

Labor and Public Employees Committee

JOINT FAVORABLE REPORT

Bill No.: HB-6475

Title: AN ACT CONCERNING FORCED ARBITRATION AGREEMENTS.

Vote Date: 3/23/2021

Vote Action: Joint Favorable Substitute

PH Date: 3/4/2021

File No.:

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SPONSORS OF BILL:

Labor and Public Employees Committee

REASONS FOR BILL:

Employees are sometimes forced to sign waivers that cancel their right to file civil actions.

RESPONSE FROM ADMINISTRATION/AGENCY:

STATE OF CONNECTICUT, JUDICIAL BRANCH, EXTERNAL AFFAIRS DIVISION

They offered suggestions to clarify whether the relator/plaintiff is considered a private party of the state; line 24 makes it clear the plaintiff is stepping into the shoes of the state. However, lines 51, 54, 55 and 118-122 allow the state to intervene in the action. This suggests the plaintiff is an individual. Clarification on this distinction would be helpful since it relates to the filing fees in these actions. These fees are normally waived for state agencies filing cases, but as currently drafted, it is unclear under what capacity the relator would be filing.

NATURE AND SOURCES OF SUPPORT:

HUGH BARAN, SENIOR STAFF ATTORNEY, SKADDEN FELLOW, NATIONAL EMPLOYMENT LAW PROJECT (NELP)

They testified in 2019 in support of a \$15 minimum wage and were excited to see it passed and signed into law. This helped lift millions of black and brown workers in low wage industries out of poverty. However, without robust public enforcement, this will be a wage floor in name only. He explained how the rise of forced arbitration and class/collective action waivers curbed workers' ability to enforce their rights before judges and juries. Forced arbitration has enabled CT employers to steal over \$97 million in wages from workers in low-wage jobs subject to forced arbitration. Public agencies lack the capacity to address the enforcement gap created by forced arbitration and class/collective action waivers. CT can act

to address the lack of public enforcement capacity by passing this proposed "whistleblower " enforcement law and allow workers to stand in the shoes of the CT Dept. of Labor and seek civil penalties for wage theft as well as other violations of the state's employment laws. It will ensure unscrupulous low wage employers cannot steal wages from workers with impunity and generate millions in new revenue for the Dept. Of Labor which would allow them to increase staffing levels and expand.

TANYA HUGHES, EXECUTIVE DIRECTOR, COMMISSION ON HUMAN RIGHTS
CHERYL SHARP, DEPUTY DIRECTOR, CHRO

Any employee wanting to allege employment discrimination against their employer must file a complaint with the Commission. If they want to pursue it further in court, they must obtain a release of jurisdiction from the Commission. The Office for Public Hearings at the Commission accepts Whistleblower complaints and has a statutory right to intervene. Forced arbitration puts employees at a distinct disadvantage. Plaintiffs fare worse in arbitration than in court litigation. This would allow private citizens to bypass the Commission, who has expertise in the civil rights scene and a special interest in preserving the rights of all residents. It could gut the administrative proceedings already in place to lessen the burden on the court system and may interfere with the Commission's institutional interest in these cases. There would be a fiscal note as well.

SAL LUCIANO, PRESIDENT, CT AFL – CIO

Workers' private rights to enforce employment laws are increasingly hampered by pre-dispute arbitration provisions in job applications, employee handbooks, and contracts. Pre-dispute arbitration provisions can mandate that all disputes be addressed in individual arbitration, sometimes with an arbitrator who is chosen by the employer. Two-thirds of low-wage workers are now covered by forced arbitration clauses. This bill allows state actors to intervene, have an opportunity to vet whistleblower's counsel before an action is brought, and approve any settlements reached. The public can act as a 'force multiplier' for under-resourced state agencies, collecting penalties to deter violations and building a culture of compliance. It would also generate an estimated \$4.1 million a year in revenue for the State which would help agencies have the resources to enforce the rights of CT's working people.

CARLOS MORENO, STATE DIRECTOR, CT WORKING FAMILIES ORGANIZATION

The use of forced arbitration is a pervasive problem nationwide, and major employers in CT such as Chipotle, McDonalds, Aetna, Lyft, Uber, Walmart, Wells Fargo, Starbucks, Airbnb, Comcast Direct TV, AT & T, Macy's, Chase, Best Buy, and many more use forced arbitration. This dissuades claims from being brought forward. Workers see violations every day, but know if they raise the issue, it will have few results and risk losing their jobs. This bill levels the playing field and puts power back in the hands of the workers. This is a systemic issue that will be improved if this bill is passed.

NATURE AND SOURCES OF OPPOSITION:

ERIC GJEDE, VICE PRESIDENT OF GOVERNMENT AFFAIRS, CBIA

Arbitration agreements are voluntarily entered into by both parties to the contract. Arbitrating disputes saves significant time and financial resources when compared to litigation. It is less formal discovery work and more accessible to individuals who do not possess legal training and don't have the resources to hire representation. Both parties have

more control over the arbitrator and undermining these contractual relationships will result in costlier and less effective dispute resolution. They are also concerned about the potential consequences of outsourcing the attorney general's law enforcement powers to third parties.

NATIONAL FEDERATION OF INDEPENDENT BUSINESS

This proposal is simply unnecessary and could hurt small business owners. Nothing in this bill speaks directly to arbitration agreements or even contracts. It seeks to impose what is known elsewhere as a 'private attorney general act' or as the "'sue your boss bill'. It would allow for new lawsuits brought by employees and even third -party organizations like labor unions, against a private employer for alleged violations. Frivolous lawsuits are a concern. Small businesses could be sued for essentially any labor or employment law violation, no matter how inadvertent, minor, trivial, or even regardless of any actual harm or injury. There is no urgent need to create new private enforcement actions. There are already plenty of tools in place to bring enforceable actions.

Reported by: Marie Knudsen, Assistant Clerk

Date: March 24, 2021