

Legislative History for Connecticut Act

HB5261	PA 76-401	1976
Judiciary	83-84	(4)2
House	2175, 4020-4025	(7)
Senate	2283-2286, 2319	(5)
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JOINT
STANDING
COMMITTEE
HEARINGS

JUDICIARY
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JUDICIARY

February 19, 1976
10:00 A.M.

RAPHAEL PODOLSKY: (CONTD.) or six or eight or ten days between the serving the papers and the hearing in Court would constitute such an emergency to justify an exemption, then everything will justify an exemption because the transfer of a house is if anything more complicated than the transfer of most other kinds of goods.

The other two Bills on which I wanted to comment were Bills 5016 and 5261 which deal with the requirement that a notice of intent be filed as a prerequisite for defendant to contest a prejudgement attachment. 5016 came up first and then was followed subsequently by 5261 which was a more comprehensive Bill. I'm not sure what the Committee's intention was but I presume that the Committee was putting forth 5261 as an alternative, as sort of superceding it's earlier raised Bill.

Can I ask if I'm correct or incorrect in making that assumption?

SEN. NEIDITZ: I think we got these from different sources, at the time some of them may have been filed, a number of them later, some uncertainty as to what was filed .

RAPHAEL PODOLSKY: Okay, then let me suggest this then as to both. The later Bill 5261 which is more comprehensive, has notice provisions to the defendant which are much clearer and much more sensible, they, it seems to me in a reasonable way make some effort to tell the defendant what it is he has to do. 5016 really doesn't give the defendant very clear instructions.

In that sense it's preferable, but in one very important sense I think it is unfair to the defendant. What it does is it gives him only four days in which to respond to the writ and to notify, to provide to file this notice of intent as to whether or not he intends to contest. It seems to me four days is really not enough time to get an appointment with a lawyer in many cases, and that if he comes unreasonably short, even in the most radical of the Statutes where a hearing is practically summary, for example in the Forceable Entry and Detainer Statute you'd ordinarily get seven or eight days notice that must be given. If you look at line 146 in 52-61 you will see that it authorizes the Clerk to set a date only four days before the time the defendant must file a notice.

It seems to me it would be much more reasonable in light of the realities, the defendant who is going to contest is going to go get a lawyer first in most cases and you really have to give him enough time or it makes no sense. If you don't give him enough time, you take away with one hand the right to contest you're extensively giving him with the other. I would suggest it ought to be at least a ten day notice.

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JUDICIARY

February 19, 1976
10:00 A.M.

RAPHAEL PODOLSKY: (CONTD.) The second comment on those two Bills is I don't think the Bills are unreasonable, they're really designed to I think ultimately make it easier for the Court and for the plaintiff's attorney. It takes the matter off the short calendar.

I don't think it's unreasonable, but I find it troubling, and the reason I find it troubling is that the extent to which a matter does not have to be looked at by a Judge in Open Court, to that extent there is no reason why he should examine the papers with any degree of closeness. It really encourages a rubber-stamping process.

The point is that to get a prejudgment remedy there is supposed to be an affirmative showing, that there is probable cause that the plaintiff will prevail on the merits. The fact that it's calendared does not guarantee that the Judge is going to with any seriousness look at the papers.

From what I've seen in Common Pleas, there are a great many Judges that merely rubber-stamp in any event when no one shows, that's right, when no one shows in opposition. But some Judges will I think look at the papers with some care, the extent to which the obligation to put it on the calendar, to in a sense force the appearance of the lawyer to answer questions if the Judge has questions, encourages the Judge it seems to me to look at the papers with some care and see if on their face, they meet the requirements of law.

For example, it is Case Law in Connecticut, if there is a re-possession in a claim for a deficiency judgment, Case Law says there must an allegation that notice was given of the re-sale, so that it can be tested. Now if the Judge looks at the papers, since Case Law says that is an essential element of the complaint, he ought to look to see if it's there. If it's not there, he ought to tell the lawyer that somethings got to be there, because that is an essential element of the complaint, but my guess is nobody looks at that if there is no appearance by an opposing party.

So what troubles me about this isn't the procedure in particular, but the direction the procedure seems to be going. It seems to be taking things off the short calendar, having things decided on the papers, because what it does is says if there is no filing of a notice of intent by the defendant, the Clerk is authorized to take the papers to the Judge and the Judge is authorized to sign them without further adieu unless the Judge decides that he wants more evidence.

So, I would just ask the Committee to think about the impact this kind of procedure has in terms of discouraging Judges from

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House of Representatives

Tuesday, April 20, 1976

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THE SPEAKER:

Please proceed, sir.

MR. CARRAGHER (5th):

Calendar No. 587, substitute for H.B. No. 5261, An Act Concerning Prejudgment Remedies, File No. 488; Calendar No. 603, substitute for S.B. No. 188, An Act Concerning Limitation on Deposits in State Bank and Trust Companies and Savings Banks, File No. 361; Calendar No. 607, substitute for S.B. No. 480, An Act Concerning Certain Clarifications in the Uniform Licensing Act for Mental Health Facilities, File No. 383; Calendar No. 608, S.B. No. 458, An Act Concerning Restriction of Outdoor Advertising on Interstate, Federal-Aid and Other Limited Access Highways, File No. 393; on page 2, Calendar No. 610, substitute for S.B. No. 80, An Act Concerning the Regulation of Dry Milk Powder, File No. 403; Calendar No. 627, H.B. No. 5742, An Act Concerning Payments by Licensee to Commissioner, File No. 546; Calendar No. 629, substitute for H.B. No. 5331, An Act Concerning Interest in Civil Actions, File No. 545; Calendar No. 649, substitute for H.B. No. 5582, An Act Concerning Distribution of General Assembly Journals to Towns, File No. 551; Calendar No. 650, H.B. No. 5538, An Act Concerning the Purchase of Credited Past Service in the General Assembly Pension System, File No. 549.

THE SPEAKER:

You have the motion of the gentleman from the 5th. Is there objection to acceptance and passage of the bills within the purvue of the motion on today's consent calendar. Is there objection? If not, then the question is on adoption of the motion. All those in favor of the motion will signify by saying aye. Opposed? The bills are PASSED.

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Will the gentleman from the 147th please repeat for the benefit of the Clerk?

MR. SHAYS (147th):

Thank you Mr. Speaker. Mr. Speaker, I voted in the negative and I wish to change my vote to the affirmative.

(record
11)

THE GUEST SPEAKER:

The Clerk please announce the tally.

THE CLERK:

Total Number Voting.....	140
Necessary for Passage.....	71
Those Voting Yea.....	114
Those Voting Nay.....	26
Those Absent and Not Voting.....	11

THE GUEST SPEAKER:

The bill is PASSED.

THE SPEAKER IN THE CHAIR

THE CLERK:

On page 4, Disagreeing Action, Calendar No. 587, substitute for H.B. No. 5261, An Act Concerning Prejudgment Remedies, as amended by Senate Amendment Schedules "A", "B", AND "C", File No. 488.

MR. ABATE (148th):

Thank you very much, Mr. Speaker. I move acceptance of the joint committee's favorable report and passage of the bill as amended by the Senate.

THE SPEAKER:

Question is on acceptance and passage. Will you remark, sir?

MR. ABATE (148th):

Thank you very much, Mr. Speaker. Would the Clerk please call

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Senate Amendment Schedule "A"?

THE SPEAKER:

The Clerk please call Senate "A".

THE CLERK:

Senate Amendment Schedule "A", LCO No. 3862.

MR. ABATE (148th):

Mr. Speaker, I request that I be allowed to summarize Senate Amendment Schedule "A" in lieu of reading.

THE SPEAKER:

The Clerk has called LCO No. 3862, Senate "A". Is there objection to the gentleman from the 148th summarizing in lieu of Clerk's reading? Hearing no objection, the gentleman from the 148th for that purpose.

MR. ABATE (148th):

Ladies and gentlemen of this Assembly, as you may recall this House passed the bill concerning prejudgment remedies and we forwarded it to the Senate and in its wisdom, it saw fit to amend the bill. Senate Amendment Schedule "A" removes from the bill as passed by the House those provisions which would have allowed for the issuance of a prejudgment remedy without a hearing. Under the existing law, a prejudgment remedy cannot be issued unless a defendant is afforded an opportunity to be heard in court. The bill would have sought to remove that particular requirement and allowed for the issuance of the remedy without a hearing. Senate Amendment Schedule "A" removes those provisions of the bill and returned us to the status quo. The situation then is as it presently exists in our statutes. A prejudgment remedy will issue only without a hearing in matters of real estate attachments and in other specified matters.

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I move adoption of Senate Amendment Schedule "A".

THE SPEAKER:

Will you remark further on adoption of Senate "A"? If not, the question is on its adoption. All those in favor will indicate by saying aye. Opposed? Senate "A" is ADOPTED.

Will you remark further on the bill as amended by Senate "A"?

MR. ABATE (148th):

Thank you, Mr. Speaker. The Clerk has Senate Amendment Schedule "B". Would the Clerk please call Senate Amendment Schedule "B"?

THE SPEAKER:

Would the gentleman be kind enough to indicate the LCO?

MR. ABATE (148th):

LCO No. 3252, Mr. Speaker.

THE SPEAKER:

Will the Clerk please call LCO 3252, Senate Amendment Schedule "B".

THE CLERK:

Senate Amendment Schedule "B", LCO 3252.

MR. ABATE (148th):

Mr. Speaker, I request that I be allowed to summarize Senate Amendment Schedule "B" in lieu of a reading.

THE SPEAKER:

Is there objection to the gentleman from the 148th summarizing in lieu of the Clerk's reading? Hearing no objection, the gentleman from the 148th for that purpose.

MR. ABATE (148th):

Thank you very much, Mr. Speaker. Senate Amendment Schedule

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"B", ladies and gentlemen, allows for the stay of an order for prejudgment remedy only on motion of the defendant for a stay and a finding by the court that justice so requires and it removes from the bill as passed by the House the provision where the court in its own discretion could have ordered a stay on an application for discharge of the order.

I move adoption of Senate Amendment Schedule "B".

THE SPEAKER:

Will you remark further on adoption of Senate Amendment "B"?
If not, the question is on its adoption. All those in favor will indicate by saying aye. Those in favor will indicate by saying aye. Opposed?

Senate "B" is ADOPTED.

Will you remark further on the bill as amended by Senate "A"
and Senate "B"?

MR. ABATE (148th):

Thank you, Mr. Speaker. The Clerk has Senate Amendment Schedule "C". Would the Clerk please call Senate Amendment Schedule "C".

THE SPEAKER:

The Clerk please call Senate "C".

THE CLERK:

Senate Amendment Schedule "C", LCO 3242.

MR. ABATE (148th):

Mr. Speaker, I request that I be allowed to summarize Senate Amendment Schedule "C" in lieu of a reading.

THE SPEAKER:

Is there objection to the gentleman from the 148th summarizing in lieu of the reading? Hearing no objection, the gentleman from the 148th for that purpose.

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MR. ABATE (148th):

Thank you very much, Mr. Speaker. Senate Amendment Schedule "C" very simply makes this act effective from its passage rather than having effect as of October 1, 1976.

I move adoption of Senate Amendment Schedule "C".

THE SPEAKER:

Question is on adoption of Senate Amendment Schedule "C". Will you remark further on its adoption? Hearing no remarks, the question is on its adoption. All those in favor will indicate by saying aye. All those opposed? The ayes have it, Senate "C" is ADOPTED.

Will you remark further on the bill as amended by Senate "A", "B" and "C"?

MR. ABATE (148th):

Mr. Speaker, most of my comments on the amendments were in summarization of what is contained in the bill. I will very briefly indicate to the members of this assembly that the bill as it is before us at this particular point in time will allow for the issuance of a prejudgment remedy, i.e. an attachment in cases involving real estate and in other very specifically delineated cases without the necessity for a hearing so long as the defendant is given notice of the procedure. I might add that before such a prejudgment remedy can issue, the court must make a finding that there is probably cause to sustain the validity of a plaintiff's claim.

I urge passage of this bill.

THE SPEAKER:

Will you remark further on the bill as amended? If not, will

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the members please be seated and the staff come to the well. The machine will be open. Have all the members voted and is your vote properly recorded? If so, the machine will be closed and the Clerk will take a tally.

Will the Clerk please announce the tally.

THE CLERK:

Total Number Voting.....	142
Necessary for Passage.....	72
Those Voting Yea.....	142
Those Voting Nay.....	0
Those Absent and Not Voting.....	9

THE SPEAKER:

The bill as amended is PASSED.

THE ASSISTANT CLERK:

Page 6, House Joint Resolution No. 167, Resolution Commemorating Polish Constitution Day.

MR. HERMANOWSKI (26th):

Thank you, Mr. Speaker. I would like to--

THE SPEAKER:

The gentleman care to have the Clerk read the Resolution?

MR. HERMANOWSKI (26th):

I'd like to have the Clerk read the resolution.

THE SPEAKER:

Will the Clerk please read H.J.R. No. 167, Resolution Commemorating Polish Constitution Day. The Clerk please read.

THE ASSISTANT CLERK:

Resolved by this Assembly:

WHEREAS, the State of Connecticut has thousands of citizens of Polish ancestry who are proud of the freedom-loving traditions of their Polish forefathers; and

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April 29, 1976 J.G.T. 113

THE CLERK:

Calendar 701, File 488, Favorable Report of the Joint Standing Committee on Judiciary. Substitute for House Bill 5261. AN ACT CONCERNING PREJUDGEMENT REMEDIES.

THE CHAIR:

Senator Neiditz. Bill on top of page 8.

SENATOR NEIDITZ:

Mr. President. I move adoption of the Committee's Report. Clerk has, I think, two amendments, ~~three~~ amendments.

THE CLERK:

Clerk has Senate Amendment Schedule "A", File 488, Substitute House Bill 5261, LCO 3862 offered by Senator Neiditz.

THE CHAIR:

Senator Neiditz.

SENATOR NEIDITZ:

Would the Clerk read the amendment? Is that technical? I don't have the ..

THE CLERK:

Do you want me to read the whole amendment?

SENATOR NEIDITZ:

What's the LCO number on that?

THE CLERK:

3862. There should be a copy right on your desk.

SENATOR NEIDITZ:

Yeah, I have it.

THE CHAIR:

Do you move adoption of the amendment?

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SENATOR NEIDITZ:

I move adoption of the amendment.

THE CHAIR:

This has numerous deletions and additions, I guess. All those in favor of the amendment signify by saying aye, those opposed nay, the ayes have it, the amendment's adopted.

SENATOR NEIDITZ:

Technical, huh?

THE CHAIR:

Very technical in nature.

THE AMENDMENT READS AS FOLLOWS:

Strike lines 1 to 154, inclusive

In line 155, strike "Sec. 2." and insert "Section 1." in lieu thereof

Strike lines 159 to 181, inclusive

In line 182, strike the word "DEFENDANT" and substitute "(a)" in lieu thereof

In line 196, strike "(c)" and insert "(b)" in lieu thereof

In line 197, strike "UNDER"

In line 198, delete "SUBSECTIONS (a) OR (b) OF THIS SECTION,"

In line 214, strike "(d)" and insert "(c)"

In line 265, strike "as amended by section 1 of this act,"

In line 268, strike "as amended by section 1 of this act."

In line 279, strike "2" and insert "1" in lieu thereof

In line 283, strike "4" and insert "2"

Renumber remaining sections accordingly.

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THE CLERK:

Clerk has Senate Amendment Schedule "B", File 488, Substitute House Bill 5261, LCO 3252, offered by Senator Neiditz.

THE CHAIR:

Senator Neiditz.

SENATOR NEIDITZ:

Move adoption of the amendment.

THE CHAIR:

Do you wish to remark? All those in favor of the amendment signify by saying aye, those opposed nay, the ayes have it, The amendment's adopted.

THE CLERK:

Clerk has Senate Amendment Schedule "C", File 488, Substitute House Bill 5261, LCO 3242 offered by Senator Rome.

SENATOR ROME:

Mr. President, I move adoption of the amendment.

THE CHAIR:

Proceed.

SENATOR ROME:

It's a simple amendment. It provides that the Senate adjourn "Sine Dei."

THE CHAIR:

(Laughter) Sounds substantive to me.

SENATOR ROME:

Mr. President, the amendment provides that the effective date of the act is upon passage. I believe it is a good bill and therefore it ought to be effective on passage and not on October 1st.

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THE CHAIR:

Do you wish to remark further? All those in favor of the amendment signify by saying aye, those opposed nay, the ayes have it. The amendment's adopted.

SENATOR NEIDITZ:

Now move adoption of the bill as amended by Senate Amendments Schedule "A", "B" and "C".

THE CHAIR:

If there's no objection, it may be placed on the Consent Calendar.

SENATOR NEIDITZ:

No. So moved.

SENATOR FLYNN:

Mr. President.

THE CHAIR:

Senator Flynn.

SENATOR FLYNN:

Will you pass that temporarily until Senator Sullivan and I have had a chance to talk to Senator Neiditz.

THE CHAIR:

Do you have any objection? It may be passed temporarily. This is on the Prejudgement Remedies?

SENATOR FLYNN:

Yes, Mr. President.

THE CLERK:

Clerk has received Senate Joint Resolution 78, Resolution recalling House Bill 5885 from the House.

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tive Commissioner's office for updating publication of statutes, three program analyst positions in the staff of legislative planning program and an investigatory committee, three budget analyst positions in the office of fiscal analysis and other legislative purposes. It's a fiscal (undistinguishable) test, and if there's no objections, we ask this matter be taken on Consent.

THE CHAIR:

Hearing none, so ordered. May I interrupt at this point. Senator Flynn, have you discussed Calendar No. 701, the Act Concerning Prejudgment Remedies? HOUSE BILL 5261

SENATOR FLYNN:

Mr. President, calendar 701 now is all right to be moved.

THE CHAIR:

Thank you. I think it was to be placed on the Consent Calendar. If there's no objection, so ordered.

THE CLERK:

Turning to page 12 of the calendar, top item of the page calendar 807, File 693, Favorable Report of the Joint Standing Committee on Appropriations. House Bill 5412. AN ACT TRANSFERRING ADMINISTRATION OF THE PARENT-CHILD RESOURCE SYSTEM TO THE DEPARTMENT OF CHILDREN AND YOUTH SERVICES.

THE CHAIR:

Senator Houley.

SENATOR HOULEY:

I move acceptance of the Committee's Favorable Report and passage of the bill.