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## OLR Bill Analysis

### sSB 132

## **AN ACT COMBATting SEXUAL HARASSMENT AND SEXUAL ASSAULT.**

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**BACKGROUND**

*Information on bills related to § 1 and §§ 15-17*

**SUMMARY**

This bill makes various changes concerning sexual harassment, sexual assault, discrimination complaints filed with the Commission on Human Rights and Opportunities (CHRO), and related matters. For example, it:

1. expands requirements for employers to train employees on sexual harassment laws;
2. allows (a) CHRO to seek punitive damages against employers and (b) courts to order punitive damages in cases after release from CHRO jurisdiction; and
3. eliminates the criminal statute of limitations for all felony sexual assault crimes.

EFFECTIVE DATE: October 1, 2018, except as otherwise noted below.

**§§ 1 & 7 — SEXUAL HARASSMENT TRAINING AND INFORMATION REQUIREMENTS FOR EMPLOYERS**

*Expands requirements for employers, including on training employees regarding sexual harassment laws*

### **Training**

Under current law, CHRO can require employers with at least 50 employees to provide their supervisory employees with two hours of training on federal and state sexual harassment laws and remedies available to victims. The bill (1) lowers the employer threshold to those with at least three employees and (2) requires that training also be provided to nonsupervisory employees. It specifies that the training must cover the remedies available from CHRO.

The bill requires the new training to take place by October 1, 2019, except that any employer who provided the bill's training after October 1, 2017 is not required to provide the training a second time. The training must take place within six months for employees hired on or after October 1, 2018.

### **Information**

Existing law gives CHRO the power to require that employers with three or more employees post in a prominent and accessible place a notice that sexual harassment is illegal and of the remedies available to victims. The bill requires such employers to also send a copy of this information to employees by email, within three months of their hire, if the (1) employer has provided an email account to the employee or (2) employee has provided the employer with an email address. The email's subject line must include "Sexual Harassment Policy" or something similar.

Under the bill, if an employer has not provided email accounts to employees, it must post the information on its website, if it has one.

The bill subjects employers to a fine of up to \$1,000 if they fail to provide the information as required.

## **§ 1 — CHRO PETITIONS TO COURT**

*Specifies CHRO's authority to apply to court to enforce orders or fines*

The bill specifies that CHRO has the authority to ensure compliance with the laws over which it has jurisdiction, including the authority to

petition the Hartford Superior Court to enforce orders or fines or for other appropriate relief. Existing law authorizes CHRO to petition the court for specified purposes.

## **§ 2 — ALLOWABLE DEFENSES IN EMPLOYER SEXUAL HARASSMENT CASES**

*Restricts employers found to have engaged in a pattern of sexual harassment from raising certain defenses, except as to the amount of damages, and allows employers to modify the conditions of an alleged victim's employment only if the person consents*

Under the bill, if a judge or CHRO finds that an employer has engaged in a demonstrated pattern of sexual harassment, it is not a defense to a subsequent sexual harassment complaint filed with CHRO that:

1. the claim was properly investigated, the employer took immediate corrective action, and no subsequent acts of sexual harassment occurred;
2. the claim was not reported to the employer before the employee filed the complaint;
3. the employer has a policy prohibiting sexual harassment or recently trained its employees on sexual harassment in accordance with the bill's requirements; or
4. the harassment was not severe or pervasive.

The bill allows the respondent (the employer) to introduce these defenses on the issue of damages.

It prohibits an employer, when taking immediate corrective action in response to an employee's claim of sexual harassment, from modifying the employee's conditions of employment unless he or she agrees, in writing, to the modification. This includes actions such as (1) relocating the employee, (2) assigning the employee to a different work schedule, or (3) making other substantive changes to the terms and conditions of employment.

## **§ 3 — CHRO COMPLAINT FILING DEADLINE**

*Gives individuals up to three years to file a discriminatory practice complaint with CHRO*

The bill extends the time for filing a discriminatory practice complaint with CHRO, until three years after the date of the alleged discriminatory act. The change applies to such acts that allegedly occurred on or after October 1, 2018.

Under current law, such a complaint must be filed within (1) 180 days of the alleged discrimination or (2) 30 days for complaints alleging discrimination based on denial of state employment or occupational licensure due to criminal history.

#### **§ 4 — REMEDIES FOR DISCRIMINATORY EMPLOYMENT PRACTICES**

*Expands the authority of a CHRO presiding officer after finding a discriminatory employment practice, including ordering promotion and attorney's fees*

Under current law, after a finding of a discriminatory employment practice, a CHRO hearing officer may order that the complainant be hired or reinstated, with or without back pay, or that his or her membership in any respondent labor organization be restored. The bill adds promotion as a possible order.

It also requires the officer to (1) determine the amount of damages, including the complainant's actual costs as a result of the discrimination and (2) allow reasonable attorney's fees and costs. The amount of attorney's fees cannot be contingent upon the amount of damages requested by or awarded to the complainant.

#### **§ 5 — PUNITIVE DAMAGES OR EQUITABLE RELIEF IN EMPLOYMENT DISCRIMINATION CASES**

*Allows CHRO to seek punitive damages against employers and to seek injunctive relief against a broader range of employers*

Under current law, if the CHRO executive director believes that equitable relief is needed to prevent irreparable harm to the complainant in an employment discrimination case, CHRO may apply to court to seek appropriate injunctive relief.

The bill extends this provision in two ways. First, it allows CHRO to seek this relief in cases involving employers with at least three

employees, rather than 50 as under current law. It also allows CHRO, if the executive director deems it appropriate, to apply to court for punitive damages of up to \$50,000. Under the bill, CHRO may seek either injunctive relief, punitive damages, or both.

### **§§ 6 & 8-10 — COURT CASE AFTER RELEASE FROM CHRO JURISDICTION**

*Gives a complainant more time to bring a court case after being released from CHRO jurisdiction and allows courts to award punitive damages in such cases*

Under current law, a complainant released from CHRO jurisdiction may bring a court case against the respondent within two years after filing the complaint with CHRO, but no later than 90 days after receiving the release of jurisdiction. The bill instead allows such an individual to file a court case within two years after being released from CHRO jurisdiction.

The bill also allows courts to award punitive damages in such cases. In a 2016 case, the state Supreme Court ruled that the current statute does not authorize courts to award punitive damages (*Tomick v. United Parcel Service, Inc.*, 324 Conn. 470 (2016)).

### **§ 7 — PENALTY FOR FAILURE TO POST CERTAIN NOTICES**

*Increases the fine for failing to post certain notices about anti-discrimination laws*

By law, CHRO can require employers, employment agencies, or labor organizations, or complaint respondents or other people subject to the public accommodations or housing discrimination laws, to post notices describing any laws as CHRO directs. The bill increases the maximum fine for failure to post such notices as required, from \$250 to \$1,000.

### **§ 11 — MANDATED REPORTERS OF CHILD ABUSE**

*Adds to the list of mandated reporters of child abuse or neglect*

The bill adds licensed behavior analysts and board-certified assistant behavior analysts to the list of mandated reporters of suspected child abuse and neglect.

It also adds to the mandated reporter list anyone age 18 or older who is employed by certain programs that are exempt, by law, from

child care center licensing requirements. This applies to programs administered by:

1. a nationally chartered boys' and girls' club that are exclusively for school-age children;
2. a religious institution that provides religion educational activities exclusively for children whose parents or guardians are members;
3. Solar Youth, Inc., a New Haven-based nonprofit youth development and environmental education organization;
4. organizations under contract with the Department of Social Services that promote the reduction of teenage pregnancy and serve children ages 10 to 19; and
5. the Cardinal Shehan Center, a Bridgeport-based nonprofit organization exclusively for school-age children.

As mandated reporters, they must make such a report when, in the ordinary course of their employment or profession, they have reasonable cause to believe or suspect that a child under age 18 has been abused, neglected, or placed in imminent risk of serious harm (CGS § 17a-101a). A mandated reporter who fails to report may be subject to criminal penalties.

## **§ 12 — SCHOOL ADMINISTRATOR SUSPENSIONS**

*Requires school superintendents, after an employee files a sexual harassment complaint against an administrator, to immediately suspend the administrator with pay and conduct an investigation*

Under the bill, if a school employee files a sexual harassment complaint against an administrator, the school superintendent must immediately suspend the administrator and conduct an investigation of the allegations. The suspension must be with pay and must not affect the administrator's employee benefits. The bill does not establish procedures for such investigations or a timeframe for their completion.

EFFECTIVE DATE: July 1, 2018

**§ 13 — WAGE DEDUCTIONS FOR CERTAIN SUSPENSIONS**

*Allows employers to deduct pay for executive, administrative, or professional employees who miss work due to disciplinary suspensions*

The bill allows employers to deduct the pay of certain executive, administrative, or professional employees for periods during which they were suspended from work for violating written workplace rules that prohibit harassment or workplace violence. It also allows the labor commissioner to adopt regulations implementing this provision. Current regulations limit employers' ability to withhold such employees' pay under these circumstances (Conn Agencies Reg., § 31-60-14).

These provisions apply to (1) private sector employers as well as the state and local government employers and (2) individuals employed in a bona fide executive, administrative, or professional capacity as defined in regulations of the federal Fair Labor Standards Act.

**§ 14 — VICTIM COMPENSATION**

*Increases the amount of compensation a sexual assault victim may receive for personal injuries*

By law, certain crime victims are eligible for compensation from the Office of Victim Services (OVS). For personal injuries, current law generally limits compensation to a maximum of \$15,000, except there is a \$25,000 limit for a dependent of a homicide victim. The bill raises the limit for sexual assault victims to \$25,000. Under existing law, unchanged by the bill, OVS or a victim compensation commissioner may, under certain circumstances, award additional amounts above these limits.

**§§ 15-17 — ELIMINATING THE STATUTE OF LIMITATIONS FOR SEXUAL ASSAULT**

*Eliminates the statute of limitations for all felony sexual assault crimes and all other crimes involving sexual abuse, sexual exploitation, or sexual assault of a minor and extends the statute of limitations for a misdemeanor sexual assault crime*

The bill eliminates the criminal statute of limitations for all felony sexual assault crimes and all other crimes involving sexual abuse, sexual exploitation, or sexual assault of a minor. It also increases, from one year to 10 years, the statute of limitations for 4<sup>th</sup> degree sexual



assault when the victim is age 16 or older (this is a class A misdemeanor).

Under current law for sexual assault crimes:

1. there is no statute of limitations for (a) those crimes that are class A felonies or (b) certain crimes involving DNA evidence;
2. in other cases involving minors, there is an extended statute of limitations; and
3. in cases not covered by (1) or (2), the statute of limitations is generally five years.

EFFECTIVE DATE: October 1, 2018, and the bill applies to (1) offenses committed on or after that date and (2) offenses committed before then if the statute of limitations in effect when the offense was committed has not expired as of October 1, 2018.

***Eliminating Statute of Limitations***

The bill eliminates the statute of limitations for the following crimes:

1. 1<sup>st</sup> degree sexual assault and 1<sup>st</sup> degree aggravated sexual assault, in cases where either crime is a class B felony (there is already no limitation on prosecuting other cases of these crimes);
2. sexual assault in a spousal or cohabiting relationship;
3. 2<sup>nd</sup> degree sexual assault;
4. 3<sup>rd</sup> degree sexual assault and 3<sup>rd</sup> degree sexual assault with a firearm; and
5. 4<sup>th</sup> degree sexual assault in cases where the crime is a class D felony.

The bill correspondingly repeals a law providing that there is no statute of limitations for certain sexual assault crimes if the (1) victim reports the crime to the police or a prosecutor within five years of the

date it is committed and (2) alleged offender's identity is established through DNA evidence collected at the time of the offense. Under the bill, all of the crimes covered by this law have no statute of limitations.

The bill also eliminates the statute of limitations in any offense involving sexual abuse, sexual exploitation, or sexual assault of a minor. Under current law, except for certain crimes with no limitation period already (i.e., class A felonies or cases with DNA evidence), the statute of limitations is generally up to (1) the victim's 48th birthday or (2) five years from the date the victim notifies the police or a prosecutor of the crime, whichever is earlier.

## **BACKGROUND**

*Information on bills related to § 1 and §§ 15-17*

### ***Related Bills***

sHB 5043, reported favorably by the Labor and Public Employees and Appropriations committees, expands requirements for employers to provide training and information on sexual harassment laws.

The Judiciary Committee favorably reported three other bills concerning the statute of limitations for sexual assault:

1. sSB 5246 contains identical provisions to this bill on the statute of limitations for sexual assault crimes.
2. SB 237 creates a task force to study the statute of limitations for the prosecution of sexual assault crimes.
3. SB 238 extends the criminal statute of limitations for certain sexual assault crimes from five years to 10 years.

## **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 25      Nay 16      (04/03/2018)