



# Senate

General Assembly

**File No. 266**

February Session, 2022

Senate Bill No. 318

*Senate, April 4, 2022*

The Committee on Labor and Public Employees reported through SEN. KUSHNER of the 24th Dist., Chairperson of the Committee on the part of the Senate, that the bill ought to pass.

## ***AN ACT CONCERNING CAPTIVE AUDIENCE MEETINGS.***

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Section 31-51q of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective July 1, 2022*):

3 (a) As used in this section:

4 (1) "Political matters" means matters relating to elections for political  
5 office, political parties, legislation, regulation and the decision to join or  
6 support any political party or political, civil, community, fraternal or  
7 labor organization;

8 (2) "Religious matters" means matters relating to religious affiliation  
9 and practice and the decision to join or support any religious  
10 organization or association; and

11 (3) "Rights guaranteed by the first amendment to the United States  
12 Constitution or section 3, 4 or 14 of article first of the Constitution of the  
13 state" includes, but is not limited to, the right of freedom of speech,

14 freedom of religion and freedom of association, and shall include the  
15 right not to be required to listen to speech.

16 [Any] (b) Except as provided in subsections (c) and (d) of this section,  
17 any employer, including the state and any instrumentality or political  
18 subdivision thereof, who subjects or threatens to subject any employee  
19 to discipline or discharge on account of (1) the exercise by such  
20 employee of rights guaranteed by the first amendment to the United  
21 States Constitution or section 3, 4 or 14 of article first of the Constitution  
22 of the state, provided such activity does not substantially or materially  
23 interfere with the employee's bona fide job performance or the working  
24 relationship between the employee and the employer, or (2) such  
25 employee's refusal to (A) attend an employer-sponsored meeting with  
26 the employer or its agent, representative or designee, the primary  
27 purpose of which is to communicate the employer's opinion concerning  
28 religious or political matters, or (B) listen to speech or view  
29 communications, the primary purpose of which is to communicate the  
30 employer's opinion concerning religious or political matters, shall be  
31 liable to such employee for damages caused by such discipline or  
32 discharge, including punitive damages, and for reasonable attorney's  
33 fees as part of the costs of any [such] action for damages. If the court  
34 determines that such action for damages was brought without  
35 substantial justification, the court may award costs and reasonable  
36 attorney's fees to the employer.

37 (c) Nothing in this section shall prohibit: (1) An employer or its agent,  
38 representative or designee from communicating to its employees any  
39 information that the employer is required by law to communicate, but  
40 only to the extent of such legal requirement; (2) an employer or its agent,  
41 representative or designee from communicating to its employees any  
42 information that is necessary for such employees to perform their job  
43 duties; (3) an institution of higher education, or any agent,  
44 representative or designee of such institution, from meeting with or  
45 participating in any communications with its employees that are part of  
46 coursework, any symposia or an academic program at such institution;  
47 (4) casual conversations between employees or an employee and an

48 agent, representative or designee of an employer, provided  
49 participation in such conversations is not required; or (5) a requirement  
50 limited to the employer's managerial and supervisory employees.

51 (d) The provisions of this section shall not apply to a religious  
52 corporation, entity, association, educational institution or society that is  
53 exempt from the requirements of Title VII of the Civil Rights Act of 1964  
54 pursuant to 42 USC 2000e-1(a) or is exempt from the provisions of  
55 sections 4a-60a, 46a-81a and 46a-81o pursuant to section 46a-81p, with  
56 respect to speech on religious matters to employees who perform work  
57 connected with the activities undertaken by such religious corporation,  
58 entity, association, educational institution or society.

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2022	31-51q

**LAB**      *Joint Favorable*

*The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.*

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Effect	FY 23 \$	FY 24 \$
Labor Dept.	GF - Potential Revenue Gain	Minimal	Minimal

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

The bill, which prohibits employers from penalizing or threatening to penalize an employee for not attending captive audience meetings, results in a potential minimal revenue gain to the extent there are violations proven in court.<sup>1</sup>

The bill allows aggrieved parties to bring an action in court over alleged violations, which does not result in any cost impact. The court system disposes of over 400,000 cases annually and the number of cases is not anticipated to be great enough to have a material change on court operations.

The bill has no cost impact to the state or municipalities as employers as it is anticipated that these entities would not violate the provisions of the bill.

**The Out Years**

The annualized ongoing fiscal impact identified above would continue into the future.

<sup>1</sup> Under the bill a violator is liable to the affected employee for damages caused by the prohibited action, including punitive damages, and reasonable attorney's fees, as well as subject to a \$300 civil penalty imposed by the Department of Labor.

**OLR Bill Analysis****SB 318*****AN ACT CONCERNING CAPTIVE AUDIENCE MEETINGS.*****SUMMARY**

This bill generally prohibits employers, including the state and its political subdivisions, from disciplining or discharging (i.e., penalizing) an employee or threatening to do so because the employee refused to attend employer-sponsored meetings, listen to speech, or view communications primarily intended to convey the employer's opinion about religious or political matters (i.e., "captive audience meetings"; see BACKGROUND). The prohibition covers meetings with the employer or its agent, representative, or a designee.

Current law prohibits employers from penalizing employees for exercising their First Amendment rights under the U.S. Constitution or similar rights under the Connecticut Constitution. The bill specifies that these rights include the right to (1) free speech, (2) freedom of religion, (3) freedom of association, and (4) freedom from the requirement to listen to speech. It also expands the law to prohibit employers from threatening to penalize employees for exercising these rights. By law and unchanged by the bill, an employee may exercise these rights as long as his or her activity does not substantially or materially interfere with the bona fide job performance or the working relationship between the employer and employee.

The bill provides certain exceptions to both its prohibition on penalizing employees for refusing to attend captive audience meetings and current law's prohibition on penalizing employees for exercising their constitutional rights. Among other things, these exceptions allow employers to communicate information required by law or that the employees need to perform their jobs. It also exempts certain religious

organizations' speech on religious matters made to their own employees.

Under the bill, the same enforcement provisions that apply to the law on penalizing employees for exercising certain constitutional rights also apply to the bill's prohibition on penalizing employees for refusing to attend captive audience meetings.

EFFECTIVE DATE: July 1, 2022

### **POLITICAL AND RELIGIOUS MATTERS DEFINED**

Under the bill, "political matters" relate to (1) elections for political office, (2) political parties, (3) legislation, (4) regulation, and (5) decisions to join or support a political party or political, civil, community, fraternal, or labor organization. "Religious matters" relate to (1) religious affiliation and practice and (2) decisions to join or support a religious organization or association.

### **EXEMPTIONS**

The bill allows exceptions to both its prohibition on penalizing employees for refusing to attend captive audience meetings and current law's prohibition on penalizing employees for exercising certain constitutional rights. It explicitly permits the following:

1. an employer or its agent, representative, or designee to communicate to employees information (a) required by law, but only to the extent of the legal requirement, or (b) the employees need to perform their job duties;
2. a higher education institution, or its agent, representative, or designee to meet or participate in communications with employees that are part of coursework, a symposia, or an academic program at the institution;
3. voluntary, casual conversations between employees or between an employee and an employer's agent, representative, or designee; or

4. a requirement that is limited to the employer's managerial and supervisory employees.

The bill also exempts, under certain circumstances, a religious corporation, entity, association, education institution, or society that is exempt from (1) the federal Civil Rights Act's prohibition of religious discrimination in employment or (2) the state's prohibitions on discriminatory employment practices and sexual orientation discrimination under the Connecticut Human Rights Act and related contracting provisions. The exemption applies to speech on religious matters to employees who perform work connected with carrying on the organizations' activities.

## **ENFORCEMENT**

Current law's prohibition on employers penalizing employees for exercising certain constitutional rights makes an employer liable to the affected employee for damages caused by the prohibited action, including punitive damages, and reasonable attorney's fees. These employers are also liable for a \$300 civil penalty imposed by the Department of Labor (CGS § 31-69a).

The bill extends these liability provisions to employers who (1) penalize employees or threaten to do so for refusing to attend, listen to, or watch a captive audience meeting or (2) threaten to penalize employees for exercising their First Amendment rights. As under existing law, if a court determines that the action was brought without substantial justification, it may award the employer costs and reasonable attorney's fees.

## **BACKGROUND**

### ***Captive Audience Meetings and Federal Preemption***

The federal National Labor Relations Act (NLRA) governs private-sector union organizing and collective bargaining rights and delineates unfair labor practices. The NLRA created the National Labor Relations Board (NLRB) to administer the law and rule on specific cases alleging unfair labor practices.

The NLRB and federal courts have generally allowed captive audience meetings as long as they are held more than 24 hours before a union election and the employer does not commit an unfair labor practice, such as threatening reprisal for supporting a union (e.g., *Peerless Plywood Co.*, 107 NLRB 427 (1953); *Linn v. United Plant Guard Workers*, 383 U.S. 53 (1966); and *Chamber of Commerce v. Brown*, 554 U.S. 60 (2008)).

In 2018, Attorney General Jepsen issued a formal opinion on HB 5473 (2018), which would have prohibited employers from holding captive audience meetings, and concluded that a court would likely determine that the bill is preempted by federal law (Opinion 2018-02). In 2019, Attorney General Tong issued a formal opinion on SB 440, which was substantially similar to this bill (SB 318), and concluded that, “[a]s a generally applicable state law aimed at protecting the constitutional rights of all Connecticut employees,” it could be “fairly defended as outside the scope of NLRA preemption” (Opinion 2019-03).

### **Related Bill**

sSB 163, reported favorably by the Judiciary Committee, contains substantially similar provisions to this bill.

### **COMMITTEE ACTION**

Labor and Public Employees Committee

Joint Favorable

Yea 9      Nay 4      (03/22/2022)