Testimony of
Domenico Zaino Jr., Carmody Torrance Sandak & Hennessey LLP
Before the Judiciary Committee
March 23, 2016

Testifying in support (in part and with modifications) of SB 468
AN ACT CONCERNING THE COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES

Good afternoon Senator Coleman, Representative Tong, Senator Kissel, Representative Rebimbas and members of the Judiciary Committee. My name is Domenico Zaino Jr. and I am a partner with the law firm of Carmody Torrance Sandak & Hennessey LLP.

I have been a practicing attorney since 1996. For 20 years I have been representing employers in all facets of labor and employment law, including the defense of complaints filed with the Connecticut Commission on Human Rights & Opportunities (CHRO).

I was asked by the CBIA to be part of a working group that would focus on issues related to the CHRO. There were about 12-15 employers who were part of the working group. The group consisted of large employers, small employers, for-profit, and non-profit entities. This working group drafted and supports the changes to Section 5 contained in Raised Bill No. 468.

The changes contained in Section 5 principally relate to what was known for many years as the Merit Assessment Review (MAR) process and as of October 1, 2015 was renamed the Case Assessment Review process. This testimony will focus on the proposed change to the standard used in the MAR process.

The MAR process was added to the CHRO investigatory process in 1994 to allow for the expeditious dismissal of frivolous cases. Under this process, the CHRO reviews the employee's Complaint, the employer's Answer and responses to the CHRO's request for information, and the employee's rebuttal to the employer's Answer. Based on this review, the CHRO determines whether the Complaint should be retained for further processing or be dismissed because the complaint, either:

(1) failed to state a claim for relief or is frivolous on its face,
(2) the respondent is exempt from the provisions of the chapter, or
(3) there is no reasonable possibility that investigating the complaint will result in a finding of reasonable cause.

For many years after 1994, the CHRO appropriately dismissed certain cases under the MAR process. From 2000 to 2010, for example, the CHRO dismissed, on average, approximately 32% of cases under the MAR standard at issue. These dismissals occurred, and were appropriate, where the employer provided strong evidence and information refuting the claims in the complaint, and the employee either failed to respond or failed to create genuine and material issues of fact requiring a full investigation.

Public Act 11-237 made a number of changes to the CHRO process, but the standard used to dismiss cases under the MAR process <u>did not change</u>. What changed is that the CHRO decided to virtually stop dismissing cases under the MAR process regardless of the information provided by the employer. For example, in FY 2000-2001, the CHRO dismissed approximately 44% of cases under the MAR standard at issue. In FY 2014-2015, the CHRO dismissed only 1% of cases under the same MAR standard.

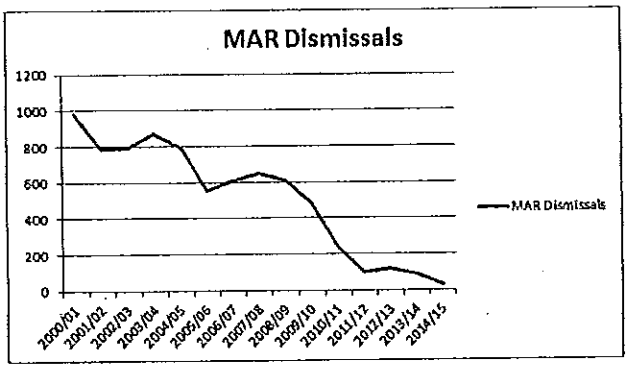
Having stopped conducting any "merit" review of complaints at this early stage, the name of the process was changed through Public Act 15-249 from "Merit Assessment Review" to "Case Assessment Review." While the name was changed, the legislature, again, did not change the standards for conducting the initial review.

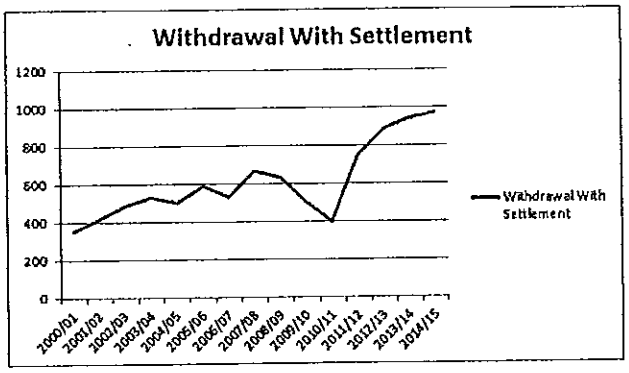
Now, instead of expeditiously dismissing meritless cases, employers have been required to engage in mandatory mediation, with the prospect that if a case is not settled it would be assigned to a full investigation. The result is that, to avoid the significant cost and expense of the full investigatory process, employers are paying to settle frivolous cases that should be dismissed under the MAR/CAR standards.

This is clearly supported by the available statistical information from the CHRO and is not good public policy.

Fiscal Year—June to June	Number of MAR Dismissals for No Possible Reasonable Cause Finding	Total Case Closures	Percentage (rounded)
2000-2001	975	2193	44%
2001-2002	786	2159	36%
2002-2003	794	2215	36%
2003-2004	866	2368	37%
2004-2005	795	2258	35%
2005-2006	553	2167	26%
2005-2007	610	2168	28%
2007-2008	651	2397	27%
2008-2009	610	2118	29%
2009-2010	483	1761	27%
2010-2011	237	1299	18%
2011-2012	95	1625	6%
2012-2013	116	2121	5%
2013-2014	86	2327	4%
2014-2015	31	2334	1%

Fiscal Year—June to June	Total Case Closures	Cases Withdrawn With Settlement	Percentage of cases settled
2000-2001	2193	350	16%
2001-2002	2159	412	19%
2002-2003	2215	481	22%
2003-2004	2368	529	22%
2004-2005	2258	501	22%
2005-2006	2167	587	27%
2006-2007	2168	531	24%
2007-2008	2397	669	28%
2008-2009	2118	630	30%
2009-2010	1761	503	29%
2010-2011	1299	397	31%
2011-2012	1625	746	46%
2012-2013	2121	881	42%
2013-2014	2327	941	40%
2014-2015	2334	968	41%





There is significant frustration among employers—large and small, for profit and not-for profit—that the MAR process is now meaningless, and there is no expeditious way to have frivolous cases dismissed short of paying money. Employers are not only frustrated at having to pay for the withdrawal of these cases, but also are concerned about the perception of wrongdoing that such settlements create.

Section 5 of the bill, with the modifications set forth below to Lines 204 to 206, would adopt the same standard the federal Equal Employment Opportunity Commission uses in dismissing cases short of a full investigation. Further, this standard protects employees by specifically stating that a dismissal of a claim

by the CHRO does not mean that the respondent is in compliance with the statute. In addition, employees would be issued a release of jurisdiction to pursue their claims in state of federal court.

These changes are not intended to simply favor one side over the other. It simply is good public policy to have a process that allows for the expeditious dismissal of meritless complaints, as the legislature recognized in 1994.

Proposed Modifications to Lines 204 to 206:

In line 204, strike "determine whether" and insert "conclude" in lieu thereof

In line 205 and 206, strike "sets forth" and insert "establishes" in lieu thereof