



Senate

General Assembly

File No. 482

February Session, 2022

Substitute Senate Bill No. 163

Senate, April 14, 2022

The Committee on Judiciary reported through SEN. WINFIELD of the 10th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT PROTECTING EMPLOYEE FREEDOM OF SPEECH AND CONSCIENCE.

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 Section 31-51q of the general statutes is repealed and the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 [Any] (a) As used in this section:

4 (1) "Political matters" means matters relating to elections for political
5 office, political parties, proposals to change legislation, proposals to
6 change regulation and the decision to join or support any political party
7 or political, civic, community, fraternal or 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 (b) Except as provided in subsections (c) and (d) of this section, any
17 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] the full amount
34 of gross loss of wages or compensation, with costs and such reasonable
35 attorney's fees as may be allowed by the court. If the court determines
36 that such action for damages was brought without substantial
37 justification, the court may award costs and reasonable attorney's fees
38 to the employer.

39 (c) Nothing in this section shall prohibit: (1) An employer or its agent,
40 representative or designee from communicating to its employees any
41 information that the employer is required by law to communicate, but
42 only to the extent of such legal requirement; (2) an employer or its agent,
43 representative or designee from communicating to its employees any
44 information that is necessary for such employees to perform their job
45 duties; (3) an institution of higher education, or any agent,
46 representative or designee of such institution, from meeting with or

47 participating in any communications with its employees that are part of
 48 coursework, any symposia or an academic program at such institution;
 49 (4) casual conversations between employees or between an employee
 50 and an agent, representative or designee of an employer, provided
 51 participation in such conversations is not required; or (5) a requirement
 52 limited to the employer's managerial and supervisory employees.

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

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

JUD *Joint Favorable Subst.*

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 disciplining or discharging an employee under certain enumerated circumstances, results in a potential minimal General Fund revenue gain from civil penalties to the extent that violations are found.¹

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 impact 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 subject to fluctuation in the number of violations found.

¹ The bill makes employers found in violation of the bill's provisions liable for a \$300 penalty imposed by the Department of Labor.

OLR Bill Analysis**sSB 163*****AN ACT PROTECTING EMPLOYEE FREEDOM OF SPEECH AND CONSCIENCE.*****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 makes 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.

The bill also changes the enforcement provisions that apply to both the current law on employees exercising certain constitutional rights and the bill's prohibition on penalizing employees for refusing to attend captive audience meetings. It does so primarily by limiting potential awards to lost wages or compensation, with no punitive damages.

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) proposals to change legislation or regulation, and (4) decisions to join or support a political party or political, civic, 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. However, it limits the potential award in civil cases involving violations of current law or the bill to the full amount of gross lost wages or compensation, with costs and reasonable attorney's fees, with no punitive damages or other unspecified damages.

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

SB 318 (File 266), reported favorably by the Labor and Public Employees Committee, contains substantially similar provisions to this bill.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 23 Nay 15 (03/29/2022)