Testimony of W. Wyatt Bosworth
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Before the Committee on the Judiciary
Hartford, Connecticut
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Testifying in Opposition to:

SB 3: AAC Online Privacy, Data and Safety Protections and an Employer's Duty to Disclose Known Instances of Sexual Harassment or Assault By An Employee When Making Employment Recommendations (Section 13)

My name is Wyatt Bosworth and I am assistant counsel for CBIA, the Connecticut Business & Industry Association. CBIA is Connecticut's largest business organization, with thousands of member companies, small and large, representing a diverse range of industries from across the state. Ninety-five percent of our member companies are small businesses, with less than 100 employees. Thank you for the opportunity to offer testimony in **opposition** to **Section 13** of **SB 3: AAC Online Privacy, Data and Safety Protections and an Employer's Duty to Disclose Known Instances of Sexual Harassment or Assault By An Employee When Making Employment Recommendations (Section 13).**

CBIA shares the General Assembly's goal of ensuring our workplaces are as safe as possible for employees, and we are committed to safeguarding all workers against sexual harassment and sexual assault in the workplace.

Section 13, however, would do nothing to protect employees, and would instead unfairly subject employers to severe financial liability for the alleged tortious acts of persons who are no longer within their employ or under their control. If section 13 were adopted, Connecticut would become a national outlier as the only jurisdiction in the nation that we are aware of to impose third-party tort liability on employers for the future misconduct of their former employees. Section 13 would also cause some employees to be blacklisted from future employment based on mere allegations of misconduct.

This problematic section would effectively require any employer giving a "recommendation" or "positive commentary" about a current or former employee to another potential employer to disclose any known allegation of sexual harassment or sexual assault that has resulted in a pending CHRO, EEOC or legal complaint.

Should the employer fail to disclose the employee's alleged sexual harassment or sexual assault within the prescribed time frame, that employer will be held liable in perpetuity for sexual misconduct committed by the employee at the new employer.

While the apparent goal of section 13 is to encourage employers to disclose known instances of sexual misconduct concerning employees applying for a job with a new employer, the practical effect would be just the opposite. Contrary to the above goal, section 13 is much more likely to have a chilling effect on the exchange of information between employers. This is because section 13 would incentivize employers to adopt strict policies prohibiting employee recommendations to mitigate the risk of future liability.

CBIA is unaware of a similar law in any other jurisdiction. In fact, several other jurisdictions have adopted job reference **immunity** statutes to encourage employers to be more candid when making recommendations. Under these statutes, employers are protected from liability when disclosing information regarding current or former employees.

It is important to remember that allegations concerning sexual misconduct in the workplace are often complex, and it is not always clear cut whether misconduct occurred. It is common for civil cases to settle prior to trial, and when this occurs it is not an admission of fault or liability, nor does it necessarily mean that the accused party committed an offense. Given the severe consequences of non-compliance with section 13, any complaint, even a frivolous complaint, would need to be reported to a prospective employer.

Section 13 would have a negative effect on job seekers, especially innocent parties who are wrongfully accused. In this regard, section 13 is inapposite to recent initiatives by this legislature to reduce barriers to employment, including Connecticut's landmark "ban the box" law (Public Act 16-83), which prohibits employers from asking prospective employees about prior arrests, criminal charges, or convictions on an initial employment application. Section 13 conflicts with the spirit, if not the letter, of the ban the box law because if an employer were to ask prospective employees for references or recommendations as part of an initial job application, prior employers providing a reference would now be required to inform the potential employer of unproven allegations made against the employee.

Given the historic workforce shortage in the state, the legislature should not be passing laws that hinder an employee's ability to find a new job or expose employers to liability that they simply cannot protect against. Section 13 imposes both realities and we respectfully ask you to oppose section 13 of SB 3. Thank you for your time and consideration.