

Legislative History for Connecticut Act

SB 823	(PA 556)	SCAN	1971
Judiciary	635 ⁶³⁶ , 649	AMH	3
Senate	221, 2345-2346, 2880		4
House	4259-4262		4
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S-80

CONNECTICUT
GEN. ASSEMBLY
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PROCEEDINGS
1971

VOL. 14
PART 5
1921-2435

S-82

CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1971

VOL. 14
PART 7

2874-3413

H-116

CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
1971

VOL. 14
PART 9

3878-4343

JOINT
STANDING
COMMITTEE
HEARINGS

JUDICIARY

PART 2

393-688

1971

The first Bill is S.B. #821.

S.B. #821 - AN ACT CONCERNING THE DISCLAIMER OF PROPERTY.

Now on this Bill, Mr. Kozloski, Attorney Walter Kozloski who is with me is going to give the detailed presentation and we will also submit a written statement in duplicate so that it can not only be available for your Committee, but we would appreciate a copy of the written statement to go into the Library as part of the Legislative History.

All I would say about disclaimer is this. Some people inherit property either under a will or by operation of law during an intestacy and they may not wish to keep this property. The real reason why many of them would not wish to keep the property is because in a closely knit family situation, a great savings of taxes - Federal taxes can sometimes be obtained if they decline to accept the property. Under these circumstances, it is possible, under present Connecticut Law, to disclaim this property if it is inherited through a will - not if it comes by virtue of intestacy. However, the Connecticut Law, in common with the law of most states, is not at all clear on the subject of disclaimer.

Approximately 12 states have enacted disclaimer legislation which has been sponsored by the Commissioners on Uniform State Law after being worked out with the American Bar Association. The State Bar of this State has spent quite a bit of time drafting a Disclaimer Bill, the details of which Attorney Kozloski will give to you, which will give Connecticut a clear procedure for disclaimer, permit the disclaimer of intestacy and also indicate that it has always been the common law of Connecticut that partial disclaimers are permissible. That is all I have to say for the present on S.B. #821 - Mr. Kozloski will supplement in detail.

The second Bill, with your permission, Mr. Chairman, that I would like to speak to is S.B. #823.

S.B. #823 - AN ACT CONCERNING TECHNICAL AMENDMENTS TO THE FIDUCIARY POWERS ACT.

The Fiduciary Powers Act was enacted to improve the powers available for executors and trustees if the draftsmen of an instrument wished to include them in the instrument. It was enacted by the last General Assembly in 1969 to make major amendments to a prior law that had been put in that provided for similar powers.

I have very carefully studied the Fiduciary Powers Act and find there to be some technical defects in it. Some of them were just caused by just technicalities, other have arisen as a result of the Tax Reform Act and the Excise Estate and Gift Tax - Adjustment Act of 1970.

The Fiduciary Powers Act to be an effective tool for draftsmen of wills and trusts, bear in mind, Gentlemen that this does not have to be used. We are not imposing powers on any estate or trust where the draftsmen does

not wish to use them. To be an effective tool, this Act has to be amended to take care of the problems that this study has brought out. I have prepared an extensive Bill which has been submitted - although apparently it has not yet been published. The Bill has been examined very carefully by Attorney Clark Whittemore, one of the leading Probate and Tax attorneys in the State - partner in the firm of Hersburg, Pettin-gill and Strong and we submit it with the recommendation of the State Bar Association that you enact this Bill.

I have a rather extensive detailed prepared statement which I do not intend to read but will submit it in duplicate for your records at the Library.

Sen. Jackson: That is very good, I am very happy to hear that.

Mr. Berall: The third Bill, and I will be very brief on this. Unfortunately it does not have a Bill number - at least I have not been able to find it. With your permission, Mr. Chairman, I would like to speak to it to save myself the trouble of having to come back to another Hearing. It is an act concerning the right of a foreign corporation to be fiduciary in a Connecticut estate.

The problem that leads to this Act being drafted and, incidently, the Act now has endorsement by the Board of Governors of the Bar Association. At the time I initially communicated with the Chairman of this Committee about this Bill, it had been endorsed only by a section of the Bar Association and now has received full endorsement.

The problem is that in Section 45-191 of the General Statutes, a Foreign Trust Company can be the executor of a Connecticut decedent's estate and this was amended in the last Session of the Legislature but to provide this, but the Legislature did not go quite as far as it should have. It did not permit a Foreign Corporation to be an administrator of a Connecticut decedent's estate.

Now, why does this cause a problem? Because, Mr. Chairman, if you have a State, such as New York - which will allow a Connecticut Trust Company to go into New York and be appointed as a fiduciary in New York in whatever capacity a New York Trust Company can come into Connecticut and receive such an appointment - then your Connecticut Bank and Trust Company, United Bank and Trust Company, Hartford National, what have you, can go into New York and serve as executors of New York estates. But they can not serve as administrators of New York estates unless we give the comparable provision in our statutes, so that a New York Trust Company could serve as an administrator in Connecticut.

I have a specific problem and this is why this Bill has been introduced. I have a client who is ineligible along with all of his relatives who are the heirs of a New York estate to serve as administrator because of peculiarities of New York Law. My client is a Connecticut resident. All of his other relative are residents of West Germany or Hungary.

Connecticut varies slightly in our Bill where the draftsmen felt that Connecticut Law needed perhaps a little bit more clarification. Along with that, the Bar Association would like to endorse H. B. #1157 which has to do with intestate succession.

H.B. #1157 - AN ACT CONCERNING INTESTATE SUCCESSION.

There are two Bills on this matter, Bill #130 and #1157. It is the opinion of the Probate Committee that the H. B. #1157 gives perhaps a more clearer statement to the fact that disclaimed property partial intestate would pass in a clear manner to the surviving spouse and for that reason, the Board of Governors recommended approval of Bill #1157 but did not approve the passage of Bill #130.

S.B. #130 - AN ACT CONCERNING THE DISTRIBUTION OF INTESTATE ESTATES.

There is one other Bill while I am here that I would like to speak in favor of and that is Bill #823 which is the act concerning technical amendments to the fiduciary powers act which Mr. Berall spoke on and which received the endorsement of the Probate Section of the Connecticut Bar Association. Thank you.

S.B. #823 - AN ACT CONCERNING TECHNICAL AMENDMENTS TO THE FIDUCIARY POWERS ACT.

Sen. Jackson: Thank you very much. Mr. Marsh to be followed by Attorney Scoler.

Mr. Marsh: Good morning, Mr. Chairman, Members of the Committee. Lee Marsh from Old Lyme, Connecticut. I am here to speak on H.B. #5542 introduced by Representative Berberich.

H.B. #5542 - AN ACT CONCERNING THE ALLOWANCE FOR SUPPORT OF SURVIVING SPOUSE AND FAMILY FROM A DECEDENT'S ESTATE.

The purpose of this Bill is to bring Connecticut the Connecticut Statute into line with the regulations of the Internal Revenue Service. In a recent estate, which I settled, the attempt was made to add the amount of the widow's allowance to the marital deduction and the Internal Revenue Service said that Connecticut's Law was not such that this could be done. I did go to the trouble of reviewing our law and the law in several states where it can be done and found that there was a difference in that Connecticut permits the Probate Court to determine the allowance whereas in the States where the allowance is permitted, the statute itself directs that the widow shall have such an allowance - a widow and other members of the family.

Now this matter was considered in the Federal Court in connection with an estate settled in New Haven and I think the difficulty arose because in the footnote to the decision in that case, it refers to an amendment to our Statute passed in 1961 which the Court there assumed apparently would qualify this widow's allowance to be added to the marital deduction, but when the matter was later considered by the Internal Revenue Service,

May 20, 1971

Page 15

Operation of a Vehicle.

SENATOR JACKSON:

Mr. President, I move acceptance of the joint committee's favorable report and passage of the bill. This adds parking cars for ten or more to our present statutes 14-225 concerning evasion of responsibility. At the present time, you can only be convicted of evading responsibility if the offense occurs on a public highway or street and this will add the large parking lots at least those of ten to the areas where this offense can be convicted for committing this offense.

THE CHAIR:

Question is on passage. Will you remark further? If not, all those in favor signify by saying, "aye". Opposed, "nay". The bill is passed.

THE CLERK:

CAL. NO. 791. Favorable report of the joint committee on Judiciary. Sub-stitute Senate Bill 823. An Act Concerning Technical Amendments to the Fidiciary Powers Act.

THE CHAIR:

Senator Caldwell previously moved for suspension of the rules in the case of any single starred items. If there is no objection, suspension is ordered.

SENATOR JACKSON:

Mr. President, I move acceptance of the joint committee's favorable report and passage of the bill. Clerk has an amendment.

Basically the amendment, deletes section 27 of the bill.

THE CLERK:

Clerk is not able to put his hand on the amendment at this time, Senator.

May 24, 1971

15

THE CLERK:

Please turn to Page 12, Calendar No. 791, File No. 1130. Favorable report of Joint Standing Committee on Judiciary. Sub. Senate Bill 823. An Act Concerning Technical Amendments to the Fiduciary Powers Act.

THE CHAIR:

Senator Jackson.

SENATOR JACKSON:

Mr. President. I move acceptance of the Joint Committee's favorable report and passage of the bill. The Clerk has an amendment and I would ask him to please read the amendment.

THE CLERK:

Senate Amendment A is offered by Senator Jackson.

Strike out subsection (27) of section 25 and renumber subsection (28).
(27).

THE CHAIR:

Senator Jackson.

SENATOR JACKSON:

Mr. President. I move adoption of the amendment. Section 27 serves no useful purpose as it is limited to discretionary distributions by a trustee. If The trustee has the discretion to the amount of distribution he can avoid unfairness by increasing or decreasing the amount distributed after taking into account the operation of the throwback rules. Thus, Section 27 would be unnecessary. I move for the adoption of the amendment.

THE CHAIR:

The question is on adoption of the amendment. Will you remark further?

THE CHAIR:

I will take your word for it Senator that you described the situation. If there are no objections, all those in favor of adopting the amendment, signify by saying aye. Opposed nay. The ayes have it. You may proceed with the bill as amended. Ruled technical.

SENATOR JACKSON:

Mr. President the bill itself contains a number of minor technical amendments to the fiduciary powers act. These are designed to correct typographical and other minor errors and make necessary revisions to the law in the light of Federal Tax Law changes passed during 1969 and 1970. Then in addition it will add twelve additional optional provisions so that there will be 27 instead of 15 additional powers. It should be stressed that the use of Fiduciary Powers Act should be optional and the use of any at all of the present powers or the proposed additional powers requires specific reference to any powers being used and a general reference to the act merely incorporates the basic powers.

THE CHAIR:

Question on passage of the bill as amended. Will you remark further? If not, all those in favor of passage, signify by saying aye. Opposed nay. The ayes have it. The bill is passed.

THE CLERK:

Calendar Number 795. File No. 900. Favorable report of Joint Standing Committee on Banks and Regulated Activities. House Bill 5194. An Act Concerning Merger of Credit Unions.

THE CHAIR:

Senator Buckley.

THE CLERK:

The following bills were passed on a Consent Motion by Senator Caldwell with the approval of the Minority Leader;

GOVERNMENT ADMINISTRATION AND POLICY: Substitute House Bill 8682. House Bill 5854. JUDICIARY: Substitute House Bill 7495. House Bill 5662; Substitute House Bill 851. GOVERNMENT ADMINISTRATION AND POLICY: Senate Bill 652; Senate Bill 1145; JUDICIARY Senate Bill 1788; Senate Bill 805; Substitute Senate Bill 1093; Substitute Senate Bill 868; Substitute Senate Bill 1441; BANKS AND REGULATED ACTIVITIES: Substitute Senate Bill 467; GOVERNMENT ADMINISTRATION AND POLICY: Senate Bill 1833; JUDICIARY Substitute Senate Bill 1296; TRANSPORTATION: Senate Bill 1115; Substitute Senate Bill 255; ELECTIONS: Substitute Senate Bill 508; JUDICIARY: Substitute Senate Bill 1022; Substitute Senate Bill 1543; TRANSPORTATION: Substitute Senate Bill 1807; JUDICIARY Substitute Senate Bill 550; substitute senate bill 823; JUDICIARY: Senate Bill 898. TRANSPORTATION Substitute Senate Bill 807; FINANCE: Substitute Senate Bill 1576; Senate Bill 1570; Substitute Senate Bill 1572; Substitute Senate Bill 1549; Substitute Senate Bill 1549; Substitute Senate Bill 1625; Substitute Senate Bill 1045; TRANSPORTATION: Substitute Senate Bill 815; EDUCATION: Substitute Senate Bill 1840; GOVERNMENT ADMINISTRATION AND POLICY: House Bill 6870; House Bill 9249; INSURANCE AND REAL ESTATE: House Bill 6995; GOVERNMENT ADMINISTRATION AND POLICY: House Bill 9242.

THE CHAIR:

Is there any objection to the passage of the bills, as called by the Clerk? If not, Senator Fauliso, do you move the passage of all said bills?

Tuesday, June 1, 1971

117.

saying AYE. Opposed. THE AMENDMENT IS ADOPTED. The Chair rules it is technical. The question is on acceptance and passage of the bill as amended. Will you remark further. The gentleman from the 100th.

MR. ORCUTT: (100th)

Mr. Speaker, I rise to oppose this bill. You have heard a lot of talk on this floor over the years about statewide zoning. I submit that this is a form of zoning where a state law tends to restrict local autonomy on this matter. So in order to be consistent, I am going to vote against this bill because I think this is a matter that can be perfectly well handled at the local level.

DEPUTY SPEAKER:

Will you remark further on the bill as amended. If not, all those in favor will indicate by saying AYE. Opposed.

THE BILL IS AMENDED AND PASSED.

THE CLERK:

Cal. 1238, Sub. for S.B. 823. AN ACT CONCERNING TECHNICAL AMENDMENTS TO THE FIDUCIARY POWERS ACT, as amended by Senate Amendment Schedule "A". File 1302.

THE SPEAKER: (William R. Ratchford)

The gentleman from the 87th, Rep. Healey.

MR. HEALEY: (87th)

Mr. Speaker, I move acceptance of the Joint Committee's favorable report and passage of the bill in concurrence with the Senate.

Tuesday, June 1, 1971

118.

THE SPEAKER:

Will you remark.

MR. HEALEY: (87th)

Mr. Speaker, the Clerk does have the Senate Amendment Schedule "A". I suggest that the reading of it be waived insofar as it is incorporated in the file.

THE SPEAKER:

Is there objection to waiving the reading. Hearing none would the gentleman outline the amendment.

MR. HEALEY: (87th)

Mr. Speaker, this may sound rather peculiar but I am assured by the Legislative Commissioners' Office that this is the easiest way to accomplish the purpose. In the Senate a request was made by the bankers that this bill, one certain section be eliminated insofar as it could create very substantial income tax problems in the situation where a series of distributions were made from a trust dependent upon various people attaining various agents. The particular section which they wish deleted would have just had tremendous income tax consequence from the first person to receive a partial distribution because of the new throw back rule. Unfortunately, in discussing this with us, they gave us the wrong section number. I am assured by the Legislative Commissioners' Office, the easiest way to handle this is for the House to adopt Senate Amendment Schedule A so that we are in conformity with the action of the Senate and then there will be a further amendment on my part which will restore

roc

Tuesday, June 1, 1971

119.

the section which was erroneously knocked out and knock out the section that was erroneously left in and therefore, I move adoption of Senate Amendment Schedule "A".

THE SPEAKER:

Further remarks on Senate "A". If not, all those in favor will indicate by saying AYE. Opposed. SENATE A IS ADOPTED. It is ruled technical. The gentleman from the 87th.

MR. HEALEY: (87th)

Mr. Speaker, I now, the Clerk has another Amendment.

THE SPEAKER:

We will call House Amendment Schedule "A". Would the gentleman care to outline it.

MR. HEALEY: (87th)

Yes, Mr. Speaker, this restores to File 1302, Section 26 of the original file 1130 and thereby corrects the error which was made in the Senate in repealing the wrong section. As I have already remarked, if the original section 27 which is repealed by this, the original section 26 is not restored, we can have this very serious income tax problem under the throw-back rule and I move the adoption of House Amendment Schedule A.

THE SPEAKER:

Question is on adoption of House A. Will you remark. If not, all those in favor indicate by saying AYE. Opposed. HOUSE A IS ADOPTED. It is ruled technical. The gentleman from the 87th.

MR. HEALEY: (87th)

Mr. Speaker, I now move for the passage of the bill

roc

Tuesday, June 1, 1971

120.

as amended by Senate "A" and House "A". I should remark that most of the contents of this bill are to correct typographical errors which crept in in 1969 and also to conform the various powers to certain Federal Tax Laws changes passed during 1969 and 1970. I should emphasize to the members of the House of the utilization of the powers contained in this Act is entirely a matter of option on the part of the distributor of the trust or will which wishes to adopt these and accordingly there is no mandate. It is simply a matter of convenience. I move the bill.

THE SPEAKER:

Question is on adoption of the bill as amended by Senate A and House A. Will you remark further. If not, all those in favor indicate by saying AYE. Opposed. THE BILL IS PASSED.

THE CLERK:

Page 14, Cal. 1240, Sub. for Senate Bill 879. AN ACT CONCERNING INVESTIGATION OF RATES OF A PUBLIC SERVICE CORPORATION BY THE PUBLIC UTILITIES COMMISSION.

THE SPEAKER:

The gentleman from the 87th.

MR. HEALEY: (87th)

I move acceptance of the Joint Committee's favorable report and passage of the bill in concurrence with the Senate.

THE SPEAKER:

Will you remark.