

Legislative History for Connecticut Act

HB 6679 PA 384 @FAX 1987 ^{3 copies in file}

House 8131-8137 (7)

Senate 4385-4387, 4419-4420 (5)

Judiciary 1838, 1839, 1850-1853, 1947-1949,
2068-2069, 2083-2085, 2070, 2087 (16)

~~Finished~~

28A

Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate
and House of Representatives Proceedings

Connecticut State Library
Compiled 2012

H-471

CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
1987

VOL. 30
PART 22
7860-8268

abs

25

House of Representatives

Wednesday, May 20, 1987

Connecticut.

Further announcements or points of personal privilege? If not, will the Clerk please continue with the Call of the Calendar.

CLERK:

Please turn to page 4, Calendar 651. Substitute for House Bill 5398, AN ACT CONCERNING SURROGATE PARENTING. Favorable Report of the Committee on JUDICIARY.

REP. FRANKEL: (121st)

Mr. Speaker?

SPEAKER STOLBERG:

Representative Frankel.

REP. FRANKEL: (121st)

Mr. Speaker, may this item be recommitted to the Committee on Judiciary?

SPEAKER STOLBERG:

Motion is to recommit. Is there objection? Is there objection? Seeing no objection, it is so ordered.

CLERK:

Page 5, Calendar 659, Substitute for House

abs

House of Representatives

Wednesday, May 20, 1987

Bill 6679, AN ACT CONCERNING CLAIMS AGAINST SOLVENT
AND INSOLVENT ESTATES AND LIABILITIES OF BENEFICIARIES
TO CREDITORS AND OTHERS. Favorable Report of the
Committee on JUDICIARY.

REP. TULISANO: (29th)

Mr. Speaker?

SPEAKER STOLBERG:

Representative Tulisano.

REP. TULISANO: (29th)

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

SPEAKER STOLBERG:

Will you remark?

REP. TULISANO: (29th)

Yes, Mr. Speaker. The Clerk has an amendment,
LCO 7636.

SPEAKER STOLBERG:

Clerk has an amendment, LCO 7636, House "A".
Will the Clerk please call?

CLERK:

LCO 7636, designated House "A", offered by

abs

27

House of Representatives

Wednesday, May 20, 1987

Representative Tulisano.

SPEAKER STOLBERG:

Is there objection to summarization? Seeing none, Representative Tulisano.

REP. TULISANO: (29th)

Yes, Mr. Speaker. Mr. Speaker, the amendment makes two amendments to the proposed file copy. The first corrects an error in the file copy, because it would allow oral claims against the State by the state and federal government, and they should be in writing. It has never been permitted before, and I think it just corrects the language in it.

And the second extends the, corrects the time limitations that are put in the file copy for establishing limitations on claims.

I would move its adoption.

SPEAKER STOLBERG:

Will you remark further on the amendment? If not, all those in favor of the amendment, please indicate by saying aye.

REPRESENTATIVES:

Aye.

abs

28

House of Representatives

Wednesday, May 20, 1987

SPEAKER STOLBERG:

All those to the contrary, any.

The amendment is adopted, ruled technical.

House Amendment Schedule "A":

In line 220, delete everything after "claim"

Delete line 221, in its entirety

In line 222, delete "connecticut"

In line 1023, insert an opening bracket after
"within"

In line 1026, adter "estate" insert the following:

"] NOT LATER THAN TWO HUNDRED TEN DAYS FROM THE
DATE OF APPOINTMENT OF THE FIRST FIDUCIARY, AS DEFINED
IN SECTION 1 OF THIS ACT"

SPEAKER STOLBERG:

Will you remark further?

REP. TULISANO: (29th)

Mr. Speaker?

SPEAKER STOLBERG:

Representative Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, the bill before concerning claims
against solvent estates really rewrites and many of
our current laws concerning claims against estates
after, decedants' estates. It is very complex and

House of Representatives

Wednesday, May 20, 1987

technical, and it represents two years of effort by the Probate Judges' Assembly and the Bar Association.

It is basically needed because similar statutes to current Connecticut law have already been declared unconstitutional in other states. Laws similar to the one that we have before us today have been upheld, and it establishes appropriate procedures so that claims will be ultimately barred and beneficiaries of estates could not be held liable in the future.

I would move its passage.

SPEAKER STOLBERG:

Would you remark further on the bill? Representative Farr.

REP. FARR: (19th)

Mr. Speaker, while I intend to support the bill and think it is basically a good bill, I did have some reservations about one aspect of it. The one problem that I see with the bill is it does seem to me to extend the time for the closing of the, of simple estates, because now it goes out to 210 days before the return of claims is filed. I had some concern about that.

House of Representatives

Wednesday, May 20, 1987

I don't think that concern can be easily corrected by the amendment process, and I would hope that maybe during this coming year, we could look at that again and see whether or not we can address that issue.

Thank you.

SPEAKER STOLBERG:

Will you remark further on the bill? If not, will members please be seated? Staff and guests, to the Well of the House. The machine will be opened.

CLERK:

The House of Representatives is voting by roll.
Members, to the Chamber, please. The House is voting by roll. Members, kindly report to the Chamber at once.

SPEAKER STOLBERG:

Have all the members voted? If all the members have voted, the machine will be locked, and the Clerk will take a tally.

Will the Clerk please announce the tally?

abs

31

House of Representatives Wednesday, May 20, 1987

CLERK:

House Bill 6679, as amended by House "A":

Total number Voting	128
Necessary for Passage	65
Those voting Yea	128
Those voting Nay	0
Those absent and not Voting	23

SPEAKER STOLBERG:

The bill is passed.

CLERK:

Please turn to page 9, Calendar 770. Substitute for Senate Bill 842, AN ACT CONCERNING THE CONNECTICUT INSURANCE GUARANTY ASSOCIATION ACT AND THE CONNECTICUT LIFE AND HEALTH INSURANCE GUARANTY ASSOCIATION ACT. (As amended by Senate "A"). Favorable Report of the Committee on INSURANCE AND REAL ESTATE.

REP. BIAFORE: (125th)

Mr. Speaker?

SPEAKER STOLBERG:

Representative Biafore.

REP. BIAFORE: (125th)

May I yield to Representative Ireland for one

S-273

CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1987

VOL. 30
PART 12
4112-4477

TUESDAY
May 26, 1987

273 4385
eg

The result of the vote is:

24 YEA

10 NAY

The bill is adopted.

Calendar C go to the next item.

THE CLERK:

Calendar 755, File 826 and 1108, substitute for
H.B. 6679, AN ACT CONCERNING CLAIMS AGAINST SOLVENT AND
INSOLVENT ESTATES AND LIABILITIES TO BENEFICIARIES, TO
CREDITORS AND OTHERS. As amended LCO "A", favorable
report of the Committee on Judiciary.

THE CHAIR:

Senator Avallone.

SENATOR AVALLONE:

Yes Mr. President. I move the Joint Committee's
favorable report and adoption of the Bill in accordance
with the action taken by the House.

THE CHAIR:

You may proceed.

SENATOR AVALLONE:

Thank you Mr. President. This is an extremely
long and complicated and very technical change in our
probate law.

TUESDAY
May 26, 1987

274 4386
eg

The Connecticut Bar Association and the Judges' Conference have been working in the Probate Judges' Assembly, have been working for these two years now, in trying to rectify what they perceive and which in fact, is a very, very serious problem in our probate laws.

Two United States Supreme Court cases based on challenges to statutes and other states very similar to Connecticut's, make it appear that Connecticut's collection laws in the state would be deemed unconstitutional.

The two Supreme Court cases are Mennonite Ward of Missions versus Adams and Continental Insurance Company versus Mosley. This law, and as I indicated, very technical bill attempts to resolve the notice problems inherent in Connecticut's law.

Connecticut's law does not require actual notice, it requires notice by publication within a specified period of time after which an individual does not file his or her claim with the representatives of the state, than that claim is barred forever.

This again, attempts to conform our timetable with that under the guidelines of the rulings in the two cases that I have talked about.

TUESDAY
May 26, 1987

275
eg

4387

THE CHAIR:

You may proceed.

SENATOR AVALLONE:

And I would move it Mr. President.

THE CHAIR:

Remark further.

SENATOR AVALLONE:

If there is no objection, I would move it to consent.

THE CHAIR:

Without objection, so awarded.

The Clerk please call the next item.

THE CLERK:

Calendar 756, File 397 and 937, substitute for
H.B. 7332, AN ACT CONCERNING UNEMPLOYMENT COMPENSATION
APPEALS, MOTIONS AND REMANDS. Favorable Report of the
Committee on Judiciary.

THE CHAIR:

Senator Spellman.

SENATOR SPELLMAN:

Thank you Mr. President. I move acceptance of
the Joint Committee's favorable report and passage of
the Bill.

TUESDAY
May 26, 1987

307 4419
sjr

Senators please return to the chamber.

THE CHAIR:

The item before us is the third Consent Calendar of the day. Are there any objections, corrections, or deletions? We will first read the list so you can make that decision.

THE CLERK:

Beginning on Page 10, Calendar Number 755, Substitute for House Bill 6679.

Calendar 756, Substitute for House Bill 7332, Calendar Page 11.

Calendar Number 761, Substitute for House Bill 6542, Calendar 762, Substitute for House Bill 6719, Calendar Page 12, Calendar Number 764, Substitute for House Bill 7437.

Calendar 765, Substitute for House Bill 7572, Calendar 766, Substitute for House Bill 7119, Calendar Page 18, Calendar Number 342, Substitute for Senate Bill 997, Calendar Page 19, Calendar Number 412, Substitute for Senate Bill 1218.

Calendar 422, Substitute for Senate Bill 1107, Calendar 430, Substitute for Senate Bill 1163, and Calendar 488, Substitute for House Bill 5931.

THE CHAIR:

Senator Gunther.

SENATOR GUNTHER:

TUESDAY
May 26, 1987

308
sjr 4420

Mr. Pressident, 488, kindly remove from the Consent Calendar, please.

THE CHAIR:

So noted. Senator Smith. It's the same, 488.

THE CLERK:

Calendar Page 20, Calendar 508, Senate Bill 1045.
Calendar 560, Substitute for House Bill 7604. Calendar 304,
Substitute for Senate Bill 854. I believe that completes
the third Consent Calendar.

THE CHAIR:

Are there any other corrections, additions, or deletions? If not, the machine is open. Please cast your vote. Senator Matthews. The machine is closed. Clerk please tally the vote.

The result of the vote on the third Consent Calendar is:

34 Yea

0 Nay

The Consent Calendar is adopted.

Senator O'Leary is it your intention to take up the item removed?

SENATOR O'LEARY:

Yes, please, Mr. President. Calendar 488, if we

JOINT
STANDING
COMMITTEE
HEARINGS

JUDICIARY
PART 6
1700-2097

1987

JUDGE KNIERIM: (continued)

law revision bill, a very good bill and we're in favor. Senate Bill 1196, an Act Concerning Property of Minors, in favor.

House Bill 7585, an Act Concerning Discrimination Between Relatives Of The Whole And Half Blood, uh, very much in favor. Senate Bill 1208, an Act Concerning Minimum Compensation From High Volume Courts, a very much and strongly in favor.

House Bill 7604, an Act Concerning Distribution of Estates to Surviving Spouse and Stepchildren, I would have no particular comment on the bill except to ask that if you do conclude that this bill is a good one and you give it a favorable report, that the word stepchildren be defined somewhere, because it's a pretty open designation of a class at this moment.

Senate Bill 1212, an Act Saving Unaffected Provisions Os a Will on Marriage Dissolution of Birth or Adoption of a Child, a Connecticut Law Revision bill, in favor. House Bill, excuse me, yes House Bill 7618, an act Amending That Connecticut Probate Judges In Employees Retirement System, strongly in favor.

House Bill 6679, an Act Concerning Claims Against Solvent and Insolvent Estates and Liabilities of Beneficiaries to Creditors and Others. This is a very important piece of legislation and we're very much in favor.

House Bill 6701, an Act Concerning Temporary Guardianship. We don't see the need for that bill, but if you do decide to report favorably, there is a very important amendment which should be made to the bill because it could do some harm as it is presently drafted, and I've put that in my written testimony.

I'd be glad to answer any questions, but if there are none of me, I'd like to introduce my colleagues to you, to my right, Judge George McManus of Madison who is President Judge of the Connecticut Probate Assembly. And Judge Jack Keyes from New Haven, Judge

140
cjp

JUDICIARY

April 4, 1987

JUDGE KNIERIM: (continued)

Robert Killinger from Hartford, Judge Paul Schipperro from Stamford, and Judge James Lawlor from Waterbury, and Judge Raymond Liddy from Bridgeport.

REP. TULISANO: Bet I can guess what bill they are on

JUDGE KNIERIM: Yes sir.

REP. TULISANO: All on the same bill.

JUDGE KNIERIM: Well, they have comments on others. There is a bill that they have a particular interest in, however. Judge McManus.

JUDGE MCMANUS: Good afternoon, I am speaking on behalf of the Executive Committee of the Connecticut Probate Assembly. I have requested that I indicate their support of the following and endorsement of the following bills. Senate Bill 1181, Act Concerning Inheritance By One Adjudged Guilty of Killing Another. Senate Bill 1184, An Act Concerning Jurisdiction of the Courts of Probate. Senate Bill 1185, An Act Concerning Auditing of Fiduciary Accounting in Courts of Probate. House Bill 7566, An Act Concerning Succession Tax Returns. Senate Bill 1208, An Act Concerning Minimum Compensation for High Volume Courts. House Bill 7618, An Act Amending the Connecticut Probate Judges and Employees Retirement System. And House Bill 6679, An Act Concerning Claim Against Solvent and Insolvent Estates and Liabilities and Beneficiaries to Creditors and Others.

We respectively request your favorable consideration and in interest of time I would like to yield to my colleagues the comments they are about to make also reflect the feelings of the Executive Committee of the Probate Assembly. Judge Killian will speak first.

JUDGE KILLIAN: Mr. Chairman I am speaking specifically on Raised Committee Bill 1208, An Act Concerning the Compensation for High Volume Courts.

This bill will affect the five largest courts as it is before you. Together the five largest courts handle approximately 24% of the volume of work in

RON DEDERICK: (continued)

I commend to your serious attention the Act concerning the inheritance by one of Judge Kildy of Killian and other as Committee Bill 1181 and specifically the remarks of Judge Glen Knierim in support of that measure. We are wholeheartedly behind that bill.

I also draw your attention to an Act Concerning Allocations between Principal and Income sponsored by the Law Revision Commission, Bill 1201 and we wholeheartedly support that bill.

My primary purpose today before you is to speak on Bill 6679, An Act Concerning Claims Against Solvent and Insolvent Estates. Our trust in the estate section of the bar association has been in the process of rapid expansion and as members of in excess of 800, covering every town within the state. We have developed a new procedure with working with legislative matters. And we stand ready to be of resource to this Committee whenever you choose to use us.

This particular bill is an example of that process. It has been under study for over two years and it was required because of the Constitutional attack on a bill, a statute that is similar to those found here in Connecticut in Nevada. And because of the unconstitutional infirmities of our current legislation we have spent considerable time over the past two years revising and presenting to you this particular bill.

The bill does more than just cure the constitutional defects of existing statutory law in this state involving claims against decedents estate. It also deals with existing statutes predating the federal bankruptcy system involving insolvent estates. It further pads and clarifies existing common law concerning when claims are presentable and the order thereof and who should pay them. And it deals with a variety of liabilities against decedents estates which have not been appropriately developed by case or statutory law in this state as of yet.

Our state is not alone dealing with this unusual

152
cjp

JUDICIARY

April 4, 1987

RON DEDERICK: (continued)

constitutional problem. To our knowledge at least 8 other states are dealing with the same situation. And many of them are looking to the model legislation produced here and is before this Committee as an example.

Accordingly we urge passage of bill 6679 and I think former Senator Rymer would further like to speak on that bill.

MR. RYMER: Thank you and Mr. Chairman and members of the Judiciary Committee. My name is Ed Rymer and I am an Attorney, I have been practicing law since 1952 and like Judges Lyddy and Shapero, I had the privilege of sitting on the Judiciary Committee some 15 odd years ago as a State Senator from the 26th district. And I am here as, along with Mr. Dederick to urge your support of Proposed Bill 6679. I thought I would go a little bit further on what our basic problems are and why we think it is so important that this legislation be enacted.

Basically we went along for a number of years when things were relatively easy and simple because we had the existing statutory law of the State of Connecticut which established that claims presentation period for the creditor which was anywhere from 3 to 12 months as determined by the Probate Judge and if they didn't present their claim within that amount of time why they were forever barred from asserting that claim. That was all very well and good until the Supreme Court of the United States in 2 decisions which I referred to in my written statement which I will submit, but one of them was a Minanite Board of Missions vs. Adams case, and the other Continental Insurance vs. Mosley. The Supreme Court of the United States basically said that these claim bar statutes which were based on publication alone, were unconstitutional and that there had to be actual notice to the creditor if the creditor was a reasonably ascertainable creditor. How you establish exactly what is a reasonably ascertainable creditor is a little bit up in the air.

153
cjp

JUDICIARY

April 4, 1987

MR. RYMER: (continued)

But one of the main purposes of this proposed bill is to set the guidelines so that you can establish what a reasonably ascertainable creditor is.

Aside from this, it is designed to spell out the guidelines to protect the individual, the fiduciaries and the beneficiaries and the creditors themselves.

As I have said forth in my written statement they have switched from this short creditor claim bar period to an ultimate 2 year statute of limitations. And in addition to that the bill takes care of the situation of codifying the existing law on insolvent estates and how we treat that in view of the recent changes in our bankruptcy laws.

What I, one of the things that I have been particularly concerned is the individual executor and the rights of creditors that now in view of the Supreme Court decision, the creditors now have against an individual executor who in fact, distributes to, we will say, children of a first wife, pursuant the will, of a first husband rather, by the will. And then say they might have a half of the residuary estate themselves. And the children of a first wife have dissipated the funds and then a creditor comes along and can get to the widow for the entire amount of the creditor claim in a situation where the children by a first marriage have dissipated their inheritance. And I think this is a very realistic possibility in view of the numerous situations of more than one marriage and different sets of children in each.

In addition to that we have the cumbersome procedure now where the creditor now would first have to go after the executor and then have to go after the beneficiaries or the executor would have to implead the beneficiaries in the case. What this legislation will do is to set guidelines to protect all parties.

I strongly urge this adoption. Thank you.

154
cjp

JUDICIARY

April 4, 1987

SEN AVALLONE: Thank you very much, Beth Parsons, Francis Dooley.

FRANCIS DOOLEY: I have with me today other members of the Compensation Board who are listed speakers and perhaps we can cut it down.

SEN. AVALLONE: Very good, would you indicate who is here for the record please.

FRANCIS DOOLEY: For the record I am Francis M. Dooley, Chairman of the Criminal Injuries Compensation Board. And immediately to my right is Dr. Steve Wilkson, member of the board, and to my left is Mr. Smith, also a member of the board. I would like to point out that we also have our administrator Mr. John Ford with us also today. I think they are here for two reasons. One is to be sure that I get it straight as I present the testimony and go over the bills. And secondly, we want to be certain that not only this Committee, but those parties that are very much interested in the rights of victims recognize that this board which has been primarily a compensation board in paying money out. Has through the benefit of the bills enacted primarily through the institution of your Committee last year. Got itself fully evolved into a complete victims program. And that is where we are going. That is where this litigation is headed. And we are hopeful that you will listen and appreciate what we have today.

I am going to focus my remarks on certain of these bills. And I am going to do it in the order that they come up with. And I want to be certain that they are not perceived to be in any order of importance or priority, just to wind our way through them.

Also, having been here for the same day that you had, I will be somewhat brief if possible, and hope that you will not take my revity as any inappropriate comment on the importance of the bills.

First on Senate Bill 200, An Establishing a Clearing House and Hotline for Victims Rights Information. This bill seeks to significantly expand two of the existing services offered to victims and their families



1947

State of Connecticut
Probate Administration

JUDGE GLENN E. KNIERIM
PROBATE COURT ADMINISTRATOR
ATTORNEY LINDA A. DOW
ASSISTANT TO THE ADMINISTRATOR
ATTORNEY DAVID J. KAZARIAN
ASSISTANT TO THE ADMINISTRATOR

186 NEWINGTON ROAD
WEST HARTFORD, CONNECTICUT 06110

April 4, 1987

(203) 566-7897

TO: JUDICIARY COMMITTEE

FROM: GLENN E. KNIERIM, PROBATE COURT ADMINISTRATOR

RE: H.B. 6679 - AN ACT CONCERNING CLAIMS AGAINST SOLVENT AND INSOLVENT ESTATES
AND LIABILITIES OF BENEFICIARY TO CREDITORS AND OTHERS

As members of the committee know, we in Connecticut have for many years enjoyed a relatively simple and straight forward procedure for dealing with claims of creditors following a death. The procedure involved the establishment of a claims period by the appropriate court of probate during which creditors were to present their claims, or forever be barred. The only specific notice required by statute is newspaper notice, although the statute does permit the court to order such other notice as it deems appropriate. While many who practiced in this field were aware that this process was vulnerable, since in our more complex society, newspaper notice may be inadequate to effect creditors' rights in such a severe way, we chose to overlook the problem and rely on our present statute because of the many benefits it offered. Regrettably, our complacency was destroyed by the United States Supreme Court in 2 cases: Mennonite Board of Missions v. Adams, 103 S.Ct. 2706, 77 L.Ed. 180 (1983), and Continental Insurance Co. v. Mosley, 103 S. Ct. 3530 (1983). The latter case vacated a decision of the Supreme Court of Nevada upholding a claims statute similar to Connecticut's and remanded the case to the Supreme Court of Nevada for further consideration in light of the decision in Mennonite. The holding, as we analyze it, is that notice to creditors of an estate by publication in a newspaper of general circulation is insufficient under the due process clause of the 14th amendment if the creditors are reasonably ascertainable.

We took immediate steps to revise our creditors' notification process to respond to the Supreme Court rulings. We now order fiduciaries of decedents' estates to send notice by certified mail to all creditors of the decedent whose status as a creditor, and whose address is known to the fiduciary or reasonably ascertainable by the fiduciary. We do this under the authority obtained in Gen. Stat. 45-205(a) which states in part "...and by such further notice as the court deems necessary". While this has provided a temporary solution, the problems of the claims process are far greater.

We believe that ordering fiduciaries to notify in writing "reasonably ascertainable" creditors is an unfair, and in many cases unworkable burden. While in simple estates, family members are usually aware of possible creditors' claims, the more complex estates present serious difficulties. One of the obvious results is that fiduciaries would be

reluctant to distribute such estates without the protection they have heretofore enjoyed. The personal liability of fiduciaries for failing to discover a creditor prior to distribution of the estate is a very real possibility.

It was for this reason that I met with representatives of the Connecticut Probate Assembly, the Connecticut Bar Association, Estates and Probate Executive Committee, and the Connecticut Bankers' Association to review the entire problem, in our present statutes, and attempt to find a workable solution. The ideas presented in the proposal before you have been reviewed by numerous groups, including the Connecticut Probate Assembly, Legislative and Executive Committees, a full meeting of the Estates and Probate Section of the Connecticut Bar Association, the Probate Committee of the Law Revision Committee, and others. While all of us regret the complexity of the proposed changes before you, we believe that this proposal is workable and provides needed protection for all parties in the estate process. Moreover, many inadequacies other than notice which have heretofore been unresolved are addressed in this proposal.

From the point of view of our courts, following are the major important improvements contained in the bill:

1. The establishment of a "taylor made" claims period initiated by beneficiaries who are most often in a better position to know of the existence of creditors.
2. Adequate notice to creditors, without which claims are not barred unreasonably.
3. A completely revised and vastly improved process for treating unmatured and contingent claims.
4. Protection for fiduciaries who distribute estates in good faith.
5. Carefully constructed transferee liability rather than the present vague reference to such liability in Gen. Stat. 45-21(b).
6. Clarification of the procedures governing the surviving spouse's claim for exoneration in connection with joint and several mortgage indebtedness under the provisions of Gen. Stat. 45-175a.
7. Shortened statutes of limitations applicable to all claims following an individual's death. This would offer some reassurance to beneficiaries that the inheritances are not vulnerable for unreasonably long periods of time.
8. A complete revision of the cumbersome and archaic provisions regarding insolvent estates. Under present law, commissioners must be appointed on every insolvent estate. The new proposal permits the appointment of commissioners when requested, in the same manner as for solvent estates.

There are two important amendments which I suggest if this bill is approved:

1. Page 6, lines 152 and 153, the words "...other than any claim of the United States, or the State of Connecticut..." should be deleted. The committee which drafted this proposal agreed to remove these words, but they were inadvertently left in when the draft was submitted to your committee. If the state and federal government were to be permitted to present claims by telephone, it is easy to see the chaos which would result: The amount of the claim, and the timeliness of the claim would all be in question and without substantial proof.

2. On page 23, the words "...within two months after the expiration of the time limited for the exhibition of claims against the estate" on line 631 1/2 and 632 should be deleted, and the new language which appears on lines 641 and 642 should also be inserted on line 631 1/2 and 632. Since there is no claims period being established by the courts under this proposal, the deadline of two months after the expiration of the claims period is inappropriate.

I would also suggest a careful review of statutes which should be repealed if this proposal is to be adopted. For example, it appears that 45-21(b) would be obsolete and indeed confusing if not repealed in view of the procedure established by this proposal. Moreover, sections 45-205 et seq. and 45-214 et seq. should probably be repealed because this proposal seems to have replaced those procedures.

We believe that this proposal represents an important milestone in the administration of decedents' estates in Connecticut, and while in the short run it will represent some disruption in traditional treatment of claims, in the long run it will benefit all persons involved in the administration of decedents' estates by providing certainty, fairness, and constitutionally sound procedures.

We urge your joint and favorable report.

GEK/jcm

STATEMENT OF EDWARD S. RIMER, JR.
BEFORE THE JUDICIARY COMMITTEE AT A
PUBLIC HEARING HELD ON APRIL 4, 1987

My name is Edward S. Rimer, Jr. and I am a member of the firm of Lovejoy, Hefferan, Rimer & Cuneo, P.C. with offices in Norwalk and Wilton, Connecticut. I have been a practicing attorney since 1952, and am admitted to practice in both the State of Connecticut and the State of New York. During my years of practice I have supervised the administration of numerous trusts and estates and have served as executor and trustee on many occasions.

I presently serve on the Executive Committee of the Estates and Probate Section of the Connecticut Bar Association, and during the years 1969 through 1972 served as a State Representative and State Senator and was a member of the Judiciary and Finance Committees.

I urge your support of Proposed Bill No. 6679, AN ACT CONCERNING CLAIMS AGAINST SOLVENT AND INSOLVENT ESTATES AND LIABILITIES OF BENEFICIARIES TO CREDITORS AND OTHERS.

The existing statutory law of the State of Connecticut dealing with claims against solvent estates provides that the Court of Probate is to establish a claims presentation period (anywhere from 3 to 12 months, but usually fixed at 3 months) and publish notice of the claims presentation period

in a newspaper having general circulation in the district where the estate is in settlement. Any creditor who fails to present his claim to the fiduciary within the claims presentation period is barred from collecting on his claim. No actual notice to creditors is required.

The apparent simplicity and validity of this procedure has become clearly unconstitutional by virtue of the United States Supreme Court decision in Mennonite Board of Missions v. Adams, 103 S. CT. 2706, 77 L.Ed. 180 (1983), and its vacating and remanding the decision of the Nevada Supreme Court in Continental Insurance Co. v. Mosley, 98 Nev. 476, 653 P.2d 158 (1982). In the Mennonite case the Supreme Court held that under the due process clause of the United States Constitution a creditor who is "reasonably ascertainable" cannot be barred on his claim by publication of notice. According to the Supreme Court, such a creditor must receive actual notice that his claim will be barred if not presented by a specific date. The problem, of course, is how do you determine whether or not a creditor is "reasonably ascertainable". The Mosley case overturned a Nevada Supreme Court decision which upheld the constitutionality of a claim bar statute almost identical to Connecticut's present law.

In view of these Supreme Court decisions, it is clear that the present Connecticut probate claim bar statute is unconstitutional and must be revised.

HB 6679

~~Proposed Bill No. 5594~~ presents a clear and easily administrable system (all at the probate court level) for dealing with all claims, whether contingent, unmatured or in exoneration, during the course of an estate administration. With respect to transferee liability, the proposed legislation carefully establishes priority among beneficiaries, defines procedures for recovering from transferees and balances the interests of creditors and beneficiaries.

One of the greatest attributes to the proposed legislation is that it will protect the individual fiduciaries from inequitable liability incurred as a result of the understandable desire to complete the administration of an estate to benefit the named beneficiaries as soon as reasonably possible. Under existing law, a surviving widow serving as Executor of her husband's estate could be held liable for the entire amount of a creditor's claim after distribution of the estate. Under the proposed bill, the widow would only be liable for her proportionate share of the claim based upon her share of the residuary estate.

The proposed bill also revises the existing statutes dealing with claims against insolvent estates, which revision is long overdue. It also substitutes a two year statute of limitations for the current claim bar period.

Again, I urge its adoption so that we may have established guide lines for the efficient and equitable administration of estates in Connecticut.

STATEMENT BY RONALD O. DEDERICK
VICE CHAIRMAN, ESTATES AND PROBATE SECTION
CONNECTICUT BAR ASSOCIATION

Speaking on behalf of House Bill Number 6679-"An Act concerning claims against solvent and insolvent estates and liabilities of beneficiaries to creditors and others."

My name is Ronald O. Dederick. I have been a practicing attorney specializing in trusts and estates and related fields for 25 years. I am currently serving as Vice Chairman of the Estates and Probate Section of the Connecticut Bar Association and in that capacity I have the responsibility for coordinating the response of our Section on legislation which affects decedents' estates and trusts. The Estates and Probate Section, with membership in excess of 820 attorneys, has close liaison with the Connecticut Probate Judges' Assembly, the Law Revision Commission and other groups having an interest in this field.

Bill Number 6679 involves claims against estates and is the result of two years of study by members of our Section, and others. In addition, this bill has been reviewed and commented upon by representatives of the Connecticut Bankers Association.

Undoubtedly, the bill is lengthy. However, it has been created in response to the presumed unconstitutionality of current statutes. As previously noted by the Honorable Glenn Knierim, Probate Court Administrator, and the former State Senator Edward S. Rimer, the need for legislation in this field is clear. Ever since the decision invalidating a similar creditor claim statute, the Probate Court Administrator and members of the Bar practicing in this field have attempted to deal with the situation on an ad hoc basis pending development of curative legislation. We feel that unless appropriate legislation is promptly enacted, the current situation is a trap for unwary and technically unsophisticated individuals who either have just and provable claims or are beneficiaries or fiduciaries of decedents' estates.

The proposed bill does more than to cure the constitutional infirmity of existing law. It also revises existing statutes dealing with insolvent estates which predate the federal bankruptcy system and which have long been in need of modernization. The legislation further codifies and clarifies existing common law concerning whether claims are presentable during the estate administration and it establishes a systematic approach for dealing with all types of decedents' liabilities which have not been dealt with appropriately by case law or by statute.

Our State is not alone in dealing with this problem. To our knowledge, at least eight other states which have similar legislative problems are now addressing this issue. Indeed, representatives of many of these states are looking to this Connecticut proposal as a model.

Accordingly, we urge passage of Bill 6679.

I am also taking this opportunity to provide written commentary on certain other bills now pending before the Judiciary Committee.

Bill No. 7566 An Act Concerning Succession Tax Returns.

We applaud the purpose of this Bill to provide for the confidentiality of succession tax returns. We urge that the definition of succession tax return be expanded to include Connecticut estate tax returns.

Bill No. 7597 An Act Concerning the Uniform Marital Property Act.

We urge rejection of this Bill which is currently under study by the Law Revision Commission and various Sections of the Bar Association. This Bill has far reaching effects on property and marital rights and while it is worthy of study, passage is highly premature at this time.

Bill 1212 An Act Saving Unaffected Provisions of a Will on Marriage, Dissolution or Birth or Adoption of a Child.

We have not had an opportunity to study this Bill in depth. Nevertheless, the purpose of the Bill is laudatory and should prevent unnecessary revocation of wills due to marriage or divorce or due to the birth or adoption of a child. We urge passage.

Bill 6701 An Act Concerning Temporary Guardianship.

We urge passage of this Bill.

Bill 7261 An Act Concerning Liability of a Fiduciary.

We urge rejection. This Bill may conflict with Bill 6679 and it should be submitted for further consideration.