



House of Representatives

General Assembly

File No. 543

February Session, 2012

Substitute House Bill No. 5431

House of Representatives, April 19, 2012

The Committee on Judiciary reported through REP. FOX, G. of the 146th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

***AN ACT CONCERNING THE CONFIDENTIALITY OF INFORMATION
OBTAINED BY THE ATTORNEY GENERAL DURING THE COURSE OF
ANTITRUST INVESTIGATIONS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 35-42 of the general statutes is amended by adding
2 subsection (i) as follows (*Effective October 1, 2012*):

3 (NEW) (i) Notwithstanding the prohibition against public disclosure
4 of documentary material and other information provided in
5 subsections (c) and (e) of this section, any documentary material,
6 responses to interrogatories or written transcripts of oral testimony, or
7 copies thereof, or other information produced pursuant to a demand
8 made under this section or furnished voluntarily, may be used by the
9 Attorney General, or the Attorney General's designee, in connection
10 with the taking of oral testimony conducted pursuant to this section,
11 when the Attorney General, or the Attorney General's designee,
12 reasonably determines that it is necessary to disclose confidential
13 material to a person providing oral testimony in order to adduce

14 evidence of a suspected violation of a provision of this chapter and
15 reasonably believes that the person providing oral testimony: (1) Is an
16 author or recipient of the confidential material, (2) has read the
17 confidential material, or (3) is otherwise aware of the substance of the
18 confidential material. The permissible use of confidential material in
19 connection with the taking of oral testimony provided under this
20 subsection shall not apply to investigations of proposed mergers or
21 acquisitions. No copy or original of the confidential material described
22 or shown to a person providing oral testimony pursuant to this section
23 shall be retained by such person. For purposes of this subsection,
24 "confidential material" means documentary material, responses to
25 interrogatories or written transcripts of oral testimony, or copies
26 thereof, or other information produced pursuant to a demand made
27 under this section or furnished voluntarily.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2012</i>	35-42

JUD *Joint Favorable Subst.*

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill results in no fiscal impact as it only changes procedural actions by the Office of the Attorney General.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis**sHB 5431*****AN ACT CONCERNING THE CONFIDENTIALITY OF INFORMATION OBTAINED BY THE ATTORNEY GENERAL DURING THE COURSE OF ANTITRUST INVESTIGATIONS.*****SUMMARY:**

This bill allows disclosure of confidential material to a person testifying in an antitrust investigation when the attorney general or his designee reasonably:

1. determines its use is necessary to adduce evidence of a suspected antitrust violation and
2. believes the person providing the testimony (a) is an author or recipient of the confidential material or (b) has read it or is aware of its substance.

By law, the attorney general's office can subpoena documents, subpoena people to testify and transcribe their testimony, and issue written interrogatories in an antitrust investigation. Current law prohibits any disclosure of these documents to the public, but allows the attorney general to share them with federal and other states' officials. Under the bill, confidential material refers to documents, responses to interrogatories, written transcripts of oral testimony, copies of them, or other information produced after a demand or furnished voluntarily.

The bill prohibits the person providing testimony from keeping any of the confidential material.

The bill's authorized use of confidential material does not apply to investigations of proposed mergers or acquisitions.

EFFECTIVE DATE: October 1, 2012

BACKGROUND

Related Case

The Connecticut Supreme Court ruled that the statutes bar disclosure of material and information gathered in an antitrust investigation to anyone outside the attorney general's office, with the exception of federal and other states' officials. The court stated that the material cannot be disclosed in connection with taking oral testimony as part of the antitrust investigation.

Regarding disclosure to federal or other states' officials, the court stated that the attorney general must obtain an agreement that the other officials will abide by Connecticut's statutory confidentiality provisions.

The court also stated that when materials are filed or entered into evidence in a court proceeding, the statutory confidentiality provisions must be balanced against the presumption that documents submitted in court related to an adjudication are publicly available. The court stated that court rules allow the party who provided the documents to seek to seal them or limit their disclosure and the trial court must then determine whether (1) they involve trade secrets or sensitive information and (2) the need for confidentiality outweighs the public's interest in viewing them (*Brown and Brown, Inc. v. Blumenthal*, 297 Conn. 710 (2010)).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 45 Nay 0 (04/02/2012)