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## OLR Bill Analysis

### sSB 4

#### ***AN ACT CONCERNING VICTIMS OF DOMESTIC VIOLENCE, THE UNSOLICITED TRANSMISSION OF INTIMATE IMAGES BY MEANS OF AN ELECTRONIC COMMUNICATION DEVICE AND THE IMPERMISSIBLE USE OF NONDISCLOSURE AGREEMENTS IN THE WORKPLACE.***

#### **SUMMARY**

This bill makes unrelated changes on the temporary restraining order grant program, the electronic transmission of intimate images, employment discrimination, and nondisclosure and nondisparagement clauses in employment contracts.

Among other things, the bill specifically does the following:

1. expands the existing grant program that gives free legal assistance to indigent individuals applying for temporary restraining orders to include the Danbury, Middlesex, and Litchfield judicial districts;
2. creates a civil cause of action, with certain exceptions, when an adult knowingly transmits an intimate image electronically to another adult who did not consent to receiving the image or expressly forbid it;
3. makes it a discriminatory practice, with violators liable for damages, for an employer to take certain actions, such as (a) terminating an employee for disclosing a discriminatory employment practice or disparaging the employer for engaging in one or (b) requiring an employee to agree to nondisclosure or nondisparagement provisions; and
4. generally prohibits nondisclosure and nondisparagement clauses in employment contracts; makes these provisions void and unenforceable; and creates a civil cause of action by making an

employer liable for damages, reasonable attorneys' fees, and costs, with specific provisions for employment contracts effective before October 1, 2024.

Lastly, the bill also makes conforming changes.

EFFECTIVE DATE: July 1, 2024, except that the provisions on employment discrimination and nondisclosure agreements (§§ 3 & 4) are effective October 1, 2024.

## **§ 1 — RESTRAINING ORDER GRANT PROGRAM**

Existing law (1) creates a grant program that gives free legal assistance to indigent individuals applying for temporary restraining orders; (2) requires the organization that administers the interest on lawyers' trust accounts (IOLTA) program to administer the grant program; and (3) appropriates funds to the judicial branch for the program, which it must turn over to IOLTA upon receipt.

The bill expands the grant program by allowing the grants to be used for these services in additional judicial districts. Under current law, the organization administering the program may only award the grants to the Bridgeport, Hartford, New Haven, Stamford-Norwalk, or Waterbury judicial districts. The bill expands this to include the Danbury, Middlesex, and Litchfield judicial districts.

Under existing law, unchanged by the bill, grants must not exceed \$200,000, except a grant to the judicial district with the highest average number of applications for civil restraining orders over the previous three fiscal years may receive a grant of up to \$400,000. A family or household member may apply for a civil temporary restraining order for relief from physical abuse, stalking, a pattern of threatening, or coercive control from another family or household member (CGS § 46b-15).

## **§ 2 — ELECTRONIC TRANSMISSION OF INTIMATE IMAGES**

### ***Civil Cause of Action***

The bill creates a civil cause of action, with exceptions, when one adult (i.e., at least age 18) knowingly transmits an intimate image using

an electronic communication device to another adult's electronic communication device and that other adult did not consent to receiving the image or expressly forbid it.

Under the bill, an "intimate image" is a photograph, film, video, recording, digital picture, or other similar visual photographic reproduction of an adult who is in a state of undress so as to expose that person's genitals. An "electronic communication device" is any electronic device that can transmit a visual depiction, including a computer, computer network and system, and a cellular or wireless telephone.

**Exception.** The bill specifies that it does not apply to (1) a health care provider who transmits an intimate image for a legitimate medical purpose or (2) the transmission of commercial electronic mail, which is otherwise subject to federal laws.

### **Remedies**

A person who violates the bill's provisions, must be liable for actual damages or \$500, whichever is greater, and attorney's fees and costs. The court may also award punitive damages or enjoin the person transmitting the intimate images from engaging in further acts in violation of the bill. Under the bill, these remedies are cumulative and must not be construed as restricting any other remedy available under any other law.

### **§ 3 — DISCRIMINATORY EMPLOYMENT PRACTICES**

The bill makes it a discriminatory practice for an employer, or the employer's agent, to:

1. refuse to hire or employ; discriminate in compensation or in terms, conditions, or privileges of employment; or bar or discharge from employment, any employee or independent contractor because they (a) disclosed conduct that they reasonably believe to be a discriminatory employment practice or (b) disparaged the employer for engaging in conduct they reasonably believe to be a discriminatory employment practice;

or

2. require or request a prospective, current, or former employee or independent contractor to enter into an agreement containing a provision that is void under the bill (see directly below), or for an employer to attempt to enforce the provision.

Existing law gives an adversely affected person the right to file a complaint with the Commission on Human Rights and Opportunities (CHRO). The bill maintains CHRO's jurisdiction over claims of discriminatory practices.

### ***Void Provision***

The bill explicitly makes any provision in an agreement between an employer and a prospective, current, or former employee or independent contractor void as against public policy if it prohibits disparagement or disclosure of conduct the employee or independent contractor reasonably believes to be a discriminatory employment practice.

### ***Damages***

Under the bill, an employer who violates this provision must be liable to an employee or independent contractor for actual damages or statutory damages of \$10,000, whichever is more, as well as other remedies provided under law, including those described below.

### ***Legal Interpretation and Remedial Purpose***

The bill specifies that the provisions described above must (1) be liberally construed to effectuate their remedial purpose and (2) extend to an intern, who is paid or unpaid, and any volunteer engaged in service to an employer in this state in the employer's business.

## **§ 4 — NONDISCLOSURE AND NONDISPARAGEMENT AGREEMENTS**

The bill generally prohibits an employer from including nondisclosure or nondisparagement clauses in employment contracts.

### ***Definitions***

Under the bill, for the provisions prohibiting nondisclosure and nondisparagement clauses in employment agreements, an “employee” is anyone employed by an employer, excluding anyone employed by his or her parents, spouse, or child. It includes (1) a current, former, or prospective employee, or an independent contractor and (2) any elected or appointed official of a municipality, board, commission, counsel, or other governmental body. An “employer” is any person or employer that employs at least one person, including the state and its political subdivisions, and anyone who acts, directly or indirectly, in the employer’s interest to any of its employees and any of the employer’s successor in interest. A “volunteer” is a person who provides services to an employer without compensation, including interns.

### ***Void and Unenforceable Provisions***

The bill makes certain provisions in an employment contract between an employer and an employee or volunteer void and unenforceable.

Under the bill, any provision in these agreements not to disclose or discuss conduct, or the existence of a settlement involving conduct, that the employee or volunteer reasonably believed under state, federal, or common law to be legally impermissible discrimination, harassment, retaliation directed at an employee or volunteer, a wage and hour violation, or a sexual assault, or that is recognized as against a clear mandate of public policy, must be void and unenforceable.

### ***Prohibited Nondisclosure and Nondisparagement Provisions***

Under the bill, the prohibited nondisclosure and nondisparagement provisions in an agreement between an employer and an employee or volunteer concern legally impermissible conduct that occurs at the workplace, at work-related events coordinated by or through the employer, between employees or volunteers, or between an employer and an employee or volunteer, whether on or off the employment premises.

The prohibited provisions include those in employment agreements, independent contractor agreements, agreements to pay compensation for the release of a legal claim, or any other form of agreement between

the employer and an employee or a volunteer.

### ***Violations***

The bill makes it a violation for an employer to:

1. discharge or otherwise discriminate or retaliate against an employee or volunteer for disclosing or discussing conduct that the employee or volunteer reasonably believed to be (a) legally impermissible discrimination, harassment, or retaliation directed at an employee or volunteer; (b) a wage and hour violation or a sexual assault, or (c) recognized as against a clear mandate of public policy, occurring in the workplace, at work-related events coordinated by or through the employer, between employees or volunteers, or between the employer and an employee or volunteer, whether on or off the employment premises;
2. request or require that an employee or volunteer enter into any agreement provision that is prohibited by this section; or
3. enforce a provision of an agreement prohibited by this section, whether through a lawsuit, a threat to enforce or any other attempt to influence a party to comply with a provision in any agreement that is prohibited under the bill.

### ***Actions Not Prohibited***

The bill specifies that it does not prohibit:

1. an employer and an employee or volunteer from protecting trade secrets, or proprietary or confidential information that does not involve illegal acts;
2. an employee or volunteer from requesting a binding written agreement with the employer, which may include terms and conditions that preclude the employer from disclosing certain confidential information about an employee or a volunteer that does not involve illegal acts; and
3. enforcing a provision in any agreement that prohibits the

disclosure of the amount paid in a claim settlement.

**Civil Cause of Action and Damages**

The bill creates a civil cause of action by making any employer who violates the bill’s provisions on or after October 1, 2024, liable for actual or statutory damages of \$10,000, whichever is more, as well as reasonable attorney’s fees and costs.

**Agreements Effective Before October 1, 2024**

Under the bill, a prohibited nondisclosure or nondisparagement provision entered before October 1, 2024, is void and unenforceable only where the provision was entered into at the outset of employment or during employment.

**Damages Limited.** For a nondisclosure or nondisparagement provision void and unenforceable in these agreements, an employee may recover only damages relating to preventing the provision’s enforcement.

This does not apply to a nondisclosure or nondisparagement provision in an agreement to settle a legal claim.

**Legal Interpretation and Remedial Purpose**

The bill specifies that (1) its provisions must be liberally construed to effectuate its remedial purpose and (2) remedies provided are cumulative and must not be construed as restricting any other remedy that is available under any other law.

**Governing Law**

Under the bill, a nondisclosure or nondisparagement provision in any agreement signed by an employee or volunteer who is a resident of the state is governed by Connecticut laws.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute  
Yea 24 Nay 11 (03/28/2024)

