connecticut have been generally exempted since 1974 from the minimum wage and overtime requirements of the Federal Fair Labor Standards Act (FLSA), through the "Companionship Exemption" and the "Live-In Exemption" contained in the FLSA. However, under new FLSA Regulations effective January 1, 2015, these two exemptions will be substantially limited for consumers and completely eliminated for third-party employee-based homecare agencies. This will enormously increase the cost of home care in CT.

The current and new FLSA Regulations provide that in calculating hours worked by live-in caregivers, sleep time, meal time and other periods of complete freedom from all duties can be excluded from the hours worked. The current CT Section 31-76b does not include such an exemption, but HB-5453 creates such an exemption, but only for sleep time. This is a

step in the right direction, but we would propose the following modifications to HB-5453 to clarify and enhance its provisions:

1. It would be simpler for CT consumers if the hours exempted followed the FLSA Regulations, so that consumers would not need to know and qualify under two different rules for the same subject matter.
2. If the FLSA Regulations are not adopted in CT, HB-5453 should be broadened to cover mealtime and other periods of complete freedom from all duties, as the FLSA does.
3. The change proposed by the bill to Section 31-76b(2) should not be limited to employees on duty at an "employer's private home". This would exclude live-in caregivers placed by agencies, because the agency does not own the home. It would also exclude live-in care provided to elderly individuals in care facilities.

The changes to the FLSA Regulations are already going to cause havoc for live-in caregivers. Most consumers will not be able to afford to pay overtime, and to avoid paying overtime, they will have to replace their current live-in caregiver with 3 live-in caregivers, each working 2 to 3 days, which is very confusing for elderly consumers and financially devastating for live-in caregivers that are used to working much longer schedules. If HB-5453 is not passed, another 56 hours of overtime will be thrown into the mix, requiring 4 replacement caregivers instead of 3.

It should also be remembered that currently live-in caregivers are provided with free room and board while working in the home of the client, which makes HB-5453 a very fair solution for caregivers. Failure to pass HB-5453 would also cause seniors who would prefer to stay at home, to now face exhausting their life savings at a quicker rate. In addition, it will further increase the speed at which an individual transitions onto Title XIX and more expensive care facilities. The Home Care Industry and our clients are currently facing many new challenges, and we are asking for your support and advocacy on behalf of those we serve daily.

I encourage you to please consider the points mentioned today and pass Bill 5343, with the suggested modifications, for the sake of our ever growing senior population and our taxpayers. Eliminate sleep time, meal time, and free time from the definition of "Hours Worked". I thank you all today, for your consideration and time.



State of Connecticut
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Statement of Brian S. Becker
 State Representative for the 19th Assembly District
 before the
 Labor and Public Employees Committee of the Connecticut General Assembly
 March 11, 2014
 in support of
RHB 5453
 An Act Concerning Employers and Home Care Workers

Chairman Holder-Winfield, Chairman Tercyak, Ranking Member Markley, Ranking Member Smith, and the other distinguished members of the Labor and Public Employees Committee, thank you for raising and taking the time to hear testimony on RHB 5453, An Act Concerning Employers and Home Care Workers.

The raised bill would make Connecticut law consistent with federal law by creating an exception for home care workers so that the definition of "hours worked" in C.G.S. §31-76b(2)(A), which includes sleep time, would not apply the sleep time portion of the statute to those workers.

Under current federal law, there is a minimum wage and overtime exemption for "companionship services" and live-in domestic service workers. This exemption has been rescinded as of January 1, 2015. As a result of this rescission, it has been estimated that today's average for monthly live-in home care of \$6,000 will nearly double to \$11,310 per-month. Also under federal law, workers are not required to be paid for sleep time on an employer's premises so long as they are ensured at least five (5) hours of uninterrupted sleep. If current Connecticut law governing "hours worked" (C.G.S. §31-76b(2)) remains unchanged, then once the federal exemption is rescinded, home care employers will have to pay at least minimum wage plus overtime (for all time greater than forty hours) for all hours that an employee is on site (including sleep time). As a result, the estimated average cost for monthly live-in home care will more than triple to \$18,720 per month. Given that federal law will require overtime pay, the only way to prevent the Connecticut statute from exacerbating an already steep increase in the cost of care would be to create an exception to the "hours worked" statute for home care workers that would make it consistent with the federal law regarding sleep time.

Absent a change, we will cause the price of home care in our state to rise above most people's ability to pay for it and drive many of our citizens prematurely into nursing homes. This is not the direction we should take.

Please support Raised Bill 5453. Thank you.