

Legislative History for Connecticut Act

HB 5504	(PA 364)	Scanned	1979
Jud:	188, 190-92, 805-07		
Sen:	3528-29; 3547		?
House:	6486-6493	✓	
LAW/LEGISLATIVE REFERENCE			189
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JOINT
STANDING
COMMITTEE
HEARINGS

JUDICIARY
PART 3
743-1145

1979

S-148

CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1979

VOL. 22
PART 11
3456-3806

H-228

CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
1979

VOL. 22
PART 19
6377-6726

JOEL FREEDMAN (Continued): posed a problem for insurance companies as well as policy holders since October 1, 1978, effective date of the act as well as the assessment date for most municipalities.

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#9

There has been questions whether claim proceeds payable and properly due to an insured, or to the mortgagee, may be dispursed due to the existence of an undetermined lien. The bill also permits municipalities to place demolition liens upon the fire insurance proceeds, and I think the only opponent to this particular bill and this particular provision has been the Connecticut Bankers Association, which testified about fifteen minutes ago. And, they're very concerned, as we are, with the mechanics of last year's public act and would like to see clarification, and they are opposed only to the new lien on -- for demolition by the municipalities.

And last, I would just like to say that I think there's a drafting error in the bill and that what you do not want to do is repeal the existing statute rather repeal the public act that was passed last year and submit this bill in its place if that's your judgment. Just for the record, now, I'll submit written statements on these two points we're opposed to: Bill No. 1576, which would raise the present basic limits for BI liability from 2040 to 4080; and, we're opposed to House Bill 5504, which would permit 8% interest recovered on all civil actions.

SEN. DE. PIANO: Thank you very much.

REP. J. BERMAN: Could I just ask why you're opposed to that? Do you have it in writing?

JOEL FREEDMAN: Yes, I do. But, I'll be happy to answer it for you.

REP. J. BERMAN: Do you have a written answer for that (inaudible).

REP. ONORATO: Mr. Chairman, concerning the arson package, you have information that you'll make available for the Committee concerning your views on any discrepancies that you see. I'm sure you know that a Committee has been appointed to put through the arson package and I'm the Committee and if you have any thoughts or any concerns of the insurance industry, I would appreciate it if you would contact me with anything that you may have in writing. I'll also be in contact with various fire marshalls and other city officials. Hopefully, the purpose behind this, the purpose will be behind this legislation is to come out with a strict arson law. We're going to try to do that. If you have anything constructive, if the insurance companies have anything instructive to offer, it'll be most appreciated.

JUDITH LERNER (Continued): act, and patients in private hospitals receiving state aid also have that right and that would apply to patients in psychiatric wards of general hospitals. So that, actually, of all the psychiatric facilities of the state, I think that there are only eight which are private hospitals not receiving state aid and those patients are discriminated against in terms of access to records.

This bill would provide to equal access to records for all psychiatric patients. The patients right of access to records has been more widely recognized by the legislature of many states. The primary experience that the patient should participate, cooperate and consent to treatment as much as possible, the records should not be automatically inaccessible, but rather accessible, unless there's a reason they shouldn't be.

I think the bill provides an essential right for psychiatric patients, but it also ensures that they'll be safeguards that disclosure will never be made if it's harmful. As I said before, this bill has

SEN. DE PIANO: Any questions? You said you have a bill -- it's not on to this material that you passed out.

JUDITH LERNER: It's not the third page?

SEN. DE PIANO: No.

JUDITH LERNER: Okay, I'm sorry, I have some extras, I'll pass them out again.

SEN. DE PIANO: Okay, Michael Jainchill.

MICHAEL JAINCHILL: Mr. Chairman, Members of the Committee, my name is Michael Jainchill. I'm an attorney in Hartford; I practice law with the law firm of _____ and Davis. I'm speaking today on behalf of the Connecticut Trial Lawyers' Association. I'm here to speak on behalf of two bills. Committee Bill No. 6925, the bill to waive the State from civil liability and Bill No. 5504, An Act Concerning the Legal Rate of Interest. I'd like to address myself to the latter bill first. The purpose of this bill basically would be to raise the legal rate of interest from presently what is 6 percent to a rate of 8 percent, which would be closer to being in line with rates of interest which are available in community -- in the community. I admit it would still be low, but it would get us more in line with rates of interest.

MICHAEL JAINCHILL (Continued): Section 2 is the provision which I would like to address in particular. That provision, that section would make interest payable from the day of commencement of a law suit or two years from the date of the aftermission or breach, whichever is later. In other words, if a litigant is successful in bringing a lawsuit, he would be entitled to the verdict awarded by the jury, plus 8% interest from the date which he commences his lawsuit.

There are several reasons which I feel are in support of that particular piece of legislation. At present, the liability carriers in this state, when a claim is made, will take a file and they will reserve a certain amount of money in that file, and they'll hold onto that money. They'll have it for maybe the four or five or six years, whatever it takes for that case to wind its way through our judicial system. They have that money and they're investing that money and they're making money off of those funds from which the date from which the injury is sustained by the funds, those funds by right belong to that individual and I believe that when the jury makes an award, although it may be speculative as to the amount that legal obligation exists from the date of the injury and I feel that if you sustain -- say \$2500 worth in medical bills -- when you get that same \$2500 back, six or eight years from now, he's not receiving just compensation.

Secondly, the inflation factor plays into that and, as I said, in terms of the medical bills that obviously would play a role, if you paid \$2500 in medical bills today and I'm compensated \$2500 six years from now, I'm not receiving the same funds. The most important thing I think that weighs in favor of the adoption of this piece of legislation is delay.

As the system exists today, there is a very strong incentive on the part of insurance carriers to delay the efficient adjudication and administration of claims. The longer they can hold onto those funds, the longer they have it in their possession, the longer they can make money off that and reduce their legal liability. As I understand it, when we reorganized the court system in the State of Connecticut, one of our avowed purposes was to increase the efficiency of that court system.

By creating this incentive on defendants to hold onto funds for as long as possible, I think what we do is we create a system which fosters delay, causes court backlogs, and we end up in a situation where people will come into me and they have a case and I have to say to them, "Look, you're going to have

MICHAEL JAINCHILL (Continued): wait maybe four, five or six years before we can try this case." And, it creates a real incentive on people to settle their cases at less than just compensation, just so that they can get that money as quickly as possible in order to get themselves back into a situation where they were before injured.

HB6925

I'd like to address myself now to the sovereign immunity bill for a few moments. Article I of the Connecticut Constitution in Section 10 states that, all courts shall be open and every person for an injury done to him in his person, property or reputation shall have remedy by due course of law. Section 18 states that no hereditary emolument, privileges or honor shall every be granted or conferred in this state.

What we have done by continuing to adhere to the doctrine of sovereign immunity is to take a notion which came from medieval times that the King can do no wrong and grafted on to the state and say that the state can do no wrong. This doctrine had its basis and design right of Kings. In our Democratic system, it's a strange notion that that concept is carried over and been with us for so long. It originally arose in this country in a decision in 1821 by Chief Justice John Marshall, who declared without giving any reason that an individual was not allowed to sue the Federal government without the government giving its consent to be sued.

The Federal government has done away with this problem by creating the Federal Tort Claims Act. I'd just like to read to you a couple of brief comments from other jurisdictions which have abrogated the doctrine of sovereign immunity. And they say, "It is almost incredible in this modern age of comparative sociological enlightenment and in a republic that the medieval absolutism supposed to be implicit in the maxim that the King can do no wrong, should exempt the various branches of the government from liability for their torts and that the entire burden of damage resulting from the wrongful acts of the government should be imposed upon the single individual who suffers the injury, rather than distributed among the entire community constituting the government. Where could be born without hardship upon the individual and preserving the sovereign immunity the state's have overlooked the fact the Revolutionary War was fought to abolish the Divine Right of Kings on which the theory was based.

Clearly the national trend at this time is for the complete abolition of the Doctrine of Sovereign Immunity. Statistics which I obtained yesterday from the American Trial-Lawyers' Association, which are current as of March of 1978, show that

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RAPHAEL PODOLSKY (Continued): Glen Knierim, testified in support of this bill with one, with a couple of changes. I think that efforts should be made to change the bills to his satisfaction and the committee should be able to then proceed and report it favorably.

In particular, I know that he objected, and I think, correctly, to the fact that the provision for payment of counsel fees for appointment of counsel for indigent and for medical examinations was through the Probate Court Fund. I think he's right that that is an incorrect way to do it. It should be through the Judicial Department Appropriation, which is out of the General Fund, which is the way that it is done for Mental Health commitments. This bill is really model on the mental health statute.

I was not here when the representative of the Commissioner of Mental Health Retardation testified. I was told that the testimony was against the bill. It seems to me that that is a form of opposition which the Committee should reject. The bill is necessary in part because of the lack of due---of well established due process procedures in commitment matters in which the Department of Mental Retardation may be involved.

The Department of Mental Health has, in the past, supported the legislation you've adopted in previous years to make sure that you have reasonable due process standards for committing the mentally ill. I think it's unfortunate that the Commissioner of Mental Retardation is not supporting an analagous bill as it affects the mentally retarded; but, I would hope that if we could find a version that Judge Knierim would find acceptable that I would hope the Committee would recommend that.

House Bill 5504, raising the legal rate of interest from 6% to 8%, a 33% increase, perhaps in excess of the present inflationary guideline. It seems to me that this is not an appropriate bill.

REP. TULISANO: (Comments Inaudible)

RAPHAEL PODOLSKY: Well, 6%, it seems to me, is a reasonable approximation of what money earns if you put it in a bank. What this really deals with is the interest that you can claim for the period of time when money has not been paid over. That 6%, it seems to me is reasonable and that's the existing statute. Eight percent really attempts to impose a penalty of an extra 2% for not having made the payment. It seems -- I see this as

RAPHAEL PODOLSKY (Continued): presently -- its main impact is going to be to wage earners and that's where I see the problem -- its main effect. It will apply, for example, to the interest that's drawn on judgments. And judgments now draw interest at the rate of 6% per year. It'll raise it to 8%. The situation that it most typically applies if you're getting something paid off on wage attachment. It means that if the wage attachment ...

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(Continued)

R...PODOLSKY:...is paying the judgment off; the judgment itself is Belt growing now at the rate of six percent a year, it will become #12 eight percent a year. That extra two percent is a penalty. I don't think that that is either necessary or appropriate. The feeling is that there are people who deliberately, willfully refuse to pay when they have the money. All I can say is although I'm sure there are some such people, that circumstance is, I believe to be a relatively small minority situation of the cases that we're talking about, because people who have the property can ordinarily...that property can ordinarily reach by direct attachment or by the use of, for example, attachment on the house to pressure somebody to pay the judgment if they can come up with the cash. You're really dealing with people who don't have the money to pay at the time and what you're doing is just increasing the rate at which the judgment grows, and I think six percent ought to be adequate.

In addition, Section Two of the bill triggers when this interest accrues, so that it will accrue not only on contract claims which are liquidated, but on unliquidated tort claims before judgment. Right now, the law is that the interest doesn't draw on a tort claim until it's reduced to judgment because you don't have a liquidated amount on which to apply the figure, the interest figure. I mean, the reason for that is is that until you have a judgment, you don't have a fixed claim on a tort. Again, it seems to me that that is not a desirable change either. I don't think it's a good bill.

The last bill I'd say something on is 5837, which is a bill that would provide that you have to make a demand...if you want to be able to claim court costs, you have to make a demand before judgment. That is really something that I consider close to a housekeeping bill, it is not a bill of enormous importance. The existing statutes 52-361 already say this, but they've been interpreted by the Judicial Department in a way that applied them only to wage executions and this would make clear they apply generally...I'd understood when the Committee raised the bill that it intended to limit it to contract actions or actions where there was liquidated damages. That does not appear to be in the draft and the Committee may want to put that in so that it doesn't apply to tort actions.

I think those are all the bills on which I have comments. I would say gratuitously that the bill...that 6925 on Sovereign Immunity, I do think is a desirable bill, but I don't feel that I have the expertise to be able to answer the kind of questions that Representative Onorato asked of a previous

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Amendment A.

THE CHAIR:

Question is on acceptance and passage as amended by House A.
Will you remark Senator?

SENATOR DE PIANO:

Yes. This Bill requires that in cases involving an application for the appointment or removal of a guardian or a minor's estate, or the appointment or removal of a conservator of a person or his estate, the application would have to state whether or not the party in question is receiving aid or care from the State. It would further require that the court notify the Commissioner of Administrative Services of any hearing on such an application where the party in question is receiving state aid or care. If there is no objection, I move it be placed on the Consent Calendar.

THE CHAIR:

Discussion on the Bill? Objection to the Motion? Hearing neither, it is so ordered. It's on the Consent Calendar.

THE CLERK:

Calendar 1012, File 767 and 1029, Favorable Report of the Joint Standing Committee on Judiciary, House Bill 5504, AN ACT CONCERNING THE LEGAL RATE OF INTEREST, as amended by House Amendment, Schedule A.

SENATE

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THE CHAIR:

Senator DePiano.

SENATOR DE PIANO:

Mr. President, I move acceptance of the Committee's Favorable Report and passage of the Bill as amended by House Amendment, Schedule A.

THE CHAIR:

Question is on acceptance and passage, as amended by House A. Will you remark Senator?

SENATOR DE PIANO:

Yes. This Bill would increase from 6 percent to 8 percent the annual rate of interest on money or property which is loaned in the absence of an agreement to the contrary and money judgments that is recoverable in a civil action. If there is no objection, I move it be placed on the Consent Calendar.

THE CHAIR:

Question on the Bill? Objection to the Motion? Hearing neither, it is so ordered.

THE CLERK:

Calendar 1013, File 818, Favorable Report of the Joint Standing Committee on Government Administration and Elections, House Bill 7876, AN ACT CONCERNING AVAILABILITY OF PATIENT INFORMATION TO THE DEPARTMENT OF ADMINISTRATIVE SERVICES.

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The vote is:		SB 1541, SB 186, SB 1360, SB 1613, HB 7307, SB 1392, HB 7873, SB 221, SB 1390, SB 1418, SB 1671, HB 7838,
27	YEA	HB 5166, HB 5709, HB 6127, HB 6231, HB 6736, HB 7659, HB 7660, HB 7712, HB 7874, HB 7885, HB 5504, HB 7876,
0	NAY	HB 7071

The Consent Calendar is adopted.

SENATOR LIEBERMAN:

Mr. President, I move for a Suspension of the Rules to allow for immediate transmittal to the House of those matters that should go to the House.

THE CHAIR:

The question is on Suspension of the Rules for all the items that need further House action. Is there objection? Hearing none, the Rules are suspended. The items are transmitted.

SENATOR LIEBERMAN:

Mr. President, the Senate will meet tomorrow at noon. Caucuses as soon after ten in both parties as soon as we can muster a quorum. I - all things going as we would hope, the Senate Session tomorrow should be relatively short and we can hope to be out by the middle of the afternoon.

THE CHAIR:

Thank you Senator. Business on the Clerk's desk? Any other announcements?

THE CLERK:

Yes. Clerk has two Senate Joint Resolutions to read in - Senate Joint Resolution 156, RESOLUTION HONORING THE MARCH OF DIMES READING OLYMPIC PROGRAM and Senate Joint Resolution 157,

and guests please come to the well of the House. The machine will be opened.

The House of Representatives is voting by roll at this time. Would the members please return to the Chamber immediately. The House is voting by roll at this time. Would the members please return to the Chamber immediately.

Have all the members voted? Would the members please check the machine to determine if their vote is properly recorded. It will be locked. And, the Clerk will take the tally.

Would the Clerk please announce the tally.

CLERK:

House Bill 7885 as amended by House Amendment Schedule "A".

Total number voting	140
Necessary for passages	71
Those voting yea	140
Those voting nay	0
Those absent not voting	11

SPEAKER ABATE:

The bill as amended passes.

CLERK:

Calendar 947, File 767, House Bill No. 5504, AN ACT
CONCERNING THE LEGAL RATE OF INTEREST. Favorable report of the
Committee on Judiciary.

House of Representatives

Wednesday, May 9, 1979

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REP. BERMAN: (19th)

Mr. Speaker.

SPEAKER ABATE:

Rep. John Berman.

REP. BERMAN: (19th)

Thank you, Mr. Speaker. I move acceptance of the Committee's Joint Favorable Report and passage of the bill.

SPEAKER ABATE:

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

REP. BERMAN: (19th)

Yes, Mr. Speaker. May I yield to Rep. Jaekle for an amendment?

SPEAKER ABATE:

Rep. Jaekle, will you accept the yield, sir?

REP. JAEKLE: (122nd)

Yes, Mr. Speaker.

SPEAKER ABATE:

Proceed please.

REP. JAEKLE: (122nd)

The Clerk has an amendment bearing LCO No. 7098. Would the Clerk call and read the amendment please.

SPEAKER ABATE:

The Clerk has in his possession an amendment, LCO No. 7098.

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Would the Clerk please call and read the amendment, designated House Amendment Schedule "A".

CLERK:

LCO 7098, offered by Rep. Jaekle of the 122nd. In line 26, delete "SUCH". Strike out lines 26 to 30, inclusive, in their entirety. In line 31 delete "LATER". Strike out lines 45 to 60, inclusive, in their entirety.

SPEAKER ABATE:

The amendment is in your possession, sir. What is your pleasure?

REP. JAEKLE: (122nd)

Mr. Speaker, I move adoption of the amendment.

SPEAKER ABATE:

The question is on adoption of House Amendment Schedule "A". Will you remark on its adoption?

REP. AJEKLE: (122nd)

Yes, Mr. Speaker. The amendment would deleter section 3 from the file copy, which is before us, which has to do with the interest charged in connection with offers of judgment. A few weeks back we passed a bill in the House and sent it to the Senate increasing the interest recoverable in offer of judgment matters. Therefore, I find that this conflicts with our previous action and, therefore, the amendment would delete that section.

Additionally, the amendment would delete the new language

between lines 26 and 31, because after reading the language did not seem to be consistent with the current law on interest after judgment and could confuse the situation and, therefore, I do not feel it is needed in the bill.

And, I would urge support for the amendment, Mr. Speaker.

SPEAKER ABATE:

Will you remark further on the adoption of House Amendment Schedule "A"?

REP. TULISANO: (29th)

Mr. Speaker, I rise to support the amendment. The amendment clarifies the intent of the Committee and makes a number of technical corrections which we intended to make before it got to the floor of the House. I hope you will support the amendment.

SPEAKER ABATE:

Will you remark further on the adoption of House "A"? Will further on its adoption?

If not, all those in favor of its adoption, please indicate by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER ABATE:

Opposed nay. The ayes have it. The amendment is adopted and it is ruled technical.

Will you remark further on this bill as amended by House "A"?

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REP. BERMAN: (19th)

Mr. Speaker.

SPEAKER ABATE:

Rep. John Berman.

REP. BERMAN: (19th)

The bill would increase our legal rate of interest from 8% on judgments and civil actions and would also provide for the same interest which as you know is presently 6% in the event of an arbitration award.

At the present time, we have a question, a gray area in our law and it's generally interpreted that in arbitration awards, they are not judgments and, consequently, interest is not provided.

The bill would clarify it and raise the state's legal rate of interest collectable after a judgment from 6% to 8%.

And, I believe in view of the cost of living and the fact that at 6% it can often be economically productive to withhold payment and have the use of the money that the 8% figure is more realistic.

And, I would move that this bill deserves our support, Mr. Speaker.

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SPEAKER ABATE:

Will you remark further on the bill as amended by House

"A"?

Will you remark further on this bill as amended by

House "A"?

REP. TULISANO: (29th)

Mr. Speaker.

SPEAKER ABATE:

Rep. Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, I think that Rep. Berman has fully explained the bill.

It does deserve our support and it meets the needs of today.

I urge immediate passage of the bill.

SPEAKER ABATE:

Will you remark further on the bill as amended?

If not, would all the members please be seated. The members please be seated.

Would the staff and guests please come to the well of the House. The machine will be opened.

The House of Representatives is voting by roll at this time. The members please return to the Chamber immediately.

House of Representatives

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The House of Representatives is voting by roll at this time.

Would the members please return to the chamber immediately.

Have all the members voted? Would the members please check the roll call machine to determine if their vote is properly recorded. The machine will be locked. The Clerk will take the tally.

REP. MOSLEY: (72nd)

Mr. Speaker.

SPEAKER ABATE:

Rep. Mosley.

REP. MOSLEY: (72nd)

In the affirmative, please.

SPEAKER ABATE:

The Chair will so note. Rep. Mosley has cast his vote in the affirmative.

The Clerk please announce the tally.

CLERK:

House Bill No. 5504, with House Amendment Schedule "A".

Total number voting 141

Necessary for passage 71

Those voting yea 139

Those voting nay 2

Those absent and not voting 10

SPEAKER ABATE:

The bill as amended passes.

REP. TIFFANY: (36th)

Mr. Speaker.

SPEAKER ABATE:

Rep. John Tiffany.

REP. TIFFANY: (36th)

Thank you, Mr. Speaker. Would the Clerk please note that Rep. Elizabeth Leonard just called and she is, will be out today. She's quite ill. Thank you.

SPEAKER ABATE:

The Chair will so note.

CLERK:

Calendar Page 8, Calendar No. 948, File No. 766, Substitute for House Bill No. 6758, AN ACT CONCERNING MODEL INSURERS SUPERVISION, REHABILITATION AND LIQUIDATION ACT. Favorable Report of the Committee on Judiciary.

REP. PALMIERI: (74th)

Mr. Speaker.

SPEAKER ABATE:

Rep. James J. Palmieri of the 74th.

REP. PALMIER: (74th)

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