State of Connecticut
COMMISSION ON HUMAN RIGHTS AND OPPORTUNITIES
450 Columbus Boulevard, Suite 2, Hartford, CT 06103
Promoting Equality and Justice for all People

Judiciary Committee Public Hearing - March 15, 2021
CHRO Testimony regarding:
SB 1023 – AAC the Duties and Responsibilities of the Commission on Human Rights and Opportunities

Good morning Senator Winfield, Representative Stafstrom, Senator Kissel, Representative Fishbein, and members of the Judiciary Committee. Thank you for the opportunity to testify on SB 1023, An Act Concerning the Duties and Responsibilities of the Commission on Human Rights and Opportunities. I am the Commission's Executive Director Tanya Hughes and with me is Deputy Director Cheryl Sharp. The Commission appreciates the Judiciary Committee working with the Commission to raise this bill, which deals primarily with efforts to streamline and update the Commission's processes and procedures.

Sections 1 and 2 of this bill address an inappropriate limitation on the State's prohibitions against both retaliation for opposing discrimination and aiding and abetting discrimination. Section 1 removes subsections four (retaliation) and five (aiding and abetting) from Conn. Gen. Stat. §46a-60(b), our State's employment discrimination statute, and conforms the numbering accordingly. Because both retaliation and aiding and abetting also occur in places of public accommodation, these prohibitions are inappropriately limited in the current statute because of their location within Conn. Gen. Stat. §46a-60. Section 2 rectifies this limitation, by moving the current prohibitions against retaliation and aiding and abetting to a stand-alone statute. As illustration, a restaurant should not be permitted to refuse service to a customer because they previously filed a CHRO complaint, just as under current law an employer is not permitted to retaliate against an employee for the same.

The CHRO continues to work with LCO to ensure that the retaliation portion of Section 2 also covers situations the Commission has seen where an adverse action is taken against someone directly because of a third person's opposition to discrimination. There is a public policy interest in protecting the right to oppose discrimination. That policy should also apply in the following situations, all of which we have seen at the CHRO but did not fit squarely within the current law: an employer terminates an employee because their spouse opposed discrimination; a hospital refuses treatment to a child because the child's parent opposed discrimination; and an employer refuses to hire an employee because of the employee's relationship with a former employee who opposed discrimination. In order to be sure that Section 2 also covers this type of scenario, the CHRO asks that lines 145-150 in the current bill be substituted to read:

> "It shall be a discriminatory practice in violation of this section for any person to: (1) Discriminate against any other person because of [such other person's] opposition to any discriminatory practice or because <u>of</u> [such other person has filed] <u>the filing of</u> a complaint or [testified or assisted] <u>the testifying or assisting</u> in any proceeding under section 46a-83, 46a-83 or 56a-84 of the general statutes, as amended by this act; and.."

While covering the types of situations outlined above, this proposed language also maintains the causation link, where a complainant would still need to prove that the alleged retaliatory action against them was taken *because of* the third person's opposition to a discriminatory practice.

Section 3 of this bill eliminates a statutory provision added in 2011 which permitted Equal Employment Opportunity officers at state agencies to delay conducting an internal investigation into a discrimination

complaint until after CHRO or the U.S. Equal Employment Opportunity Commission (EEOC) conducted its own investigation. This provision often resulted in the continuation of a discriminatory working environment throughout the length of a CHRO or EEOC investigation. Instead agencies should, and indeed have an obligation under Conn. Gen. Stat. §46a-68(a)(4), to take swift action to eliminate the discriminatory conduct. Staying an investigation actually does a disservice to the agency who was complained about, as one of the elements that a CHRO or EEOC investigator will look for is what action the agency took to eliminate the discriminatory conduct complained of and prevent reoccurrences.

Section 4 clarifies that service of a complaint that reaches public hearing may be made by electronic mail. Conn. Gen. Stat. § 46a-86a currently permits notice of "any finding, closure, dismissal or other determination or proceeding concerning the complaint" to be sent to the complainant and respondent by methods that include first class mail, fax, and email. To the extent any ambiguity existed as to whether this provision applied to the service of complaints upon the start of public hearing proceedings, such ambiguity will be resolved by the proposed change. We note that by the time a complaint reaches public hearing, the complaint will already have been served on the respondent(s). This clarification will therefore result in a reduction in cost to the state, as it will eliminate the unnecessary expense of cumulative service by first class mail.

Section 5 permits the executive director, as opposed to the Commissioners who only meet monthly, to authorize the Commission to seek injunctive relief where appropriate. It also adds the judicial district of Hartford to the list of permissible judicial districts where the Commission may bring a petition, and allows the Commission to serve a petition that is an extension of an existing CHRO case by electronic mail, United States mail, certified or registered, or by a marshal. The use of electronic service is limited to instances where the Respondent or Respondent's counsel has provided the CHRO with an electronic mail address, so no surprise will result. Conn. Gen. Stat. §46a-86a already authorizes the CHRO to serve findings, closures, dismissals, or other determinations or proceedings via electronic mail. Electronic service will result in a reduction in cost to the state, as it is zero-cost and instantaneous, as compared to the cost and time of marshal service or even certified mail.

Section 6 is included at the request of the Associated General Contractors of Connecticut as a technical correction to Public Act 19-94. That Act requires the CHRO to review a contractor's affirmative action plan (Plan) within 120 days of submission. If it fails to do so, the Plan is deemed approved or disapproved without consequence. This section clarifies that a contractor will not be barred from bidding on future contracts if its Plan was either deemed approved or deficient without consequence as opposed to only if it is deemed approved, which had been omitted from the 2019 revision to this statute.

Section 7 of the bill allows the CHRO sexual harassment training to be portable for two years. We have heard from various employers and employees that they do not want to have to redo a training that they recently completed at another job. Under current law, an employee who had several jobs might have had to take the training multiple times within a short period. That is not what the law intended. This section allows people who have taken the CHRO training to utilize that at any subsequent job for the following two years, making the training requirements easier to satisfy for both employees and employers.

Section 10 of the bill allows CHRO employees to administer oaths. This is important because the CHRO takes oaths as part of its intake and investigative processes. Ensuring that testimony is taken under oath increases its reliability and makes it usable in subsequent proceedings. Under Conn. Gen. Stat. §1-24, investigators at many other state agencies are able to take oaths and this section would simply add CHRO employees to that statute.

Section 11 changes the filing timeframes for all complaints to 300 days from the date of the alleged discriminatory act. As part of the Time's Up Act in 2019, the filing timeframes for employment complaints and for public accommodation complaints filed against state agencies were changed from 180 to 300 days. The timeframe for housing and other public accommodation complaints was kept at 180 days. This difference has caused some confusion for the public. Making all timeframes 300 days would eliminate that confusion and bring the filing timeframes more closely aligned to federal filing periods. This measure will bring a small amount of additional federal funding into the state to process housing complaints that would otherwise be dismissed as untimely.

Section 12 adds age as a protected class to Conn. Gen. Stat. § 46a-58. This is the state's anti-discrimination umbrella statute that makes it a discriminatory practice under state law to violate other state or federal laws based on an enumerated list of protected classes. Age is not currently on that list. Adding age would convert a violation of the federal Age Discrimination in Employment Act (the ADEA) into a state violation as well. This will allow complainants alleging age discrimination to seek additional state remedies in a public hearing or in court.

Section 13 of this bill amends our Public Accommodations laws to ensure that individuals with disabilities can have access to places of public accommodation within our state. In the event that legally permissible architectural barriers prevent access, the business would be required to engage in an interactive process with the person with a disability to attempt to provide access to the facility or to provide the relevant services. This section of our statutes was enacted long before the Americans with Disabilities Act (ADA) and before statutes and court cases addressed reasonable accommodation in the employment and housing arenas. At that time, the statute was written to require business establishments and housing providers to treat people with disabilities the same way that people without disabilities were treated, as well as to provide their services to all individuals in the same manner without regard to protected class. However, equity requires more than treating all people the same way. Individuals with disabilities may need accommodation to be able to fully access businesses or other places of public accommodation. Many of these facilities are already required by the ADA to provide accommodation to individuals with disabilities, but to the extent that that they are not required to do so, this section will require them to address those concerns.

The CHRO appreciates the Judiciary Committee's willingness to raise this bill and looks forward to working with the Committee moving forward.