

Legislative History for Connecticut Act

HB9237

PA 431 ~~PA~~
or

1973

Senate: Consent. 3640

1

House: P. 5834-5842

9

Judiciary: P. 696-697, 702-705

6

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CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1973

VOL. 16
PART 8
3473-4003

Tuesday, May 15, 1973

168.

recommit will be renewed at that time. In other words, we will have a thorough inquiry into this matter tomorrow. Senator Page.

roc

SENATOR PAGE:

I will agree to that, Mr. President.

THE CHAIR:

It is thoroughly understood that we will thoroughly go into this tomorrow. We will not press it tonight in view of the other business we have. There being no objection, so ordered.

SENATOR ROME:

I believe that takes care of my motion. I would ask that we now vote on the Consent Calendar. Bills passed on the Consent Calendar HB-8148, SB-2209, SJR-22, SB-2423, SB-2142, SB-2037, SB-2084, HB-8203, SB-1655, HB-8088, HB-8132, HB-8724, HB-8232, HB-8961, HB-9237, HB-9121, HB-8585, HB-8612, HB-8836, HB-8246, HB-9370, HB-9382, HB-8822, HB-8663, HB-8668.

Is there any objection or further technicality or recommendation to be made? Hearing none, all in favor signify by saying Aye to Senator Rome's motion on the Consent Calendar. Opposed Nay. The Ayes have it. THE MATTERS THEREON ARE DECLARED PASSED.

SENATOR ROME:

Mr. President, I would like to announce that we will be meeting tomorrow at 1 o'clock. We originally intended to meet ladies and gentlemen of the Senate at 10 o'clock to take care of our business. I would hope that meeting at one o'clock would allow us enough time to do our homework in advance so there be no question, it is not our intent to recess at any time during the day tomorrow but to complete all the items. It has been agreed that there will be no objection to suspension for con-

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5812-6126

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GUEST SPEAKER GREEN:

hw

The lady from the 16th.

REP. CONNOLLY: (16th)

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

GUEST SPEAKER GREEN:

Will you remark.

REP. CONNOLLY: (16th)

Yes. The Clerk has an amendment.

GUEST SPEAKER GREEN:

Will the Clerk please read the amendment.

THE CLERK:

Clerk has two amendments. Is there any particular order you prefer them taken up. One is File 86 is LCO 8628. The other is 7655.

REP. CONNOLLY: (16th)

I'm sorry. I'm just informed that this amendment is not correct. Could we pass this matter temporarily until we clear it.

GUEST SPEAKER GREEN:

The matter will be passed temporarily.

Will the Clerk please return to the Calendar.

THE CLERK:

Cal. No. 703, page 10, File No. 765, Sub. H.B. No. 9237.

AN ACT CONCERNING PREJUDGMENT REMEDIES.

Favorable report of the Committee on Judiciary.

GUEST SPEAKER GREEN:

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The gentleman from the 147th.

hw

REP. BINGHAM: (147th)

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

GUEST SPEAKER GREEN:

Will you remark.

REP. BINGHAM: (147th)

Yes, Madam Speaker. The Clerk has an amendment, has two amendments. LCO No. 7655. May I summarize Madam Speaker.

GUEST SPEAKER GREEN:

You may summarize the amendment.

REP. BINGHAM: (147th)

Madam Speaker, this bill provides that no attachment of property, real or personal, or garnishment of wages, may be made upon the commencement of a civil suit unless detailed procedures set forth in the bill are complied with or unless a defendant in a commercial transaction has executed a waiver.

Now, amendment "A" provides for those actions now pending in the court. The bill itself does not provide for actions pending the court. Amendment "A" merely provides for all the actions in the court at the present time and that amendment has been suggested by the Judiciary.

GUEST SPEAKER GREEN:

The question is on passage of the amendment. Are there any further remarks? If not, all those in favor of accepting House Amendment "A" indicate by saying AYE. Those opposed.

The amendment is adopted.

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REP. BINGHAM: (147th)

hw

Clerk is in possession of House Amendment "B" -----

GUEST SPEAKER GREEN:

Please, sir, I'll rule the amendment technical. You may proceed.

REP. BINGHAM: (147th)

Sorry Madam. Clerk is in possession of another amendment.

THE CLERK:

House Amendment Schedule "B" offered by Rep. Bingham. This is LCO No. 8628.

GUEST SPEAKER GREEN:

Do you wish the Clerk to read the amendment or do you wish to summarize?

REP. BINGHAM: (147th)

I request permission to summarize.

GUEST SPEAKER GREEN:

You may have permission.

REP. BINGHAM: (147th)

This amendment has been suggested by the chief court administrator and clerks of the court. What it does essentially is to provide for a proposed complaint and proposed application unsigned and the reason is that if a person is served with the process which is provided for in the bill, it will be clear that an action has not yet been started. It will be a proposed action. The clerks felt and the chief court administrator felt that this would be fairer procedure to those people being served.

I move the amendment.

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GUEST SPEAKER GREEN:

hw

Any questions on the adoption of Amendment "B"? All those in favor say AYE. Opposed. Amendment "B" is adopted. I rule Amendment "B" technical. You may proceed.

REP. BINGHAM: (147th)

Thank you Madam Speaker. Madam Speaker, this bill rises out of a series of cases. One in the District Court of Connecticut entitled Lynch against The Household Finance Corporation and we have other Supreme Court cases which indicate the direction in which the federal judiciary is moving. Those cases are (inaudible) against Chevin 407 US and the Sniadek case in 395 US.

Essentially these cases hold and the rule of law was set forth in the Lynch case that before attachment or any interest in property may be affected there must be notice to the debtor and there must be a provision for a hearing. This bill has attempted to provide for these constitutional requirements and still protect the creditors in the State of Connecticut.

A commercial transaction and there are definitions in the bill. The bill was needed to prevent an abuse of process where the property of the defendant or his wages are attached at the commencement of suit and remains under attachment until final judgment.

There is a procedure provided in the act for obtaining attachment or garnishment upon application to court. Notice of the application for an attachment or garnishment prior to the commence under the suit must be given to the defendant and after the hearing and after the court finds that there is probable

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cause that the plaintiff or the creditor will prevail, then there is an order given for the attachment of the property.

As in other states there are certain exceptions to the rule. This is the great number of cases which will be handled but there are certain exceptions to the rule. You do not need to notify the defendant in certain cases and those cases are similar to what we call "provisional remedies" in other states, such as the State of New York and the State of New Jersey.

First of all, if the defendant doesn't write or reside in Connecticut or have an office or place of business in Connecticut, or has hidden himself or will hide himself so that he cannot be served with process, or is about to remove himself or his property, or is fraudently ready to dispose of his property, or has fraudently or hidden any money. In those cases, the court cases seem to indicate in the Lynch case, the (inaudible) case and all those cases indicate that no notice is required constitutionally because by the defendant's conduct he's waived his rights to constitutional notice.

There is a further exception that in any commercial transaction in which the defendant has waived his right to a notice, then he has -- you do not need to make an application to the court.

Madam Speaker, I feel that this bill is an excellently drafted bill. It complies with the constitutional mandates of the State of Connecticut in protecting both the creditors and the debtors. I urge its passage.

GUEST SPEAKER GREEN:

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Any further remarks? If not, will all members take their hw seats. The aisles be cleared. Staff members return to the well. The Clerk announce an outside call for a roll call vote, please.

The gentleman from the 29th.

REP. KABLIK: (29th)

Madam Speaker, I rise to indicate that I realize that some bill in this fashion is needed because of the (inaudible) case law that the Chairman of the Judiciary has cited. However I think it does go quite far and I would submit to the House that everything has two sides and we can be for the consumer to the point that we're really doing a severe disservice to the business man and I feel that under this law coupled with all of the other developments in terms of removing holder in due course, defenses, (Tape #4) and so forth which I agree with, he is left with precious little when he dealing with someone who intentionally wants to make a practice of avoiding his debts and I realize it's going to pass. It's going to pass overwhelmingly but I think we ought to at least note for the record what we're doing by this bill to the business man.

GUEST SPEAKER GREEN:

Will you remark further. If not, the question is on --- the lady from the 102nd.

REP. CLARK: (102nd)

Madam Speaker, I'd just like to point out for the record that I am handicapped because the transcript of the hearing before the Judiciary Committee was not available to me and I know that there was testimony in opposition to this bill that was

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presented at that hearing by an attorney in my town and I have not been able to catch up with him to have him repeat it for me. I know that he feels that it's a bad bill and I think that we should have these transcripts of the hearing available to us before these measures come to the floor. Thank you.

GUEST SPEAKER GREEN:

The gentleman from the 147th.

REP. BINGHAM: (147th)

Yes. If I might answer that. We were cognizant of the fact that transcripts were unavailable and I might add that this bill is not the bill that was before the committee. We have attempted to meet all the objections that those attorneys and those creditors who felt that the bill went too far.

I feel that the bill is four square within the constitutional framework while still recognizing the rights of the creditors. We must understand that this bill goes much further in protecting the rights of creditors than for instance the State of New York does. The State of New York only provides for a provisional remedy in the case of fraud which is very hard to prove, I must admit. However this bill does protect the creditors.

Further, in the case of a commercial transaction where there is a signed contract the debtor then waives his rights and I feel that this bill has answered all the objections of the commercial section of the Connecticut Bar Association, the attorneys who feel in collections have the great weight of them, have agreed that this is the best bill that could be drafted.

GUEST SPEAKER GREEN:

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Will all members take their seats. Gentleman from the 109th.hw
REP. RATCHFORD: (109th)

Madam Speaker, I believe that this is a carefully worked out bill. I think it's necessary for those who are concerned as to its justification or why we find it before us at this time.

There was a federal decision on the whole question of pre-suit attachment and garnishment which I think through a broad interpretation struck from our statutes all Connecticut's law on this subject. It may be subject to appeal but I think it's much better for us to act, act responsibly, lay out procedures for protecting the creditor and the debtor. But most important, to eliminate from current law practice the abuse that can exist where someone simply has the power of attachment regardless of cause and can go out in advance of determining the merits of the suit, and in fact advance of any hearing before a judge and attach a person's assets.

I think that this bill will go a long way toward balancing inequities and toward bringing into the courtroom the question of whether or not someone's assets should be placed under attachment. It's good legislation. It's carefully drafted. I think it will meet the constitutional questions raised in the federal case earlier this year.

GUEST SPEAKER GREEN:

Are there any further remarks? If not, the question is on acceptance and passage of the committee's favorable report on H.B. No. 9237, as amended by Amendment "A", "B".

The machine --- if everybody will take their seats. The

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aisles will be cleared. The machine will be open. The 69th in hw
the affirmative, please. Has everyone voted who wishes to vote?
The machine will be locked. Clerk please take the tally.

THE ASS'T. CLERK:

Total Number Voting.....	125
Necessary for Passage.....	63
Those voting Yea.....	123
Those voting Nay.....	2
Absent and Not Voting.....	26

GUEST SPEAKER GREEN:

The favorable report is accepted and passed as amended by
"A" and "B".

MR. SPEAKER:

The Chair wants to thank the gracious lady from the 69th
for acting as guest speaker.

The Chair would now like to call to the rostrum to act as
guest speaker a gentleman who has served this body for a period
of twelve years, former committee chairman, the gentleman from the
33rd district, the Honorable Raymond Dzialo.

THE CLERK:

Returning to the Calendar. Page 10, Cal. No. 706, your File
No. 769, Sub. for H.B. No. 8668, AN ACT CONCERNING INCREASED RE-
SPONSIBILITY OF PRIVATE EMPLOYMENT AND INFORMATION AGENCIES.

Favorable report of the Committee on Finance.

REP. STEVENS: (119th)

Mr. Speaker, back to the same unpleasurable activity. I
would move that Cal. No. 706 be passed retaining its place on
the Calendar.

JOINT
STANDING
COMMITTEE
HEARINGS

JUDICIARY
PART 2
360-705

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town lines.

We feel that giving people broad arrest powers is dangerous and should be really looked into. I feel that I come from the town of Cromwell a small town we could almost take over the state of Connecticut simply by enforcing all of the laws. There is nothing in the bill about uniformity we have, we don't want to end up having policemen shooting other policemen. We think that the authority is already there. A civilian can make an arrest on a felony. We don't think this should be broadened to anyone especially to misdemeanors. Thank you.

DAVID BEIZER: My name is David Beizer, I represent the Connecticut Bankers Association, I am here this morning to speak on two bills, first committee bill # 9274, AN ACT CONCERNING LIENS ON PROPERTY CONDEMNED AS A NUISANCE. The Connecticut Bankers Association wholeheartedly supports Committee Bill No. 9274. This bill makes a simple change in the law, it provides that property seized and condemned by the state as a nuisance remains subject to any mortgage lien, security interest etc. that was legitimately placed on the property.

In a word, the law as it exists now is intolerable if not unconstitutional, for a user's or equity holder's property which has been seized and condemned by the state has been taken in such a manner as to destroy without compensation any and all lien holder's rights on the property. The lien-holder in these cases (as opposed to user or equity holder) has in no way violated any law or aided or abetted in the violation of law and his property rights should in no way be extinguished or diminished.

The CBA feels this bill would equitably redress this situation and accordingly we support this measure.

The second bill we speak to is 9237, AN ACT CONCERNING PRE-JUDGMENT REMEDIES.

The Connecticut Bankers Association supports the general concepts addressed by bill 9237. Obviously some statutory guidelines have to be established regulating in a constitutionally permissible fashion certain prejudgment remedies. Except for certain definitional problems we believe this bill is generally adequate. We would opine however that the scope of this measure may be overly broad to the extent that it reaches all the assets of individuals in consumer transactions. In other words, perhaps some added protection for the little guy should be inserted - some dollar exemption that would permit the average income or low income individual to maintain his family's minimum subsistence level during the pendency of the lawsuit. No doubt this committee is aware of a similar concern being raised in pending federal legislation in related areas.

The definitional problem we alluded to earlier is contained

in Section 1, subsection (d) which defines "prejudgment remedy". This provision as it stands is unclear and indeed misleading. The use of the words "by way of" on line 32 is unartful and does not indicate whether the four types of process that follow are illustrative or exhaustive of the category intended.

We suggest it would be far clearer to say:

"Prejudgment remedy" means attachment, foreign attachment, garnishment and replevin.

Assuming this definition is clarified and some thought is given to added protection for the small wage-earner, we can support 9237.

MORRIS TYLER: Gentlemen of the Committee and Mr. Chairman, I would simply like to take a moment to add to what Mr. Dixon has told you which a comprehensive overall picture of the situation with respect to the Joint Resolution for an amendment to the Constitution. The bill paving a commission on the Judiciary. HJR-157

I would simply like to add this, that I also being a member of the joint committee and for judicial modernization would urge you strongly that you consider the Joint Resolution for the constitutional amendment and the bill which I don't have the number of I don't know if Mr. Bingham or the committee yet has it, it was to be prepared this morning. Mrs. Brewer said that she, who ever had charge of it in the works. On the other hand I am sure this committee of which all the members here were present when we discussed the bill originally before this committee are familiar with it and I left with the committee a memorandum which I have prepared discussing the bills so I won't burden the committee further with it. Except to point out that the reason we urge you to consider the bill and the Resolution together is that the last provision in the bill and is necessary reads as follows; This act will take effect on the approval of adoption of the proposed amendment to the constitution creating the commission on the judiciary. So that it is really a joint effort if the bill is passed the same time the Joint Resolution is passed, then it would become operative when, as and if the voters pass the amendment to the constitution.

I think it is significant to point out to the committee that in the 21 of the 22 states that have adopted a similar bill and have done it by constitutional amendment there has never been any problem in having the voters pass it by an overwhelming majority. Apparently the people are anxious to see that you set up somebody that can oversee the conduct of those very few judges who let the dignity and importance of the mantle that falls upon them go to their head.

There has never been a turndown by the voters. One state Vermont, apparently felt that they put the bill in

that is used to transport marijuana or to a house in which illegal gambling operations are conducted.

Savings banks as secured lenders frequently have security interests in cars and houses. Our concern is that we not lose our security interest when property is condemned under the statute.

Bill # 9274 would clarify this point by providing that property that is condemned under the statute becomes the property of the state subject to any existing prior liens. We urge you to give the bill a favorable report.

I would like to comment on one other bill if I may? Bill #9360, AN ACT CONCERNING CORRECTIONS ON CERTIFICATES OF ATTACHMENT.

This provides that where an error is made in the certificate of attachment the certificate may be corrected and it further provides that the certificate shall be deemed corrected on the day of the recording of the original certificate. This could present a problem where the error in this certificate is in the name of the land owner. If the name of the land owner were incorrect the certificate would not be indexed under the name of the correct land owner. The title searcher representing the purchaser or prospective lender would not have noticed of the certificate of attachment at the time he did his title search and yet under this bill the certificate could be corrected retroactively and there would then be a lien on the property that would effect the rights of the purchaser for value of the lender.

The bill as presently drafted does require the approval of the judge of the court in which the action is pending, for the correction. We would ask that if youthis bill that you provide specifically that the approval must be given after a hearing held upon notice to intervening lienors or purchasers. So intervening lienors and purchasers would have a right to assert any interest that they may have in not having the certificate be corrected as to have the effect of taking precedence over their purchase or subsequent lien. Thank you.

JOHN H. KRICK: Mr. Chairman, I am a practicing attorney with the firm of Greenfield, Krick, and Jacobsen, in New Haven.

I am here today speaking informally on several capacities because the various organizations did not have an opportunity to review the particular bill which is 9237, which I am speaking generally in favor of but all have expressed favor to the principle of the immediate or as the adoption is as soon as possible, AN ACT CONCERNING PREJUDGMENT REMEDIES, to deal with the problems raised by the casesand to deal effectively with the right of a debtor in a consumer or commercial debtor to have their property to have any substantial interest in property not seized without a mean-

ingful opportunity to be heard. Then the purpose of the bill is certainly one which is received the general favor of the New Haven County Bar Association, Commercial Law League of America, and The Commercial Law and Bankruptcy section of the State Bar Association.

There are several questions which I would like to consider with the committee relative to that content of this bill which in theory as I say support. Number 1, I am slightly concerned with the provision of C of the definition of the which refers to person and says it means and includes individuals, partnerships, associations and corporations. This terminology is then used only as far as I can determine in the bill in section 3, which says any person desiring to secure prejudgment remedies must attach to his writ summons and complaint. Traditionally I am sure the attorneys on the committee are aware of the fact that all prejudgment remedies can only be issued in what we call main process and only be issued by attorneys acting in their capacity as commissioner of Superior Court.

In so far as that definition would lead to some confusion as to the right of a person or individual, corporation, partnership to initiate prejudgment remedies I think that should be clarified in the act.

Number two, I will address myself for a moment to the question raised by Mr. Bizer, from the Connecticut Banking Association, which involves a definition of prejudgment remedy. I should point out to the committee that while Mr. Bizer, thinks that the definition should be clarified in terms as to what it refers to and wishes it to refer specifically to the listed items attachment, foreign attachment, garnishment, and replevin, there is a great body of difference of opinion as to whether some of our other additional remedies that we have not thought of might eventually be construed by a court as being prejudgment remedies. Some of those for instance are mechanics liens, repairman's liens, artificer liens, even perhaps, although it is more remote, tax liens by any municipalities by the state, which in effect can be construed to seizure of property without an opportunity on the part of the debtor to be heard. I think perhaps the definition of prejudgment remedies should include these things certainly. It should also not necessarily exclude other items because these problems may arise when the legislature is not in session and cannot be dealt with. At least the statute would provide a method by which these remedies could be obtained by people who have traditionally had them.

I would also point out to the committee that sections 3, and 4, which deal with methodology, perhaps should be reviewed in some way with the legislative commission's office. The use which made or the plaintiff of the remedy employed need be a problem the remedy be ordered to show cause or the rule to show cause. Traditionally, in Connecticut rule is to show

cause have been used on an injunctive proceeding, have been used in divorce cases where they drag in somebody to throw them in jail or for contempt of court. In order to show cause that has never been used in terms of a prejudgment remedy. Traditionally, the order to show cause by writ summons and complaint are reached simultaneously, after signing by the judge. This act contemplates that. I am afraid I have serious reservations as to its practicality in this area. I think the order to show cause and perhaps the order is used authorizing the issuance of the prejudgment remedy should be separate items and then be issued in due course of business as they traditionally have been.

That is my biggest problem as with section 7 of the act. Section 7 of the act is an effort on the part of the drafters to provide a mechanism for the sustenance of current attachment in the event that they are declared unconstitutional. I am sure that the lawyers here have been fully aware of the fact that our prejudgment management law can be declared unconstitutional in the case of Lynch vs. Household Finance. No other particular remedy has been dealt with at this time. There are three possibilities, one more remote, one very possible, and one also very possible. In this area when we deal with real estate, attachment which is my primary concern, which effects the status of title throughout the state of Connecticut there is a pending case which will ultimately be decided as to whether real estate attachments are or are not unconstitutional.

The court has the course, choice or option as not being unconstitutional and the theory that they did not effect the substantial interest in property.

I personally consider that this be the most remote of the three possibilities. I feel that they evidentially will be declared unconstitutional.

There is law in other states particularly the Margosi case in Massachusetts which had a similar effect on Massachusetts laws as here in Connecticut. Which while it declares the prejudgment remedy to be unconstitutional decline to make the unconstitutionality retrospective. Which would leave the current, which would leave the all attachments made prior to the date of the decision in full force in effect on the basis that they were lawfully made.

The third of course is that the entire statute would be declared unconstitutional which would have the effect of removing all real estate attachments not matured to judgment in the land records. What this act proposes to do is to have a hearing before the court in the pending action with the same burden of probable cause and then have the attachment declared effective from the date of the order of court. This is going to cause in my opinion make clerks of the court, clerks of the various courts land record indices

or keepers of land records indices stamping dates and times of entries or orders on existing attachments . I think will tend to confuse the issuer rather than to clarify it.

With those reservations, Mr. Chairman, we are in favor of this legislation. I think that this is going to be done and we should. Thank you.

MR. PICKETT: Attorney John Pickett of Middletown, Connecticut, representing the Connecticut State Surety Association. This is an organization of bail bondsmen both private and those working for insurance companies speaking in favor of Committee Bill 9350, I notice this is a Democratic Platform bill so I doubt the future is too rosy but never the less I think it is a good idea to have a study committee formed for the bail bond question I know there are other bills pending before this committee regarding this subject matter but if the resurgent is a bail bond review committee such as contained in 9350 is advisable we would support it. Thank you.

REP. BINGHAM: The hearing is declared closed.