

---

## OLR Bill Analysis

### sSB 132 (as amended by Senate "A" and "C")\*

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

### TABLE OF CONTENTS:

#### SUMMARY

#### §§ 1, 3, & 8 — SEXUAL HARASSMENT TRAINING AND INFORMATION REQUIREMENTS FOR EMPLOYERS

*Expands requirements for employers, including on training employees regarding sexual harassment laws and requires CHRO to make related training material available*

#### § 2 — DISCRIMINATORY PRACTICE DEFINITION

*Expands the definition of "discriminatory practice" in the CHRO statutes to include, among other things, an employer's failure to provide sexual harassment training or post certain notices as required*

#### § 4 — CORRECTIVE ACTION AND RETALIATION IN EMPLOYER SEXUAL HARASSMENT CASES

*Allows employers to modify the conditions of an alleged harassment victim's employment only if the person consents and prohibits employers from taking retaliatory personnel actions against an employee*

#### §§ 5, 7, & 9-10 — COMPLAINT FILING AND LAWSUIT DEADLINE

*For complaints alleging employment discrimination or state agency discrimination, gives individuals more time to file a complaint with CHRO or file a court case after being released from CHRO's jurisdiction*

#### § 6 — REMEDIES FOR DISCRIMINATORY EMPLOYMENT PRACTICES

*Requires the CHRO presiding officer to award attorney's fees after finding a discriminatory employment practice*

#### § 8 — PENALTY FOR FAILURE TO POST CERTAIN NOTICES

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

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

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

#### § 12 — WAGE DEDUCTIONS FOR CERTAIN SUSPENSIONS

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

#### § 13 — SCHOOL ADMINISTRATOR SUSPENSIONS

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

**§ 14 — FUNDING TRANSFERS FOR HUMAN RIGHTS INVESTIGATOR TRAINEE SALARIES**

*Requires the attorney general to transfer certain funds to CHRO from settlements to pay salaries of human rights investigator trainees*

**§ 15 — CHRO CIVIL ACTIONS IN THE PUBLIC INTEREST**

*Allows CHRO's executive director, within available appropriations, to assign CHRO legal counsel to bring a civil action, instead of an administrative hearing, in certain cases when doing so would be in the public interest and the parties agree to the case proceeding to court*

**§§ 16 & 17 — SEXUAL ASSAULT OF INCAPACITATED PERSON**

*Increases the penalty for subjecting someone to sexual conduct if the victim is mentally incapacitated and cannot consent*

**§§ 18 & 19 — STATUTE OF LIMITATIONS FOR SEXUAL ASSAULT AND RELATED CRIMES**

*Eliminates or extends the statute of limitations for various sexual assault crimes and eliminates the statute of limitations for 1st degree promoting prostitution*

**§ 501 — STATE PENSION REVOCATION**

*Requires the AG to apply to revoke the state pension of anyone entitled to one who is convicted of certain sexual assault crimes committed while the person was a state public official or on duty as a state employee*

**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. extends the time to file a CHRO complaint alleging employer discrimination, including sexual harassment;
3. eliminates or extends the criminal statute of limitations for various felony sexual assault crimes and related crimes; and
4. requires the attorney general to apply to court to seek the revocation of the pension of anyone entitled to a state pension

who is convicted of 1<sup>st</sup> degree sexual assault or 1<sup>st</sup> degree aggravated sexual assault committed while the person was a state public official or on duty as a state employee.

\*Senate Amendment "A" replaces the underlying bill. The amendment makes various changes, such as requiring employers with 20 or more employees to train nonsupervisory employees on sexual harassment, instead of employers with three or more employees as in the file copy. It adds various provisions, such as those (1) requiring CHRO to develop training materials for employers, (2) requiring the attorney general to transfer certain funds to CHRO, (3) allowing CHRO to bring a civil action instead of an administrative hearing in certain circumstances, and (4) raising the penalty for subjecting a mentally incapacitated person to sexual conduct.

It also eliminates various provisions from the underlying bill, such as those that would have (1) allowed CHRO to seek punitive damages against employers and courts to order punitive damages in cases after release from CHRO jurisdiction and (2) increased the amount of compensation sexual assault victims could receive for personal injuries.

\*Senate Amendment "C" adds the pension revocation provisions.

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

## **§§ 1, 3, & 8 — SEXUAL HARASSMENT TRAINING AND INFORMATION REQUIREMENTS FOR EMPLOYERS**

*Expands requirements for employers, including on training employees regarding sexual harassment laws and requires CHRO to make related training material available*

### ***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 requires such training for (1) supervisory employees of all employers, regardless of size, and (2) nonsupervisory employees of employers with 20 or more employees. It specifies that

the training must cover the remedies available from CHRO and the type of conduct that constitutes sexual assault.

The bill requires the new training to take place by October 1, 2019, and for new supervisors at employers with fewer than 20 employees, within six months of their assuming a supervisory position, 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 bill requires CHRO to develop and make available to employers an online training and education video or other interactive method of training and education that fulfills the bill's training requirements. As long as the commission does so, the bill's required training must take place within six months for employees hired on or after October 1, 2018 (i.e., for all new hires for employers with 20 or more employees, or for newly hired supervisory employees only for smaller employers).

Under the bill, employers who are required to provide such training must, at least every ten years, provide supplemental training to update employees on the content of the training and education.

### **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 (1) that sexual harassment is illegal and (2) 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 requires CHRO to develop and include on its website a link about the illegality of sexual harassment and the remedies available to victims. An employer can comply with the requirement above by

providing employees with a link to this website, by email, text message, or in writing.

***Penalty***

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

EFFECTIVE DATE: October 1, 2018, except the requirements for CHRO to develop a link on its website and training materials are effective upon passage.

**§ 2 — DISCRIMINATORY PRACTICE DEFINITION**

*Expands the definition of “discriminatory practice” in the CHRO statutes to include, among other things, an employer’s failure to provide sexual harassment training or post certain notices as required*

The bill expands the definition of “discriminatory practice” in the CHRO statutes to include violations of the following requirements for:

1. 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;
2. employers to provide training and information to employees (as specified above) about sexual harassment and available remedies; and
3. state agencies to provide diversity training and education to employees, annually report on such training, and submit information demonstrating compliance as part of their affirmative action plans.

By adding these violations to the definition of discriminatory practice, the bill allows individuals aggrieved by any such violation, or CHRO itself, to file a complaint with CHRO alleging such discrimination.

**§ 4 — CORRECTIVE ACTION AND RETALIATION IN EMPLOYER SEXUAL HARASSMENT CASES**

*Allows employers to modify the conditions of an alleged harassment victim's employment only if the person consents and prohibits employers from taking retaliatory personnel actions against an employee*

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

It also prohibits employers from taking or threatening to take personnel action against an employee in retaliation for the employee filing a complaint alleging that the employer committed a discriminatory practice.

#### **§§ 5, 7, & 9-10 — COMPLAINT FILING AND LAWSUIT DEADLINE**

*For complaints alleging employment discrimination or state agency discrimination, gives individuals more time to file a complaint with CHRO or file a court case after being released from CHRO's jurisdiction*

#### **CHRO Complaint**

Under current law, a discriminatory practice complaint with CHRO may 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.

The bill extends, to one year, the time for filing complaints alleging discrimination in any of the following areas, that allegedly occurred on or after October 1, 2018:

1. employment (including sexual harassment);
2. equal employment in state agencies and the Judicial Branch;
3. state agency practices (including permitting certain types of discrimination, such as in housing or public accommodations);
4. state agency job placement services or state licensing;
5. state agency educational and vocational guidance and

- apprenticeship programs;
- 6. allocation of state benefits;
- 7. state agency cooperation with CHRO;
- 8. required state agency annual reporting to the governor on anti-discrimination efforts; and
- 9. denial of state employment or occupational licensure due to criminal history.

***Court Case After Release from CHRO Jurisdiction***

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. The case must be filed no later than 90 days after receiving the release of jurisdiction. For anyone alleging the types of discrimination listed above occurring on or after October 1, 2018, the bill instead generally allows the individual to file a court case within two years from the filing of the complaint or one year after being released from CHRO jurisdiction, whichever is longer. The bill sets a deadline of 180 days after release from CHRO jurisdiction if the complaint was dismissed for failure to accept full relief and the complainant did not request reconsideration.

**§ 6 — REMEDIES FOR DISCRIMINATORY EMPLOYMENT PRACTICES**

*Requires the CHRO presiding officer to award attorney's fees after finding a discriminatory employment practice*

Under existing 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 additionally 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.

## **§ 8 — 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) \$500 for employers, employment agencies, or labor organizations or (2) \$1,000 for complaint respondents or such other persons.

## **§ 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 — 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.

## **§ 13 — SCHOOL ADMINISTRATOR SUSPENSIONS**

*Requires school superintendents, after an employee files a sexual harassment complaint against an administrator, to immediately suspend the administrator 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 bill defines "complaint" for this purpose as a written communication alleging that an administrator has committed sexual harassment, and that a school employee files, or someone files on the employee's behalf, with (1) the superintendent, (2) someone the superintendent designates to accept such a complaint, (3) CHRO, or (4)

a court.

The bill does not (1) specify whether the suspension is with or without pay or (2) establish procedures for such investigations or a timeframe for their completion.

EFFECTIVE DATE: July 1, 2018

**§ 14 — FUNDING TRANSFERS FOR HUMAN RIGHTS INVESTIGATOR TRAINEE SALARIES**

*Requires the attorney general to transfer certain funds to CHRO from settlements to pay salaries of human rights investigator trainees*

The bill requires the attorney general, in FY 19, to transfer \$400,000 to CHRO, from settlements he receives from lawsuits to which the state is a party.

It requires CHRO to establish a nonlapsing, other current expense account for such funds. CHRO must use these funds during FYs 19, 20, and 21 to pay salaries and fringe benefits of human rights investigator trainees CHRO hires to investigate discriminatory practice complaints.

The bill makes a corresponding change by eliminating the requirement that the attorney general, in FY 19, transfer \$200,000 each to the judicial branch and Division of Public Defender Services to fund a pilot program on access to legal counsel in certain civil proceedings.

EFFECTIVE DATE: Upon passage

**§ 15 — CHRO CIVIL ACTIONS IN THE PUBLIC INTEREST**

*Allows CHRO's executive director, within available appropriations, to assign CHRO legal counsel to bring a civil action, instead of an administrative hearing, in certain cases when doing so would be in the public interest and the parties agree to the case proceeding to court*

Under existing law, certain cases within CHRO's jurisdiction proceed to an administrative hearing phase (e.g., if the investigator makes a finding that there is reasonable cause to believe that discrimination occurred and the parties cannot reach a settlement). The bill allows the CHRO executive director, through the supervising attorney and within available appropriations, to assign CHRO legal

counsel to bring a civil action, instead of a case proceeding to an administrative hearing, if she determines that:

1. an alleged act of employment discrimination, including sexual harassment, or discrimination by the state under various laws occurred on or after October 1, 2018 (see the list above under “Complaint Filing and Lawsuit Deadline”);
2. the case proceeding in this way would be in the public interest; and
3. the parties mutually agree, in writing, to the case proceeding in this way.

The legal counsel must bring the civil action within 90 days after notifying the parties of the executive director’s determination. The action may be served by certified mail. The bill exempts such cases from certain conditions that apply to civil actions brought after CHRO has released a case from its jurisdiction (such as specific provisions on venue and the statute of limitations).

The bill limits the court’s jurisdiction for these cases to the claims, counterclaims, defenses, or other matters that could be presented at a CHRO administrative hearing, had the complaint remained with CHRO. The bill allows the complainant to intervene as a matter of right without permission from the court, CHRO, or the other party. The case must be tried without a jury.

Under the bill, the complainant or his or her attorney must present all or part of the case in support of the complaint if CHRO legal counsel determines that this will not adversely affect the state’s interest.

The bill allows a court to grant the same relief that would be available in a civil action after a case was released from CHRO jurisdiction. If the court finds that a respondent committed a discriminatory practice, the bill requires the court to order the respondent to pay CHRO its fees and costs, in addition to a civil

penalty of up to \$10,000. CHRO must use the funds from the penalty to advance the public interest in eliminating discrimination.

### **§§ 16 & 17 — SEXUAL ASSAULT OF INCAPACITATED PERSON**

*Increases the penalty for subjecting someone to sexual conduct if the victim is mentally incapacitated and cannot consent*

Under current law, it is 4<sup>th</sup> degree sexual assault to subject someone to sexual conduct if the victim is mentally incapacitated to the extent that he or she cannot consent to the contact. The bill instead classifies this conduct as 3<sup>rd</sup> degree sexual assault, thus increasing the maximum prison term and criminal fine as shown in table 1.

**Table 1: Penalties for 3<sup>rd</sup> and 4<sup>th</sup> Degree Sexual Assault**

<b>Victim Age</b>	<b>4<sup>th</sup> Degree Sexual Assault</b>	<b>3<sup>rd</sup> Degree Sexual Assault</b>
Under 16	Class D felony  (Up to five years in prison, a fine of up to \$5,000, or both)	Class C felony  (Up to 10 years in prison, a fine of up to \$10,000, or both)
16 or older	Class A misdemeanor  (Up to one year in prison, a fine of up to \$2,000, or both)	Class D felony  (Up to five years in prison, a fine of up to \$5,000, or both)

### **§§ 18 & 19 — STATUTE OF LIMITATIONS FOR SEXUAL ASSAULT AND RELATED CRIMES**

*Eliminates or extends the statute of limitations for various sexual assault crimes and eliminates the statute of limitations for 1<sup>st</sup> degree promoting prostitution*

The bill eliminates the criminal statute of limitations for various felony sexual assault crimes.

It increases, from five years to 25 years, the statute of limitations for 3<sup>rd</sup> or 4<sup>th</sup> degree sexual assault in cases when either crime is a class D felony. By law, 4<sup>th</sup> degree sexual assault is a class D felony if the victim is under age 16; 3<sup>rd</sup> degree sexual assault is a class D felony if the victim is age 16 or older.

It also increases, from one year to five 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, there is already:

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

The bill also eliminates the statute of limitations for 1<sup>st</sup> degree promoting prostitution. Under current law, the statute of limitations for this crime is five years.

EFFECTIVE DATE: October 1, 2018, and applicable 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 for Sexual Assault***

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, in cases where this crime is a class C felony (i.e., if the victim is under age 16); and
5. 3<sup>rd</sup> degree sexual assault with a firearm.

**§ 501 — STATE PENSION REVOCATION**

*Requires the AG to apply to revoke the state pension of anyone entitled to one who is convicted of certain sexual assault crimes committed while the person was a state public official or on duty as a state employee*

The bill requires the attorney general to apply to Superior Court to revoke the state pension of anyone who is:

1. eligible to receive such a pension at any time and
2. convicted of, or pleads guilty or no contest to, 1<sup>st</sup> degree sexual assault or 1<sup>st</sup> degree aggravated sexual assault for an offense committed while the person was a state public official or was on duty as a state employee.

Existing law already requires the attorney general to apply to court to revoke or reduce the pension of public officials or state or municipal employees who commit a crime related to their office. Unlike such existing law, the bill does not set standards for the court to consider when deciding whether to grant the attorney general's request to revoke a pension for these sexual assault crimes.

Certain provisions of the existing pension revocation law apply under the bill to cases involving sexual assault as described above. For example:

1. in the criminal proceeding, the attorney general must notify the prosecutor of the pension revocation law;
2. no such pension may be revoked if the IRS determines that this action will negatively affect or invalidate the status of the state's or government retirement plans under § 401 (a) of the Internal Revenue Code;
3. collective bargaining agreements may not contain any provision that bars the revocation of a pension for such crimes;
4. no pension may be revoked if the court determines that doing so would constitute a unilateral breach of a collective bargaining agreement, but in that case, the court may issue an order to reduce the pension by an amount necessary to satisfy

any fine, restitution, or other monetary order issued by the criminal court and pay the cost of the person's incarceration; and

5. if a court determines that any of provisions of the pension revocation law or action by the attorney general under the law pursuant is invalid, any remaining provisions or actions are unaffected and remain valid.

The bill does not make conforming changes to certain other provisions of the existing law that specifically reference "crimes related to state or municipal office," and thus, these provisions presumably would not apply to pension revocations under the bill for sexual assault. For example, existing law provides that, for crimes related to state or municipal office, no revocation or reduction may prohibit or limit benefits that are the subject of a qualified domestic relations order (e.g., child support).

#### **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 25    Nay 16    (04/03/2018)