

**POSITION STATEMENT OF THE CONNECTICUT TRIAL LAWYERS
IN SUPPORT OF RAISED BILL 5402, AN ACT CONCERNING
THE EXTENSION OF WHISTLEBLOWER PROTECTION
TO AN EMPLOYEE WHO REPORTS A SUSPECTED VIOLATION
OF LAW TO THE EMPLOYEE'S SUPERVISOR OR MANAGER**

The Connecticut Trial Lawyers Association strongly supports the modifications of Connecticut's Whistleblower Statute, which is currently codified as Conn. Gen. Stat. §31-51m. The statute proposes three changes: (1) It increases the statute of limitations from 90 days to 180 days; (2) It provides coverage to individuals who speak out on violations or suspected violations of state or federal law when they raise the issues with their supervisors or managers; (3) It broadens the remedies to include noneconomic damages and future lost earnings.

RB 5402 extends the protection against retaliation for whistleblowers to employees report violations or suspected violations of law to their supervisors or managers. Under current law, Conn. Gen. Stat. §31-51m only applies to individuals who have reported their employers violations of law to a "public body." In other words the employee had to have actually complained to a state, federal or local agency to get whistleblower protection.

As currently written, Connecticut's whistle blower statute has very limited practical application. Most employees who lose their job for reporting potential legal violations never get to the point of reporting the illegal conduct to a public body. In over twenty-five years of representing employees in workplace disputes, I have seen employees claiming to be fired for internal reports of illegal conduct hundreds of times. Rarely do active employees report conduct to an outside agency.

II. RB 5402 Encourages Employees to Make Reports of Suspected Illegal Conduct Directly to Their Employers

Employees should be encouraged to make any initial report of illegal conduct internally to their employers. This is the best way to assure and encourage Companies to exercise responsible governance upon matters important to public health and welfare. On the other hand, employees should not lose their job for truthfully reporting illegal or suspected illegal conduct to their employers who are then discharged before reporting the conduct to a government agency. Whistleblower protection should not be limited to reports to public agencies. This bill addresses the gap in coverage that currently exists under Connecticut law.

III. The Statute Should Provide Broad Coverage For Any Internal Report of Illegal Conduct

Subsection(a)(5)(B) of the proposed bill defines "Supervisor and Manager" as any person who "solely or in part is responsible for decisions involving employee compensation or other material terms and conditions of employment. Companies often have various hotlines, human resources, compliance officers set up to receive any such reports. The intent of this definition is to have this language read broadly to these types of reporting mechanisms for illegal conduct set up by the company.

II. Extension of the Statute of Limitations Makes the Statute of Limitations Allows Adequate Time to Investigate Initial Complaints, and Gives Whistleblowers the Same Amount of Time to file as Victims of Discrimination

The 180 day statute of limitations gives whistleblowers the same amount of time to file their claim as individuals who claim to be victims of discrimination. There is no rational reason to give whistleblowers less time to file their complaints than victims of discrimination. In

addition, I know of or have read a number of decisions where potential whistleblower claims have been time barred. These cases often can be legally and factually complex, and require investigation prior to filing suit. The longer statute of limitations will permit counsel time to weed out the meritorious cases from frivolous ones.

III. Modifications of the Damages Provisions Makes the Relief Provided Comparable to Other Statutory Causes of Action

The proposal also includes providing a remedy for future lost earnings and noneconomic damages. The intent of including non-economic damages is to permit, in appropriate cases, awards for emotional distress damages and punitive damages. This makes the relief allowed in this whistleblower statute commensurate with the relief permitted in other protections against retaliation, such as the anti-discrimination statutes, the free speech statute, drug testing, worker's compensation, and Family and Medical Leave. Again, there is no rational reason to distinguish whistleblowers who suffer retaliation from these other protections. These broader remedies are important because the broader damages make a claim under the statute more viable for low wage earners. If there remedies are limited to back pay, as is currently the case, it generally does not make economic sense for low wage earners to pursue these claims.

For example, I recently represented a woman in a whistleblower case who worked for a fast food chain. She was a single mother, she made \$8.50 per hour, and received no benefits. She had asthma and had to work during repairs to the roof that was left uncovered and exposed her, her co-workers, and customers to dust and other materials that were being blown into the restaurant by the air conditioning unit. She complained to her manager, and nothing was done. She reported it to the local department of health, and they inspected and cited the restaurant. My client was fired the same day as the inspection. We filed suit and were able to obtain a reasonable recovery that helped her out during difficult circumstances. But it was only because

we were able to bring other claims that included damages for emotional distress that she was able to obtain a favorable outcome. In employment claims, damages for emotional distress are the great equalizer in bridging the gap. The protection afforded to whistleblowers should apply to all wage earners, not just highly-compensated individuals.

IV. 31-51m Provides Adequate Protection For Employers Against Frivolous Cases

Unlike many statutes, 31-51m provides a prevailing party (employer or employee) reasonably attorney's fees and costs. This provides significant incentive against disgruntled employees from filing false or frivolous cases.

Respectfully Submitted,

Lewis Chimes
Chairperson of the Connecticut Trial Lawyers
Employment Section