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

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

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

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

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

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

In conclusion, CBIA has specific concerns regarding the application of this bill. First, issues surrounding the 10-day review period are distinguishable from causes of action arising under an executed non-compete agreement and therefore such disputes should be treated appropriately and should not be subject to the same fee and damage provisions. Secondly, a cause of action brought by an employee under a non-compete agreement *currently* requires expedited review in order to avoid the fees and damages provided for in this bill. Therefore, CBIA respectfully suggests the damage and fee provisions included in this bill are not necessary. Finally, the definition of employee as currently drafted is overly broad.

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