

Judiciary Committee JOINT FAVORABLE REPORT

Bill No.: SB-132

Title: AN ACT COMBATTING SEXUAL HARASSMENT AND SEXUAL ASSAULT.

Vote Date: 4/3/2018

Vote Action: Joint Favorable Substitute

PH Date: 3/26/2018

File No.: 604

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SPONSORS OF BILL:

Judiciary Committee

REASONS FOR BILL:

This concept for this bill comes to the Judiciary Committee from Senator Mae Flexer. The recent national movements, #MeToo and #TimesUp have called attention to the many forms of sexual harassment that have occurred and continue to occur. Awareness of sexual harassment is important but action is imperative to eliminating sexual harassment completely.

SUBSTITUTE LANGUAGE:

Substitute language adds that "If a judge or the commission finds that an employer has engaged in a demonstrated pattern of sexual harassment, before outlining what shall not be a defense of a subsequent claim in Section 2 of the bill. In section 15, the language clarifies that there shall be no statute of limitations for a Class D felony violation of 53a-73a and that there shall be a ten year statute of limitations for a class A misdemeanor violation of 53a-73a. In Section 16, language is added that removes the statute of limitations for sexual offenses committed against a minor.

RESPONSE FROM ADMINISTRATION/AGENCY:

State of Connecticut, Commission on Human Rights and Opportunities, Executive Director, Tanya Hughes; supports many aspects of this bill that aim to combat sexual harassment in the workplace. It was stated that section 1 expands the requirements for employees to be trained and educated on laws prohibiting sexual harassment and antidotes that are available to its victims. The CHRO supports sexual harassment prevention and enforcement and supports the intent, however, points out that CHRO staff is limited and urges the legislature to make funding for this initiative a priority.

State of Connecticut Offices of the Victim Advocate, State Victim Advocate, Natasha M. Pierre, Esq.; testified in support of SB 132 as a Victim Advocate for the State of Connecticut. She argued that crime victims in Connecticut have a state constitutional right to be treated fairly and with respect throughout the entire criminal justice process. Nevertheless, she asserted that many victims have never been able to exercise that right in light of the statute of limitations for sexually violent offenses. She claims that SB 132 will eliminate these limitations to the advantage of victims. Firstly, she stipulated that the bill would allow victims/survivors can report the assault when they see fit as they heal from the assault. Secondly, she further explained that the bill would increase the compensation amount available to victims/survivors through the Office of Victim Services Victim Compensation Program to provide for the supportive resources and services they need. Finally, she argued that the bill would enforce the state's commitment to ending sexual harassment and support victims/survivors of sexual violence in the wake of the #MeToo movement.

NATURE AND SOURCES OF SUPPORT:

Senator Martin M. Looney; supports this bill stating that this legislation includes the largest overhaul of sexual harassment and sexual assault law in modern Connecticut history. It was stated that this bill strengthens many provisions within the realm of CHRO's adjudicatory system and prevents a defendant in a CHRO complaint from avoiding liability by arguing either the offense was not severe. It is stated that unless a victim files a discrimination complaint with CHRO, he or she has no redress in CT courts under state laws and the current 180-day deadline to file a complaint is too short, especially considering the justifiable fear of retaliation employees have.

Connecticut Trial Lawyers Association; supports this bill states the great strides that have been made legally and culturally to eradicate sexual harassment in the workplace but mentions it is still prevalent. Examples of sexual harassment cases were shared including a case of a working mother working as a paralegal and on the receiving end of lewd comments about her appearance. Another case was mentioned of a waitress who was sexually assaulted by her boss who was never charged because he claimed what had occurred was consensual however, she was charged with making a false statement to the police. It is stated that while this bill has a broad reach which will encourage further discussion it will encourage employees to meet their obligation to provide a safer environment for their workers.

Connecticut Women's Education and Legal Fund, Policy Manager, Madeline Granato; supports this bill and states that the #MeToo movement shines a spotlight on sexual harassment and its inescapable presence in every sector and it remains a significant problem. It is stated that sexual harassment in the workplace threatens workers' economic survival, especially for women who are disproportionately affected; it also leads to job loss, lost wages, legal fees and less income for families. In addition to this, it affects an individuals' physical and emotional health. This bill would modernize the training requirements and provide adequate support and protections for victims in Connecticut. This bill would not only extend the critical training to employers with three or more employees, both supervisory and nonsupervisory but would limit employer's defense to sexual harassment claims. The proposed increase of the time limit to file an employment-related discrimination or sexual harassment claim to CHRO from 180 days to 3 years is also supported.

The Hayber Law Firm and Connecticut Employment Lawyers Association, Attorney, Deborah McKenna; supports this bill and states that four key proposals of SB 132 would expand the protections available to victims of sexual harassment: “an increase in the time to file an initial complaint with the Connecticut Commission on Human Rights and Opportunities; the requirement that all employees be informed of the illegality of sexual harassment; the restriction that all employees be informed of the illegality of sexual harassment; the restriction of certain defenses to claims of sexual harassment to the issue of damages and not liability; and the ability for a claimant to obtain punitive damages”. Referring to current statutes and past cases, she claimed that the bill would eliminate limitations that victims might encounter before or when coming forward and would also provide additional protections for Connecticut’s employees. Additionally, the bill would also allow for victims of sexual harassment to sue for punitive damages, which an improvement over the current state of the law. She asserted that one purpose of punitive damages is to punish an employer for allowing the unlawful conduct to occur in the first place. Finally, she stipulated that the bill would require that all employees are notified of their right under the law within a short period of their hiring.

American Civil Liberties Union Connecticut, Executive Director, David McGuire; supports this bill stating that the support of the provisions providing more notice of sexual harassment policies to employees, additional sexual harassment requirements to apply to employers with three or more employees as well as greater remedies available to employees. He also applauded the bill’s provision extending the time limit for someone to file a complaint of alleged harassment and discrimination. To go beyond the state’s current five-year criminal statute limitations for sexual assault, he stipulated that the American Civil Liberties Union of Connecticut is in favor of the creation of a task force as proposed in SB 237. Nevertheless, he also asserted that he opposed SB 132’s proposal in Section 15 and 16 to eliminate the statute of limitations altogether arguing that statutes of limitations are established to balance the right to prosecute with the right to a fair trial. He claimed that after a significant passage of time, essential facts may be altered or forgotten. In addition, he further explained that eliminating the statute of limitations altogether would be at the risk of prioritizing incarceration and policing over dismantling the power disparities and discrimination that fuel sexual and gender-based violence.

Connecticut Alliance To End Sexual Violence; Executive Director, Laura Cordes; supports this bill stating support in the #MeToo stories shared by the courageous survivors and acknowledging that sexual harassment thrives in every space not just in Hollywood and it is prevalent in the workplace. The Alliance recommends expanding the training content in Section 1 to include bystander intervention skills and discussions regarding workplace civility, and acceptable and expected behavior in the workplace as is recommended in HB 5043. It is noted that there are 29 states that have no statute of limitation or period of 21 years or more for sexual assault crimes and there is concern that five years is too short and closes before many victims can report.

National Federation of Independent Business; supports harassment free workplaces for all employees, yet, expressed some concerns as to Section 1. They claim that Section 1 will be a costly training for small businesses. They further added that a “one-size-fits-all” state mandate on small employers is costly and unnecessary. They also expressed concerns as to small businesses’ ability to comply with the extensive nature of the training requirements in

Connecticut. In addition, they claimed that certain aspects of the legislation could unnecessarily expose an employer to additional lawsuits or state compliance violations, limit legitimate defenses available to employers as well as expanding allowable damages in certain cases to include punitive damages. The Federation also made the argument that the promoting a state mandate on small employers being the least able to afford to comply is not the best-suited proposal. They suggested that the State “could develop and promote a training curriculum and/or awareness materials for employers to provide to their employees, but not necessarily mandated through the “one-size-it-all” email or internet requirements outlined in lines 57-69.” Further, they suggested that the date of implementation should be pushed out beyond the current October 1, 2018 effective date so as to allow employers to prepare and comply with any new requirements.

The Connecticut Business and Industry Association, Counsel, Eric Gjede; supports the intent of this bill however shares concern that that Connecticut has robust requirements for sexual harassment training. For that reason, he made the argument that most businesses are forced to hire attorneys or consultants to conduct such training, incurring costly expenses. He asserted that Connecticut businesses are willing to do more to prevent sexual harassment in the workplace, nevertheless, requirement such robust training on small businesses could be at a massive cost, difficult to bear. In addition he believes that even if businesses are financially able to comply with such provisions, there is no point in doing so, especially since the bill eliminates any affirmative defense available to an employer. He claimed that SB 132 creates liability for employers based on an employee’s subjective belief even if an investigation conducted in good faith concludes that sexual harassment did not occur. For him, this is problematic with the bill’s extension of the statute of limitations for raising claims. Nevertheless, he finished his testimony by applauding the committee’s inclusion of section 13 into SB 132. It is stated that Section 13 would correct current state law according to which people who commit violations are treated differently based on how they are paid by their employer.

NATURE AND SOURCES OF OPPOSITION:

State of Connecticut Judicial Branch External Affairs Division; states that while the Judicial Branch is sensitive to the issues raised in the bill, an analysis shows that the Victim Compensation Fund cannot sustain the proposed increase that would result if this bill is enacted into law. It is stated that the year-to-date deposits into the Criminal Injuries Compensation Fund are down dramatically and based upon the crimes noted in the bill, it would mean the fund’s financial exposure could increase to \$12,150,000.

Reported by: Zoë Gluck

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