CBIA
Connecticut **Business&Industry** *Association*

Testimony Of
Kevin R. Hennessy
Staff Attorney
Connecticut Business & Industry Association
Judiciary Committee
Legislative Office Building
Hartford, Connecticut
March 12, 2007

My name is Kevin Hennessy. I am a staff attorney for the Connecticut Business and Industry Association (hereinafter "CBIA"). CBIA represents approximately 10,000 member companies in virtually every industry. They range from large, global corporations to small, family owned businesses. The vast majority of our member companies have fewer than 50 employees.

- CBIA **opposes SB 1242**, *An Act Concerning Antitrust Investigations and Enforcement Actions by the Attorney General.*

I. Overview

SB 1242 will increase civil penalties for antitrust violations by four times the current amount. Additionally, the bill offers monetary incentives for antitrust "whistleblowers." The bill also states that voluntarily provided employee information to the Attorney General is confidential and protected from any employer retribution.

II. Arguments

a. Business Concerns

i. Dramatically Increased Penalties

Increasing the civil penalties by four times their current amount will negatively impact all businesses involved in antitrust investigations. In Connecticut, it is rare for antitrust penalties to be assessed. Typically, antitrust investigations and allegations are never tried. Instead, they are usually settled or dismissed altogether. Increasing civil penalties by four times their current amount will simply give the Attorney General's office greater leverage in the negotiation process. Thus, the floor for settlement negotiations will rise and the Attorney General's office will have greater leverage in forcing individuals and companies into settlement.

ii. Whistleblower Incentives

Creating monetary incentives for the reporting of antitrust violations is unnecessary and will be very problematic for businesses. Currently, the Attorney General's office can institute an antitrust investigation whenever it wants. There are no thresholds that have to be met. Creating incentives for more antitrust investigations is unnecessary. As is, the Attorney General's office has not been hampered for work in its antitrust department; it is very active.

Unnecessarily creating rewards for whistleblowers will be very problematic for businesses. For example, there will likely be an influx of reported violations that will be investigated. After speaking with an experienced antitrust partner in a large Connecticut law firm, I learned that the vast majority of antitrust investigations simply dissolve. Although companies are not usually subject to antitrust settlements or civil penalties, their legal costs during the investigation process are enormous. Antitrust investigations are long and complex. Therefore, the legal fees associated with them quickly escalate into the tens or hundreds of thousands of dollars range. Subjecting companies to potentially frivolous investigations by enticing whistleblowers with monetary rewards will be extremely costly for Connecticut businesses.

Moreover, there are no safeguards in Raised **SB 1242** to protect individuals and businesses from unlawful or illegal allegations. Section 4(c) does not address the fact that whistleblowers can be rewarded even if the information they provide is obtained illegally. Rewarding wrongdoers with antitrust civil penalty money is bad public policy. It will reward bad behavior with money that should be part of the general fund.

Finally, businesses will be unduly harmed by the fact that they have no redress against fraudulent whistleblowers. Under Section 6 of Raised **SB 1242**, businesses are prohibited from reacting to information provided to the Attorney General. Therefore, if an employee is worried about being laid off or punished, it will be in his or her best interest to notify the Attorney General's office about potential antitrust violations at the company. Because the employee's report to the Attorney General is a "lawful act," the employee will be protected from any termination or punishment. Among other things, this bill will create a wedge between employers and employees and reward disgruntled employees by protecting them and costing their employer time and money.

SB 1242 is an unnecessary bill that will harm Connecticut businesses. As such, please reject the measure as bad public policy.

b. Technical Concerns

i. Expands Connecticut's Antitrust Powers

Section 1 (4) defines "federal antitrust law" as defined in 15 USC 1311(a). This definition includes investigation subpoena and enforcement authority on issues that are

outside of Connecticut's current jurisdiction, such as foreign commerce, mergers and acquisitions, etc. Using the federal definition of antitrust law expands the jurisdiction of Connecticut's antitrust powers. Besides the fact that the constitutionality of this expansion is questionable, it is much too broad of an expansion. If amended, the statute should not be radically altered. Instead, the goal should be for deliberate and cautious change that has been studied. For this reason, **SB 1242** should be rejected.

ii. Connecticut will Expressly Take a Federal Power

Under Section 4 (b)(2), Connecticut will expressly take a federal power. This section allows the Attorney General to "apply to the *Superior Court* for a monetary award to an individual source as provided in this subsection..." (emphasis added). Unfortunately, under federal law and as stated earlier in the bill, the United States District Court has exclusive jurisdiction over federal antitrust complaints. Allowing the Attorney General to apply to the Superior Court for a monetary award after initiating the claim in United States District Court is confusing and troublesome. The proposed measure is inconsistent with federal law and should not be adopted.

iii. Language Problems

Section 4(a)(2) specifically addresses "civil penalties" with regard to businesses. Section 4(c)(4) is inconsistent because it fails to address "civil penalties," instead focusing on "voluntary compliance or other settlement agreement..." This inconsistency shows that the bill was carelessly drafted. Again, this is another reason to reject **SB 1242.**

III. Conclusion

SB 1242 lacks sufficient reasoning for enactment. Moreover, it will unnecessarily expand the reach of authority of the Attorney General's office in antitrust cases. Additionally, **SB 1242's** cost will be extremely high to Connecticut businesses and individuals alike. Rather than pass unnecessary, damaging legislation, the Judiciary committee and the General Assembly should focus on adopting laws that are mutually necessary and beneficial. For the aforementioned reasons, CBIA **urges** the Judiciary Committee **to reject SB 1242** *An Act Concerning Antitrust Investigations and Enforcement Actions by the Attorney General.*