

Judiciary Committee JOINT FAVORABLE REPORT

Bill No.: SB-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

Title: NONDISCLOSURE AGREEMENTS IN THE WORKPLACE.

Vote Date: 3/28/2024

Vote Action: Joint Favorable Substitute

PH Date: 3/20/2024

File No.: 522

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SPONSORS OF BILL:

Judiciary Committee

CO-SPONSORS OF BILL:

Sen. Martin M. Looney, 11th Dist.

Sen. Bob Duff, 25th Dist.

Sen. Saud Anwar, 3rd Dist.

Sen. Jorge Cabrera, 17th Dist.

Sen. Christine Cohen, 12th Dist.

Sen. Mae Flexer, 29th Dist.

Sen. Herron Gaston, 23rd Dist.

Sen. Jan Hochadel, 13th Dist.

Sen. Julie Kushner, 24th Dist.

Sen. Matthew L. Lesser, 9th Dist.

Sen. Ceci Maher, 26th Dist.

Sen. James J. Maroney, 14th Dist.

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Sen. Douglas McCrory, 2nd Dist.

Sen. Patricia Billie Miller, 27th Dist.

Sen. Marilyn V. Moore, 22nd Dist.

Sen. Norman Needleman, 33rd Dist.

Sen. MD Rahman, 4th Dist.

Sen. Derek Slap, 5th Dist.

Sen. Gary A. Winfield, 10th Dist.

Rep. Hubert D. Delany, 144th Dist.

Rep. Anthony L. Nolan, 39th Dist.

Rep. Gregory Haddad, 54th Dist.

Rep. Matt Blumenthal, 147th Dist.

REASONS FOR BILL:

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.

SUBSTITUTE LANGUAGE:

The substitute language made changes throughout the bill. In section 3(b)(14), line 262, it provides that the Commission on Human Rights and Opportunities (CHRO) remedy provided in Section 3 is in addition to other remedies provided at law, including the remedies offered in Section 4. Section 4 is added to the bill and incorporates several revisions. Revisions included section 4(a) (1) and (2), changing the definition of employee and employer to make the definitions consistent with the CHRO definitions. In section 4(d)(2), language was added to allow an employee to enter into an agreement with an employer that would preclude the employer from disclosing certain confidential information relating to an employee or a volunteer that does not involve illegal acts. In section 4(h), language was added to specify that the remedy under section 4 is in addition to other remedies provided at law.

RESPONSE FROM ADMINISTRATION/AGENCY:

Tanya Hughes, Executive Director, Commission on Human Rights and Opportunities (CHRO): She testified in support of the bill, in particular Section 3 which pertains to nondisclosure agreements (NDAs) in the workplace. She stated that multiple states already prohibit NDAs, which can be used for new employees or for settling agreements that prevent victims of discrimination and harassment from talking about their experience with others. She explained that the immense power differential between employer and employee makes employees feel that they do not have the choice in signing an NDA, but secrecy permits bad actors to continue to discriminate against other employees and discourages others from coming forward.

Natasha Pierre Esq, State Victim Advocate, Office of the Victim Advocate: She testified in support of the bill as it will enhance legal protections for victims and promotes public safety through legal measures for those who knowingly transmit intimate images without consent. In addition, it prohibits discriminatory practices in employment, highlighting equal treatment and non-discrimination based on various protected characteristics, including victim status of domestic violence.

NATURE AND SOURCES OF SUPPORT:

Liza Andrews, VP Government & Public Relations, CCADV: She testified in support of the bill, in particular Section 1 which seeks to expand the grant program known as the "TRO Program", providing income-eligible individuals with access to free legal assistance when applying for a family violence restraining order. This would expand the program from the judicial districts of Bridgeport, New Haven, Stamford-Norwalk, Waterbury, and Hartford to also include those of Danbury, Middletown, and Torrington. She explained that this program has played a meaningful role in victim safety in the past two years it has been operational. She stated that research has shown victims are successful with their applications around 30% of the time when filed without the assistance of an attorney versus over 80% with legal representation. She stated that legal aid providers have also gone beyond their requirements by advising and representing victims on other matters like divorce, custody, and child support as well as safety planning and referrals to local domestic violence organizations; this strengthens the family's overall safety and positively impacts the operation of the family court.

Senate Democratic Caucus: They testified in support of the bill which covers legal aid for domestic violence victims, cyberflashing, and workplace discrimination. They support the expansion of the TRO Program, as it will only expand the success the program has had so far in providing legal aid funds to non-profits for victims of domestic violence. They also support a private right of action against someone who sends an unsolicited picture of genitals and provides an automatic \$500 to the victim, plus attorney fees and court costs. They stated that California and Virginia have enacted similar legislation on cyberflashing. They explained that section 3 of this bill protects an employee's ability to speak openly about any kind of workplace discrimination, not just sexual harassment. They explained that it also voids any clause in a contract for employment or settlement for workplace discrimination that prohibits the employee from discussing discrimination.

Senator Martin Looney, Senate President Pro Tempore, CT General Assembly: He testified in support of the bill, reiterating what the Senate Democratic Caucus stated in their testimony, adding that he hopes one day the TRO Program will be able to operate statewide.

Linda Ciano, Director of Community Engagement, Project SAGE: She testified in support of the bill, in particular section 1 which looks to expand the TRO Program grants, which provide income-eligible individuals with access to free legal assistance when making an application for a family violence restraining order. It expands this program to the judicial district of Torrington, where survivors served by Project SAGE may apply for a restraining order. Project SAGE served nearly 825 survivors this past year and the expansion will allow them to do more.

Jennifer Ferrante, Manager of Civil Legal Services, Center for Family Justice: She testified in support of the bill as she has seen firsthand in Bridgeport the importance of having legal aid available to restraining order applicants. She believes the bill will give those in the expanded districts of Danbury, Middletown, and Torrington the same meaningful access to the legal system. She explained that legal aid provides help with preparing forms, court representation, and hearing preparation; all of this results in better outcomes for applicants, leading to improvements in the health and wellbeing of communities.

Jeanne Fusco, Executive Director, Susan B Anthony Project: She testified in support of the bill, in particular Section 1 which would expand the TRO Program, providing income-eligible individuals with access to free legal assistance when making an application for a family violence restraining order. She explained that the proposal would expand the program to three additional judicial districts, including GA 18, where victims seeking services from the Susan B. Anthony Project may apply for a restraining order. She furthered that the nature of coercive control in domestic violence creates many hardships for victims and their children, many who need TROs to have safe housing and financial protection. Legal assistance gives the victim a more stable living circumstance and limits damage to their personal credit which is critical in establishing self-sufficiency for a future without abuse.

Mary Lee Kiernan, President and CEO, YWCA Greenwich: She testified in support of every section of the bill. She explained that section 1 bolsters legal aid for victims of domestic violence; section 2 aims to deter the harmful practice of sending unsolicited intimate images to a nonconsenting adult; and section 3 prohibits the use of certain nondisclosure agreements in the workplace. She stated that the components of this bill fortify Connecticut's protection of survivors of domestic and sexual violence by expanding legal services, giving

rights and monetary aid to victims of the unsolicited transmission of intimate images, and prohibiting particular nondisclosure agreements in the workplace.

Cara During, Director of Community Impact, The Center for Empowerment and Education (CEE): She testified in support of the bill, in particular section 1, which looks to expand the grant program known as the TRO Program; this program provides income-eligible individuals with access to legal assistance at no cost when making an application for a family violence restraining order. She explained that the proposal would expand the program to three additional districts, where survivors served by CEE may apply for a restraining order. She gives an example of someone who it would help, a client who did not have the means for representation, while her abuser did have the means. She stated that when clients do have proper representation, clients feel much more at ease knowing a professional is handling the restraining order process. This past year, CEE served over 5,000 people impacted by domestic and sexual violence and helped nearly 2,000 domestic violence victims in the Danbury area obtain criminal and civil legal assistance including protective orders, restraining orders, visitation, housing, custody, and child support. She stated that an expansion of this program in Danbury will bolster these efforts.

Brooke Lynn Maxfield, Outreach Advocate and Educator, New Horizons Domestic Violence Services: She testified in support of the bill, in particular section 1 which would expand the TRO Program to three additional districts, including Middletown where survivors served by New Horizons Domestic Violence Services may apply for a restraining order. She explained that New Horizons often uses Connecticut Legal Services for assistance with restraining orders, but this creates a problem because it takes time to be approved, which increases the time between the danger and when someone applies for a TRO. She believes expanding the TRO Program in Middletown would allow more of New Horizons clients to apply for a TRO speedily and accurately.

Angela Schlingheyde, Executive Director, Connecticut Bar Foundation: She testified in support of the bill, particularly section 1, as the primary funder of civil legal aid, administering grant programs that fund legal services for those who cannot afford an attorney; explaining that one of those programs is the state's Right to Counsel Program for Temporary Restraining Orders (RTC-TRO). She furthered that this proposed legislation would add three additional judicial districts to the existing program: Danbury, Middletown, and Torrington, increasing the budget of the program by \$600,000. In 2023, more than 8,600 applications for relief from abuse were filed in Connecticut. She explained that the legal service providers work in tandem with family violence victim advocates at the courthouses, connecting victims to additional services they may need; this model of wrap-around services is critical to securing the safety of victims.

Julie Roginsky, Co-Founder, Lift Our Voices: She testified in support of the bill, as a co-founder of a national organization that is dedicated to the eradication of silencing mechanisms, including non-disclosure agreements, in the workplace. Stated that she sued former Fox News Chairman Roger Ailes for sexual harassment and retaliation as well as Fox News for enabling the behavior, but she is not able to talk about that because she signed an NDA. She also worked on the campaign for Governor Phil Murphy of New Jersey where she signed an NDA and was unable to help a young woman volunteer who approached her about a rape by a staffer. She explained that she was forced to make a choice between helping a sexual assault survivor and staying silent, for fear of being sued by a powerful man with

unlimited resources. She was eventually released from the NDA and then New Jersey became the first state to ban NDAs for toxic workplace issues. She stated that a qualitative study by Penn State shows that this ban has had no effect on the ability of companies to settle with survivors – or on the amount they are forced to pay in settlement.

Isla MacPherson: She testified in support of the bill, particularly the part that supports victims of domestic violence. She speaks to the damage done by domestic violence to all parts of a person’s life.

Laura Sanchez, Social Work Student: She testified in support of the bill, speaking to the damages to one’s mental health that are caused by domestic violence as well as the unsolicited transmission of intimate images. She knows that this damage would be mitigated by the easier ability for someone to get legal support to get out of a domestic violence situation.

Stella Sheed: She testified in support of the bill, speaking to the widespread prevalence of domestic violence and supporting the need for victim assistance in filing restraining orders.

Yihan Chen: She testified in support of the bill, speaking on the major public health problem that is violence against women and lists many statistics about this issue. She speaks to the bravery of women who stand up against the violence and the barrier that is the expense of finding a lawyer to defend them. She believes this bill not only helps those that do not have the funding to pay for their own legal representation, but it also gives courage to those who are thinking of standing up for themselves and using the law for help.

Anonymous: Testimony without attribution was submitted in support of the bill and speaks to the prevalence of domestic violence and the barrier of the cost of legal representation to assist with legal action. When victims are forced to navigate the legal system alone and without legal counsel, it puts them at a disadvantage and allows abusers to evade accountability for their actions. They believe free legal aid for domestic violence victims gives victims a voice and sends a message that domestic violence is not tolerated in our society.

NATURE AND SOURCES OF OPPOSITION:

Connecticut Hospital Association: They testified in opposition to Section 3 of this bill, stating that the provisions go beyond the stated purpose and may create unintended consequences. They stated that the bill creates unachievable and unwise protection for employees who disparage and defame their employer when the employer has done nothing wrong, simply because an employee holds a strong belief that an activity was illegal. They believe the bill does not focus on the actual conduct of the employer, only on the perception of the employee.

Wyatt Bosworth, Associate Counsel, CBIA: He testified in opposition to Section 3 of the bill, stating that the banning of the use of NDAs in employment agreements and settlements could inadvertently discourage settlements and hinder privacy protections for both employers and employees. He explained that the new causes of action are predicated on the subjective belief of the employee as to whether discrimination had occurred and whether they were punished for “disclosure,” which is left undefined. He believes it opens the door for disputes based on perceptions rather than concrete evidence and could also negatively impact the

privacy of employees such as human resource professionals, for whom confidentiality is paramount. He also stated the bill could also infringe on an employer's ability to enforce confidentiality requirements for attorneys under the Rules of Professional Conduct.

Rory Whelan, Regional VP, Northeast NAMIC: He testified in opposition to Section 3 stating that it is an issue that the bill would make an employer liable to the employee for a minimum of \$10k in statutory damages as well as attorneys' fees. He claims the bill is too broad and would harm businesses and insurers by preventing businesses from protecting their reputations and expose employers to increased expensive litigation. He also stated that the bill does not address retroactivity and he believes contractual provisions that predate the effective date of this legislation should be able to still be enforced.

Reported by: Hillary Desideraggio

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