

Legislative History for Connecticut Act

HB 7825	<PA 827>	FOX	1969
Jud + Gov Functions	352, 386 - 388		4
Senate	3236 - 3237		2
House	4192, 4193, 4799-4801		5

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JOINT
STANDING
COMMITTEE
HEARINGS

JUDICIARY

339 - 590

1969

THURSDAY

JUDICIARY AND GOVERNMENTAL FUNCTIONS

APRIL 10, 1969

4922

In my opinion, the probate court is a people's court and one that should not be easily tampered with. I'm not so happy as to what we did to another court, the present circuit court, which was once also a people's court. It's now becoming so expensive and so complicated for the average person to go to this court that I'm not so sure it's setting a tremendous example for us to do any more about tampering with another court, the probate court which is the people's court. These judges are elected and on that basis, they are directly responsible to the people. Therefore, I urge that we do nothing to disturb the probate court as we know it today. Thank you.

Sen. Pickett: I note from the speakers list that everyone who wishes to speak wants to speak on the probate bills, I think there's some attraction about that bill, except for Frank Berall and Frank, I don't know where you are, Frank I know you want to speak on your favorite topic, unless there are any legislators here, Frank would you speak on your favorite topic? Again, for the benefit of the late-comers, speakers are selected from the speakers list and these lists are situated in the back of the room, in back of Judge Rubinow.

Mr. Berall: Thankyou, Senator Pickett. I'll be very brief, gentlemen, I'm here to speak on two totally uncontroversial bills which in the opinion of myself and other lawyers who practice in the probate and estate and tax field would be an improvement to the law of this state. I am here as Chairman of the State Bar's Tax Section and I have been authorized to speak in favor of the fiduciary powers act H.B. 7825 and the disclaimer act H.B. 7885 by the State Bar Association.

The fiduciary powers act, the printed copy of which you have, is not the bill that we are hoping that you will pass. Since we had to meet a printing deadline, we did what we could in putting in the bill we then had. Subsequent to that I have worked with approximately five or six other lawyers and a probate judge and have gotten opinions from a number of different people. Therefore, I have a revised master of the fiduciary powers act which, with the committee's permission at some future date, I would like to submit to it and in a hearing in executive session, if you wish, we can go over the technicalities or I can just submit the revised master at that time. The purpose of this act is merely to revise and improve the existing powers and trust instruments act which was passed by the 1967 legislature as a, practically a carbon copy of North Carolina's Act. I have studied the powers and trust instruments act very thoroughly. I'm convinced that it's a good step in the right direction but it needs major improvements and major changes. I have personally read the fiduciary powers statutes of every state, there are approximately 21 or 22 of them that have fiduciary powers statutes and I have tried to make the fiduciary powers act which I urge this legislature to pass a composite of the very best in all of these states.

7922

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CONNECTICUT STATE BAR ASSOCIATION'S OFFICIAL
POSITION on HB 7825 and HB 7885 CONSIDERED
AT JUDICIARY COMMITTEE MEETING APR. 10

Testimony of
Frank S. Berall, Esq.
Chairman, Tax Section
Connecticut State Bar Association
(Given by Director of Board of Governors of Bar Association)

THE FIDUCIARY POWERS ACT

H. B. 7825, the Fiduciary Powers Act, is a bill to revise the powers in trust instruments act, C.G.S. § 45-100-a-c, which was enacted by the 1967 Legislature.

Following publication of an article by me on this act, Connecticut's Powers In Trust Instruments Act: A Critical Examination, 42 Connecticut Bar Journal 313 (1968), Representative McCarthy, on behalf of the Judiciary Committee, requested me to revise the act in line with the suggestions in the article. The revision had three basic objectives in mind:

1. To improve the powers in the existing act and eliminate any danger that adverse tax consequences might result from their use.
2. To add additional powers that could be helpful in certain situations where the nature of the

assets, etc. in an estate or trust required broader powers in the existing act; and

3. To change the basic format of the statute into (a) a package of basic powers, so that a mere reference to the act itself would result in their incorporation in an instrument, and (b) a package of additional powers from which a draftsman could select those needed by him.

Needless to say, the purpose of any kind of fiduciary powers statutes is to provide workable powers that can be granted to a fiduciary in such a way that instruments can be shortened and simplified by eliminating many pages of "boiler plate". There are four other states besides Connecticut that have statutes incorporating powers by reference, and seven states with laws that automatically confer powers, unless the instrument specifies to the contrary. In addition, at least nine other states' laws grant some form of statutory powers automatically to fiduciaries.

Further information about what other states have done and general discussion of the use of statutory powers can be found in a letter by me to the Editor of the Connecticut Bar Journal, in Vol. 42 at page 529 (December 1968), and in an article, "Fiduciary Powers Statutes", written by me in the

current issue of Trusts and Estates, Vol. 108, No. 3, p. 243, (March 1969).

The proposed fiduciary powers act for Connecticut is an attempt to use the best of what other states have and to build on it to give a truly useful tool to draftsmen. No one need use it unless he wishes to do so, unlike the powers in states that automatically grant powers to fiduciaries.

The present printed copy of the bill should be amended, since subsequent to its printing a number of leading probate attorneys and one probate judge have suggested improvements. Inasmuch as I have the only master copy, the opportunity to meet with the Judiciary Committee in executive session to present it and answer any questions of the committee would be appreciated.

THE DISCLAIMER ACT

HB 7885, an act concerning the disclaimer of interests passed by Will, intestate succession, or under certain powers of appointment, is designed to fill the void caused by the absence of any clear law in Connecticut concerning disclaimers. A disclaimer is an

S-74

CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1969

VOL. 13
PART 7
3074-3658

SENATOR PICKETT:

Mr. President, in addition to a few technical amendments, a few technical changes, the jest of this bill contain toward the end of section 1, which provides. Basically that there is an interval trust and this trust is to be dissolved upon the death of the settlor. That the expenses of dissolving this trust can be deducted from the proceeds of the trust.

It is of course, dealing with the succession laws of the state of Connecticut and something which really, in all fairness is long overdue.

THE CHAIR:

Will you remark further on the passage of this bill. If not, all those in favor signify by saying aye, opposed. The aye's have it and the bill is passed.

THE CLERK:

Calendar No. 1416, File No. 1382. Favorable report of the Joint Standing Committee on Judiciary and Governmental Functions on Substitute House Bill No. 7825. An Act concerning the Fiduciary Powers Act

SENATOR PICKETT:

Mr. President, I move for acceptance of the Committees favorable report and passage of the bill.

THE CHAIR:

Question is on passage of this bill. Will you remark.

SENATOR PICKETT:

Mr. President, if nothing else, I think that this is the

biggest bill of the session judging from the pile of papers in the Clerk's hand.

This bill has to do with the Fiduciary Powers Act which in effect will be as follows: That when an attorney is preparing a will or some similar document or nature, that he may by reference refer to all or some of the various powers set forth in this act. This Fiduciary Powers Act, again its been hammered out for many years, has been enacted into law in many jurisdictions throughout the United States and we are bringing Connecticut into line with those four states which are trying to give to the Fiduciary in those states the complete powers so that they can act for the best interest of the state to effect efficiency and economy for those states involved.

THE CHAIR:

Are there further remarks. If not, as many who are in favor signify by saying aye, opposed. The aye's have it and the bill is passed.

THE CLERK:

Calendar No. 1417, File No. 1486. Favorable report of the Joint Standing Committee on Judiciary and Governmental Functions on Modified House Bill No. 8130. An Act concerning Divorce on Grounds of Wilful Desertion. Clerk has an amendment.

SENATOR PICKETT:

Will the Clerk please read the amendment.

THE CLERK:

Senate Amendment Schedule A if offered by Senator Hull.

H-103

CONNECTICUT
GENERAL ASSEMBLY
HOUSE

PROCEEDINGS
1969

VOL. 13

PART 9

4023-4395

Tuesday, May 27, 1969

Page 170 MR. SPEAKER:

Any remarks further on the Bill? If not all those in favor indicate by saying Aye, Aye. Those oppose. The Bill is passed.

THE CLERK:

Are there matters to be placed on the consent cal.?

REP: PAPANDEA: - 78th D.

There ar Sir, as soon as he finishes, print. Mr. Speaker, having finished printing pursuant to rule 47 I would move, that the following matters be placed on the Consent Cal. Beginning on page 11. the middle of the page Cal. No. 1158 H. B. No. 8012 File No. 1255, then to page 18. The fourth matter from the top on page 18. Cal. No. 1242 Sub. for H.B. 7512 File No. 1355. Cal No. 1243 Sub. for H.B. No. 7656 File No. 1358. To the top of page 19. Cal. No. 1248 Sub. for Senate Bill No. 431 File No. 41. Down to Cal. No. 1253 Sub. for H.B. 7825 File No. 1382. Page 20 at the of the page Cal. No. 1255 H.B. 8607. File No. 1372. Cal. 1257 Sub. for H.B. No. 5806 File No. 1374. Cal. No. 1258 Sub. H.B. No. 7351 File No. 1375 . Page 21 second from the top Cal. No. 1263 H.B. No. 7124 File No. 1380. To the bottom of Page 21. Cal. No. 1269 Sub. for H.B. No. 6978 File No. 1387. Page 22. second item on the page Cal. No. 1271 Senate Bill No. 1112 File No. 262.

MR. SPEAKER:

Would the motion of the gentleman from the 78th, is there objection placing any of these items on the Consent Cal.?

REP: COLLINS: - 165th D.

Mr. Speaker, there is objection to the last item just read

Tuesday, May 27, 1969

Page 171 REP: COLLINS: - 165th D.

by the gentleman from the 78th. Cal. No. 1271 on Page 22.
Senate Bill 1112 File No. 262.

MR. SPEAKER:

Objections noted accordance with rule 47 Cal.No.1271 Senate Bill 1112 File No. 262 will not be placed on the consent Cal.

REP: BRINCKERHOFF - 161st. D.

Mr. Speaker on Page 19 Cal. No. 1253 Sub. for H.B. 7825
File No. 1382. I object.

MR. SPEAKER:

Objection is noted, item will not be placed on the Consent Cal. There are no further objections the items indicated with the exception of the last two items be placed on the Consent Cal.

THE CLERK:

Page 11 of the Cal. 1151 Sub. for H.B. No. 8074. An Act
concerning the Appointment, Powers and Duties of the State
Board of Education.

REP: MCNELLIS - 85th D.

Mr. Speaker, I move the acceptance of the Committees
favorable report in Passage of the Bill.

MR. SPEAKER:

Acceptance and passage, will remark?

REP: MCNELLIS - 85th D.

Mr. Speaker, the clerk has an Amendment.

MR. SPEAKER:

Will the clerk please call the Amendment.

H-104

CONNECTICUT
GENERAL ASSEMBLY

HOUSE

PROCEEDINGS
1969

VOL. 13

PART 10

4396-4892

Saturday, May 31, 1969

45

objection, it is so ordered.

THE CLERK:

Calendar 1253. Substitute for House Bill No. 7825. An Act concerning the Fiduciary Powers Act.

THE SPEAKER:

The gentleman from the 161st.

MR. BRINCKERHOFF: (161st)

Mr. Speaker, I move for acceptance of the Joint Committee's favorable report and passage of the bill.

THE SPEAKER:

The question is on acceptance and passage. Will you remark?

MR. BRINCKERHOFF: (161st)

Mr. Speaker, the Clerk has an Amendment which I would beg not to be read. I feel, sir, that I will be able to explain it sufficiently for the edification, if that is what we need, for all members of the House.

THE SPEAKER:

Will the Clerk please show the Amendment to the House? Is there any objection to this being outlined? Will the gentleman from the 161st outline the Amendment?

MR. BRINCKERHOFF: (161st)

Thank you, Mr. Speaker. This is a piece of legislation, perhaps full of sound and fury, and signifying nothing. If I may, Mr. Speaker, in terms of the Amendment, the Amendment which is the act itself - - if I may with reference to File 1382, the Amendment merely reorganizes the various sections set forth in that file, inasmuch as initially as the powers of a fiduciary were to be allocated to what would be called basic powers, that is,

mec

Saturday, May 31, 1969

46

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those generally available to a fiduciary in a will or other trust instrument, and certain alternate powers which could be used. In reviewing the file as drafted, it seemed to many of us that it was important were we to use an act of this nature, that as many of those trust or fiduciary powers as seemed reasonably probable to be used as a trust instrument, be put in the basic section of that trust. For that reason, the Amendment has been presented. It does not change the substance of the bill as it is before us, but merely the orientation of those bills - the location of those sections within the bill itself. In talking on the Amendment which, again, sir, is the bill, this bill before us is a revamping of the present law, the powers of trust instruments act, that was adopted in the 1967 Session. Again, the substantive matter has not been materially changed. The changes that do appear in the Amendment and in the bill in the file, are mostly in terms of form for purposes of clarification. The act, however, would divide the powers into two sections. One, the powers in Section 2 of the act are generally used in a trust instrument, and those in Section 3 of the act, in order to be used, would have to be referred to specifically in the trust instrument for the reason that they deal with a very special situation, and we would not want to cause tax problems by someone using them through inadvertence. Further, Mr. Speaker, since this is quite long and quite detailed, and indeed is a lawyers' bill, it is felt desirable that the effective date be withheld until January 1 of 1970, in order that those who have the technical responsibility for using such legislation would be certain that they had the same in the revision of the acts. I move adoption of the Amendment.

THE SPEAKER:

Saturday, May 31, 1969

47

mec

The gentleman from the 22nd.

MR. McCARTHY: (22nd)

Mr. Speaker, I rise simply to confirm to the House the understanding of this proposal which Mr. Brinckerhoff has explained to you. It is essentially a re-working, an innovative type of proposal adopted at the last Session of this House, and represents some significant procedural betterment. We would be remiss in closing if we did not read into the record of this House the very significant contributions made to this bill by its proponent, Representative Brinckerhoff, together with Representative Healey and Mrs. Nancy Finley of the office of the Legislative Commissioners.

THE SPEAKER:

Will you remark further on the Amendment? If not, will all those in favor indicate by saying Aye. Those opposed? The Amendment is adopted. You may proceed with the bill. The gentleman from the 161st.

MR. BRINCKERHOFF: (161st)

Thank you Mr. Speaker. I now move for passage of the bill as amended by House Amendment Schedule "A". I believe no further comments are required.

THE SPEAKER:

Will you remark further? If not, all those in favor, indicate by saying Aye. Those opposed? The bill is PASSED.

THE CLERK:

Calendar 1259. Substitute for House Bill No. 6665. An Act Concerning the Juvenile Court.

THE SPEAKER:

The gentleman from the 1st.