

Legislative History for Connecticut Act

PA 15-86

SB914

House	6153-6227	75
Senate	933-943	11
Labor	1790-1791, 1809-1820, 1840-1842, 1848-1861, 1988-1992, 2005-2006, 2011-2012, 2022, 2027, 2068, 2162-2169, 2231	52
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HOUSE**

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House Bill 6754

(HB6745)

Total Number Voting	140
Necessary for Passage	71
Those voting Yea	140
Those voting Nay	0
Absent and not voting	11

DEPUTY SPEAKER SAYERS:

The bill passes. [gavel] Will the Clerk please
call Calendar No. 532.

CLERK:

On Page 30, House Calendar 532, Favorable
Report of the Joint Standing Committee on
Judiciary, Senate Bill 914, AN ACT CONCERNING AN
EMPLOYER'S FAILURE TO PAY WAGES.

DEPUTY SPEAKER SAYERS:

Representative Tercyak.

REP. TERCYAK (26th):

Thank you very much. Good evening, Madam
Speaker. I move for acceptance of the Joint
Committee's Favorable Report and passage of the
bill.

DEPUTY SPEAKER SAYERS:

The question before the Chamber is acceptance
of the Joint Committee's Favorable Report and

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passage of the bill. Representative Tercyak, you have the floor, sir.

REP. TERCYAK (26th):

Thank you very much, Madam Speaker. We have a system now where if somebody fails to pay wages to their employees, of course they have to pay what they should have paid. But that's generally as bad as it gets.

It's possible, at least on the books, to end up with a punishment for it, but generally it's you pay - they pay what they should've paid, unless they liked ripped off so many people, it's such a big number, they don't ask them to pay the full amount even. The they here, by the way, are my dear friends at the Department of Labor. We're looking to correct that.

For people who don't get paid, maybe we can do better if, like every single state around us, when people are guilty of not paying wages, they - there's a penalty. The lowest penalty around us is double damages. You pay what you owe plus what you owe again - that amount again. That's what this bill is going to do. It's going to require, rather than allow, the court to award double damages plus

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court costs and attorney fees if it finds that the employer failed to pay wages, benefits, or failed to meet the law's requirements for an employee's minimum wage or overtime rates.

The double damage requirement doesn't apply to employers who establish a good-faith belief that their underpayments were legal. Such employers must, however, pay full damages, which is only fair. It's what they owe the workers and court costs and attorney fees should there be any.

Existing law also allows the Labor Commissioner to collect unpaid wages and payments or bring a civil suit on the employee's behalf. So one can see the changes aren't that large.

Madam Speaker, I hope that everybody will join me in voting for this common sense and modest bill. Thank you very much.

DEPUTY SPEAKER SAYERS:

Thank you, sir. Representative Candelora of the 86th. Representative Rutigliano of the 123rd.

REP. RUTIGLIANO (123rd):

Thank you, Madam Speaker. Madam Speaker, a few questions to the proponent of the bill. Through you.

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DEPUTY SPEAKER SAYERS:

Please frame your questions, sir.

REP. RUTIGLIANO (123rd):

Thank you, Madam Speaker. Through you. Currently, is the penalty of double damages available to the court and/or the Labor Commissioner under current law? Through you.

DEPUTY SPEAKER SAYERS:

Representative Tercyak.

REP. TERCYAK (26th):

Through you, Madam Speaker, yes it is. And if only it were used often enough for people to recall when the last time was, we wouldn't have to be in front of us now with this bill trying to stand the present things on its head. So that people can have a real disincentive to withholding wages besides they might get caught. Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Rutigliano.

REP. RUTIGLIANO (123rd):

Yeah. Thank you, Madam Speaker. One would think that the ability of the courts to award double damages now may be deterrent enough but I digress.

Through you, Madam Speaker. Currently in your statement you said that the employer only has to pay the back wages that they failed to pay. Is there or is there not already a mechanism for the Department of Labor to penalize or fine an employer for bad acts? Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Tercyak.

REP. TERCYAK (26th):

Thank you very much. I - as I - the speaker is correct. As I said in my introduction that existing law also allows the Labor Commissioner to collect unpaid wages and payments or even to bring a civil suit on the behalf of the unpaid employee. Thank you very much, Madam Speaker. Through you.

DEPUTY SPEAKER SAYERS:

Representative Rutigliano.

REP. RUTIGLIANO (123rd):

Thank you, Madam Speaker. Madam Speaker, through you. The - but the Department of Labor can levy a fine. Am I correct or incorrect that they can currently levy a fine against an employer who fails to follow proper payroll procedures? Through you, Madam Speaker.

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DEPUTY SPEAKER SAYERS:

Representative Tercyak.

REP. TERCYAK (26th):

Thank you, Madam Speaker. That is my understanding. Correct. Through you.

DEPUTY SPEAKER SAYERS:

Representative Rutigliano.

REP. RUTIGLIANO (123rd):

Thank you, Madam Speaker. Madam Speaker, through you, is the current - is the Labor Commissioner the one who decides whether or not that there'll be double damages? Is it a hearing through the Labor Commissioner or must the Labor Commissioner bring suit against that employer? Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Tercyak.

REP. TERCYAK (26th):

Hold on. Let me see if I have it in front of me. Let me see if I understand the question. Is the question that - is the question whether the Department of Labor is able to make a decision on their own or does the Department of Labor have to go and defend the employee in some other decision-

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making thing, whether it be a court or mediation or the Star Chamber - I don't care which? Is - would that be the question, Madam Speaker?

DEPUTY SPEAKER SAYERS:

Representative Rutigliano.

REP. RUTIGLIANO (123rd):

Through you, Madam Speaker. I believe the Chairman of the Labor Committee has assessed my question properly. Thank you.

DEPUTY SPEAKER SAYERS:

Representative Tercyak.

REP. TERCYAK (26th):

Thank you very much, Madam Speaker. It is my understanding that the Department of Labor is, in fact, able to do more than just ask for back wages and is able to ask for a penalty. And, as I said before, if only they would now and then, we wouldn't have to be here. Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Rutigliano.

REP. RUTIGLIANO (123rd):

Thank you, Madam Speaker. Madam Speaker, through you. So what you're saying is that now

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through this law is the Labor Commissioner now the sole arbitrator of the double damages award?

Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Tercyak.

REP. TERCYAK (26th):

Thank you very much, Madam Speaker. I am saying that that is the way it is now. That the Department of Labor - either the Commissioner or the person assigned to do that role at the Commissioner's direction for the state through the Department of Labor - they are already the people who are make - who are the decision makers alone.

And - well, I'm sorry. Sometimes these do end up in court, which is why we talk about court cases. And while it can be decided in the Department of Labor, it is also possible to choose to go to court for - I believe it's a choice to go to court for recompense for wages unpaid. Through you, Madam.

DEPUTY SPEAKER SAYERS:

Representative Rutigliano.

REP. RUTIGLIANO (123rd):

Thank you, Madam Speaker. Madam Speaker,

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through you, so why would the Labor Commissioner ever bring a court case or go to court if now they are compelled, through this law, compelled - not maybe, shall - compelled to charge double damages for any case of unpaid wages? Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Tercyak.

REP. TERCYAK (26th):

Sometimes these aren't easy fights, and I imagine that the Department of Labor moves the fight along in front of an impartial judge and into a court rather than being the agency that is both doing the investigation and making the decisions, whether in separate rooms or not, all on its own. But they could have other reasons I'm not aware of. That's a guess on my part. I hope it's a good one. Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Rutigliano.

REP. RUTIGLIANO (123rd):

Thank you, Madam Speaker, and I thank the Chairman for that answer. Following your line of thought, if the Labor Commissioner decides to bring

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a court action against an employer, although now according to this law he doesn't even have to, but if he did decide to bring an action against an employer in the court system, would he use an attorney that is employed by the Department of Labor or do they hire outside counsel? Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Tercyak.

REP. TERCYAK (26th):

Thank you, Madam Speaker. I'm not sure if either is required. I'm - I know that it is possible for it to be outside counsel. I believe that's why the language about legal - recovering legal fees is in the bill. Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Rutigliano.

REP. RUTIGLIANO (123rd):

Thank you, Madam Speaker. And I shared the good Chairman's concern or thought if the attorney was an employee of the Department of Labor, why would we need to recoup attorney's fees if that person is employed and being paid by the Department

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to begin with? So I found that curious, and I was wondering if the Commissioner - I mean the good Chairman - also found that odd? Through you.

DEPUTY SPEAKER SAYERS:

Representative Tercyak.

REP. TERCYAK (26th):

Thank you very much, Madam Speaker. I assumed that either there wouldn't be an attempt to recovery - recover - fees in that case or that it was like too many things that go on now.

Easiest example that comes to mind quickest is about rescues now. Don't need the Coast Guard to come and rescue you from your boat on a bad day. You're likely to get a bill. They were on duty anyhow. They were already out there. They were spending money on gas and personnel. And this is much the same way. Many times, now, in this example, but municipalities also say that's too much. You're gonna have to pay for what it costs us even though that cost would've been static had the event not taken place. Thank you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Rutigliano.

REP. RUTIGLIANO (123rd):

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Thank you, Madam Speaker. Madam Speaker, through you, when the award of double damages is assessed against an employer, who receives the additional monies above the amount that was owed to the employee? Through you.

DEPUTY SPEAKER SAYERS:

Representative Tercyak.

REP. TERCYAK (26th):

Thank you very much, Madam Speaker. I believe that it is the employee. One reason I remember that is early on in the process I was in favor of - like some states have - treble damages - and then the damage award above the monies originally owed I thought would be reasonably split between the employee and the state, but the Department of Labor was worried about the appearance of conflicts or whatever that worry was they had, and they turned down my offer of raising more money with higher fines. Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Rutigliano.

REP. RUTIGLIANO (123rd):

Thank you, Madam Speaker. Madam Speaker, I also had a question about the good-faith criteria.

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I was curious, through you, Madam Speaker, who decides and what is the criteria to establish the good-faith belief that the employer acted without malice? Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Tercyak.

REP. TERCYAK (26th):

Thank you very much, Madam Speaker. Through you, hang on while I check. I'm pretty sure it's a civil servant. Because - and one of the reasons I'm thinking that is because these decisions ideally would be made before ending up some place automatically where it's going to cost somebody money to defend themselves. That would be decided in the same manner as the decisions are made now. All we would be doing through this bill is changing what the consequences would be. Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Rutigliano.

REP. RUTIGLIANO (123rd):

Thank you, Madam Speaker. And thank you for that answer. Madam Speaker, I rise in strong opposition to the bill obviously. Connecticut is

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not exactly known as an employer-friendly state.

The Commissioner already has the ability to assess double damages, assess a fine, assess some sort of interest on the employee's wages that weren't paid.

We can't even - they control all the cards now.

They decide what good faith means. They decide what the damages are. They decide what the fine is. I mean, all this stuff is in statute already.

By forcing - we're now taking any ambiguity out of the system. There's no way a judge or a magistrate or whatever we decide to use to adjudicate the case can say well, this employer didn't willfully do this. It may or may not have been a situation. They're compelled to have double damages applied to them.

It is yet just another unfriendly employer mandate - or not a mandate - action against an employer. There are bad actors in the marketplace. And we feel that they should be punished. The mechanism to punish them already exists. I believe that this bill and this law is an overreach. And for that I urge rejection. Thank you, Madam Speaker.

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Thank you, sir. Representative Candelora.

REP. CANDELORA (86th):

Thank you, Madam Speaker. Madam Speaker, if I may, a couple of questions to the proponent.

DEPUTY SPEAKER SAYERS:

Please prepare your questions, sir.

REP. CANDELORA (86th):

Thank you, Madam Speaker. Along similar lines that Representative Rutigliano had mentioned in terms of good-faith belief, because I think one of my concerns is we are stripping discretion away from the courts now. And so we're shifting a burden onto the employer to prove good-faith belief.

There could be situations, I guess, where it's pretty clear if you have employees on your payroll. You're W-2-ing them, somehow you're only paying them \$5 an hour. Obviously, that's below minimum wage. There could be some gray areas where maybe an employer is contracting with an individual, and they could be paying that person a flat fee for that work. That individual would then say, you know what? It took me a lot more hours to complete the task than I contracted for. I'm gonna bring a claim that I'm an employee and that I'm entitled to

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minimum wage and so when you calculate out the hours that that individual worked under contract, it falls below minimum wage. And they would go to court and fight this.

Under these provisions, first of all - does it have to be - I guess would it be a good-faith defense that the individual was being treated as an independent contractor and not an employee? Through you.

DEPUTY SPEAKER SAYERS:

Representative Tercyak.

REP. TERCYAK (26th):

Thank you very much, Madam Speaker. If somebody's filling out that magic - I believe it's a 1099 - we have a friend who knows that for sure - then they're not an employee. They would be an independent contractor. That's correct. If that's where we're going with that, then yes, that's correct.

DEPUTY SPEAKER SAYERS:

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Madam Speaker. And, Madam Speaker, you know, over the years we have - you know -

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obviously we've increased the minimum wage. And so sometimes I think this last one we might've had effective January 1. So we go through the holiday season. Employers might have inadvertently, for the first week of pay, continued to pay employees under that same - under the old minimum wage. And didn't notice it in that first week and then subsequently paid those individuals the appropriate minimum wage and then maybe went back and made good on paying the incremental difference to those employees. Under that provision, would that be a good-faith defense that an employer might be able to assert so as to avoid, you know, double damages and attorneys' fees? Through you.

DEPUTY SPEAKER SAYERS:

Representative Tercyak.

REP. TERCYAK (26th):

Thank you very much, Madam Speaker. If it's - well, first, the answer is a simple yes. I would also just like to add that I can think of other instances, especially in that situation when the minimum wage goes up, where an employer could find themselves later looking back and saying what happened.

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I spoke with a good restaurant owner who told me about he uses a payroll service. He doesn't see those checks and didn't know that the minimum wage hadn't gone up. He is the one who caught it and told the payroll service. He got whacked.

You know, so apparently, everybody doesn't always agree with me with what's a reasonable answer or not. I can't imagine why anybody would say that person was at fault - looks like a do-gooder to me. I would hope it would always be that way.

But what this does now is not change how those decisions are made or by whom or what criteria. The - what this does now is - in the case that used to be you could give up to double damages - you will now be forced to be paying double damages. I'm sorry that I didn't - a little sorry - that I didn't just stop at yes. But thank you very much, Madam Speaker, sir.

DEPUTY SPEAKER SAYERS:

Representative Candelora.

REP. CANDELORA (86th):

Thank you, Madam Speaker. I appreciate those answers. And I think, you know, we are changing a

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may to a shall. But I think what we're also doing here is we are limiting what we're - eliminating the court's discretion. And we're codifying what the exceptions are gonna be for an employer to assert a defense to try to avoid attorneys' fees or double damages. I appreciate the answers to my questions of some of the examples of what a good-faith defense may be.

I have to say, I think everybody in this room - we probably all agree - that a bad actor who is withholding wages from an individual who's entitled to them certainly should be subject to some sort of a penalty.

The concern I have sort of globally about this particular bill is the track that Connecticut has gone on in the way we treat businesses and organizations.

And I will go back again to how currently our nonprofit sports' organizations are being treated in the State of Connecticut. So we have organizations that volunteer - individuals volunteer - and have running leagues for children to join teams to participate in our communities. And the Department of Labor is free to come in and

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audit these individuals. And at times, the stories that I have heard is that checks that these organizations pay out to umpires and referees are then being treated suspect. And the Department is making a claim that these umpires should be treated as employees of that organization.

The problem with that is - I mean, first off, there needs to be a factual basis that these referees or umpires are employees. Typically, I think almost as a matter of law, they are not. But unfortunately, despite that fact, businesses are still having to go through the process of fighting these audits. So in that circumstance, when that happens, an umpire that may be paid \$20 to officiate a game that might've lasted three hours, if they're cited now as being an employee, that sports' organization is subject, potentially under this bill now, to double damages. And I think the good gentleman responded that if they believe they're an independent contractor, which so many of them do believe, that they could claim this exemption. And I think that is helpful.

But the reality is that the mindset of the Department hasn't changed. And we are no longer

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partners with our businesses in the State of Connecticut. There is this predatory relationship.

Certainly, I think that we should be making sure the bad actors are dealt with through the court systems. But my concern is, as I see and I hear every single day, it's not the bad actors that we go after. We go after these businesses like a sports' organization who is out there trying to do good in the community. It's nonprofit. They're not making any money off of this, but they just wanna help build a community. Have a sports' program where children can get exercise and thrive. And before you know it, they're subject to an audit procedure that lasts for several months. They're spending time away from their business trying to defend these types of charges.

And so I think that's sort of the problem I have with this underlying bill. Because it just piles on. If we had a state that truly worked in partnership with its businesses, I think this bill might make sense. But we continue to see the onslaught of businesses constantly being under the defense mode. We're hearing around the building of other bills that we're seeing. Yesterday being

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visited by Dunkin' Donut and their concern of the impact of the \$15 wage bill. This in its totality is certainly the problem.

And so I think this bill just goes too far, along with many others that we're seeing in this Chamber, given these economic times. I think that we should be leaving well enough alone right now. Let the courts continue to have the discussion on their own to punish these bad actors. Don't make it statutory at this point in time. And maybe down the road when we start fixing the other areas that are broken, we could take a look at these provisions. But I think today is not the day. Thank you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Thank you, sir. Representative Smith of the 108th.

REP. SMITH (108th):

Madam Speaker, thank you. I was listening to the exchange of the ranking member and the Chairman of the Labor Committee. And I was interested in learning new stuff here this evening. I thought I heard that the Labor Commissioner has the power, under current law, to assess double damages, and I

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was looking at the statute while we were talking, and I don't see that anywhere. I'm just asking the Chairman if he could point that out to me, through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Tercyak.

REP. TERCYAK (26th):

Hold on a sec. I wouldn't blame you if you had people stand at ease, Madam Speaker.

DEPUTY SPEAKER SAYERS:

The House will stand at ease.

(Chamber at ease.)

DEPUTY SPEAKER SAYERS:

The House will come back to order.

Representative Tercyak. You have the floor, sir.

REP. TERCYAK (26th):

Thank you very much, Madam Speaker. Now if I'm following things correctly, through you, we're talking about Section 2 of the bill on Line 44, it starts out saying Section 31-72 of the General Statutes is repealed and the following is substituted. We get to Line 43, where we start

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seeing the changes. These are - where we start reading what is presently the language of Section 31-72 of the General Statutes.

It starts out with those words, when an employer fails to pay, and it goes on and on until we get to the part on Line 49 in the bill where it ends on Line 49 with the word may. We bracket that out to remove it from the present law. And the first word on Line 50 we - I'm sorry - we add a new word first on Line 50 - changing that may to shall.

That is where - so in the printed statutes - that may can be found in the sixth line and close to the middle. That's the may that we're changing - I mean that may is being changed to shall. Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Smith.

REP. SMITH (108th):

Madam Speaker, thank you, and I thank the Chairman for taking the time to look at the statute. When I read the statute, I read it a little bit differently. I see as the employer has the right to bring a civil action to recover damages, and under the current law, the court has

discretion to award double damages, and this proposed bill is seeking to make that mandatory.

I don't see anywhere in the language before us in this bill where the Commissioner has the discretion to award or even assess damages under this particular bill that we're talking about. And I thought I heard the Chairman say, in response to the ranking member that, in fact, the Commissioner did have that discretion. And I'm just wondering if we could just clarify that for the Chamber. Thank you, Madam Speaker. Through you.

DEPUTY SPEAKER SAYERS:

Representative Tercyak.

REP. TERCYAK (26th):

Thank you very much, Madam Speaker. Good catch by the Representative. I - the Labor Code Commissioner does collect awards but I was - I misspoke before. [swearing] It is the court that assesses - that decides the cases, gives awards, decides what damages are, and reasonable attorney fees.

The Labor Commissioner can bring - it is the Labor Commissioner that may bring any legal action necessary to recover twice the full amount, but the

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Commissioner doesn't make that decision herself on whether it'll be twice the full amount or just the amount owed. Maybe we'd have it decided in terms in favor of the employees more often, but it doesn't matter. It's not her. It's the courts and the Labor Commissioner does - has the ability to bring any legal action, bring the suits to court, to collect the damages, to hold them should somebody be unable to be found to collect their back wages, and - but I was wrong, and thank you for the correction, when I said that it was the Commissioner who actually made the decision on whether or not it would be damages..

It's the Commission - it's the Commissioner - it's the Department that makes the decision on whether they're going to court, and then it's the court that makes the decision on whether or not the employer is guilty. And then we never, ever, or hardly see anything more than pay the employee what they're owed. States around us are twice as much.

So that's why these changes - but, again - thank you to my fine, former ranking member for once again catching the part that wasn't right up there. Thank you. We've worked together like this

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before. We do it well. Thank you very much. Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Smith.

REP. SMITH (108th):

Madam Speaker, I thank the Chairman for the clarification and the kind words. And I think we'll get to the comment about whether the court awards double damages or not in the - historically - but I'm still looking at Line 49 of the section that the good Chairman had just been referring to. And I think it's Section 2. And as I read that language, Madam Speaker, it seems to me that the employee or labor organization, and I guess that the labor organization could be deemed to be the Commissioner, then I would agree with our ranking - our Chairman of the Labor Committee - but absent that, I don't see where the Commissioner actually brings the civil action. So if the Chairman could clarify that for me. Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Tercyak.

REP. TERCYAK (26th):

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Thank you very much. I would go down to Line 63 where it says, in addition, the Labor Commissioner may bring any legal action necessary. That's where I see it. Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Smith.

REP. SMITH (108th):

Well, I thank the Chairman for pointing that out and that I had been looking for that, and it is there in black and white under current law.

I'm wondering if the Labor Commissioner testified in favor of this bill or opposed to it? I looked in the public hearing testimony online here. It's - I didn't see it, but, you know, there was quite a few people who did testify and might've missed it, so I'm asking the Chairman if he knows? Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Tercyak.

REP. TERCYAK (26th):

I don't remember the Labor Commissioner testifying for or against this bill either. Gosh knows we have a lot of bills in front of us. But nope, and I don't see a record of the Labor

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Commissioner having testified either so the
Representative's memory is correct. Through you,
Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Smith.

REP. SMITH (108th):

And I find that interesting, Madam Speaker,
that the Commissioner of Labor for the State of
Connecticut, who testifies in front of the Labor
Committee on a routine basis and particularly every
labor bill that comes before us, would not testify
in reference to this bill, which is changing the
whole dynamics of taking any type of discretion
away from a court to require double damages against
their employers in this very unfriendly business
state.

I think that's telling in and of itself,
Ladies and Gentlemen, that the Labor Commissioner
chose not to speak in favor of this bill. If the
failure to collect double damages was such an
issue, one might think that the Labor Commissioner
would have taken a little walk down - or a roll
down to the Labor Committee and said, you know
what, Ladies and Gentlemen? We have a problem here

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in Connecticut. There are employers who are not paying their employees, and we are suffering for it, and the employees are suffering for it. And we need to make a change in our law. We need to make sure that they're paying double damages. And we wanna take all the discretion away from the court. And we're gonna require that they pay double damages. One might think that the Labor Commissioner would have done that. But, in fact, she did not. And I pause to wonder why. And I think it should cause all of us to pause to wonder why.

I heard the colloquy between the ranking member and the Chairman about the courts' failure to award double damages and that's why we're forced here tonight to change our law to require the court to assess double damages. And I'm wondering if the Chairman has any statistics along those lines? For instance, how many cases have gone to court in which the court has failed to award double damages? Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Tercyak.

REP. TERCYAK (26th):

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Thank you very much, Madam Speaker. Let's see. There was no testimony on how often besides that it was a problem, and for the Labor Commissioner not to speak, there is - there are no new duties in this law. No changes to present law for the Department of Labor, and they generally don't comment on what we're bossing the courts around with. It's a different branch of government. But we hear complaints. The anecdotal evidence. The fed - this is a known problem. It's been in the newspaper recently. The Federal Government has standards that we are woefully behind, and this will help us catch up. There's over a dozen states that have double or treble damages. This is a huge problem.

One of those out-of-town newspapers did something recently on problems in the nail - fingernail taking care of industry. Whatever that is. And one of the things highlighted was how easy it is to just not pay the last couple of weeks. Maybe after a couple of weeks of blaming the payroll service or the bank - you don't pay a couple more. And then the next thing the workers know, they come to a locked up place. The owner's still in business under a new business name. If

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those workers are lucky enough to get in front of a court about this, then that business would only have to pay what they owe. It's not a very big incentive to do the right thing.

Every honest employer suffers from the illegal competition of the people who are able to offer lower prices because they are paying no wages or less wages than they should.

So while we have anecdotal evidence and many people complain about it, sadly, we have had neither task force nor a study, and we don't know exactly how often that has happened. Through you, Madam Speaker. [laughs]

[laughter]

DEPUTY SPEAKER SAYERS:

Representative Smith.

REP. SMITH (108th):

Madam Speaker, it sounds like, to me, that the good Chairman is looking for a friendly amendment for a study on this matter.

[laughter]

REP. SMITH (108th):

And I'd be happy to propose one, Madam
Speaker, if -

You know, what's interesting here is the
Chairman and I happen to agree a great deal on this
bill. For those employers who are not paying their
employees, they should be assessed double damages.
These people work hard. They show up every day.
They give a full week's work, and they don't get
paid. That's wrong. And they should have the right
to recover double damages. I have no issue. I
wouldn't mind if it was treble damages.

But I think we need to leave it to the
discretion of the judge. Why is that, Madam
Speaker? Because the court - the judge - hears the
evidence. He hears the evidence that the employee
worked all week, and the employer said, you know
what? I just don't have the money. Catch me next
week. And the employee comes back next week, and
the employer says, I'm still a little short - come
back next week. And it goes on and on and on until
he never collects the money. Or she never collects
the money.

I'm sure as I'm standing here this evening, Madam Speaker, that if a judge heard that type of evidence, that judge would award double damages. And hold the employer accountable for their lack of compliance with the law. But there are many situations here in Connecticut - one that was described by Representative Candelora. Others I can think of such as our general contractors and construction folks out there who are not sure and pretty much believe they are in independent contractor relationship as opposed to an employee/employer relationship.

In those situations, they go into court perhaps because somebody brings a claim, whether it's the Labor Commissioner or whoever is thinking well, you know what? This was an employer/employee relationship. You should've paid wages. You should now pay double damages. And the court may hear that and say, no, it really wasn't an employer/employee relationship. It was a contractor/independent contractor relationship, and if money is owed, there are different means of recovering that. And I'm not going to award double damages.

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You see, when you take the discretion away from the judge to hear the evidence, to hear the facts and render a decision - we make bad policy. Why else have judges? Why not - why even refer it to the court? What's the purpose?

Madam Speaker, this is a bill that goes way too far, and it goes too far in another way by awarding legal fees. Now as a lawyer, I'm all in favor of recovering legal fees. I think it's the right thing to do. You hire somebody, they work hard for you and they win for you, God bless'm. Let'm recover his legal fees. Or her legal fees.

But here we have the State of Connecticut. A salaried employee going into court on behalf of perhaps the Labor Commissioner seeking to recover lab - legal fees. I'm not sure how the judge awards that. Do they divide the salary based on hours worked? I'm not sure if there's any other statute out there where this would apply.

But we have a similar statute that allows a state-employed attorney to recover legal fees. I could be wrong. I'm sure I am. But I'll ask the question anyway. Is the good Chairman aware of any

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other situation where legal fees are recoverable by a State Attorney? Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Tercyak.

REP. TERCYAK (26th):

Through you, Madam Speaker. The main reason I used the recovery of costs for rescue and police-type fees was because no, I'm not aware of a specific instance where - when the damages are awarded it would include damages - it would include reimbursing the state for what they spent in legal fees. Although the Attorney General, I do believe, collects legal fees when they do settlements. So maybe that's the one example you ask for, that the good Representative asked for. Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Smith.

REP. SMITH (108th):

I thank the Chairman for his answer. I think the Attorney General can recover punitive damages and have, based on some wrongful claims, but I'm not aware of any other statute where legal fees are awarded to a state-salaried attorney.

This is creating a whole new way of doing things, Ladies and Gentlemen. I'm not even sure how the court does it. I understand if an employer were to go to court or an employee were to go to court and hire a lawyer and the lawyer were successful. That's easy to calculate. Spend 10 hours, bills at \$400 if we were using some of our colleagues over here per hour, and next thing you know, you have a nice legal fee recovery.

But this provision in this statute seems to be way overboard. I was looking also why - while my colleagues were talking about where it says in the statute that the employee is allowed to recover the double damages. And I'm sure it's in here, but my number was called quickly, and I was unable to find it, Madam Speaker, and I'm wondering of the Chairman knows that? Through you.

DEPUTY SPEAKER SAYERS:

Representative Tercyak.

REP. TERCYAK (26th):

Thank you very much, Madam Speaker. Through you, I'm sorry. I've been distracted by highlighting Lines 55 and 6 where it - I apparently misspoke before because the costs and such

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reasonable attorney fees are not a shall. They remain a may as they were in the original language, as seen in Line 51, which for some reason we have replaced exactly in Lines 55 and 56. But I have complained before about the belts and suspenders people, but I take comfort in the fact they do no real damage. So I guess what I'm confessing is I'm sorry. If I could please ask the good questioner to repeat his question.

DEPUTY SPEAKER SAYERS:

Representative Smith.

REP. SMITH (108th):

I'm happy to, Madam Speaker. It's easy to try to - it's easy to get distracted when you're trying to follow the bill and answer questions and answer those hovering next to you, so I'm happy to repeat the question. I'm wondering where in this bill, you know, I'm sure it's in here, that it says that the employee is the one who is allowed to recover the double damages if so awarded by the court? Through you.

DEPUTY SPEAKER SAYERS:

Representative Tercyak.

REP. TERCYAK (26th):

Thank you very much. Hold on. I believe that what we're talking about would be beginning in Line 47 and - well, first, actually - I'm sorry. As I mentioned before, the last word on Line 49 in present law is a may. We're changing that to shall, but should we have left it alone, it would be as it continues on to Line 50, may recover in a civil action, one, twice the full amount of such wages with costs and such reasonable attorneys' fees as may be allowed by the court. So the answer is - and I'm sorry - Line - more precisely - Line 50. Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Smith.

REP. SMITH (108th):

I thank the Chairman for pointing that out. If we jump down to Line 63 where it allows the Labor Commission to bring a legal action. If the Labor Commissioner were to bring such an action and was successful, and the court did award double damages, is there language in this statute that says that the double damage recovery goes to the state or does it go to the employee? Through you, Madam Speaker.

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DEPUTY SPEAKER SAYERS:

Representative Tercyak.

REP. TERCYAK (26th):

Thank you, Madam Speaker. In Section 2, starting in Line 43, we're talking about when an employer fails to pay an employee wages in accordance with the right provisions or overtime or whatever. We get down to where Line 46, an employer or labor organization representing an employer institutes an action to enforce an arbitration order, which requires an employer to make an employee whole or to make payments to an Employee Welfare Fund, such employ - we're on Line 49 now if we're keeping up with me - such employee or labor organization may - which this law - now we're reaching change number one - turn to shall - recover in a civil action twice the full amount of wages. There is no language to give that anywhere else. The people who are identified as being able to recover twice presently - under present law - and we are not changing who the people are who are eligible. You see no brackets around anything like that. The only people who are eligible to recover - only an employee or the labor organization who is

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representing them and is required to pass it along by other laws. That's where it is, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Smith.

REP. SMITH (108th):

Thank you, Madam Speaker, and thank the Chairman for the clarification. Ladies and Gentleman, this - just to reiterate where we're at here tonight with this bill. There's no question that Connecticut is ranked at the bottom every year since I've been in this hallowed Chamber as an unfriendly business state. We continually rank at the bottom because we enact legislation that goes after employers. We're an unfriendly business state because we continue to tax our employers to the point where they can no longer afford it. We now are requiring that they pay double damages, legal fees, and costs without the ability to have any discretion of a court. I understand there's a good-faith component to this. But that's a very, very, very shallow give.

What you're saying to the court is you're gonna aware double damages and legal fees and costs if you find that this employer failed to pay this

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employee, whether or not they met the - all the elements of what we call the ABC test.

Now many of you in this Chamber haven't had the opportunity to sit on the Labor Committee and you may not be familiar with ABC test. I wasn't familiar with ABC test, or that it was called such, until I had the privilege of sitting on this Committee.

The ABC test, Ladies and Gentlemen, tries to define who is and who is not an employer and employee. I have asked, since I have been on that Committee, for the state to come up with a true policy where employees and employees know who is who. We have yet to do so. And until we do so, legislation like this, which goes after contractors, your friends, your colleagues, your plumbers, your electricians, your carpenters, your builders, your contractors. This is what's - that's what this legislation is doing. It's going after them because they're the ones that are claiming to be employers when they're not because we're not able to determine, under this so-called ABC test, whether they are or they're not because it's so vague and the courts are all over the place. And we

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as a legislature continue to go year after year after year without changing that particular law.

That's what we should be focusing on, Ladies and Gentlemen. Trying to define and give the people who are out there in the workplace the right to know who is who, what they should do, what they shouldn't do, what they can do, what they can't do. Who is and who is not an employer.

I think the Chairman's comment, although it was in jest about a study, is probably the most appropriate thing we could do here to figure that out. To figure that out. To figure the ABC test out. To figure out whether we should be requiring judges to compel double damages. To take a look at all the cases and see how many were actually awarded. We have no idea tonight whether our courts are awarding or not awarding double damages. We have no statistics. We have a Labor Commissioner who did not think this bill was worthy enough to come in and say, we need this bill.

So in light of that, I ask my colleagues here in the Chamber to consider that and to consider the effect of this legislation on those who will - it will hurt the most. And that is our contractors.

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And I would urge that you not approve or not support this bill. Thank you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Thank you, sir. Representative Miner.

REP. MINER (66th):

Thank you, Madam Speaker. Good evening.

DEPUTY SPEAKER SAYERS:

Good evening, sir.

REP. MINER (66th):

Madam Speaker, if I might ask a few questions to the proponent of the bill please, through you.

DEPUTY SPEAKER SAYERS:

Please frame your questions, sir.

REP. MINER (66th):

Thank you, Madam Speaker. I remember a public hearing that we had, and I would ask the good gentleman if he could remind me. I think my recollection is correct.

When we heard this bill, I think there were people who came and testified that they had been wronged in that they were promised wages, and then at the end of the day, someone offered to pay them something substantially less than what they had committed to pay them when they started whatever

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task it was first thing in the morning. Am I correct? Is that the same group? Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Tercyak.

REP. TERCYAK (26th):

I'm sorry, Madam Speaker. I'm getting people kicked off the stairs here so that I'll be able to hear better. They're gone. I would ask the indulgence of the questioner to please repeat the question. I think this time I and the area are ready for the question. Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Miner, would you mind repeating the question?

REP. MINER (66th):

I don't mind at all, and I'm happy to have the area and gentleman take another stab at answering it. So when we had - we had a number of bills this year in the Labor Committee. And my recollection on this one was that there were a number of groups that came to testify. And one of the groups that did come to kind of state their case and explain the problem, as I recall, indicated that they had

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agreed to perform a certain function - a task -
earlier in the day. And that at the end of the
day, when they were supposed to get paid, or in one
case at the end of the week when they were supposed
to get paid, the amount of compensation was
significantly less than what they had understood
the compensation to be when they took on the task.
Am I correct? Through you, Madam Speaker. Is that
the right bill and the right recollection of the
hearing? Through you.

DEPUTY SPEAKER SAYERS:

Representative Tercyak.

REP. TERCYAK (26th):

Thank you very much, Madam Speaker. The
questioner is correct. We were hearing that kind of
testimony on this bill. We heard from advocates
representing many - in particular - representing
immigrant workers who didn't feel confident
testifying in English. They spoke of a specific
case that's already been decided where the owner
paid workers less than \$6 an hour and required
workers to work for 12 hours a day and denied them
overtime on their \$6-an-hour wage. The courts have
already decided, and it was pointed out in that

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testimony that that's a settled fact by court.

Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Miner.

REP. MINER (66th):

Thank you, Madam Speaker. And in that case where there was a settlement in court, could the good gentleman tell me whether or not the remedy was, in fact, double damages? Through you.

DEPUTY SPEAKER SAYERS:

Representative Tercyak.

REP. TERCYAK (26th):

Thank you very much, Madam Speaker. And I'm sorry, but one of our colleagues was asking if we were actually - if - people wanted to know if we really want a study. And I was reassuring the person that, no, I'm certainly not gonna ask for a study. So I'm sorry. I'm doing my best to keep the aisle clear, but apparently now it's worse. People come up and talk to me instead of just loudly behind me. I'll keep trying to be able to hear. I'm sorry, Madam Speaker. Through you, again.

DEPUTY SPEAKER SAYERS:

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Representative Miner, would you mind repeating the question?

REP. MINER (66th):

I don't. And I wonder maybe before we did that, maybe we could put a few cones up in the area down on the bottom at least until we finish this. All right. Here we go. We've got the garbage cans are out. So here - well, let's try this again. So if the good gentleman knows, through you, Madam Speaker. Was the decision made by the court an award of double damages or was the decision to pay purely the differential between what they had provided and what they should have provided? Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Tercyak.

REP. TERCYAK (26th):

I'm looking because what I do know off the top of my head is the last time we heard about this, the owner still has not paid completely the single amount of damages he owes people. You know, he hasn't come good on all the back wages yet and no, I don't - I don't see anything here that says they were - that he was ordered to pay double damages. I

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believe that his argument about how much money it would be was accepted. And the initial amount he was ordered to pay was, in fact, less than the amount he actually owed so very many employees for so very long. Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Miner.

REP. MINER (66th):

Thank you, Madam Speaker, and so if the gentleman remembers, were the individuals claiming that they were independent contractors or whether they were, in fact, employees of the business? Through you, please.

DEPUTY SPEAKER SAYERS:

Representative Tercyak.

REP. TERCYAK (26th):

These people were employees of a bagel res - I'm sorry - a restaurant that called themselves a gourmet restaurant. It might just be a fancy bagel place. I don't get down to that area much. It's popular with the Yalies, I hear. They'd be familiar with it. Through you, Madam Speaker. But employees. Nobody would ever consider them anything but

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employees, back to the answer. Thank you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Miner.

REP. MINER (66th):

Thank you, Madam Speaker. And so was it the gentleman's feeling that I think those of us who were present understood the reason why people felt that we needed to do something in those cases? Through you.

DEPUTY SPEAKER SAYERS:

Representative Tercyak.

REP. TERCYAK (66th):

Thank you very much, Madam Speaker. I know what I should be saying is who cares what my feelings were. People can speak for my - themselves. But if we're talking about, I believe, that every single person there that day, on that Committee, regardless of which party they belonged to, was touched deeply in their heart and had real concern for the stories they heard. People's questions were coming from a place of shock that things could be so bad for some of the people who work in Connecticut. There was - nobody was

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callous. Nobody was inattentive. People were showing they obviously cared very, very much. There was no way to distinguish between parties or senior versus new person or anything like that. It was, as I recollect, a circle of caring. It was very nice. We don't get very many moments on the Labor Committee to all come together like that. Thank you very much, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Miner.

REP. MINER (66th):

And so maybe it was just the good Chairman's aura that day that I think brought us all to that -

[laughter]

REP. MINER (66th):

That place - but I - you know - my recollection was that we were kind of universally shocked that anybody would take advantage of someone else, especially, I think, at - my recollection is the same as the Chairman's - that a number of the individuals did not even speak English. And so they felt, I believe, not only

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wronged in terms of what they were paid, but wronged, and they felt almost violated because they were maybe without protection. Or at least not the same protection that the Chairman and I might have if we went into the Labor Department or went into a court. And so I do think that universally there was a concern. And I think tonight there's still a concern.

But we had a conversation at the time we voted on the bill, as I recall. And it focused around an issue that Representative Smith spoke a little bit about. And it had to do with this kind of unknown, independent contractor, 1099 situation that exists not only here in the State of Connecticut but in other states.

And I think - I think certainly I realize that in an effort to try and do good for people who appeared to need help, that there was some risk. And when we started changing certain words from may to shall, there were circumstances under which, if the Labor Department had performed an investigation for one reason or another and someone felt that they were an independent contractor on Monday, and then through some investigation someone determined

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that they met the ABC test and therefore became an employee, that those who had engaged in that relationship, for whatever reason, I believe then, and I believe today, that it takes two people to make that decision. And if they felt it was the right decision, and but for the State of Connecticut determining that it wasn't, there would be no problem.

But in some circumstances when you make that transition from 1099 to employee, so a contractor to an individual that you're required to withhold taxes, pay wages at a certain rate, recognize overtime, all of those things - there are times when contractors realize that some things go well and some things don't go well. And on the days when they don't go well, maybe it takes longer to do something than it otherwise would, and in those circumstances, the issue of overtime can be a real problem.

I may feel, as an independent contractor, that I didn't make as much money as I thought I would on that job, but I agreed to enter into that arrangement as a 1099 contract employee, a contractor, not an employee. In fact, I have a

business, and therefore, there should be some discretion.

And my concern then, and it's still here tonight, that if the agency felt that there was an egregious situation, they had the right, under our current law, to make a finding that there should be a greater penalty.

But as the bill is currently drafted, even in those complicated situations where again, I don't consider myself an employee. I consider myself an independent contractor. The agency might make the determination that I'm an employee, and therefore, under the bill as it's drafted, I think they would be left with no opportunity but to require double damages and require court fees or require legal fees.

And so, Madam Speaker, I have an amendment, and the Amendment LCO No. 8643, if the Clerk call it and I be allowed to summarize please.

DEPUTY SPEAKER SAYERS:

It's eight - excuse me one moment, Representative Miner. There's a question if it's 8643 or 8648? I have four, three but apparently they needed another - the Clerk needs another.

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REP. MINER (66th):

I - both of my eyes are sighted in and it's
four, three.

DEPUTY SPEAKER SAYERS:

Thank you, sir. So will the Clerk please call
LCO No. 8643, which - will the Clerk please call
LCO No. 8643, which we'll designate as House
Amendment "A."

CLERK:

LCO No. 8643, designated House Amendment
Schedule "A" and offered by Representative Miner.

DEPUTY SPEAKER SAYERS:

The question before the Chamber is acceptance
of the Joint - of the - excuse me - the
Representative seeks leave - excuse me, sir -
Representative seeks leave of the Chamber to
summarize the amendment. Is there any objection to
summarization? Is there any objection? Seeing none,
Representative Miner, you may proceed with
summarization.

REP. MINER (66th):

Thank you, Madam Speaker. I was actually
thrown off. I think someone broke through the

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barricade over there, but they don't seem to have hung around so we'll move on.

So thank you, Madam Speaker. The amendment - what it does is it restores the current status under our statute, and it gives discretion to the Commissioner in the cases where a 1099 arrangement between an independent contractor and someone who would engage into an agreement with that contractor are found at some point, perhaps, not to have paid minimum wage or overtime under some formula that the Commissioner may determine to be appropriate.

And in the case of a 1099, they would be not subject to the double damages plus court costs because of the reason that I had stated earlier, which was that these are sometimes complicated arrangements for work that are not performed by employees. The gentleman, I think, when we talked about those that had testified, they were very clearly employees, considered themselves to be employees. And what this amendment seeks to do is to provide some relief to people who provide certain functions under the guise of a 1099 agreement and operate their own business as independent contractors, and I move adoption.

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DEPUTY SPEAKER SAYERS:

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

REP. MINER (66th):

Thank - if I could just finish, Madam Speaker. I'm sorry. And so what this does do also is it requires the individuals to make full restitution if, in fact, there was some uncompensated - something uncompensated for. So for instance, if they have not fulfilled their obligation under the agreement they're not exempt from that. They have to make proper compensation. And it allows the court still to have a role here. We're not suggesting that people shouldn't be able to take somebody to court.

What the amendment seeks to do is to provide the discretion that's in the current statute and make the distinction clear that in the case of individuals who are all known to be employees, and there is a circumstance that's handled under the bill as it's proposed, that that would remain in force but not for those that are in a 1099

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agreement. And Madam Speaker, I would ask that when the vote be taken, it be taken by roll.

DEPUTY SPEAKER SAYERS:

The question before the Chamber is when the vote is taken that it be taken by roll call. All those in favor of a roll call vote, please signify by saying yea.

REPRESENTATIVES:

Yea.

DEPUTY SPEAKER SAYERS:

Twenty percent has been met. When the vote is taken, it'll be taken by roll call. Representative Tercyak.

REP. TERCYAK (26th):

Thank you very much, Madam Speaker. I won't quibble with your interpretation that we reached the 20 percent this time, but - sometimes you wonder.

I would encourage people to vote against this well-intentioned amendment. As the good Representative from the 66th District who offers it says, he is trying to restore what is presently allowed under present law.

We are trying to make clear here that we are not changing present law in any other way except to say that once the Labor Commissioner has decided this is so bad it's going to court, that at that time, rather than may recover double damages, it would be shall recover. The language that says the Labor Commissioner may collect the full amount of any such unpaid wages due to an employee - that doesn't change. We will have exactly the same circumstances where the Labor Commissioner is allowed to decide that something does not have to be referred to court. The Labor Commissioner is allowed to decide that nothing beyond the unpaid wages is due. There's nothing that stops that now. We are not changing anything in the law that would stop that. We're - that still remains the same.

We've even - I'm sorry - we've even added language that says if the employer establishes that - the employer instead of he or she - had a good-faith belief the underpayment of wages was in compliance to the law, it says the full amount of such wages - it doesn't say double amount - double damages - there should it happen.

This - I believe that this present law adequately protects employers, or at least offers as much protection as I interpret is possible from the good amendment or - by good, I mean well meant - and would encourage my colleagues to reject the amendment on the basis of it's not necessary. What it wants to do is already law. Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Lavielle, did you want to speak on the amendment? 'Cause you were on the board. Did you wanna speak on the bill? Okay. And - Representative Rutigliano. I - just because there's been a couple names on the board, and I just wanted to make sure that they didn't wanna speak on the amendment. Thank you.

REP. RUTIGLIANO (123rd):

That's quite all right, Madam Speaker. And thank you. Through you, Madam Speaker, to the proponent of the amendment.

DEPUTY SPEAKER SAYERS:

Please prepare your questions, sir.

REP. RUTIGLIANO (123rd):

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Thank you, Madam Speaker. Madam Speaker, through you. When you say that the this amendment restores discretion to the Labor Commissioner - are you saying in all matters of employee wage disputes or the double damages is now or is just for the people who receive a 1099? Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Miner.

REP. MINER (66th):

Thank you, Madam Speaker. In Line 5, the insertion speaks specifically to those that are part of a 1099 agreement, and so under the bill, as proposed, the penalties in both court and the Commissioner's decision would be as they are in the current bill as it's proposed in Senate Bill 914. So the distinction here is only for those that are subject to a 1099 agreement. Through you.

DEPUTY SPEAKER SAYERS:

Representative Rutigliano.

REP. RUTIGLIANO (123rd):

Thank you, Madam Speaker. Madam Speaker, through you. I was curious what is - I was listening to your argument for the amendment, and I

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was curious what was so - what was special about the 1099 relationship? So you're saying that because it is a 1099 relationship, or an independent contractor relationship, that it's assumed that it's a good-faith relationship between the employer and the employee? Through you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Representative Miner.

REP. MINER (66th):

I guess my explanation would be that it is a good-faith agreement but between someone who would like a service performed - a new roof. Somebody to put in a floor - any number of things - and that agreement has been in some way codified maybe through a written contract or some verbal contract depending on the amount of money. And so it's not an individual who, for instance, someone had filled out an application for employment and gone to work. These are more of a business relationship that I would claim as good faith. Through you.

DEPUTY SPEAKER SAYERS:

Representative Rutigliano.

REP. RUTIGLIANO (123rd):

Thank you, Madam Speaker. I wanna take a moment and thank the good Representative for his answers. I also wanna thank him for this thoughtful amendment. It does clarify up some certain relationships that people do in the employee and employer. It doesn't exactly fix the bill, but I would urge adoption. Thank you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Thank you, sir. Representative Carter, do you wish to speak on the amendment? Representative Lavielle, not on the amendment? Will you remark? Will you remark further on the amendment that is before us? If not, Representative Miner, do you wish to speak on the amendment further?

REP. MINER (66th):

Just one last time to clarify, Madam Speaker, if I might.

DEPUTY SPEAKER SAYERS:

Proceed, sir.

REP. MINER (66th):

And so the clarification is here that I, like the good Chairman, was horrified by what appeared to have happened at least in the testimony that was presented to the Labor Committee. And in no way did

anyone of us that night or tonight condone that kind of conduct.

But I think the gentleman knows, as I do, that we have this phenomenon in the State of Connecticut where we have individuals who have agreed to perform certain functions generally around contracting. And that if you look at the full breadth of what that work might be, if it's determined that someone is, because of the ABC test perhaps, no longer considered to be a contractor but instead an employee that you automatically fall into the category of being at risk.

And so it's not that the individual who was paid felt that way or that the person who had agreed to that arrangement on the payer side felt that way, it's just that conceivably when the agency may be called in to do an investigation or they may do a random investigation, that someone, by virtue of that investigation, may not meet the ABC test and therefore you could automatically be found responsible for double damages. And so that's why I would urge adoption. Thank you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

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Thank you, Representative. Representative Carter, on the amendment? No. Just wanna check. Thank you very much. Will you remark? Will you remark further on the amendment that is before us? If not, I will try your minds. Will staff and guests please come to the Well of the House. Members take their seats, and the machine will be opened.

CLERK:

[bell ringing] The House of Representatives is voting by roll. Members to the Chamber. The House of Representatives is voting by roll. Members to the Chamber.

[pause]

DEPUTY SPEAKER SAYERS:

Have all the members voted? Have all the members voted? Please check the board to see that your vote has been properly cast. If all the members have voted, then the machine will be locked, and the Clerk will take a tally.

The Clerk will announce the tally.

CLERK:

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LCO No. 8643 designated House Amendment

Schedule "A"

Total Number Voting	138
Necessary for Adoption	70
Those voting Yea	63
Those voting Nay	75
Absent and not voting	13

DEPUTY SPEAKER SAYERS:

The amendment fails. [gavel]

[pause]

DEPUTY SPEAKER SAYERS:

Representative McGee.

REP. MCGEE (5th):

Madam Chair, I'd like to vote in the affirmative. Oh - in the negative, I'm sorry, for the Transcript. Thank you.

DEPUTY SPEAKER SAYERS:

Representative McGee, would you like to have that recorded in the Transcript notation?

REP. MCGEE (5th):

Correct. Thank you, Madam Chair.

DEPUTY SPEAKER SAYERS:

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It will be so noted. Thank you,
Representative. Will you remark? Will you remark
further on the bill that is before us?

Representative Carter.

REP. CARTER (2nd):

Thank you very much, Madam Speaker. Madam
Speaker, I just wanna make a few comments on the
bill. You know, we get a lot of bills in here that
really do some horrible things to businesses. And
the thing that I have the biggest problem with this
particular bill is that - and by the way, I'm not
gonna ask any questions, I'm just making a few
comments.

So, Madam Speaker, the thing that I have a
problem with most in this is we're taking something
that the court can already do, and we're making it
more onerous on the employers of the state. And it
kind of reminds me of my very - or I should say -
one of my very favorite movies.

Now I don't know if any of you have ever seen
the movie. It's called *The Last Castle* with Robert
Redford and James Gandolfini. Great, great movie.
It's called *The Last Castle*. And the whole point of
the movie, and there's a number of things

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throughout, but it's really about leadership. And Madam Speaker, when I speak about leadership, I'm not gonna be a spoiler like the guy over in Seat 82 was for me and my mom the other day with *American Idol*. But I talk about this particular scene in the movie. Robert Redford is playing the antagonist, and he's the person who looks for the very best in the people he's leading. Yet James Gandolfini, I think, looks for the very worst. In fact, there's a scene where Robert Redford's in a holding cell for, you know, punishment for doing something, and James Gandolfini peeks in through the window, and he makes a comment. He says, you know, all I have to do is open up a file on one of these guys, and I can see the very worst in them. And it solidifies my purpose.

Ladies and Gentlemen, I put to you every time we put out bills like this, this is kind of what we're doing in Connecticut. You know, I've noticed time after -

[gavel] [cheering/applause]

DEPUTY SPEAKER SAYERS:

I hope that maybe brings a little bit of quiet, Representative Carter. And I'm sorry I interrupted your speech. You may proceed.

REP. CARTER (2nd):

Thank you very much, Madam Speaker. And now I don't feel like I have to talk very, very, very loud.

So Madam Speaker, you know, like I said, in the story of the scene of the movie, you know, a lot of this is, you know, true leaders looking for the very, very best in people. And I feel like that's what we should be doing in Connecticut. You know, when we look at our business people out there and the people who make this state work for us, at some point, we have to start looking at them and saying, you know, we trust you. We know there are bad actors out there. There's no question about it.

But yet in this House, many times we're passing everything because of those few bad actors. And we're talking even - you know - outside these halls we're talking about penalizing people or looking for the worst in our businesses and the people in the state. And at some point that has to stop. You know, I'm no longer surprised how some of

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these bills like this come where, like in this case, we're gonna mandate that the employer gets hammered twice for something that might've been a mistake. But why not just leave it up to the judge? But instead, we have to look for the worst and say, well, you know, what? You businesses out there, you must be rotten. You must be bad.

So it's no wonder folks wanna leave this state. Because it's a common theme year after year and time after time. And this bill does the same thing.

At the end of the day, is this going - this particular one bill - going to ruin the State of Connecticut? No! No! But it's one more. It's one more chink in the armor that's driving businesses outta here and making it harder to survive.

So at some point we gotta say enough. And when you wonder, Madam Speaker, why a lot of us want to get up here late at night and keep speaking for a long time. That's what we're doing. We're saying enough. Because these kinds of - these kinds of bill are not good for our state. They're not good for our businesses. And that mean they're not good

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for our constituents. So I'll vote against it. And
Madam Speaker, thank you for the time.

DEPUTY SPEAKER SAYERS:

Thank you, sir. Representative Lavielle.

REP. LAVIELLE (143rd):

Finally, Madam Speaker. You got me on the
bill.

DEPUTY SPEAKER SAYERS:

Thank you, Representative.

REP. LAVIELLE (143rd):

And thank you and good evening to you. I don't
think I can recall a movie as well as
Representative Carter, but I can recall not only
everything I've heard in this Chamber just now but
everything I've heard for the past five years. I'm
not gonna talk about all of it. [laughs] Don't
worry.

But, you know, we do have - we have all
acknowledged - everybody in this Chamber has
acknowledged that we do have a problem in
Connecticut with a lagging economy, lagging behind
the rest of the country. We don't have enough jobs
- enough good paying jobs, enough companies coming
here. We have a lot of them who leave here. And

yet, just the most remarkable things keep happening.

Every session I walk in here and we find that we're trying to tell businesses something else they can't do that they really need to do to be able to run their operations. We tell them what - how much they have to pay their employees. Not just minimum wage but more. One time we tried to tell the - I say we - I didn't support this - but we're a family here. We tried to tell them how big a spread there could be between their highest paid employees and their lowest paid employees even if they had three. We tried to tell them what benefits they get they can give to their employees. We've just had a bill that attempts to regulate how much leave employees can get every year, up to a quarter of the time that they would spend working. Here we're trying to tell them what damages they'll have to pay with no intercession of the courts. There was a time a couple of years ago when we tried to tell businesses exactly what they could and couldn't talk about with their employees.

Last year, the Labor Commissioner got to decide what sort of federal tax - not state - but

federal tax businesses would pay because it - she didn't apply for the waiver of the interest the state had to repay on - I don't - Federal Employee Unemployment Compensation Trust Fund loans.

And finally, yesterday we had a bill where it was assumed that because a quasi-public agency was organized more like a private sector company than a unionized company, it was better that they look more like a state agency.

Quite honestly, if we have any role in business in this legislature, it ought to be to help people get and keep jobs and be productive. But what we continue to see is legislation proposals that helps to tear down businesses and deprive them of the ability either to manage their operations or to survive.

I don't see how it's productive, Ladies and Gentlemen. And I don't see why we should one more time try to interfere in a business's ability to exist especially when we need jobs. Thank you, Madam Speaker.

DEPUTY SPEAKER SAYERS:

Thank you, Madam. Will you remark? Will you remark further on the bill that is before us? If

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not, will staff and guests come to the Well of the House. Will members take their seats, and the machine will be opened.

CLERK:

[bell ringing] The House of Representatives is voting by roll. The House of Representatives is voting by roll. Will members please report to the Chamber immediately.

[pause]

DEPUTY SPEAKER SAYERS:

Have all the members voted? Have all the members voted? Please check the board to see that your vote has been properly cast. If all the members have voted, the machine will be locked, and the Clerk will take a tally.

The Clerk will please announce the tally.

CLERK:

Senate Bill 942, in concurrence with the Senate

Total Number Voting	139
Necessary for Passage	70
Those voting Yea	70

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Those voting Nay 69

Absent and not voting 12

DEPUTY SPEAKER SAYERS:

The bill passes in concurrence with the
Senate. [gavel] The House will stand at ease.

(Chamber at ease.)

SPEAKER SHARKEY:

The House please come back to order. Will the
Clerk please call Calendar 605.

CLERK:

On Page 39, Mr. Speaker, House Calendar 605,
Favorable Report of the Joint Standing Committee on
General Law, Senate Bill 158, AN ACT CONCERNING
LANDSCAPE ARCHITECTS' LICENSES.

SPEAKER SHARKEY:

Distinguished Chairman of the General Law
Committee, Representative Baram. You have the
floor, sir.

REP. BARAM (15th):

Good evening, Mr. Speaker. Good to see you.

SPEAKER SHARKEY:

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GENERAL ASSEMBLY
SENATE**

**PROCEEDINGS
2015**

**VOL. 58
PART 3
703 – 1013**

CLERK:

Senate Bill 841

Total Number Voting	33
Necessary for Passage	17
Those voting Yea	33
Those voting Nay	0
Absent/not voting	3

THE CHAIR:

The bill passes. Mr. Clerk, will you call on Page 30, Calendar No. 207, Senate Bill 914.

CLERK:

On Page 30, Calendar 207, Senate Bill No. 914, AN ACT CONCERNING AN EMPLOYER'S FAILURE TO PAY WAGES. Favorable Report of the Committee on Judiciary.

THE CHAIR:

Senator Osten. Excuse me. Senator Osten. Senator?

SENATOR OSTEN:

Good afternoon, Madam President.

THE CHAIR:

Good afternoon.

SENATOR OSTEN:

I move acceptance of the Joint Committee's Favorable Report and passage of the bill.

THE CHAIR:

Motion is on acceptance and passage. Will you remark, sir.

SENATOR OSTEN:

Yes, Madam President. Madam President, this is a bill that we've been working on that deals with double damages for wage theft.

As you know, Connecticut has led the nation by raising our minimum wage. In order to make sure workers are receiving the money they earn, we need to make sure that certain employers who ignore the law have been sanctioned.

Wage theft covers a variety of infractions, including nonpayment of overtime, not paying for all hours worked, withholding a final paycheck, not paying minimum wage, not turning over tips, and misclassifying workers as independent contractors.

Low-wage workers are particularly vulnerable to wage theft. This bill mandates double damages for wage and hour violations plus court costs and attorney fees. This will level the playing field for those law-abiding employers who always follow the rules.

The State of Massachusetts mandates triple damages. New York, Maine and Vermont mandate double damages.

Right now, Connecticut judges have the discretion to award up to double, but apparently rarely do that. The case law says that double damages are to be awarded if the employer does something reckless. This standard is hard to meet.

When judges simply order back pay, employers only have to pay what was already owed to the employee. This is not a disincentive for breaking the law, and our current law is not strong enough to deter wage theft.

This bill provides that double damages are awarded automatically unless a judge using their discretion, finds the employer attempted in good faith to comply with said law. This simple fix would conform Connecticut law to neighboring states and ensure that our workers receive a fair day's pay for a fair day's work, and I urge my colleagues to support this piece of legislation.

THE CHAIR:

Thank you. Will you remark? Senator Hwang.

SENATOR HWANG:

Thank you, Madam President. Through you, a couple questions to the proponent.

THE CHAIR:

Please proceed, sir.

SENATOR HWANG:

Thank you. As the good Senator cited the question of the judge's discretion, could the good Senator give me some feedback? Would the judge's discretion in handing out damages be taken away in this bill? Through you, ma'am.

THE CHAIR:

Senator Osten.

SENATOR OSTEN:

This would require judges to award double damages if the employer was found to have not provided a good faith attempt to pay their employees a correct wage.

So it does take away judicial discretion originally, but it also allows them to only award what an employee is owed if they made an honest mistake. So it's actually looking at it from the reverse of the way it currently is.

THE CHAIR:

Senator Hwang.

SENATOR HWANG:

Thank you. Through you, Madam Speaker, allow me to ask for a clarification of that. So you are sharing that you're taking away the judge's discretion, but it actually works out better because it works more effectively?

Could the good proponent clarify a little bit better for me? Through you, Madam President.

THE CHAIR:

Senator Osten.

SENATOR OSTEN:

Certainly. That's exactly it. If an employee makes a complaint against an employer, and the employer simply made a mistake, the judge could award just straight damages requiring that the employer merely pay the worker the correct wages.

However, if the employer deliberately did not pay the employee, it would require double damages. Thus, a judge is then required to put on the employer double damages if they had acted in a negligent fashion, and in particular, many of these cases are repeat cases where an employer has over and over and over again not paid employees as they should.

THE CHAIR:

Senator Hwang.

SENATOR HWANG:

Thank you, Madam President. Through you, I think the question that was raised is, and was raised as a good point of repeat offenders, and employers that have truly acted in multiple situations of bad faith.

But I don't see this statute written to define those type of egregious behavior. It could be clearly interpreted that if a employer for the first time did do something badly through an error in judgment, this bill would in essence punish a first-time offender if they were found quote, to be negligent, to take away a judge's discretion in reviewing that unique case.

And I respect that if it is a multiple offender and a repeat and egregious offender of this intend of the statute, I would respect that. But nowhere in the statute, but maybe the proponent could clear, that if offers that kind of relief. Through you, Madam.

THE CHAIR:

Senator Osten.

SENATOR OSTEN:

I believe that, through you, Madam President, that that was merely a statement. I do not believe that this takes away the judge's discretion should an employer act in good faith.

But by my colleague's clear statement he is saying that they acted badly. There are always consequences to people acting badly, and in this case it puts us well within our neighboring states, and requires an employer to act in a correct fashion.

And it actually rewards employers who always do the right thing and puts those good employers on an equal footing with employers who choose to not treat their employees with the respect that they deserve, and that is to be paid a fair day's pay for a fair day's work.

And when they choose not to do that by withholding money that that person has correctly earned, it is an unfair assessment. And it's not only unfair for the worker, it's unfair for good employers who always follow the rules. Through you, Madam President.

THE CHAIR:

Senator Hwang.

SENATOR HWANG:

Thank you, Madam President, and I appreciate the good Senator's belief, and I also agree passionately that a fair wage should be properly paid and that bad employers should be punished.

But with that said, the good Senator mentioned certain states. Could she share the states that provide statutes that take away the judge's discretion to be able to assess damages? Through you, ma'am?

THE CHAIR:

Senator Osten.

SENATOR OSTEN:

Thank you very much, Madam President, through you. Massachusetts already mandates triple damages. New York, Maine and Vermont also mandate double damages.

THE CHAIR:

Senator Hwang.

SENATOR HWANG:

Thank you. Through you, Madam President, does it take away the judge's discretion in determining the damages? Through you, Madam President.

THE CHAIR:

Senator Osten.

SENATOR OSTEN:

That would be correct. It mandates an employer who does not pay their employees correctly in those four states that they either get triple or double damages.

THE CHAIR:

Senator Hwang.

SENATOR HWANG:

Through you, Madam Speaker, a second line of question. What was the determination to have the double damages? Could there be a progression level? Was there a consideration to that? Because obviously it is our goal to properly punish those people. But isn't our ultimate goal to prevent such measures? Couldn't a progressive penalty be a viable, but why immediately to a double damage? Through you, Madam President.

THE CHAIR:

Senator Osten.

SENATOR OSTEN:

Thank you very much, Madam President. We believe that if an employer just make a mistake, the judge would rule that it was just a mistake, and allow them to be just paying straight wages to the employee. And that is in this piece of legislation.

The double damages comes out from those who act recklessly, and who actually commit an act of either fraud or an illegal act and choose not to pay that employee. And we think when someone makes that step, that there should be some consequences to those bad behaviors. And this will make that assessment and provides for double damages, and puts us in the same realm as our neighboring states. Through you, Madam President.

THE CHAIR:

Senator Hwang.

SENATOR HWANG:

Thank you, Madam President. I appreciate the Senator's advocacy and explanations. I think ultimately it goes back to the state in which we address our current jobs and economy, and the message that we sent as a Legislative Body, that we are trying to do fair by the employees and by fairness to the employers.

But at the same time, we are creating such a situation, such an environment in which employers that might have made a mistake, that might have made a mistake. No one's ever perfect, but they could potentially be confronted and faced with the implications of damages. and to take away the possible discretion of a judge's ability to evaluate situations.

And to take that out of a judicial perspective is something that adds another issue that is used as competition against us in the national marketplace.

So I would urge that we do not support this bill, that we continue working on this to create an environment where we do and we encourage bad employers to do right, but not in a force that takes away judicial discretion. Thank you, ma'am.

THE CHAIR:

Thank you. Will you remark further? Senator Witkos.

SENATOR WITKOS:

Thank you, Madam President. If I may, just one question to the proponent of the bill.

THE CHAIR:

Please proceed, sir.

SENATOR WITKOS:

Thank you, Madam President, through you to Senator Osten. Section 2 of the bill would change the simple may to a shall. Am I correct in understanding that we're forcing an employee to seek a civil action now? What remedy do we have if the employee chooses not to seek that civil action? Through you, Madam President.

THE CHAIR:

Senator Osten.

SENATOR OSTEN:

Through you, Madam President. You're looking at Section 2 after such employer labor organization shall recover in a civil action?

THE CHAIR:

Senator Witkos.

SENATOR WITKOS:

That is correct.

THE CHAIR:

Senator Osten.

SENATOR OSTEN:

This does not require that the employee or the labor organization go to a civil action. This requires that in the civil action that there would be twice the wages paid if the employer was found to have acted in a negligent fashion.

THE CHAIR:

Senator Witkos.

SENATOR WITKOS:

That's what I originally thought. But then I saw the, in Line 52 with the or in there, after the or, Subsection 2, which talks about the doubling of the wages and compensation. So I'm reading it as two separate entities.

One forces either the employer labor organization to seek a civil action or forces the employee to seek the civil action. Current law says that either entity may do that. But now we're saying that they shall do that, and I just have some concern that we're forcing an employee who may not want to do that to seek.

And then the second part of that is, or the employer can go. I'll stop there and I'll her answer.

THE CHAIR:

Senator Osten.

SENATOR OSTEN:

We're not forcing employees to take a civil action. Short answer. Through you, Madam President.

THE CHAIR:

Senator Witkos.

SENATOR WITKOS:

Thank you.

THE CHAIR:

Will you remark further? Will you remark further on the bill? Senator Osten.

SENATOR OSTEN:

So I'm not going to ask that this go on the Consent Calendar.

THE CHAIR:

Good idea.

SENATOR OSTEN:

And I would urge my colleagues to support this as I believe it supports good employers, employees, and creates a significant deterrent for people to act in a bad fashion, and I would ask for a roll call vote.

THE CHAIR:

Will you remark further? Will you remark further? If not, I will open the machine, and Mr. Clerk, will you call for a roll call vote.

CLERK:

An immediate Roll Call has been ordered in the Senate.
An immediate Roll Call ordered in the Senate.

THE CHAIR:

Senator, your light's not working? Okay, guys. At this point, I would imagine, I guess, Joe, I don't know. What's the ruling on this? Did we get it? Senator Slossberg's machine is not working. She wants to vote in the affirmative. Senator Slossberg, could you publicly on your microphone announce how you would have voted if your machine was working?

Senator Slossberg, I allow you to go and use -

SENATOR SLOSSBERG:

Here we go. Thank you, Madam President. Yes, Madam President, I would like the record to reflect that I will be voting on the affirmative on Senate Bill 914.

THE CHAIR:

Thank you very much.

SENATOR SLOSSBERG:

Thank you, Madam President.

THE CHAIR:

At this point, since everybody else has voted, I will close the machine and ask the Clerk to give us the tally, including the vocal voice vote.

CLERK:

On Senate Bill 914

Total Number Voting	33
Necessary for Passage	17
Those voting Yea	18
Those voting Nay	15
Absent/not voting	3

THE CHAIR:

The bill is passed. It's closed. We have a problem with the machine. Will the Senate stand at ease please.

(Chamber at ease.)

THE CHAIR:

At this point, since we cannot do or go on with work, I wondered if anybody has a point of personal privilege? Senator Slossberg. Do you have a point of personal privilege?

SENATOR SLOSSBERG:

**JOINT
STANDING
COMMITTEE
HEARINGS**

**LABOR AND
PUBLIC
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2015

As a result, when Danielle's father passed, her mother was -- was working once again and her mother was in the room next door preparing documents for her job and her father passed away.

And her mother missed the opportunity to say goodbye to her husband because she was struggling to make ends me while caring for her dying husband and caring for their teenaged daughter dealing with a dying father.

If Connecticut moves forward with a system of paid family and medical leave, families like Danielle's won't have to make those tough choices again and miss the opportunity to say goodbye to a loved one that they cherish as they pass.

So I ask this committee, look carefully at this legislation and please support it moving forward in this Legislative session. Thank you very much for your attention.

REP. TERCYAK: Thank you very much, Senator. Thanks for your patience. Are there any questions? Well done. Thank you very much. We appreciate it.

SENATOR FLEXER: Thank you very much.

REP. TERCYAK: Next up is Todd Berch, followed by Nora Duncan, followed by Kim Armstrong.

SB106 SB1035
SB1037 SB858
HB6791 HB6877
HB6874 HB6876
HB6933 SB914

TODD BERCH: Afternoon, Senator Gomes, Representative Tercyak, and members of the Labor and Public Employees Committee. My name is Todd Berch. I am here on behalf of Lori Pelletier, the executive secretary treasurer of

the Connecticut AFL-CIO and our 200,000 plus members.

Today's -- we have submitted on a -- a litany of bills today, but I just want to, for essence of time, talk on a few of them; Senate Bill 106, we support this legislation, AN ACT CONCERNING RETALIATION AGAINST IMMIGRANT WORKERS, and also Senate Bill 1035, AN ACT CONCERNING BULLYING IN THE WORKPLACE.

We also would like to testify in support of both of these bills, AN ACT CONCERNING EMPLOYERS' FAILURE TO PAY WAGES and Senate Bill 1037, AN ACT CONCERNING EMPLOYEES' LIENS AGAINST EMPLOYERS FOR UNPAID WAGES. We find them both to be punitive for people that are actually doing things against the working person. SB914

We have included in our testimony our Resolution 8 supporting raising wages, which was at our political convention last year, which will address the majority of the bills before you today on this agenda. So again, for essence of time, I will not reiterate on them other than numbers, Senate Bill 858, House Bill 6791, and House Bill 6877.

And we're also here today in support of a UAW members and our UCONN students with regards to both bills, House Bill 6874 and 6876.

And for -- again, for time's purposes, we are in support, in concept, of House Bill 6933, AN ACT CONCERNING PREDICTABLE SCHEDULING FOR EMPLOYEES.

As Mayor Lauretti stated earlier, and also Mr. Weintraub, I believe his name was, there are a multiple amount of people that have various

the provost earlier talking about one of the bills not being necessary, 6876, because you've still got your rights. You just can't use them until you're done with the grievance process. Is that your understanding of what it works?

KIM ARMSTRONG: Well, part of our concern on that is with the statute of limitations as well on things. We do not want to run into a situation where we cannot exercise all of our full rights because we have waited so long.

REP. TERCYAK: Very good. Thank you very much. Okay. Thank you very much for coming. We appreciate it. A couple of good handouts. Thank you.

Next up, Eric Gjede, then Catherine Bailey, then Deb Chernoff, then James Bhandary-Alexander.

ERIC GJEDE: Good evening. My name is Eric Gjede and I'm here on behalf of the Connecticut Business and Industry Association. And as you probably have guessed, I'm here to oppose a few bills.

In particular, we oppose 106 on the immigration. 426, we support, and that's on online privacy. 914, on employers' failure to pay wages. We oppose the criminal records, 6875. We oppose the mandate in the work hours for janitors, 6877, and the predictable schedule, 6933.

I've submitted testimony on all of those, but I'd like to talk about just three during my three short minutes here. 914, the expansion of paid sick leave; 6791, large corporations; and 6932, unpaid FMLA.

Now, these proposals, what they do is they create a lack of business confidence in the state of Connecticut. And -- and the reason for that is because whenever we pass one of these mandates, you know, we -- we always try to trim it down and we get it just narrow enough where it'll get enough votes to pass.

But businesses know that every single time, what happens is it becomes more expansive over the next few years and a lot more expensive. So you'd probably be surprised to -- to hear me say this, but, you know, we support paid family medical leave. We support paid sick leave. We support \$15 an hour minimum wage.

But what we don't support is a government -- a state mandate that tells businesses to do it. We support it when businesses create one of these policies on their own, that -- that they apply in a way that works for both themselves and their employees without the state telling them how to do it.

These one size fit all mandate approach hasn't been working for the state of Connecticut. Businesses cannot afford to do what these bills ask us to do.

Now, government fiat will not make businesses be able to afford these and -- and provide more paid leave or more paid sick leave or higher wages. Actually, they -- you -- you can force us to do that, but what happens is something else gets cut.

If you want to keep things from being cut, whether it's other -- whether it's wages, whether it's hours, whether it's other benefits, the way to do this is to create an environment where businesses want to come to

this state. By attracting more businesses to this state, you create more job opportunities.

And when there's more job opportunities, business have to -- businesses have to increase the -- the leave they provide, the wages they provide, in order to maintain their workforce. And if you want to expedite that process, give tax incentives to create a paid family leave program that works for businesses. Don't just tell them they have to do it.

People in businesses are slowly leaving this state and they're not leaving here to go to places because -- that have better paid leave. They're leaving here to find jobs.

So this one size all -- this one size all fits -- fit all mandate approach, they're not bringing jobs to Connecticut. So on, that I'm -- I know I didn't touch on any bill in particular, but I'm happy to take questions on any of the bills that we have before you today.

REP. TERCYAK: Thank you very much. Don't beat yourself up. You were clear about speaking on some of the specific bills. You're fine.

Are there any questions? Representative Smith, please.

REP. SMITH: Thank you, Mr. Chair, and welcome, Mr. Gjede. Since you didn't talk about any particular bills, I'm going to ask you a general question.

You talked about the business climate here in Connecticut and you've been testifying before this committee since I've been on it. And I'm just wondering, you know, we all read the different stats and where Connecticut stands.

In my three years on the committee, I don't think they've really gone up in some places. They have gone down. I'm just wondering has the business rankings for Connecticut changed at all or can you give some indication to this committee where we stand as a whole in comparison to the other states in the country?

ERIC GJEDE: Yeah. Absolutely. And -- and -- you know, it really depends on -- on some of the rankings. Some of the ones that we look at closely are what businesses as a whole look at closely.

They -- they look at the CNBC, they look at the Forbes ranking. That's -- there's been rankings on rankings to determine who -- you know, what -- what businesses pay attention to.

The CNBC one, we have continued to slide down and we are now in -- according to that poll and, again, I don't know that it's perfect. I don't know that that's the perfect poll to look at.

We're now in the bottom five states to do business, and that's not to say that -- everything about Connecticut is bad. We rank very highly in certain categories.

But in terms of costing -- cost to do business and cost of living, we continue to slide. And -- and, you know, that's what people really pay attention to. That's what hits people's bottom line. That's what hits businesses' bottom line. So we -- we find those to be important categories.

REP. SMITH: Thank you for the answer. And, you know, it concerned me last year -- I think the

poll came out and it said 49 percent of the people are looking to leave Connecticut as opposed to staying here. And if we have that higher of a percentage of people wishing to leave, it tells me at least that what we're doing here needs to change.

And -- so I hope the -- this committee, in any event, takes cognizance of that and -- and really starts proposing some bills out of this committee that would actually help businesses grow, stay here, keep our families here, keep our children here, keep our elderly here.

Right now, it seems worse, at least as of last year, and I don't know that it's changed. We're continuing to slide in the other direction.

So I appreciate the fact that you come and share some of your thoughts and hopefully we can turn it around. Thank you.

REP. TERCYAK: Senator, please.

SENATOR HWANG: Thank you, Mr. Chair. Eric, I appreciate that you're here representing businesses, but it's not just businesses. You're talking about small businesses as well.

One of the things I've gotten a lot of calls from are -- are from small business owners that aren't able to come up here. They can't take their day. They're one or two-person shops.

Can you offer some perspective from them since they're not able to be here? Of -- of what a lot of what we're doing is impacting them, granted that there are some bad employers?

But with all due respect, share with us some of the voices that aren't here today. About how they're feeling, the -- the owners' burden of governing. The -- the casting of them being the villain in some cases.

That's not the case, but share with us some of the pressures that they encounter to the point that they can't give up a whole day to be here.

ERIC GJEDE: Yeah. I -- I get a lot of calls from businesses and I certainly can't repeat a lot of the language that is used to describe some of the policies, not just this committee. I don't want to say that.

But -- you know, people are really worried. They -- they are contemplating leave. You know, some people are rooted here, they have to stay, or they -- they're going to stay for while. But they -- they see that things are -- things are bad right now and we haven't recovered from the recession.

In fact, Connecticut's recovery from the recession has been one of the slowest in the country and a lot of people are still feeling that. I know -- I mentioned that the other night when it came to unemployment compensation.

We're still -- businesses are still paying for the recession. It's -- it's years later. We're still feeling the impact.

And -- and -- in terms of opposing some of these bills, I know it's not just my membership that -- that believes that, because we -- there's a piece of testimony I submitted earlier today with more than 40 business organizations throughout the state of

Connecticut and chambers of commerce throughout the state of Connecticut that oppose some of these -- these new mandates.

SENATOR HWANG: I -- I really do appreciate you prefacing your -- your testimony by saying that, in a perfect world, the -- the -- some of the presentations of family medical leave, paid sick leave, those are practices that -- that your employers support if they were economically viable to do so.

And -- and I think that's the challenge, is, you know, you talk about the -- the role in which our rankings have played in the message that we send out to the outside people.

Where do you think a lot of the array of bills that we're discussing, some of them that you couldn't even touch upon, what do you think it does in sending a message to businesses outside this area? From what you do, and -- and not only in advocating up here.

You are advocates to bring businesses into our state and I think, if you could, you know, the idea of being in the top 20 by 2017, which is one of your big goal, and -- and I think all of us in the legislative body embrace this fact, what do all of these bills, as a totality, send as a message to your efforts in trying to recruit businesses coming to the state?

Does it have a chilling effect?

ERIC GJEDE: Well, we know for a fact that some of the rankings, not only do they take laws that have passed into account when determining their rankings, but they take proposed legislation. So even the stuff that doesn't pass at the end

of the day still has an impact on where we rank in some of these, you know, national rankings.

And -- and it's really -- it's -- it's less about where we rank than it is about the perception that -- that these things create throughout the country. I mean, people -- businesses throughout the country look at this, they see Connecticut as a bad place to do business. You know, where it's listed. They see the reasons why.

And -- and people think to themselves, you know, it's -- it's the old ABC rule, anywhere but Connecticut. So --

SENATOR HWANG: One of the things we take great pride in this building is the fact that we can be the first in doing a lot of these things in the country. Take me through the three bills that you have spoke about. Are there any other states in this country that are imposing these kind of mandates?

ERIC GJEDE: Well, the -- the three I talked specifically on. We'll start with -- the easiest one, which is the -- the tax on large corporations and very small franchises that, collectively, have 250 or more employees.

That certainly, no state has done that. That -- that's just a punitive tax that inhibits job growth and stops businesses from coming here, stops them from creating opportunities. No other state has done that.

The paid FMLA, the program that's actually put forward here is -- I -- I know some other state examples have been cited to you, but, really, this is much larger in scope than any of those other examples. The only thing you can really

compare it to is the proposal that Washington state looked at a few years ago and then abandoned.

They passed the law contingent upon finding funding for the law. And when they went to see how much the bill would cost, it was estimated to cost \$1.2 billion per biennium to run this program.

And in my testimony, I've actually laid out a chart comparing the Washington state law against the Connecticut proposal. And you'll actually see that the Connecticut proposal is significantly more expansive.

And further, during the -- I was also part of the Family Medical Leave Taskforce. There's some real issues about -- in terms of cost on that proposal.

For one, the current Labor Department Workforce cannot, under law, administer this program. You can't just add duties to people because they are receiving federal funds to run the unemployment compensation program.

So you are talking about needing a lot of new state employees to run this program. If you've ever been over to the Labor Department, you will know that place is packed to the gills with employees.

There is no place for anyone to be stationed to do their work. So you're talking about a new -
- a need for a new building.

During the taskforce, the Department of Labor also said they don't have the IT infrastructure to run this new program. So that's another cost.

So this is a massive cost increase. This is a massive number of state employees that would be needed to run this program.

So we think it's cost prohibitive and it's certainly not cost-free to employers, despite the fact, you know -- I think it's been mentioned earlier today that this is employee-funded, and that's -- that's correct. The -- the proposal right now is employee-funded.

But under FMLA regulations, employers will have to continue to provide non-wage benefits to any employee using this program. So that means your healthcare match, your vacation accumulation, all that has to continue to be provided to folks who are out of work for 12 weeks every year.

SENATOR HWANG: Thank for that explanation. Take a broader scope. Right? A lot of these bills we're talking about, there -- there is a real consideration for people that -- that aren't able to sustain a livable wage.

And I -- I greatly respect that and I -- and I -- I'm sensitive to that. Tell me, from your experience, and -- and from your clients that are creative businesses, and for us as a legislative body places a priority in growing jobs and helping our businesses, are there any empirical evidence that -- that a raise in a base pay, a raise in these type of set hours, would actually create more wealth or jobs?

I mean, one of the examples that I think Mayor Lauretti brought up is the fact that, you know, you want to impose a 30-hour workweek for the janitorial services. Their reaction would

actually be a reduction of employees to fulfill that mandate.

Can you elaborate a little bit about that?

ERIC GJEDE: Well, I think, just to expand upon what I said earlier, I think if you want to increase the number of benefits, you want to increase and employee's pay, you need to grow your way into -- into that. You need to create more opportunities. You need to create competition where employers are fighting over employees.

And we saw this play out just a few weeks ago. There was a large retailer in -- in the -- I think it was somewhere in the Midwest that had been reluctant to increase their -- their wage above the minimum wage and they found out that, you know what? They had to.

Because, just to get the -- the employees and maintain employees from their competitors, they had to increase wages. That's how you do it.

You grow your way. You make it so employers have to compete against each other in order to -- to keep their employees. And the best part about it, it doesn't cost the government a dime to do it that way.

SENATOR HWANG: One last question. Thank you, Mr. Chair. What you're in essence saying is market forces creates a more responsive marketplace, rather than governmental mandates. Would that be correct?

ERIC GJEDE: That was a much more concise way of saying what I just said.

SENATOR HWANG: Thank you for your time. Thank you, Mr. Chair.

REP. TERCYAK: Thank you. Representative Cuevas, did you have a comment or question, please?

REP. CUEVAS: Good afternoon. How are you doing? One of the bills you mentioned that you didn't speak on was actually my bill, 6875, and my question to you is you said you were opposing that bill. Can you give me a rational behind opposing the bill?

ERIC GJEDE: Yeah. Well, there -- there's really two parts of the bill and I -- I went and elaborated a little bit in my testimony.

For one, we personally think it's a little bit cruel to require a background check after you've already made a preliminary offer of a job to a person. So essentially, you've got this person's hope up, only to take that job offer away when they were -- you know, they failed to pass the background check that -- at least for a job, you know, that -- that requires a clean criminal history.

And then, the other part of it was to exclude any -- I believe it was non-violent misdemeanor. And we -- there was a couple examples that I provided in there.

I mean, cruelty to poultry is a non-violent misdemeanor, but do you want that person to be working as a veterinary technician? Or there's various data breach options that are non-violent misdemeanors, but do you want that person managing your IT network?

So for those reasons, we did -- we did oppose that bill.

I don't know if you were here earlier when Monique Varle Zmuda was testifying.

DEBORAH CHERNOFF: I was.

REP. TERCYAK: She's somebody who has PCAs around the clock and anybody who's a PCA should hear about what she had to say. It's touching and moving and it should make anybody who does that work very proud. We're lucky she was here.

Thank you very much for your testimony, too, Deb. We appreciate it.

DEBORAH CHERNOFF: Thank you, Mr. Chairman.

REP. TERCYAK: Okay. Next up, James -- I'm sorry. No. Next up, James Bhandary-Alexander, followed by Robin Gilchrist.

JAMES BHANDARY-ALEXANDER: Good afternoon, or good evening. My name is James-Bhandary-Alexander. I'm an attorney at New Haven Legal Assistance.

We're a legal services provider for low-income people in New Haven County and I represent mostly low wage workers in employment law cases and I represent them in -- in court and before administrative agencies. And also, here -- and I'm here for my clients today.

My -- my primary area of expertise is -- is wage theft, which is a term that refers to an employer practice of not paying overtime, not paying the minimum wage, or not paying what was promised.

A national study of several metropolitan areas revealed that an estimated 64 percent of low-wage workers suffer some form of wage theft

SB1037
SB914

during the year. We don't have data for Connecticut, but we have no reason to think that things are any better here.

Indeed, my clients are -- who are low wage workers, often immigrant workers, are routinely underpaid, having their rights violated week in and week out, using various -- using various schemes. Construction, landscaping, childcare, domestic work, restaurants, these are the industries where wage theft is rife and I think that if you were to ask the folks at the Department of Labor, they -- they would confirm that.

When somebody's wages are stolen in this way, the worker is not the only victim. Businesses that comply with the law are the primary victim because they're being low-balled by their -- by their competitors.

The state is a victim because W2 income is not coming or, in Connecticut, payroll taxes are not coming in. In fact, when I settled a case for a worker, the damages that accrue are filtered -- taxes are paid on that.

There's two bills that I'm here to support, S.B. 1037, which is a wage lien bill, and S.B. 914 for double damages. Wage liens are constitutional. Wage liens exist in many states. And, in fact, wage liens are just like mechanics liens, except they're for employees, not contractors.

And Wisconsin, which has had wage liens for many years, their collection rate is 80 percent. 80 percent of judgments are collected on.

At our Stamford Day Labor Clinic in Stamford, of the cases where we get judgment for unpaid wages for workers, the collection rate is 30 percent. The difference is between 80 percent and 30 percent. That's why wage liens are important.

If I could have ten seconds on the double damages. Thank you.

The other bill, the double damages bill, is a very modest change to the remedy provisions for minimum wage and overtime violations. It does not remove discretion from judges. It just has the judges ask a different question in order to determine whether double damages are appropriate.

The reason double damages are important is because those businesses that build their business model on wage theft and undermine their law-abiding competitors in that way, under the current system often don't have to pay anything but the wages they would have had to pay in the first place.

That's not good for the state, that's not good for the workers, and it's not good for other businesses.

Thank you.

REP. TERCYAK: Thank you very much. Questions?
Okay.

JAMES BHANDARY-ALEXANDER: Thank you.

REP. TERCYAK: You did a great job of explaining that. A lot of folks have had trouble with the wage theft and with the double damages idea. So thank you very much.

SB914
SB1037

MEGAN FOUNTAIN: Good afternoon, Representative Tercyak, Senator Gomes, and members of the committee. My name is Megan Fountain. I'm a member of Unidad Latina en accion, which has a project called the New Havens Workers' Association, and I'm bringing up some of the members of our association because we know we have a long evening ahead of us and I don't think they'll have time to testify.

We have a report here that we try to deliver to you all about the wage theft crisis in Connecticut. And I hope that you read the stories of these gentlemen, these workers, which are contained here in this report.

Ulber Morales worked in Gourmet Heaven Deli on Yale campus earning less than \$5 an hour. He started working there when he was only 16 years old and he worked 72 hours every week. Every week, the boss was stealing more than half of his paycheck.

This was the same thing that happened to Cristian Lopez here, who was only 14 years old when he started working at the deli, 72 hours per week, earning less than \$5 an hour.

And this was also the case for Michael Lopez. These workers have been seeking their unpaid wages for more than a year and a half. The Labor Department found more than \$200,000 in unpaid wages just for the past two years. That's the statute of limitations.

The Labor Department was going to settle for much less, for only \$140,000, but the -- the owner of the deli continued to offend, continued to improperly pay wages. He fired four of these workers in retaliation for their cooperation with the Department of Labor.

And so eventually, through a community boycott, we got the police to intervene and arrest the employer, because this was such a serious case. Even so, the criminal proceedings ended. The employer was ordered to pay some of the wages.

He ended up with a clean criminal record and these workers are still seeking the hours that they worked and the damages that they're owed in court.

It's extremely difficult for workers to get paid just the minimum wage, just the overtime, that they have earned, and the Connecticut laws are failing to protect these workers and to protect all of us from wage theft.

There's a lot more information in this report. One of the stories that we highlight here is the story of Goodfellas Restaurant in New Haven, which has been investigated by the Department of Labor seven times in the last ten years and has been sanctioned by the Connecticut Department of Labor and the U.S. Department of Labor seven times in the last ten years and they keep doing the same thing.

We met with the owner of the restaurant. He said he's not going to change his ways. This is the way business works in America and there are no consequences for wage theft.

And if you look at the records from the Department of Labor, which we got through a Freedom of Information request, the penalties were very little. The -- the Department of Labor asked them to pay the wages to the workers, but there's really no penalty, there's no fine.

So that's why we're testifying today in support of S.B. 914, which would create double damages for unpaid wages, and S.B. 1037, which would provide for employee liens. Thank you.

REP. TERCYAK: Thank you very much. I know I received your pamphlet and I found the stories in there disturbing and surprising. This is Connecticut. We assume that we always do better everywhere in Connecticut.

So it's very important work. Thank you, gentlemen, for coming forward and telling us your stories. We appreciate your patience. We're going to try and do something about this.

Senator Osten.

SENATOR OSTEN: Thank you very much, Mr. Chairman. I'm just wondering if you could, one, the -- do the people that are, the four gentlemen, if you could identify yourselves so that for the record we know who was here by their name?

If -- and I don't know if you all understand English and you understood their -- your testimony in their name. Is that -- is that true or not true? I -- I just would like to know.

MEGAN FOUNTAIN: (Speaking in Spanish)

EDGAR SANDOVAL: Hi. My name is Edgar Sandoval and I understand everything that she said and I'm okay with that.

SENATOR OSTEN: Thank you.

ULBER MORALES: Hello, my name is Ulber Morales.

SENATOR OSTEN: Thank you.

MEGAN FOUNTAIN: And you worked at Gourmet Heaven and (inaudible).

SENATOR OSTEN: Go ahead.

ULBER MORALES: (Speaking in Spanish)

MEGAN FOUNTAIN: Former worker at Gourmet Heaven.

SENATOR OSTEN: Okay.

CRISTIAN LOPEZ: Hi. My name is Cristian --

SENATOR OSTEN: You got to turn the button. Hit the red button right there in front of you.

MEGAN FOUNTAIN: I think it's on.

SENATOR OSTEN: Oh, this thing's on? Okay.

CRISTIAN LOPEZ: Yeah. My name is Cristian and I'm working, too. But this true, really. That's it.

SENATOR OSTEN: Thank you.

MICHAEL MORALES: My name is Michael Morales. We work in Gourmet Heaven.

SENATOR OSTEN: Thank you very much. I -- I think that's -- it should have everybody on the record. In particular, if you're speaking for those people, that we want to make sure that we know who's here and -- and that everybody knows that -- that they are being spoken for. Just -- it makes it a lot easier.

So I would like to say did you -- were you able to get any of the back wages paid to any of the

people in that particular restaurant? Has anybody been paid?

MEGAN FOUNTAIN: (Speaking Spanish).

A VOICE: (Speaking Spanish).

MEGAN FOUNTAIN: We have recovered some of the money. It's not all of what we're owed and the laws are not as strong as we would like them to be.

SENATOR OSTEN: Thank you very much. I appreciate that. I appreciate your testimony and thank you for coming forward.

It's always hard to be that whistleblower. I think that -- that it's really important to have people that have enough morality to step up and face bad actors. Thank you.

MEGAN FOUNTAIN: (Speaking Spanish).

REP. TERCYAK: Senator Gomes.

SENATOR GOMES: Excuse me. You made one comment that they actually tell you that this is the way that things are done in America?

MEGAN FOUNTAIN: Yes. I was in a meeting with Mr. Aiconi, the -- the owner of Goodfellas Cafe. At the time, there were four workers who -- they left the restaurant and the owner said, okay, you can leave, but I'm not going to give your last paycheck and he has a practice of doing this.

So the workers ended up adding up what they were earning. They found out that they weren't being paid the minimum wage and the overtime.

Each of them were owed about \$4,000, \$5,000, for less than a year of work. The Department of Labor, again, tried to settle the case for much less than what they were owed and they refused to accept it and they continued a boycott.

And we had meeting with the owner and asked if he would issue an apology to the workers and promise not to do this again. And he said that he's done this as long as he's run his business and this is the way that business works in America and he was not going to change his way.

SENATOR GOMES: So after the Department of Labor tried to settle for a cheaper rate and they didn't pay it, what did the Department of Labor do then?

MEGAN FOUNTAIN: The Department of Labor said -- this was the U.S. Department of Labor and the worker said we don't want less than what we're owed. And the Department of Labor said, well, you can kiss that money goodbye.

We're going to deposit it in the U.S. Treasury and the workers showed up at the restaurant with a big picket demonstration and then the owner called up the DOL and agreed to pay the full amount to the DOL and the DOL gave it to the workers.

SENATOR GOMES: So the Department of Labor said if you don't accept this little bit of money, we'll take it and you get nothing?

MEGAN FOUNTAIN: That's right. That was the U.S. Department of Labor.

SENATOR GOMES: That's hard to believe. Geeze. I'm sorry. Thank you.

REP. TERCYAK: Thank you for making that clear that wasn't our Connecticut Department of Labor.

MEGAN FOUNTAIN: It was not the Connecticut Department of Labor.

REP. TERCYAK: I find that very reassuring. I'm sitting up here thinking, dear God.

MEGAN FOUNTAIN: And there are a lot of people at the Connecticut Department of Labor who do great work. We just need to give them tools so that they can truly hold the employers accountable.

Because, currently, the strategies that employers are using are -- are working for them, but not working for the rest of Connecticut and really robbing all of us of good jobs.

REP. TERCYAK: Thank you. One question. Are you aware of any of our neighboring states' laws regarding wage theft? Is there punishment beyond paying what you owe and no interest or - or penalties, like we're trying to make a definite consequence in Connecticut? Or are they like Connecticut is now and, hey, if you get caught, pay what you can.

MEGAN FOUNTAIN: Yes. There are ten states that allow for triple damages and there are other states that allow for double damages.

The Federal Labor Standards Act makes it -- allows for double damages. And so I think that Connecticut would be stepping into the mainstream by making this fix.

Also, in terms of the wage liens, we've had a mechanics lien in Connecticut for a long time. There are about ten other states that have some kind of employee lien.

New York is working on creating one right now and they just published a report about the -- the millions of dollars that go uncollected. Even when a worker goes to court and wins, they're not -- they're over not able to collect on that judgment and if they could place a lien on the employer's property, that would increase the -- their ability to collect on that judgment.

REP. TERCYAK: Thank you very much. Did you have a question, Representative Miner?

REP. MINER: I did, Mr. Chairman. Thank you. First of all, thank you all for being here.

I -- I think I had heard some testimony earlier, but it was about another aspect, I think, of unpaid wages, where people maybe in the trades were being affected. And I -- I think I got a handle on that one.

In -- in the case of these individuals, are -- you represent them?

MEGAN FOUNTAIN: I'm not a lawyer. We're a grassroots all-volunteer organization.

REP. MINER: Okay. So -- so if I ask you a question about their departure from employment, it offends me that someone would withhold someone's last paycheck and say see you later.

But I can imagine in the separation that there are occasions where someone may have uniforms, whether it's a mechanic or someone working in a

restaurant. Were the wages withheld, do you know, because there was some tangible item that the employer had provided for the employee during the time when they were employed and, upon return of that, they would get that last check? Do you know?

MEGAN FOUNTAIN: In none of the cases that I've seen, that's -- that's the case. And I don't believe that it's legal for an employer to say I'm just going to hold on to part of your wages and pay it to you later, unless they have some kind of written agreement with the Department of Labor.

I'm not a lawyer so I'm not sure about that. But in all of these cases, you know, this young man was just told you're going to earn \$330 a week, 72 hours a week. They worked from seven a.m. to seven p.m. Monday through Saturday. It's a 24-hour deli.

So you do the math and you find out that that amounts to around \$5 an hour. And if they had been paid the proper minimum wage and overtime, they would have been earning double that.

REP. MINER: And -- and I know -- you probably weren't here during the prior public hearing, but we heard some testimony about the Department of Labor spending, you know, a fair amount of time actually researching payroll records for, you know, kind of a volunteer soccer organization.

Do you think it would be helpful if maybe the Department of Labor focused more acutely on some of these circumstances and then there would be a more timely, perhaps, resolution to these claims?

Because it almost seems like every one of these individuals must have filled out paperwork. So that's known.

Every one of their employers, it sounds to me, is brick and mortar. So it's not like they're a ghost. That's known.

So now, it really becomes whether the records show what their claim is or not and their payroll records should be pretty easy to follow. I guess I would -- so do you have a comment on -- on whether maybe we, as a Legislature, should be not -- not passing judgment on whether they're doing their job appropriately, perhaps whether they've assigned that responsibility to the right number of people to see that this sort of situation doesn't occur?

MEGAN FOUNTAIN: I know the Department of Labor got more wage investigators last year, and that's a positive thing. What I don't understand is why the Department of Labor routinely settles for less than what the workers are actually owed.

But I'm -- I'm starting to understand that it's -- part of it may be because if they go to court, they don't have a great chance of success and that that may deter them from pursuing the full amount that the workers are owed. And so they're -- they're settling for less.

And from what I understand is that because it's so common, that these bad employers -- we're not talking about the majority of employers who are good employers, but it's so common.

My -- one of our members, Karim, is going to talk about this nail salon in Darien and New

Canaan, Connecticut, where it took the court four years to make a judgment on these six women who were owed minimum wage, overtime, and tips. They were also sexually harassed by their employer and all kinds of horrid things.

Took the court four years to make a judgment and the court made a judgment that they were owed more than \$200,000. But during the course of those four years, the employers mysteriously -- their two homes in Darien went into foreclosure, they sold the businesses to a family member, and all of a sudden, they -- they disappeared and their property disappeared. And so the workers won a default judgment in the court, but they couldn't collect a penny of it.

And I understand from data in New York and the little data we have at the Stamford Legal Clinic that this is a common practice and that may, you know, prevent workers and the Department of Labor from seeking these wages in court.

REP. MINER: Thank you. Thank you, Mr. Chairman.

REP. TERCYAK: Thank you very much. Representative Vail, please.

REP. VAIL: Thank you, Mr. Chairman. Good evening. Are -- Gourmet -- in regards to Gourmet Heaven, do I have that name correct?

MEGAN FOUNTAIN: Yes.

REP. VAIL: Now, they have -- do they have stores in Providence, Rhode Island, as well?

MEGAN FOUNTAIN: Yes.

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hc/mcr/gbr

LABOR AND PUBLIC EMPLOYEES
COMMITTEE

2:30 P.M.

REP. VAIL: And have they got in trouble there for the same issue?

MEGAN FOUNTAIN: Yeah. Recently, the workers in Rhode Island began a campaign and I believe three of them have filed a lawsuit to recover unpaid wages there.

REP. VAIL: Okay. I'm -- I'm looking at something on -- on Google right now that says that the owner -- is it -- so it's the same owner?

MEGAN FOUNTAIN: Yes. Chung Cho.

REP. VAIL: And he was arrested last year in Rhode Island. What were the results of that? What -- were there any findings there? Any judgments? Or is that still ongoing?

MEGAN FOUNTAIN: I -- you -- I'm not sure if you have the exact information there, but he was arrested in -- in Connecticut.

REP. VAIL: Okay.

MEGAN FOUNTAIN: The Department of Labor found about -- more than \$200,000 in wages owed.

REP. VAIL: Okay.

MEGAN FOUNTAIN: They settled the case for \$140,000 and Mr. Cho, the owner, made a -- paid one installment of that settlement. But then, he retaliated against four of these workers.

He fired them during Christmas, during their unpaid one-week of -- of Christmas vacation. He singled them out because they had cooperated with the Department of Labor and he continued -- he started paying the minimum wage to his

other employees, but he continued to pay the overtime off the books.

So at that point, we met with leaders in the city of New Haven and the police department and the Department of Labor. And the Department of Labor got an arrest warrant and had the employer arrested.

It -- it's an extremely rare process, but the DOL will do it if they exhaust other options. And the employer was charged under -- under the larceny statute for stealing more than \$200,000.

He went to court. Sometimes he didn't show up in court, he sent his lawyer. The workers went to court month after month.

The judge ordered him to pay the \$200,000 that he owed to them and the judge gave him a long time to pay it and the judge gave him a clean criminal record and dismissed the charges like they had never happened.

REP. VAIL: Was it for the employees just in Connecticut or both Connecticut and Rhode Island?

MEGAN FOUNTAIN: That case applied to 20 -- more than 20 employees in the Connecticut stores.

REP. VAIL: Okay. So this is just specifically for the Connecticut incident.

MEGAN FOUNTAIN: Mm-hmm.

REP. VAIL: Okay.

MEGAN FOUNTAIN: And then, the lawyer -- the workers still have a suit pending in -- in federal

court to recover the rest of the wages that they are owed.

REP. VAIL: Okay. Thank you.

REP. TERCYAK: Thank you very much. Anything else since everybody's back here muttering this is unbelievable. How does this happen? But they're owed the money. It's --

We have these hearings and we learn a lot. Thank you very much for coming. Thank you all. We appreciate your struggle. It's not just you; it's apparently for a lot of other workers, too. Thank you, very, very much.

MEGAN FOUNTAIN: Thank you for your time.

REP. TERCYAK: Okay. Marilyn Rice, followed by David Veleber, followed by Lisa Bigelow and Africka Hinds.

MARILYN RICE: Okay. Good afternoon, Chairs and members of the committee. I am offering testimony in support of S.B. 1035, AN ACT CONCERNING BULLYING IN THE WORKPLACE.

I strongly support this bill. I worked at a small agency that advocates for healthcare for Connecticut consumers led by an appointed official.

In early 2011, the office consisted of ten employees. Five of these employees eventually were terminated from this agency.

There was a new employee at that time who I will call A who soon became a close friend of the leader's. This particular employee used derogatory language in describing several of

A VOICE: That was a Worker Compensation claim.

REP. RUTIGLIANO: Thank you. I think I -- maybe I thought I heard it differently from you. I'm sorry.

Thank you, Mr. Chairman.

REP. TERCYAK: Neither do I. Thank you very much. We appreciate you coming and waiting so long to speak here.

A VOICE: Thank you.

REP. TERCYAK: Thank you.

Karim Calle, Joelle Fishman, George Colli, and then Caroline Carlson.

Welcome. Thank you for coming.

KARIM CALLE: Thank you.

Good evening, Mr. Chairman and members of the Committee, and Representative Rutigliano. I want to thank you for your honest business in the restaurant industry.

My name is Karim Calle. I'm a resident of East Haven and I am a member of Unidad Latina en Accion. I am here in support of the bill S.B. 1037, 106, and 914. I am a mother of a 22-month-old month daughter and a worker. I know what it's like to make ends meet. My free time with my family and my community is minimal. I work. I attend school full time, and I completed a social work internship in order to provide a decent future for my daughter. I have tolerated sexual harassment on the job and have kept silent due to the fear of being left jobless. I have waitressed for

about eight hours a day making \$30 per day. I have a family that I need to provide and student loans that need to be paid.

I am a U.S. citizen and I immigrated here from Peru, but often immigrants have it worse, earning as little as 3 to \$4 per hour. But I'm here tonight to tell you about a story of minimum wage laws that are failing to protect workers from wage theft. At Renaissance Nail Salons from Darien and New Canaan, six women worked as manicurists and gave massages. They weren't paid minimum wage or overtime. Their bosses kept their tips. They weren't allowed to get bathroom or meal breaks, and they often faced discrimination. They were given dirty work and yelled at with racial slurs. They were sexually harassed by the boss and slapped around by him. Two of the women were fired and they were asked for a day off to take care of their children when they were ill. Several developed health problems due to bathroom regular and breaks.

Some -- these women filed a lawsuit for all these violations and won the case for \$209,000, but the women have no way to collect the wages and the damages that are owed to them. Fraudulent employers use these practices frequently. They sell their businesses to family or friends and then they declare bankruptcy, and there is no way for any of these workers to get their wages even when the court orders the employers to pay. So, I urge you tonight to approve S.B. 1037 so the court can place a lien on the employers' property and prevent the employers from getting away with theft.

We also need S.B. 914 and S.B. 106 so there are real consequences when employers steal wages

and retaliate against workers for speaking out. Employers should have the opportunity to spend time with their family and not sacrifice their health and family to maintain someone else's business. The wage theft laws will seek justice for those who have worked hard and will ensure that employers pay the salary that are owed to them.

I'm tired of my community being trampled on as if we were slaves with no freedom. My family has faced wage theft and discrimination because of the language barrier. We all deserve human rights and social justice. Thank you for your time. (Inaudible).

REP. TERCYAK: Wow, perfect timing. Thank you.

KARIM CALLE: You're welcome.

REP. TERCYAK: Any questions? No.

Thank you very much.

Joelle Fishman, then George Colli, then
Caroline Carlson.

JOELLE FISHMAN: Senator Gomes --

REP. TERCYAK: Welcome.

JOELLE FISHMAN: Thank you. Representative Tercyak, members of the Committee, my name is Joelle Fishman. I'm speaking today on behalf of the Connecticut Communist Party. It's a real honor to testify during Women's History Month in favor of bills that would improve job stability and conditions of working women and all low-wage workers and workers in our state. And, so, I'm speaking in support of the entire

HB6932

SB914

SB1037

HB6791

group of bills in the Women's Economic Agenda and the bills on wage theft.

H.B. 6932, it's time to enact paid family and medical leave in Connecticut. In 1988, our state was in the forefront, enacting FMLA five years before the national law. Now we need to catch up as other states have enacted paid FMLA. And we've heard today about how thousands of workers and disproportionately African American and Latina women workers live from paycheck to paycheck and cannot afford to utilize FMLA for emergency care for sick children or aging parents. Many of us probably know someone and we heard tonight from people who have been in this difficult situation and the crises that result.

Family economic security is basic to strong communities and a strong Connecticut economy. Last year's report on women in the workforce by the Permanent Commission on the Status of Women confirms more women in the workforce, more women single, and the race-gender wage gap for women persists. The recommendation for expansion of family-friendly workplace policies, including paid sick days and paid family and medical leave, is a concrete step that the Legislature should take.

S.B. 914 and S.B. 1037, a tremendous contribution has been made by those courageous immigrant workers who have risked their job, who refuse to be the victims of unpaid labor, and took action against their employers who broke the law and failed to pay proper wages. And we heard that beautiful testimony today. While the legal remedy to -- is double wages, many workers never recover what they rightfully earned because some employers find ways to hide their assets. So, allowing liens on employers

to recover what is owed should provide incentive to abide by the law and would, therefore, benefit all workers in our state.

H.B. 6791, Connecticut cannot afford to keep subsidizing large employers like Wal-Mart and McDonald's who pay low wages and then encourage their employees to sign up for State services. So, this bill would simply require such corporations to pay a fee to offset the cost of State programs workers and their families are forced to rely on.

And just in closing, across the country, the needs and rights of union workers and women and immigrant workers are being undercut in many parts of the country at a time when nearly all the recovery from the economic crisis has gone to the top one percent. And, so, that puts us all in the same concern. And Connecticut has rejected this trend and listened to the voices of the majority of people. So, I hope the Legislature continues as a beacon to the country, and I thank you.

REP. TERCYAK: Thank you very much for wrapping up promptly, and for all of your support there.

Any questions? Yes, Senator.

SENATOR GOMES: Joelle, it's nice to see you. And your testimony is reminiscent of all the great work you've done in the City of New Haven for your communities, and I just want to thank you for being here.

JOELLE FISHMAN: Thank you so much, Senator Gomes. And congratulations (inaudible).

SENATOR GOMES: You're welcome. After 35 years of knowing you, I know you.

Okay, great. Thank you. Appreciate you waiting.

I don't see Merril Gay. Let's see. Katherine Bessen-Johnson. Kamisha Trimmier. Dr. Helen Evrard. No? Yes? No? Great.

Kathleen Bozelko. Annamaria still here? You're up next, followed by Issa Connell and then Tim Phelan and then Kirk Springsted.

Welcome. It's good to see you. Please speak quickly.

ANNAMARIA RIVERA-FORASTIERI: Good evening, Senator Gomes, Representative Tercyak, other members. Thank you for staying with us. It's been a long night, and I've forgotten half of what I was going to say five hours ago, but my name is Annamaria Rivera-Forastieri. I'm the Political Director of the Connecticut Working Families organization. I have submitted extensive written testimony on all of the bills that we're supporting, but I think it was important to us that I stay here and talk about our Women's Economic Agenda that we launched today. Some of you were at the press conference.

HB6784HB6932HB6791HB6933SB858SB1037SB914

You know, Working Families has been fighting for working and middle class families in Connecticut on social and economic justice issues. We've helped secure pretty important battles, but women -- despite those battles being won, women continue to face some pretty serious disparities. You know, it's something that people continue to talk about, but it's true. Women continue to make 78 cents per dollar for every white male. Women of color, the pay gap is even larger. For African American women, they make 64 percent, and for

Latina women that's 55 percent. So, our economy is constantly changing.

More and more women are entering the workforce and becoming bread winners and co-bread winners of their households. In Connecticut, there's approximately 179,000 households that are headed by women, and 25 percent of those have incomes that fall below the poverty level. So, for us it's very important. We believe that there's many contributing factors to the gender pay gap and, so, it requires a multifaceted approach and multiple solutions to -- to really ensure that women are guaranteed rights at the workplace, good wages and benefits. So, we're supporting a slew of bills -- H.B. 6784 that would EXPAND PAID SICK DAYS to more workers; 6932, creating a PAID FAMILY AND MEDICAL LEAVE program; 6791, AN ACT CONCERNING WORKERS' WAGES AT LARGE CORPORATIONS; PREDICTABLE SCHEDULES FOR EMPLOYEES, that's 6933; s.B. 858, which will eliminate the tip credit system in Connecticut; and finally but not least, the S.B. 1037 and S.B. 914, which would address the issue of WAGE THEFT in the state of Connecticut.

So, I, please, urge you to consider the passage of all of these bills. We believe they're going to do a lot of -- they will -- sorry, it's late at night. Lost my train of thought.

Anyway, I urge you to pass them and I'm happy to answer any questions you might have this late at night.

REP. TERCYAK: Thank you very much.

Any questions? No.

ANNAMARIA RIVERA-FORASTIERI: Thank you.

perpetrators of this vicious act, specifically managers and supervisors who bully in the workplace.

If you have any questions.

REP. TERCYAK: Thank you very much.

Any questions? No?

Thank you very much for waiting to speak to us.

LAURA LILLIAN BEST: I ask that you read the testimony as you said that you do that I have provided because this is a very, very sad situation and it needs to be fixed. You can have all of these other concerns for, you know, women's rights and everything, but if we don't address workplace bullying, it's going to continue to be a sad thing.

REP. TERCYAK: Thank you very much.

Kennard Ray. And is there anybody else who wanted to testify? Is Danielle Donnelly here? Is Michael Zanger-Tishler, anybody wanting to testify and hasn't signed up yet?

You, Sir, are you signed up or are you --

A VOICE: (Inaudible).

REP. TERCYAK: Okay. They'll help you out right over there, then, a nice blonde lady named Pam. Thank you.

Hey, welcome, Kennard.

KENNARD RAY: Hello, and thank you, Chairman Gomes, Chairman Tercyak and the members of the Committee. My name is Kennard Ray. I am the

<u>HB6932</u>
<u>HB6784</u>
<u>HB6933</u>
<u>HB6791</u>
<u>SB1037</u>
<u>SB106</u>
<u>SB914</u>
<u>HB6875</u>
<u>SB858</u>

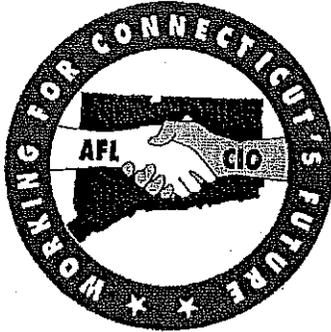
Deputy Policy Director of the Restaurant Opportunities Center. I am testifying in support of the Women's Economic Agenda, which would include H.B. 6932, H.B. 6784, H.B. 6933, H.B. 6791, S.B. 1037, S.B. 106, S.B. 914, and I'd like to add in H.B. 6875 for good measure.

REP. TERCYAK: Go right ahead.

KENNARD RAY: Why not? But specifically I want to hone in on H.B. 858, AN ACT CONCERNING EMPLOYEES WHO CUSTOMARILY AND REGULARLY RECEIVE GRATUITIES AND THE FAIR MINIMUM WAGE. And in doing that, my name will be Jennifer Torres, a server at Red Robin in West Hartford for the moment.

So, thank you and each member of this Committee for hearing this very important issue today. After 14 years working in the restaurant industry, I've come to learn that there are good days and bad days. However, more often than we can afford, servers know that we will always have more bad days than good. But with two teenage girls and a 7 year old to take care of, I have to grin and bear it and make my small paychecks last. Server is one of the only professions where grinning and bearing it are part of the job description. Grin and bear it through disrespectful customers, through cut hours, through snow days and lost wages, through making less than you thought you would for the week and through the stress of barely making ends meet.

I've worked in a few chain restaurants over the years -- Red Lobster and Uno Pizzeria among them -- and one of my current jobs is as a server at Red Robin in West Hartford. Over the past three years at Red Robin, I have worked hard to support my fiancé and my three



Testimony of the Connecticut AFL-CIO

Before the Labor and Public Employees Committee

March 5th, 2015

Senator Gomes, Representative Tercyak and members of the Labor and Public Employees Committee,

We submit this testimony on behalf of the 900 affiliated local unions who represent 200,000 working men and women from every city and town in our great state submit testimony as follows:

S.B. No. 106 (COMM) AN ACT CONCERNING RETALIATION AGAINST IMMIGRANT WORKERS

We support this legislation. No worker should fear retaliation but the fact is retaliation is quite prevalent within the world of immigrant labor. Workers' who stand up when something is unsafe, not being done appropriately or violating state law should not fear repercussion. The Connecticut AFL-CIO is willing to work with the committee on this very important legislation.

HB6932

HB6933

SB858

HB6791

S.B. No. 914 (RAISED) AN ACT CONCERNING AN EMPLOYER'S FAILURE TO PAY WAGES and S.B. No. 1037 (RAISED) AN ACT CONCERNING EMPLOYEE LIENS AGAINST EMPLOYERS FOR UNPAID WAGES

HB6877

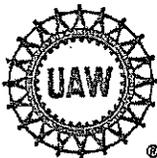
We support this legislation. In economies of high unemployment, bad employers are often found exploiting workers by failing to pay them a proper wage. This penalty should deter employers from taking such risky and hurtful action.

S.B. No. 1035 (COMM) AN ACT CONCERNING BULLYING IN THE WORKPLACE

We support this legislation. Every 16 hours a worker dies on the job, and once every eighty hours that employee is murdered on the job. Violence and bullying are a growing epidemic and a costly one too. According to Business Week magazine bullying "increases employee turnover, it causes a loss of productivity" both of which means additional costs to the State. This legislation is an important one for both the worker and the State.

H.B. No. 6784 (RAISED) AN ACT EXPANDING PAID SICK LEAVE – We support this legislation. Circumstances within families are very different for many people and this legislation, by expanding the definition of certain extended family members, can create relief for those that are coping with the health needs of those family members.

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INTERNATIONAL UNION, UNITED AUTOMOBILE, AEROSPACE & AGRICULTURAL IMPLEMENT WORKERS OF AMERICA-UAW

DENNIS WILLIAMS, President



GARY CASTEEL, Secretary-Treasurer

**Public Hearing Testimony
 Labor and Public Employees Committee
 United Auto Workers Region 9A
 Julie Kushner, Director and Beverley Brakeman, Political Representative
 Several Bills
 March 5, 2015**

The United Auto Workers Region 9A represents over 10,000 active and retired members living and working in Connecticut. Our members work in light manufacturing, legal aid programs, higher education, casinos, childcare facilities, and defense employers.

On behalf of our members, UAW Region 9A urges this committee to support the following bills, all of which support workers in our state, particularly female workers, juggling the varied time constraints associated with being a homemaker, working outside of the home, and ensuring that her children have quality childcare.

These bills expand paid sick leave, create a program for paid family and medical leave, protect immigrant workers, increase wages paid to tipped workers and require large low wage employers like Walmart and McDonalds to pay their fair share to the state when their employees have to be on Medicaid and other safety net services due to below average compensation.

Please vote yes for the following bills:

SB106 AAC Retaliation Against Immigrant Workers

SB858 AAC Employees who Customarily and Regularly Receive Gratuities and the Minimum Fair Wage

SB914 AAC An Employer's Failure to Pay Wages

HB6784 AA Expanding Paid Sick Leave

HB6791 AAC Worker's Wages at Large Corporations

HB6874 AAC Graduate Assistant Benefits (Substitute Language being Provided)

HB6876 AAC Public Institutions of Higher Education And Collective Bargaining Agreements

HB6932 AAC Paid Family Medical Leave

HB6933 AAC Predictable Scheduling for Employees

Thank you.

JK/BB:cg
 opeiu494afl-cio



Testimony of Eric W. Gjede
Assistant Counsel, CBIA
Before the Committee on Labor and Public Employees
Hartford, CT
March 5, 2015

Testifying in opposition to SB 914 AAC An Employer's Failure To Pay Wages

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

CBIA opposes SB 914.

SB 914 removes a judge's discretion to award less than double damages in a civil action to collect unpaid regular and overtime wages. In other words, judges already have the ability to impose this hefty fine on the truly bad businesses skirting wage obligations to their employees. I'm not opposing this bill on behalf of those bad actors.

The business that will truly be impacted by this are the one that are acting in good faith. By mandating that double damages be awarded in every case, the effect will be that businesses will be forced to settle wage disputes every time - even when they did nothing wrong. Why? Because if a business doesn't cut its losses and settle, even when in the right, the only other option is to take on the expense of defending themselves through costly litigation. In other words, even when the employer is right, they lose.

Current law allows bad acting employers to be punished appropriately, while allowing good employers the ability to defend themselves when needed.

CBIA urges the committee to take no further action on SB 914.



TESTIMONY
OF
JAMES BHANDARY-ALEXANDER, NEW HAVEN LEGAL ASSISTANCE
ON
THE PROBLEM OF WAGE THEFT IN CONNECTICUT
AND
IN SUPPORT OF SB 1037 REGARDING WAGE LIENS
AND
IN SUPPORT OF SB 914 REGARDING AN EMPLOYER'S FAILURE TO PAY WAGES.

MARCH 5, 2015

HARTFORD, CONNECTICUT

Dear Members of the Labor and Public Employees Committee,

My name is James Bhandary-Alexander and I am a staff attorney at New Haven Legal Assistance. New Haven Legal Assistance provides high-quality legal services to individuals and groups unable to obtain legal services because of limited income, age, disability, discrimination and other barriers. I represent low-wage workers in court, before administrative agencies, and in the legislature. My principal area of expertise is wage theft.

WAGE THEFT IS RAMPANT IN CONNECTICUT

Wage theft occurs when an employer steals wages by paying less than the minimum wage, fails to pay an overtime premium, forces employees to work off the clock, steals tips, withholds pay, or does not pay workers at all. A national study of several metropolitan areas revealed that an estimated 64% of low-wage workers suffered some form of wage theft each week.¹ A June 2012 Report from the Progressive States Network showed that over sixty percent of low-wage workers "suffer wage violations each week."² Extrapolating from national rates of failure to pay minimum wage or overtime wages, it is possible to estimate the number of Connecticut workers in low-wage professions who experience these workplace violations:

Retail Salespersons:	49,670 employed in Connecticut. ³ 76.2% national rate of overtime violations. 37,848 Connecticut employees suffering from overtime violations at least once during the year.
Waiters and Waitresses:	26,110 employed in Connecticut. 77.9% national rate of overtime violations 17,885 Connecticut employees suffering from overtime violations at least once during the year.
Janitors and Building Services:	30,400 employed in Connecticut 71.2% national rate of overtime violations 21,644 Connecticut employees suffering from overtime violations at least once during the year

¹ Annette Bernhardt, et al, Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in American Cities (NELP, 2008), available at <http://www.nelp.org/page/brokenlaws/BrokenLawsReport2009.pdf>

² Where Theft is Legal: Mapping Wage Theft Laws in the 50 States, Progressive States Network (June 6, 2012), <http://progressivestates.org/wagetheft>

³ Connecticut numbers come from: CT Voices For Children Analysis of U.S. Bureau of Labor Statistics, May 2010 Occupational Employment Statistics data <http://www.ctvoices.org/sites/default/files/econ12raiseminwage.pdf>

National numbers come from Annette Bernhardt, et al, Broken Laws, Unprotected Workers: Violations of Employment and Labor Laws in American Cities (NELP, 2008), available at <http://www.nelp.org/page/brokenlaws/BrokenLawsReport2009.pdf>

These are just three examples, though. Construction, landscaping, childcare, domestic work are all examples of industries employing hundreds of thousands of vulnerable workers who are often victims of wage theft.

The workers are not the only victims. Businesses that comply with the law face unfair competition from low-balling rivals. The state loses tax revenue, too. In short, this is a major economic problem with real – and very negative – economic ramifications for Connecticut and its citizens. Apart from continuing to fund the Connecticut Department of Labor and legal services agencies like mine to the maximum extent possible to enforce existing laws, the legislature needs to make some changes to those existing laws.

SB 1037 – Wage liens work

SB 1037 would create a procedure for establishing a lien on an employer's property to secure a payment of unpaid wages owed to an employee. I can tell you from personal experience representing low-wage workers that many workers who obtain money judgments for wage theft are never able to collect their wages. Employers who commit wage theft hide assets, shut down operations, switch corporate forms, and sometimes declare bankruptcy to avoid the consequences of their actions. For example, at Connecticut Legal Services' Day Laborer Clinic in Stamford only 30% of workers who obtain judgments are able to collect.

This tool would be especially useful for workers in low-wage industries who often live paycheck to paycheck, and need to get their wages paid in a timely manner. SB 1037 would send a message to non-paying employers that the minimum wage and overtime protections are to be enforced, and that cheating employees of hard-earned wages will not pay. Wage liens are a simple tool that encourages employers to comply with pay requirements efficiently. Contractors in Connecticut already have this tool available when they are not paid, there's no reason employees shouldn't.

And wage liens are proven to work extraordinarily well. In Wisconsin, the collection rate on wage theft claims backed by a wage lien is 80%.⁴ Let me remind you, at the Stamford Day Laborer Clinic, where the wage theft victims have the benefit of counsel, the collection rate is 30%. Wage liens exist in one form or another today in Alaska, Idaho, New Hampshire, Texas, Washington, and Wisconsin. I strongly urge you to support SB 1037 and help make work pay.

SB 914 – Double Damages are common sense

I also urge the Committee to support SB 914, which makes a modest change to the statutory remedies available to victims of wage theft. The statutes currently allow for the award of double damages in wage theft cases. However, case law has so constricted the circumstances in which double damages may be awarded – essentially requiring the worker to prove that the employer

⁴Eunice Hyunhye Cho, Tia Koonse, Anthony Mischel, *Hollow Victories: The Crisis in Collecting Unpaid Wages for California's workers*, available at http://nelp.3cdn.net/f6fc363a30266f0cd3_pzm61d1xa.pdf

conducted some other unlawful activity alongside the wage theft – that double damages under state law are difficult to obtain.

If double damages are difficult to obtain, it means that employers have an easy time basing a business model on wage theft. That is because even if they lose a case, they will only pay what they should have paid in the first place.

If SB 914 passes, all that will happen is that the burden will shift to the employer to demonstrate that the wage violation occurred despite the employer having tried to comply with the law. For example, if an employer has made a good-faith attempt to verify with the Department of Labor or through an independent law firm audit that their payment practices are legal, under the terms of SB 914, they would not be assessed double damages. This protects employers who truly make honest mistakes. I have read commentary that SB 914 would take discretion away from judges. This is false. The judge has the same amount of discretion, but is asking a different question. Rather than asking "has the employee proven employer recklessness?" the judge asks "has the employer proven that she tried to comply with the law but made an honest mistake." The latter is a better question.

Sincerely,

James Bhandary-Alexander
New Haven Legal Assistance

To: Senator Ed Gomes, Representative Peter Tercyak and Members of the Labor Committee

From: Karim Calle
Member of Unidad Latina en Accion (ULA) and resident of East Haven, CT
Email: Suarezk2@gmail.com
Phone: (203) 823-3265

Testimony in support of Wage Theft Legislation
S.B. 1037, S.B. 914 and S.B. 106
March 5, 2015

I am testifying today in support of

S.B. 1037 AN ACT CONCERNING EMPLOYEE LIENS AGAINST EMPLOYERS FOR UNPAID WAGES

S.B. 914 AN ACT CONCERNING AN EMPLOYER'S FAILURE TO PAY WAGES

S.B. 106 AN ACT CONCERNING RETALIATION AGAINST IMMIGRANT WORKERS

My name is Karim Calle. I am a resident of East Haven and for several years I've been a member of Unidad Latina en Accion, an organization that defends the rights of immigrants and workers throughout the New Haven area and other parts of the state.

I am a mother to a 22 old-month daughter and a worker. I know what it's like to make ends meet. My free time with family and community is minimal. I work, attend school full-time, and complete a social work internship in order to provide a decent future for my daughter.

I have tolerated sexual harassment on the job and kept silent due to the fear of being left jobless. I have waitressed for about 8 hours a day and only making \$30 per day. I have a family that I need to provide for and student loans that need to be paid. And I am a U.S. citizen. I immigrated here as child.

Immigrants often have it worse. Some earn as little as \$3 per hour. Three workers last year sought our help because they were beaten by their employers. For all that they endure, the Connecticut laws do not protect them. The era of slavery is over, but many workers are treated as slaves, and the law allows it. It's time for justice!

I want to tell you a story today about how the minimum wage laws are failing to protect workers from wage theft.

At Renaissance Nail salons in Darien and New Canaan six women worked as manicurists and gave massages. They weren't paid minimum wage or overtime. The boss kept some of their tips. They couldn't go to the bathroom or have meal breaks. The women also faced discrimination.

They were sexually harassed by the boss, and slapped around by him. Two of the women were fired when they asked for a day off to take care of their children who were ill. Several developed health problems because of not being able to go to the bathroom regularly.

Three of these women filed a lawsuit for all of these violations, and later another three women joined the lawsuit. Community organizations held demonstrations outside the nail salons.

While the case proceeded in court, the employer's three houses in Darien mysteriously went into foreclosure, and he "sold" his two salons to his niece, who claimed to know nothing about the labor dispute. The two main employers also declared bankruptcy.

The workers' claim was for about \$370,000. Two of the smaller employers settled for about \$20,000. In 2012 the major employers failed to show up to court, so the court issued a default judgment against them for \$209,000, but these two employers are nowhere to be found and have no known assets. So even though the women from Renaissance nail salons are owed at least \$209,000, and the court entered a judgment, the women have no way to collect the wages and damages owed to them.

Fraudulent employers use these practices frequently. They sell the business to a family member, they declare bankruptcy, and there is no way for the worker to get their wages, even when the court orders the employer to pay.

I urge you to approve SB 1037, so that the court can place a lien on the employer's property and prevent the employer from getting away with theft. We also need SB 914 and SB 106, so there are real consequences when employers steal wages and retaliate against workers for speaking out.

This story makes me angry because it's very common with the immigrant community. Employees should have the opportunity to spend time with family and not sacrifice their health and family to maintain someone else's business. The wage theft laws will seek justice for those who have worked hard and will ensure that employers pay the salaries owed. I will continue to protest businesses that cheat workers until justice is served.

I'm tired of my community being trampled on as if we were slaves with no freedom. My family has faced wage theft and discrimination because of the language barrier. We all deserve human rights and social justice.

I urge you to vote yes in favor of updating the Connecticut laws to improve our rights at work. Thank you for listening to my testimony today.

Ava Tomasula y Garcia

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Testimony in support of Senate Bills 1037, 914, and 106

To Senator Gomes, Representative Tercyak, and the Members of the Labor Committee:

My name is Ava Tomasula y Garcia, and I want to speak in support of Senate Bills 1037, 914, and 106. I am a student at Yale University, and I would like to talk about a case of wage theft that is happening just a minute's walk away from my dormitory. This took place at Gourmet Heaven, a popular 24-hour deli which students call "G-Heav." The Department of Labor closed its investigation of the business last year, and the deli's owner was subsequently found to have withheld more than \$218,000 in wages during a 2-year period. I want to emphasize that many workers at G-Heav have been working at the store for much, much longer than 2 years, and the total amount of wages stolen from workers is likely over \$1,000,000. As Julio Olivar, a G-Heav employee who was fired in retaliation for speaking with the DOL, said, "Legally, I can claim ONLY the last two years of unpaid wages. But I worked here for seven years. Can you imagine how much money [the owner] has stolen from me? I did the math: About ten thousand dollars per year, for seven years. That's seventy thousand dollars." If these bills had been law when G-Heav was still in court, then Julio and his family would be living their lives differently. I know that, if my family were \$70,000 short, I certainly wouldn't be in school right now.

G-Heav is a case study in how, even when workers' cases do come to court, they rarely get what they are due. The state loses revenue, and honest employers who play by the rules are hurt. This affects everybody: from entire families, to our entire state. And so I am here today to speak about my personal ties to wage theft. The property that houses G-Heav is owned and managed by Yale

University Properties. This means that Yale invited the store to open on campus to improve student life, and that Yale is responsible for what happens on that property. And yet when I and many other students have pressed our administration to investigate the abuses they are subsidizing in their own property, they have answered by saying they don't have the resources to do so. I know this is untrue. My school has an endowment that exceeded the revenue of the entire Hollywood industry last year. I have been told again and again that Yale is a community of people that look out for each other. The issue here is about taking responsibility, not dodging it. If Connecticut takes the responsibility for the stolen wages its workers are owed, then that will force private actors like Yale to take responsibility for their own role in making our city an unequal, unsafe place to work.

When CT has inadequate wage laws and does not enforce even these, then it is easier for my University—and other institutions and private citizens—to take robbery less seriously. Yale has its own police force, and the entire school gets an email informing them whenever a student is robbed walking somewhere. Yet we're never told when employees at Yale, who are also members of this community, are robbed of much, much greater amounts of money. In history class, I learn about the sweatshop labor of the 19th century; how workers were grossly underpaid or not paid at all. No one mentions wage theft as the same thing, although it's happening right now, across the street. Bills 914, 1037, and 106 will help prevent wage theft, that is, they will help prevent the outright robbery of sweatshop labor. They will work to call out those who are responsible, they will help restore faith in our economic system and make sure that everyone in our state knows that, yes, they too are part of this community. Thank you.

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Labor and Public Employees Committee
 Testimony, Thursday, March 5, 2015
 Joelle Fishman, Connecticut Communist Party USA

Senator Gomes, Representative Tercyak, members of the Labor Committee,

It is an honor to have the opportunity to testify before this committee in March, during Women's History Month, in favor of bills to improve job stability and conditions of working women and all low wage workers in our state. This testimony is in support of all of the bills that comprise the Women's Economic Agenda as well as the three bills on wage theft. I will speak specifically on a few:

HB 6932: The time has come to enact paid family and medical leave in Connecticut. In 1988 our state was in the forefront by enacting family and medical leave five years before the national law was passed. Now, we need to catch up to the conditions of today, as other states have enacted paid FMLA.

Thousands of workers, disproportionately African American and Latina women, live from paycheck to paycheck and cannot afford to utilize FMLA when there is need for emergency care for sick children or aging parents. Many of us probably know someone who has been in this difficult situation and the crises that result. Family economic security is basic to strong communities and a strong Connecticut economy.

Last year's status report on women in Connecticut's workforce by the Permanent Commission on the Status of Women confirms that more women are in the workforce, more women are single, and the race/gender wage gap for women persists. The recommendation for "expansion of family friendly workplace policies including paid sick days and paid family and medical leave" is a concrete step toward equality that the legislature should take.

SB 914 and SB 1037: A tremendous contribution has been made to our state by those courageous immigrant workers who have risked their job, refused to be victims of unpaid labor, and took action against their employers who broke the law and failed to pay proper wages and hours. There is powerful testimony on some of those cases today.

While the legal remedy for failure to pay wages is double wages, many workers never recover what they rightfully earned because some employers find ways to hide their assets. These bills would allow liens on employers to recover what is owed. They are simple fixes that should provide incentive to employers to abide by the law and would therefore be of benefit to all workers.

HB 6791: Our state cannot afford to keep subsidizing large employers like WalMart and McDonalds who pay low wages and no benefits while encouraging their employees to sign up for state services. This bill would require such corporations to pay a fee for each worker who receives poverty wages to offset the cost of state programs those workers and their families are forced to rely on.

In closing it should be noted that across the country workers' rights, women's rights and immigrant rights are being undercut at a time when nearly all the recovery from the economic crisis has gone to the top 1%. Connecticut has rejected this trend and listened to the voices of the majority of people in our state. I hope the legislature will continue to be a beacon for the country