

Legislative History for Connecticut Act

HB8144 FAY PA 622 1973
Senate: Consent (4086) 1p.
House: P. 6430-6433 4p.
Judiciary: P. 229-232 * 4p.

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CONNECTICUT
GEN ASSEMBLY
SENATE

PROCEEDINGS
1973
SPEC SESS
JUNE-JULY

VOL 16
PART 9
4004-4434

May 17, 1973

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C.G.C.

We're removing 1193 for what reason I do not know, but we'll discuss it.

THE CHAIR:

1193 we're removing?

SENATOR ROME:

Page 7, bottom.

THE CLERK:

Yes, I had--that bill called?

THE CHAIR:

Call the bill.

SENATOR ROME:

May we act on my motion. We'll call the bill thereafter, please?

THE CHAIR:

The question is on adoption of the Consent Calendar as enumerated by ~~Senator~~ Majority Leader Rome. All those in favor signify by saying Aye. Is there opposition? Hearing none, the Consent Calendar is adopted.

SENATOR LENGE:

Mr. President. Mr. President.

THE CHAIR:

Senator Rome, would you move--we have some Senate bills, some amended bills...

SENATOR ROME:

I move suspension of the rules for immediate transmittal of all the matters passed to the appropriate authority.

Bills passed on the Consent Calendar ~~HB-8864, HB-8266,~~
~~HB-9317, HB-8082, HB-8644, HB-9401, HB-8685, HB-8983,~~
~~SB-2484, HB-8144, HB-9390, HB-8745, HB-8270, HB-8960,~~
~~HB-8957, HB-9355, HB-2483, SB-2158, HB-8841, SB-2244,~~
~~HB-9404, HB-9387, HB-8854, HB-8539, HB-8147, HB-8301,~~
~~SB-2027, HB-8874, SB-1778, HB-8349, HB-8551, SB-2383,~~
~~HB-9387, SB-2432, HB-8746, HB-8229, HB-9157, HB-9153,~~
~~HB-8642, HB-9385, HB-8080, HB-9124, HB-8409, HB-8564,~~
~~HB-8980, HB-8941, HB-8320 and HB-9207.~~

H-143

CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
1973

VOL. 16
PART 13
6387-6886

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Calendar. Is there objection? Without objection, the rules are EFR
suspended, and the pertinent items are transmitted to the Senate.

THE CLERK:

Returning to Page 13 of your Calendar, Calendar No. 867,
File 963, H.B. 8144, an Act concerning the application of the
Doctrine of Comparative Negligence. Favorable report of the Com-
mittee on Judiciary.

DAVID J. SULLIVAN, JR.:

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

MR. SPEAKER:

Question is on acceptance and passage. Will you remark.

DAVID J. SULLIVAN, JR.:

Mr. Speaker, the Clerk has an amendment.

MR. SPEAKER:

The Clerk is in possession of an amendment.

THE CLERK:

Sorry...but the Clerk doesn't seem to have an amendment.

This is on...

DAVID J. SULLIVAN, JR.:

Could it be passed temporarily?

MR. SPEAKER:

Is there objection to passing this item temporarily and
locate the amendment? Without objection, it is so ordered, and
the item will be passed temporarily.

THE CLERK:

Sorry. If we can go back to that bill. Representative

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Sullivan had just put the bill on the Clerk's desk, and it hadn't been filed yet. EFR

DAVID J. SULLIVAN, JR.:

May I have permission to outline the amendment?

MR. SPEAKER:

Is there objection to the gentleman summarizing House Amendment Schedule "A"? Without objection, please proceed with your summary.

DAVID J. SULLIVAN, JR.:

The amendment strikes Section 3 of the bill, which would have provided that this bill, if adopted, would apply to all civil actions pending, and that Section is deleted, so that the bill, if passed, would take effect on October 1st and would only apply to causes of action arising after that time. I move adoption of the amendment, Mr. Speaker.

MR. SPEAKER:

Will you remark further on adoption of House Amendment Schedule "A"? If not, all those in favor of adoption indicate by saying "aye". Those opposed. The amendment's adopted. The Chair will rule the amendment technical. Question is now on adoption of the bill as amended.

DAVID J. SULLIVAN, JR.:

Mr. Speaker, the reason, or the necessity, for this particular piece of legislation arises out of the so-called No-Fault Automobile Bill, which...Automobile Insurance Bill...which was passed here in the 1972 Session. In Section 6 of that bill, as it was amended on the floor, this Doctrine of Comparative Negligence

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was applied to the usages of a private passenger motor vehicle and EFR
to a private passenger motor vehicle only. The Judges of our
Courts have called to our attention a problem that arises out of
this language, and the problem is specifically this. If a private
passenger automobile is involved in an accident with a truck, how
do you properly prepare or request a charge...frame a charge to the
jury, because the Doctrine of Comparative Negligence applies to
the private motor vehicle, but it does not apply to the truck.
Now, what the Doctrine of Comparative Negligence is is simply a
measuring by the jury of whether or not a party is negligent to
such a degree that it should not recover...that is, if a person is
more than 50% negligent in the operation of a motor vehicle or in
any action, he then does not...he is not entitled to recover. If
he is less than 50% negligent, then the jury is entitled to sub-
tract a certain percentage of any damages, because of his negli-
gence. In order to eliminate that problem, it is proposed in this
bill to strike out that section of the No-Fault Law and to set it
up as a separate statute and make it apply to all motor vehicles
and, additionally, to any other type of accident, because it is
felt on the part of the Committee that if negligence is to be
applied in a motor vehicle accident, it ought to be applied in the
same manner to a fall-down in a super market. This is a step for-
ward in our law, because it eliminates the harsh doctrine of con-
tributory negligence where if a person is even one percentile
negligent he is not supposed to recover. This will enable a fair
treatment of anybody who is injured and in Court and is in keeping
with the same principles which motivated the passage of the No-Fault

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Insurance Act. I move passage of the bill.

EFR

MR. SPEAKER:

Will you remark further? If not, if all Members/^{would}please take their seats, non-Members come to the well. All non-Members please come to the well. Question is on acceptance and passage of H.B. 8144, as amended by House Amendment Schedule "A". The machine will be opened. Has everyone voted? The machine will be closed, and the Clerk please take a tally.

THE CLERK:

Total number voting - 141. Necessary for passage - 71. Those voting yea - 141. Those voting nay - none. Those absent and not voting - 10.

MR. SPEAKER:

The Joint Committee's favorable report is accepted, and the bill is passed.

THE CLERK:

Returning to...I believe we're going to Page 16 of the Calendar, Calendar No. 920...14...oh, I'm sorry...just a minute... Calendar No. ...Page 14, Calendar No. 892...I'm sorry...877, File 956, Substitute H.B. 9153, an Act concerning the regulation of private pensionsfunds. Favorable report of the Committee on Appropriations.

CLYDE W. FULLER:

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

MR. SPEAKER:

Question is on acceptance and passage. Will you remark.

JOINT
STANDING
COMMITTEE
HEARINGS

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PART 1
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JUDICIARY

TUESDAY

FEBRUARY 20, 1973

MR. GAUCHER con't: changes in the statutes regarding the Judicial District of Waterbury but the board approves of that bill.

House 8243, AN ACT PROHIBITING DISCRIMINATION AGAINST PERSONS AND INSTITUTIONS REFUSING TO PERFORM CERTAIN ABORTIONAL ACTS. The board approves of such legislation and principles.

Senate Bill 1567, AN ACT CONCERNING WITNESS FEES. The board approves such legislation but recommends that the increase be not as great as legislation suggests. I believe the amount suggested is \$10.00. The board thought in terms of \$2550 against the present subsistence level of fifty cents per day.

Senate Bill 1566, AN ACT CONCERNING THE COMPENSATION OF JURORS. Again the board approves of such legislation but recommends that the increase only up to \$15.00 a day rather than the present suggested \$20.00 a day.

Senate Bill 1616, AN ACT CONCERNING PAYMENT OF POLICE AND FIREMEN WITNESS FEES. The board approves of that legislation.

With regard, I don't have any bill number here, but apparently there are some bills with regard to rental space for the Circuit Court. Proposed Senate Bill 83 and Proposed House Bill 6364, the board approves of such legislation. Feeling that it would bring better circuit court facilities in certain areas of the state where they are greatly deficient at the present time. I believe that touches upon the proposed legislation that other members of the bar have not already talked upon.

REP. BINGHAM: Mr. Gaucher, after 8207, I lost the two numbers between 8207 and 8237.

MR. GAUCHER: 8207 was concerning jurors, the one following that was 8142, concerning the summoning and selection of jurors. One immediately following that one was 8239, Firemen compensation. Any other questions?

REP. BINGHAM: Any questions from the members. Thank you Mr. Gaucher. John Ahern.

JOHN AHERN: Mr. Chairman, members of the committee, my name is John Ahern, I'm counsel for the Insurance Association of Connecticut, which represents Connecticut's domestic insurance companies.

We're apposed to the application of the comparative negligence standard in general liability cases for several reasons. The Committee Bill 8144.

Abandonment of the common law doctrine of contributory negligence would be a significant legislative change. We do not believe there is evidence of the public need for a change of such magnitude.

Second, we suggest that the committee consider the difficulties

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JOHN AHERN con't: involved in the practical application by a jury of a percentage standard of negligence in non-automobile cases. Because of basic differences in the involvement of the parties and in the standard of care to which they are held in most non-motor vehicle liability cases, a jury would have to compute several unrelated elements in order to arrive at a percentage evaluation of the negligence of each party.

We ask also that you consider the likely effects of this proposed change on an already overburdened court system. If virtually all plaintiffs feel that they are entitled to some percentage award, disagreements over the percentage of liability will multiply with a resultant increase in the number of requests for trials. We submit the likelihood of an increase in court congestion.

Furthermore, it is our considered judgment that a comparative negligence standard, since it would permit recovery in more cases and lead to more trials, would result in increased insurance costs.

In conclusion, we submit that extension of the comparative negligence doctrine to all negligence cases would be a legislative change not shown to be socially necessary or desirable, would be unworkable in practice, and would lead to an increased burden on the court system and increased insurance costs.

We respectfully urge you to reject Committee Bill 8144.

On the same subject, Committee Bill 8111, when the legislature adopted an automobile reparations reform program, it was not contemplated that the law would be amended until sufficient time had passed to allow for the compilation of experience data.

As some people have pointed out, however, there is a possibility that the language of that section of the No-Fault Act concerning comparative negligence may permit more than one construction. If that should be the case, we would certainly offer to work with this Committee on the language of that section of the statute.

There are two other bills I would like to address myself to briefly, Committee Bill 1614 and Committee Bill 8152. 1614 would require the payment of plaintiffs costs for expert witnesses and attorneys fees in an automobile property suit when the defense that repair costs exceeds market value is not successful and Bill 8152 would award costs for prevailing plaintiff in a small claims action when the defendant had removed the case from circuit court.

We would submit that costs be awarded by statute for the prevailing plaintiff in each of these circumstances. Then there should also be a statutory award of costs to the plaintiff

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JOHN AHERN con't: when the plaintiff's suit is unsuccessful. Both of these bills, we feel violate the principle that there should be mutuality of remedy. Each bill would provide a remedy for one party without allowing a similar remedy for the other party under the same circumstances.

Furthermore, each bill would penalize the defendant for the exercise of a right. 1614 would penalize the right to raise a good defense for a client and 8152 would penalize the defendant to exercise his right to a trial in circuit court. So we feel that each of these bills would penalize a party for exercising his rights and would offer him no remedy in the exercise of those rights prove to be both necessary and successful and for these reasons we request that you not give favorable consideration to either 1614 or 8152.

REP. BINGHAM: Thank you Mr. Ahern. Are there any question?

REP. FREEDMAN: One question Mr. Chairman. On 8144 you did not say whether you favored or did not favor the bill. I presume you do not. Is that correct?

JOHN AHERN: That is correct, we do not favor 8144.

REP. FREEDMAN: When you spoke about 8111, you spoke about the difficulties in the charge of the jury and the court problems that were involved. Many of the members of this committee and some of the people that have testified pointed out that 8144 was put into this committee to eliminate some of the problems that do arise as far as the court is concerned. In a case between the motor vehicle and a commercial vehicle especially. So that you do have a different charge to the jury as far as one sided concern as compared to the other side.

It seems to me that the confusion for a jury of six, let alone twelve people, would be incredible.

JOHN AHERN: I believe sir, that there may be some confusion between 8111 and 8144. I believe its 8111 which would amend section 6. Referring to motor vehicle and delete the line "private passenger" from this statute. 8144 would delete any reference any reference to motor vehicle.

We feel that if you apply comparative negligence to all negligence cases not just motor vehicle of any kind but to all negligence cases, this is where we believe it would be confusion of charges to the jury.

SEN. FREEDMAN: What about motor vehicle situations?

JOHN AHERN: In motor vehicle situations that's 8111 and we agree that Section 6 as it now reads may permit more than one construction. It was not intended that there be an ambiguity there and if members of the committee feel that there is, we'd be more than happy to work with you.

SEN. FREEDMAN: I'm not suggesting that under that statute that now exists

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SEN. FREEDMAN: there are two separate distinct charges to the jury when you have a collision between a motor vehicle and a commercial vehicle. The two drivers are held at different standards as far as contributory negligence are concerned.

JOHN AHERN: If I may give you my own opinion of the legislative history of it that the comparative negligence would apply, the comparative negligence standard would apply in between a private passenger motor-vehicle and a commercial vehicle as long as there is a motor-vehicle involved you would have a comparative negligence standard applicable. I believe that that was the intent of the statutes and that is why I say that there may be an ambiguity in the language but I believe that that was the intent.

REP. BINGHAM: Any other questions from Mr. Ahern. Thank you. Mr. J.Q. Tilson.

JOHN TILSON: I am John Q. Tilson from New Haven and I am counsel for the Connecticut Hospital Association and I am speaking today, in favor of 8243, which is the abortion bill that was referred to by Harry Gaucher speaking for the Connecticut Bar Association.

This bill is not one that the Hospital Association originally introduced. It came out of your committee but something that the association is in favor of. The Supreme Court decision which approved or struck down the abortion law of Texas and Georgia, dealt in at least a limited way, the problem of so called 'conscience' in connection with a hospital's right to have abortions performed in it and plus in a hospital to have a right to participate in an abortion.

The Georgia statute had language somewhat similar to 8243 and the Supreme Court didn't rule specifically on the issue but they did state with a pat approval that this particular section protected hospitals and hospital personnel from having to perform abortions.

My own feeling is that a hospital has a right to not to perform abortions in anyway, but it seems to me that the passage of a bill of this kind would strongly improve the hospitals' position with respect to its right to make a decision as to whether or not it would approve abortions on its premises.

The Hospital Association has never taken any position on the basic issue of abortions but on this particular issue we have long felt if abortions were to be legalized, the individual hospital and the individual personnel in the hospital should have rights with regard to whether or not they wish to have abortions performed on the hospital premises or by any given personnel.

It's interesting that the American Hospital Association just last week adopted a resolution urging the passage of this type of legislation and I will leave that with you.