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## OLR Bill Analysis

### SB 1111 (File 807, as amended by Senate "A")\*

#### ***AN ACT CONCERNING A STUDY OF CRIMINAL LAWS OF THIS STATE.***

#### **SUMMARY**

sSB 3, as amended by the Senate and passed by both chambers, made various changes to laws on sexual harassment, sexual assault, discrimination complaints filed with the Commission on Human Rights and Opportunities (CHRO), and related matters.

This bill makes various changes to sSB 3 as amended (hereinafter "sSB 3"), such as (1) placing limits on when CHRO designated representatives can enter businesses to ensure compliance with specified laws; (2) reducing certain fine increases; (3) allowing, rather than requiring, CHRO presiding officers to order specified relief after finding a discriminatory employment practice; and (4) adding provisions on magistrates presiding over CHRO hearings in certain situations.

The bill also makes related technical and conforming changes.

\*Senate Amendment "A" replaces the underlying bill, which concerned a working group to study the state's criminal laws.

EFFECTIVE DATE: October 1, 2019, except a provision on the civil statute of limitations task force (§ 7) is effective upon passage.

#### **SEXUAL HARASSMENT AND RELATED LAWS**

Table 1 provides an overview of this bill's changes to sSB 3. The provision on magistrates (§ 4) is explained in more detail below the table.

Section numbers in the table refer to this bill.

#### **Table 1: Overview of This Bill's Changes**

<b>sSB 3's Changes</b>	<b>This Bill's Changes to sSB 3</b>
<b><i>"Discriminatory Practice" Definition in CHRO Statutes (§ 1)</i></b>	
<p>Expands definition to include violations of requirements for employers to:</p> <ul style="list-style-type: none"> <li>• post in prominent location information on sexual harassment laws and available remedies,</li> <li>• provide copies of related information to employees, and</li> <li>• provide related training to employees.</li> </ul>	<p>Retains within the definition violations of the training requirement, but removes from the definition violations of the first two items noted in the left column.</p>
<b><i>CHRO Civil Actions in the Public Interest (§ 2)</i></b>	
<p>Allows CHRO to bring a civil action, instead of an administrative hearing, in certain cases and requires the court to grant CHRO its fees and costs and award a civil penalty of up to \$10,000 when it finds that the respondent committed a discriminatory practice.</p>	<p>Requires the court to award this relief only when a discriminatory practice has been established by clear and convincing evidence.</p>
<b><i>Document Inspection (§ 3)</i></b>	
<p>Specifies that CHRO and each party to a CHRO administrative hearing must have the opportunity to inspect and copy relevant and material documents not in their possession unless another state or federal law prohibits it.</p>	<p>Removes reference to federal law for this purpose.</p>
<b><i>Magistrates Presiding over CHRO Hearings (§ 4)</i></b>	
<p>N/A</p>	<p>Adds a provision allowing the chief human rights referee, under certain conditions, to appoint a magistrate to preside over a CHRO proceeding if there</p>

<b>sSB 3's Changes</b>	<b>This Bill's Changes to sSB 3</b>
	is a backlog of more than 100 cases (see below).
<b>Maximum Fines for Certain Violations (§ 5)</b>	
<p>Increases, from \$250 to \$1,000, the maximum fine for certain individuals or entities who fail to post specified notices as CHRO requires.</p> <p>Sets a \$1,000 maximum fine for employers who fail to provide training on sexual harassment laws and remedies as CHRO requires.</p>	Reduces the maximum fine to \$750 for any such violations.
<b>Designated CHRO Representatives Entering Places of Business (§ 5)</b>	
<p>Allows the CHRO executive director to assign designated representatives to enter an employer's business location, during normal business hours, to:</p> <ul style="list-style-type: none"> <li>• ensure compliance with certain notice posting requirements, including on sexual harassment laws, and</li> <li>• examine the employers' records, policies, postings, and sexual harassment training materials, related to these posting and sexual harassment training requirements.</li> </ul> <p>These designated representatives must not unduly disrupt the employers' business operations.</p>	<p>Limits these provisions to:</p> <ul style="list-style-type: none"> <li>• the 12-month period after an employee has filed a complaint against the employer or</li> <li>• when the CHRO executive director reasonably believes that the employer has violated these posting or training requirements.</li> </ul> <p>Prohibits the designated representatives from entering without the homeowner's express permission if the business location is a residential home.</p>
<b>Remedies for Discriminatory Employment Practices (§ 6)</b>	

<b>sSB 3's Changes</b>	<b>This Bill's Changes to sSB 3</b>
<p>Requires CHRO presiding officers, after a finding of a discriminatory employment practice, to:</p> <ul style="list-style-type: none"> <li>• determine the amount of damages, including the complainant's actual costs due to the discrimination and</li> <li>• allow reasonable attorney's fees and costs.</li> </ul>	<p>Allows, rather than requires, CHRO presiding officers to issue these orders.</p> <p>Requires the CHRO executive director, starting by October 1, 2020, to annually report to the Judiciary Committee on CHRO's awarding of reasonable attorney's fees and costs under these provisions. Report must include:</p> <ul style="list-style-type: none"> <li>• the awards of attorney's fees and how they compare to damages awards;</li> <li>• the complaint category for which damages and attorney's fees are awarded;</li> <li>• how CHRO calculates attorney's fees and costs, if ascertainable;</li> <li>• data on the number of employees for respondents subject to awards of attorney's fees and costs; and</li> <li>• the percentage of complainants and respondents represented by counsel in matters in which attorney's fees and costs were awarded.</li> </ul>
<b>Civil Statute of Limitations Task Force (§ 7)</b>	
<p>Establishes a nine-member task force to study whether the statutes of limitations for personal injury to minors and adults caused by sexual abuse, exploitation, or assault should be amended.</p>	<p>Requires the House speaker's appointee to be an attorney who has represented multiple plaintiffs in civil lawsuits concerning sexual abuse, exploitation, or assault.</p> <p>Reduces total membership from nine to eight by removing the Connecticut Trial</p>

<b>sSB 3's Changes</b>	<b>This Bill's Changes to sSB 3</b>
	Lawyers Association executive director or the director's designee.
<b>Corrective Action in Response to Sexual Harassment Claim (§ 8)</b>	
Prohibits employers, when taking immediate corrective action in response to an employee's sexual harassment claim, from modifying the claimant's conditions of employment unless the claimant agrees in writing.	Allows CHRO, even if the employer did not obtain the claimant's written consent, to find that the employer's corrective action was reasonable and not harmful to the claimant, based on the parties' presented evidence.
<b>Sexual Assault of Mentally Incapacitated or Impaired Person (§§ 9 &amp; 10)</b>	
Increases the penalty, from 4 <sup>th</sup> to 3 <sup>rd</sup> degree sexual assault, for subjecting someone to sexual contact if the victim is mentally incapacitated to the extent that he or she cannot consent to the contact.	<p>Similarly increases the penalty for subjecting someone to sexual contact if the victim is mentally impaired to the extent that he or she cannot consent to sexual contact.</p> <p>Makes a technical change by specifying that the increased penalty applies to contact with someone incapacitated or impaired due to mental disability or disease (consistent with the underlying law).</p>

**§ 4 — MAGISTRATES PRESIDING OVER CHRO HEARINGS**

Under existing law, the chief human rights referee must appoint human rights referees to preside over CHRO hearings. She must also appoint another referee or a volunteer attorney to conduct settlement negotiations.

The bill creates a process for magistrates to also preside over CHRO hearings under certain circumstances. It allows the chief human rights referee to request such an appointment when there are more than 100 CHRO complaints pending for public hearings. The CHRO executive

director can approve the request if she determines the appointment would be within available appropriations.

If approved, the chief human rights referee must select the magistrate from the chief court administrator's list of available magistrates. Any such magistrate has the same powers and duties as a human rights referee appointed under law and must be compensated at the rate set by existing law (i.e., \$200 per day), from CHRO funds as available.

The bill allows magistrates to be appointed as presiding officers for proceedings on the following matters:

1. discriminatory practice complaints (CGS § 46a-84);
2. determining remedies following a default order against a respondent (CGS § 46a-83(l));
3. complaints brought by CHRO against a contractor or subcontractor for noncompliance with nondiscrimination laws or required contract provisions (e.g., affirmative action requirements) (CGS § 46a-56(c));
4. complaints brought by CHRO against a contractor, subcontractor, service provider, or supplier for fraud related to qualifying as a minority business enterprise in relation to certain state, municipal, and quasi-public agency contracts (CGS § 46a-56(d)); or
5. whistleblower complaints for alleged retaliation against employees of state or quasi-public agencies, large state contractors, or appointing authorities (CGS § 4-61dd(e)).

## **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable

Yea 34    Nay 4    (04/09/2019)