SB 821 PA 820 (Vetoed) 1971

Judiciary 635, 648-649, 681-686 (9)

House 5900 (1)

Senate 2966 (1)

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JOINT
STANDING
COMMITTEE
HEARINGS

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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

I might say that the Squad is composed of dedicated policemen who literally risk their lives daily for you and I to protect us against this very dangerous evil. So, in conclusion, I would solicit your support for this Bill. Thank you very much, Mr. Chairman and Members of the Committee.

Sen. Jackson: Mr. Kozloski to be followed by E. J. Marsh. I would point out that you are talking of very technical points, it would be very helpful to the Committee if you can give us a statement and be sort of as brief as you can in your spoken comments. So if you can, phrasing things down for us, we would appreciate it.

Mr. Kozloski: Very good, I plan to be brief, Mr. Chairman. I speak in favor of S. B. #821.

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

I am Walter Kozloski, Secretary-Treasurer of the Estates and Probate Section of the Connecticut Bar Association. The Probate Section recommended indorsement to the Board of Governors of this Bill and that was received.

This Bill attempts to give the Connecticut residents equality with residents of other states insofar as savings and gift taxes and Federal estate taxes for both non-testamentary and testamentary transfers. Unfortunately, under the present situation in Connecticut, we have no case law and the Statute Law is very, very brief. It is clear that the disclaimer of property received under a will can be made but it is also clear that property under intestate distributions cannot be disclaimed.

This Bill would provide for a disclaimer of both intestate and testate and inter vivos gifts. As I said before the main purpose is to give equality to the residents of the State of Connecticut before the Gift and the State Tax Division of the Internal Revenue. Congress has recently expanded the benefits which can be derived by the use of disclaimers and the reverse mar reduction situation - it's Section 20-56e of the 1954 Revenure Code.

I had a case several years ago and we went up to appellant in New Haven and they said they would not permit the deduction because Connecticut law was unclear, they would not accept necessarily a Probate Court decision nor a Superior Court decision to back our position. They wanted a decision of the Connecticut Supreme Court. As a result of that, the clients decided to pay the tax of some $29,000 rather than obtain a case before - a favorable decision from the Connecticut Supreme Court.

I have written statements of the testimony which I would like to submit and I think that unless there is some specific questions, it is really quite a detailed Bill. It covers all of the aspects of disclaimers under the Uniform Disclaimer Act of the American Bar Association has sponsored.

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,

CONNECTICUT STATE BAR ASSOCIATION'S OFFICIAL POSITION FAVORING S.B. 821, CONCERNING THE DISCLAIMER OF PROPERTY AT THE JUDICIARY COMMITTEE MEETING ON MARCH 4, 1971

Testimony of Walter B. Kozloski, Esq., Secretary-Treasurer of the Estates and Probate Section, and Frank S. Berall, Chairman of the Tax Section of the Connecticut Bar Association. (Given by direction of the Board of Governors of the Connecticut Bar Association.)

AN ACT CONCERNING THE DISCLAIMER OF PROPERTY

SB 821, an Act concerning the disclaimer of property, is designed to fill the void caused by the absence of any clear law in Connecticut dealing with disclaimers.

A disclaimer, also known as a renunciation, is a complete and unqualified refusal to accept property, benefits therefrom, or an interest therein. The reason why a person would wish to disclaim a property interest is because that person would rather the property go to someone else, usually a close relative. The main motivation here is the saving of federal estate taxes. The property interest, if not disclaimed, would otherwise pass under a will, an inter vivos trust, by intestacy, by payment of insurance proceeds, by survivorship, by an agreement contained in a contract or under a power of appointment. The effect of the proposed Act on the Connecticut Succession Tax is minimal since that tax will be imposed upon the ultimate recipients, as though the disclaimed property had initially passed to them.

Under common law principles, presently applicable to disclaimer in Connecticut, it is possible to disclaim property passing by will, under a trust, or in various other ways, but no disclaimer

can be validly made of intestate property. Furthermore, the procedure for making a valid disclaimer in Connecticut is not at all clear. Although disclaimers are authorized by the federal estate tax law, the Internal Revenue Code leaves it to the law of each particular state to determine whether or not they are valid.

In the last few years, there has been a national movement to encourage the adoption of state legislation in all jurisdictions to clarify the law of disclaimer and permit the disclaimer of intestate property. The Commissioners on Uniform State Laws have proposed a Model Disclaimer Act, this act has been endorsed by a Committee of the Real Property, Probate and Trust Section of the American Bar Association and variations of it have been adopted in at least fourteen states. In fact, the Model Act was drafted subsequent to the enactment of some of these state statutes and embodies some of their experience in its provisions.

The proposed disclaimer statute for Connecticut is based on the Model Act, with some variations to meet certain peculiar requirements of local law and experience in this state. It has been drafted by attorneys Walter B. Kozloski, Guy R. DeFrancis and Frank S. Berall and has been critically examined by the Executive Committee of the Estates and Probate Section of the Connecticut Bar Association.

Both the Tax Section and the Estates and Probate Section recommended that the Bar Association endorse disclaimer legislation. Inasmuch as the bill had not been completed in final form at the time of endorsement of it by the Board of Governors, endorsement was given in principle.

It should be borne in mind that the common law of disclaimer had been developed over a period of several centuries, first in the English and then in the American Courts. In the case of intestacy, the rule has always been that an heir is not permitted to disclaim an intestate succession, but if the owner of property left a will, he could not force title on an unwilling beneficiary; accordingly, a beneficiary can renounce a legacy or devise. The latter principle has been applied to property passing under instruments other than wills, but the law is not entirely clear in this area.

Congress has encouraged the use of disclaimers in post-mortem estate planning by making it possible to increase or decrease the amount available for the federal estate tax marital deduction, through the use of disclaimer. But these and other favorable tax results permitted by the Internal Revenue Code, to be fully effective, require state laws that not only permit disclaimers under testamentary and non-testamentary instruments, but also disclaimers of intestacies. The laws must prescribe the mechanics of accomplishing disclaimers, the devolution of disclaimed property and the effects on creditors and state death tax.

All of the commentators who have written articles in the field of disclaimer in the last few years generally agree that enactment of state statutes is the best way to achieve a workable and effective law governing disclaimers.

These articles are:

Finnell, Disclaimers and the Marital Deduction: A Need for adequate state legislation, 21 U.Fla. L.R. 1 (1968); Report of Special Committee on Disclaimer Legislation, Disclaimer of Testamentary and Non-Testamentary Dispositions - Suggestions for a Model Act, 3 Real Prop. Prob. & Tr. J. 131 (1968); Report of Sub-Committee of Committee

on Estate and Tax Planning, Post-Mortem Estate Planning, 4 Real Prop. Prob. & Tr. J. 209 (1969); Final Report of Special Committee on Disclaimer Legislation, approved by the Council of the Real Property, Probate and Trust Section, Disclaimer of Testamentary and Non-Testamentary Dispositions - Suggestions for Model Acts, 4 Real Prop. Prob. & Tr. J. 658 (1969); Heckerling, Estate Planning Techniques; Disclaimer - A Useful Post-mortem Estate Planning Tool, 1 The Tax Advisor 182 (1970); and Berall, Using Disclaimers Effectively; An Analysis of a Useful Post-mortem Tax Planning Tool, 34 J. Tax. 92 (1971).

The proposed Connecticut statute, based upon the suggestions of these authorities, is needed for the reasons set forth below, which also summarize what the statute does:

1. Abolish the distinction between testate and intestate succession as regards the right to disclaim; and permit an heir in the case of intestacy to reject an inheritance the same as a legatee or devisee under testate succession and with like consequences;

2. Fix a specific time for making disclaimers and eliminate the indefinite rule of "reasonable time"; since for deaths after 1970 the period for filing the federal estate tax return is nine months after death, the nine month period is being used as the criteria for a reasonable time in Connecticut because to have a longer period would result in the disclaimer being invalid for federal estate tax purposes;

3. Provide mechanics and procedures for making disclaimers;

4. Make it clear that under common law, partial disclaimers have always been valid (based upon a study of cases in other leading jurisdictions, such as New York, since Connecticut has no cases on the validity of partial disclaimer);

5. Authorize the disclaimer of future interests and specify the time and procedure;

6. Provide for the devolution of property disclaimed and resolve the uncertainty as whether such property passes as intestate property or as property which lapses by reason of death before the testator;

7. Declare the effect of various acts and conduct before the expiration of the period for disclaiming transfers under wills or by intestacy;

8. Authorize the disclaimer of property passing under a power of appointment as well as disclaimer power itself.

For a specific example of how disclaimers can be used in post-mortem estate planning, suppose that a father leaves one-half of his estate to his son and the other half to his daughter, but the son has a large estate of his own and would like not to augment it, but would prefer to add to that of his four children. By using a disclaimer, he could reject the half of his father's estate passing to him so that it would pass as if he had predeceased his father, resulting in his four children succeeding to his interest. In this manner, the son would shift his legacy to his children and avoid a substantial tax that would occur if this property were included in his estate at his death.

Another example of the use of disclaimers is where a husband leaves his wife a 50% share of his adjusted gross estate qualifying for the maximum marital deduction. But the wife has a large separate estate and the bequest would merely result in higher income taxes while she lived and higher combined death taxes on both her and her husband's estate, following her death. By making a partial disclaimer, she can shift the excess to the non-marital share.

An opposite illustration of how disclaimer can be used to augment the marital deduction would be where a wife receives only an intestate share, but her children wish either to give her the entire estate or at least enough to obtain the maximum marital deduction. Under these circumstances, the children could disclaim in favor of their mother, assuming that the proposed statute is in force.

A final example would be where a widowed father leaves his estate to a spinster daughter who lived with him all his life, excluding his son who married and left home. The daughter does not feel right about the arrangement, regardless of tax consequences, and wants to share the estate with her brother. She could disclaim half of the estate and achieve equalization, without gift tax problems.

With the exception of a disclaimer of an intestacy, disclaimer could be attempted even without the proposed bill legislation in all the above examples. But its use would be fraught with doubt and danger, due to the total lack of clarity in Connecticut (and other states without disclaimer legislation), as to the mechanics and consequence of disclaimer. In view of all the circumstances, the passage of the proposed disclaimer act is strongly recommended. It will provide a valuable tool needed to help increase the benefits going to the family of deceased people.

Respectfully submitted,

CONNECTICUT STATE BAR ASSOCIATION

By Walter B. Kozloski

Walter B. Kozloski, Esq.
Secy.-Treas., Estates & Probate Section

Frank S. Berall

Frank S. Berall, Esq.
Chairman, Tax Section

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CONNECTICUT
GENERAL ASSEMBLY
HOUSE

PROCEEDINGS
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of the Parole Process, File No. 1650; Calendar No. 1629, substitute for S.B. No. 0821, An Act Concerning the Disclaimer of Property, File No. 1604; Calendar No. 1630, substitute for S.B. No. 0839, An Act Concerning the Escheat of Ownership Interests in Business Associations, File No. 1693; Mr. Speaker, in as much as this is the last consent calendar we'll have the privilege to bring before the House, I would now yield to Rep. Gilles from Middletown. djh

MR. GILLIES (75th):

Mr. Speaker, I move the following items be placed on consent, Calendar No. 1631, substitute for S.B. No. 0910, File No. 1590, An Act Concerning Rates Charged by Municipalities; Calendar No. 1632, subsitute for S.B. No. 0988, An Act Concerning Persons Exempt from Registration as Professional Engineers and Land Surveyors, File No. 1054; Calendar No. 1633, substitute for S.B. No. 1017, An Act Concerning Full Disclosure of Property, Wages or Indebtedness on all Support Cases to the Circuit Court Family Relations Division, File No. 1605; Calendar No. 1636, substitute for S.B. No. 1187, An Act Concerning the Admissions, Dues and Cabaret Tax, File No. 1645; Calendar No. 1644, S.B. No. 1787, An Act Concerning Parole or Conditional Discharge of Persons to a Residential Community Center, File No. 1692; Calendar No. 1645, S.B. No. 1828, An Act Concerning Medical Internships, File No. 966; Calendar No. 1646, S.B. No. 1836, An Act Extending the Time for Filing Biennial Reports of the Norwalk Town Union of the King's Daughters and Sons, Incorporated, File No. 1714. I move that these items be passed on the consent calendar.

THE SPEAKER:

Is there objection to any of these items being adopted on the consent calendar? If not, the question is on acceptance and passage. All those in favor indicate by saying aye. Opposed? The bills indicated are PASSED.

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SENATE

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SENATOR CALDWELL:

On page 1, Cal. 1134, 568; on page 5, C l. 1047; on page 6, Cal. 1067; on page 7, Cal. 1110, 1116; on page 8, Cal. 1131, 1133; on page 11, Cal. 1159 page 12, Cal. 1160, 1164, 1165, 1168, 1169; I might point out that that Calendar is currently marked Banks and should be the Liquor Committee; on page 13, Cal. 1170, 1171, 1179; page 14, Cal. 1182; on page 17, Cal. 1208; on page 23, Cal. 919, on page 26, Cal. 327; on page 28, Cal 491; on page 30 Cal. 664; on page 31, Cal. 733; on page 14, I omitted one, that we might take up, Mr. President, and that is Cal. 1181. S[illegible]1,SB1696,SB910,SB821, SB1017,SB808,SB1187,SB1837,SB584,SB889,SB1787,SB592,SB890,SB337

THE CHAIR: SB1836,HB5190,SB1598,SB31,SB1828,SB988,SB1139

Is there any objection to the motions recommended by the Majority Leader for suspension of the rules on any single starred or no starred items and for the passage of all bills, as described by him? If not, the motions are granted, said bills are declared passed.

SENATOR CALDWELL:

Mr. President, I had a request from the Chairman of the General Law Committee, to remove one of those that I had placed on the Consent Motion, so I withdraw my motion with respect to that particular matter, it's on page 28, top of the page, Cal. No. 491.

THE CHAIR:

I don't think it's necessary to go through the proceeding of reconsideration. The motion is to withdraw the approval of that bill from the consnt list, if there is no objection. So ordered. That bill is not passed.

SENATOR CALDWELL:

Now, may we take up the following matters? On page 2, Cal. 665, recomit 765, take up 788; on page 3, take up Cal. 851, 858, 865, 925, and 929; on