



State of Connecticut COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES

450 Columbus Boulevard, Suite 2, Hartford, CT 06103

Promoting Equality and Justice for all People

Labor Committee Public Hearing – March 4, 2021

CHRO Testimony Regarding:

HB 6476 – AAC A Disparity Study

HB 6474 – AAC Collateral Employment Consequences of a Criminal Record

HB 6475 – AAC Forced Arbitration Agreements

HB 6537 – AAC Expansion of Paid Sick Days and Domestic Workers Coverage

Good morning Senator Kushner, Representative Porter, Senator Sampson, Representative Arora, and members of the Labor Committee. I am Tanya Hughes, the Executive Director of the Commission on Human Rights and Opportunities and with me is Deputy Director Cheryl Sharp. Thank you for the opportunity to testify today regarding HB 6476, An Act Concerning a Disparity Study; HB 6474, An Act Concerning Collateral Employment Consequences of a Criminal Record; HB 6475, An Act Concerning Forced Arbitration Agreements; and HB 6537, An Act Concerning Expansion of Paid Sick Days and Domestic Worker Coverage.

HB 6476 – An Act Concerning a Disparity Study

The Commission appreciates the Labor Committee's continued willingness to work with us on this important bill. HB 6476 would require the Commission to work with the Department of Administrative Services to issue a request for proposals for the conducting of a much-needed disparity study. The Commission, through its Contract Compliance Unit, enforces the state's antidiscrimination contract compliance laws which include set-aside plan compliance under Conn. Gen. Statute §§4a-60 and 4a-60g. The set-aside program guarantees that competitive bidding and other contracting processes will give qualified but underutilized small businesses within the state the opportunity to get state contracts. These set-asides (currently 25% for small businesses, and 25% of those small businesses for enterprises owned by women, ethnic minorities, and individuals with disabilities) are designed to create greater inclusion of historically disadvantaged persons in state funded public works contracts. The program, in turn, contributes to the state's economic development by allowing dollars to be turned over within the state and keeping state dollars in local small businesses.

The laudable goals behind the state set-aside program must stand on solid legal ground, however. Set-asides must be grounded in specific strong evidence that shows past or present discrimination against each of the protected classes in the set-aside program. The state last conducted a disparity study in 1992. Certainly, the diversity and economy of Connecticut has changed substantially in almost 30 years. A disparity study would provide an accurate picture of the availability pool of small contractors owned by women, ethnic minorities and individuals with disabilities and ensure equity and equality in state contracting by affirmatively addressing underutilization.

The Commission continues to work with DAS on the language in subsection (a) to ensure that the procurement process envisioned by the subsection is structured in the best way possible. The Commission also requests that subsection (c)(2) be deleted and replaced with the following:

“(2) The number of small contractors or minority business enterprises, based on available data and analysis, that are qualified for eligibility for state contracts under the set-aside program established under section 4a-60g of the general statutes, and a determination of whether such businesses are in compliance with the definition of a “small contractor” as defined in section 4a-60g(1) of the general statutes or in compliance with the definition of a “minority business enterprise” as defined in section 4a-60g(4) of the general statutes.”

The Commission and DAS agree that the use of “legitimate” and “legitimately” in line 32 of the current language is unintentionally vague. The language above will better achieve the subsection’s purpose of requiring the study to examine whether existing small contractors and minority business enterprises are operating in compliance with statutory definitions of these types of businesses.

HB 6474 – An Act Concerning Collateral Employment Consequences of a Criminal Record

The Commission is fully supportive of legislative efforts to address the barriers faced by individuals with a criminal record as they reenter the community following their release from incarceration. Those barriers negatively affect their successful reentry into daily events many of us take for granted – living in a home or apartment, going to work, going to school, or training for a professional license. According to the National Conference of State Legislatures, over 77 million people, or one in three adults, have a criminal record. A criminal record can not only prevent someone from securing a job but can also prevent them from obtaining the proper licensing for higher paying jobs. The Commission fully supports prohibiting all employers – both public and private, landlords, and institutions of higher education – from discriminating based on criminal history record information.

Section 3 of the bill expands protection the Commission currently enforces for state employment only. When a state agency hires a new employee, under current law it is required to engage in the balancing test outlined in Sec. 3. Given that the balancing test outlined in Conn. Gen. Stat. §46a-80 has been successful, the Commission strongly supports it being expanded to all employers, both public and private. It would give a much-needed opportunity to many job seekers who are qualified but are held back from being hired due to their criminal history. Further, the addition of the advertising restriction regarding criminal history will encourage potential employees to consider submitting applications for positions they may not otherwise have considered given their criminal history.

Section 4 of the bill provides a similar expansion in licensing. Prior to this proposed change, only a state agency would need to engage in the balancing test found in Conn Gen. Stat §46a-80 in order to determine whether a license can be issued to an individual with a criminal conviction. This section would expand that provision to all licensing entities– both public and private. The CHRO supports this expansion as it would provide a wider degree of professional opportunities for jobseekers to enhance their skill set and position themselves for a higher-paying job.

Finally, the Commission looks forward to working with the other agencies, groups, and entities identified in Section 9 on the Council on the Elimination of Occupational License Collateral Consequences. Taking a thorough look at the statutes to make sure there are no barriers or conflicts with the changes to the statute is important to fully enforce the protections afforded to the formerly incarcerated.

The Commission appreciates the Labor Committee's willingness to address this important issue and urges it to pass HB 6474.

HB 6475 – An Act Concerning Forced Arbitration Agreements

The Commission appreciates the opportunity to provide informational testimony regarding HB 6475. Any employee who wishes to allege employment discrimination against their employer must file a complaint with the Commission, and if they wish to pursue the matter in court, obtain a release of jurisdiction from the Commission.¹ Currently, the Commission handles complaints of discrimination, even in situations where an arbitration agreement is in place. In EEOC v. Waffle House, Inc., 534 U.S. 279 (2002), the United States Supreme Court held that an agreement between an employer and an employee to arbitrate employment-related disputes does not bar the EEOC from pursuing victim-specific relief, such as back pay, reinstatement, and damages, in an ADA or Title VII enforcement action. Inasmuch as the Commission has the statutory right to file discrimination complaints, the Commission may also bring such complaints through its public hearing process or into court in some circumstances, pursuant to Public Act 19-93 and Conn. Gen. Stat. § 46a-84, and seek victim-specific relief. Additionally, Office for Public Hearings at the Commission accepts Whistleblower complaints via Conn. Gen. Stat. § 4-61dd, within which the Commission has a statutory right to intervene.

The Commission certainly shares the concern that forced arbitration puts employees at a distinct disadvantage. At least one study suggests that plaintiffs fare much worse in arbitration than in court litigation.² We are concerned that this bill as written allows private citizens to bypass the Commission, guts the administrative proceedings set up to lessen the burdens on the court system, and might interfere with the Commission's institutional interests in these cases. The Commission has expertise in the state's civil rights scheme and a special interest in preserving the rights of all residents. A private attorney might not fully consider those interests. The Commission respectfully requests that if this bill should pass, it should at least be amended to make clear that the Commission must be given notice of such actions and permitted to intervene as of right.

Finally, we would also want to point out that this bill will need a fiscal note in that if when cases go to court and are not processed by the Commission, the agency does not get reimbursed by the EEOC for the drafting of the complaints and conducting of the investigations. These reimbursements currently go to the General Fund.

HB 6537 – An Act Concerning Expansion of Paid Sick Days and Domestic Worker Coverage

The Commission also supports HB 6537 and its expansion of paid sick days. The Commission is strongly supportive of paid sick leave due to the disparate impact the lack of this leave has on people with disabilities, people of color, and women. An expansion of paid leave, particularly during a devastating pandemic, will help members of these communities that need it the most.

¹ Conn. Gen. Stat. Sec. 46a-82.

² See Katherine V.W. Stone & Alexander J.S. Colvin, *The Arbitration Epidemic*, ECON. POLICY INST. (Dec. 7, 2015), available at <https://files.epi.org/2015/arbitration-epidemic.pdf>.