



Senate

General Assembly

File No. 855

January Session, 2019

Substitute Senate Bill No. 440

Senate, April 30, 2019

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 Section 31-51q of the general statutes is repealed and the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, 2019*):

3 [Any] (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
6 or support any political party or political, civic, community, fraternal
7 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

13 the 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
22 Constitution of the state, provided such activity does not substantially
23 or materially interfere with the employee's bona fide job performance
24 or the working relationship between the employee and the employer,
25 or (2) such employee's refusal to (A) attend an employer-sponsored
26 meeting with the employer or its agent, representative or designee, the
27 primary purpose of which is to communicate the employer's opinion
28 concerning 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
38 agent, representative or designee from communicating to its
39 employees any information that the employer is required by law to
40 communicate, but only to the extent of such legal requirement; (2) an
41 employer or its agent, representative or designee from communicating
42 to its employees any information that is necessary for such employees
43 to perform their job duties; (3) an institution of higher education, or
44 any agent, representative or designee of such institution, from meeting
45 with or participating in any communications with its employees that
46 are part of coursework, any symposia or an academic program at such

47 institution; (4) casual conversations between employees or between an
 48 employee and an agent, representative or designee of an employer,
 49 provided participation in such conversations is not required; or (5) a
 50 requirement limited to the employer's managerial and supervisory
 51 employees.

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

This act shall take effect as follows and shall amend the following sections:		
Section 1	July 1, 2019	31-51q

Statement of Legislative Commissioners:

In Section 1(a)(3), "except as set forth in subsections (c) and (d) of this section" was removed and reinserted into Section 1(b) for consistency with standard drafting conventions; and in Section 1(d) "under 42 USC 2000e-1(a) or sections 4a-60a, 46a-81a and 46a-81o under section 46a-81p" was changed to "pursuant to 42 USC 2000e-(1)(a) or is exempt from sections 4a-60a, 46a-81a and 46a-81o pursuant to section 46a-81p" for clarity and consistency.

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 20 \$	FY 21 \$
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.

It is anticipated that the Labor Department has sufficient staff and expertise to manage any complaints, which are expected to be few in number.

The Out Years

The annualized ongoing fiscal impact identified above would continue into the future subject to fluctuation in the number of violations found.

OLR Bill Analysis**sSB 440*****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 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). Such meetings are held by the employer or its agent, representative, or a designee.

Additionally, the bill expands the prohibition in current law against employers disciplining or discharging employees for exercising their First Amendment rights under the U.S. Constitution or similar rights under the Connecticut Constitution to include threats by employers to discipline or discharge 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 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, except as allowed under the bill.

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

employees need to perform their jobs. It also exempts speech on religious matters made by certain religious organizations to their employees.

The law's prohibition on employers disciplining or discharging employees for exercising their constitutional rights makes an employer liable to the affected employee for damages caused by the prohibited discipline or discharge, 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) discipline or discharge employees, or threaten to do so, for refusing to attend, listen to, or watch a captive audience meeting or (2) threaten to discipline or discharge employees for exercising their constitutional 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.

EFFECTIVE DATE: July 1, 2019

POLITICAL AND RELIGIOUS MATTERS DEFINED

Under the bill, "political matters" relate to (a) elections for political office, (b) political parties, (c) legislation, (d) regulation, and (e) decisions to join or support a political party or political, civic, community, fraternal, or labor organization. "Religious matters" relate to (a) religious affiliation and practice and (b) decisions to join or support a religious organization or association.

EXEMPTIONS

The bill allows exceptions to both its prohibition on punishing employees for refusing to attend captive audience meetings and the current law's prohibition on punishing 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

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- 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. casual conversations between employees or between an employee and an employer's agent, representative, or designee, as long as participation is not required; or
 4. a requirement to attend captive audience meetings that is limited to the employer's managerial and supervisory employees.

The bill also exempts from the prohibition on punishing employees, under certain circumstances, a religious corporation, entity, association, education institution, or society that is exempt from (1) Title VII of federal Civil Rights Act (which generally prohibits employment discrimination based on race, color, religion, sex, and national origin) or (2) the state's prohibitions on discriminatory employment practices and sexual orientation discrimination under the Connecticut Human Rights Act. The exemption applies to these organizations' speech on religious matters to employees who perform work connected with carrying on the organizations' activities.

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, Connecticut's attorney general 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).

Related Bill

SB 64 (File 360), favorably reported by the Labor and Public Employees Committee, generally prohibits employers from requiring their employees to attend employer-sponsored meetings that are primarily meant to communicate the employer's opinion about political or religious matters (i.e., captive audience meetings).

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 24 Nay 16 (04/10/2019)