

Legislative History for Connecticut Act

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HB 6793	PA 56	1989
House 2687-2704, 2809-2818		(28)
Senate 1099-1100, 1110, 1112		(4)
Judiciary 787-788		(2)

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HB7265, as amended by House "A".

Total Number Voting 139

Necessary for Passage 70

Those voting Yea 139

Those voting Nay 0

Those absent and not Voting 12

SPEAKER BALDUCCI:

The bill as amended is passed.

CLERK:

Page 6, Calendar 169, Substitute for HB6793. AN ACT  
CONCERNING THE DISTRIBUTION OF INTESTATE ESTATES.

Favorable Report of the Committee on Judiciary.

REP. MINTZ: (140th)

Mr. Speaker.

SPEAKER BALDUCCI:

Representative Mintz of the 140th.

REP. MINTZ: (140th)

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

SPEAKER BALDUCCI:

Will you remark?

REP. MINTZ: (140th)

Yes, Mr. Speaker. The Clerk has an amendment,  
LC05740. I ask that he call and read.

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SPEAKER BALDUCCI:

Will the Clerk please call and read LC05740,  
designated House "A"?

CLERK:

LC05740, designated House "A", offered by  
Representative Tulisano.

In line 107, delete "FOR THE PURPOSES"

Delete lines 108 to 111, inclusive, in their  
entirety

SPEAKER BALDUCCI:

Representative Mintz.

REP. MINTZ: (140th)

Yes, Mr. Speaker, the purpose of this amendment --.

SPEAKER BALDUCCI:

Do you move adoption, sir?

REP. MINTZ: (140th)

Oh, I move adoption, yes, absolutely.

SPEAKER BALDUCCI:

Will you remark?

REP. MINTZ: (140th)

Yes, thank you. The purpose of the amendment is to  
delete the definition of abandonment. We had not  
defined abandonment in the past and the common law  
interpretation of abandonment is what we feel should  
remain and it's not a clear definition, so we've

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deleted it and I urge its adoption.

SPEAKER BALDUCCI:

Will you remark further on the amendment?

REP. KRAWIECKI: (78th)

Mr. Speaker.

SPEAKER BALDUCCI:

Representative Krawiecki of the 78th.

REP. KRAWIECKI: (78th)

Thank you, Mr. Speaker. I think I can understand why the proponent is requesting the removal of the language defining abandonment. However, with the absence of that language, perhaps you could address for the Chamber what you anticipate the remainder of the bill will be interpreted as or give us some indication what you're ultimate legislative intent might be with the bill as amended, through you, Mr. Speaker.

REP. MINTZ: (140th)

Certainly, Mr. Speaker.

SPEAKER BALDUCCI:

Again, I would like to bring to the Chamber's attention that there are two people carrying on a debate and it would be appreciated by all because there are many trying to listen to the debate to give their attention to Representative Mintz and Representative Krawiecki as this debate progresses.

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Again, I've said it before, conversations can well be carried on out in the corridor or quietly in the back, but I would appreciate it if the noise level would diminish for all those members trying to listen, including myself. Thank you. Representative Krawiecki -- Representative Mintz, you had the floor. I apologize.

REP. MINTZ: (140th)

Thank you, Mr. Speaker. Representative Krawiecki is correct. I probably should have explained it, in the amendment. What the bill will do, it just makes it clear that any person who abandons his spouse is not entitled to share in the deceased intestate estate.

An intestate estate is where a person dies without leaving a will.

SPEAKER BALDUCCI:

Representative Krawiecki.

REP. KRAWIECKI: (78th)

And just one follow-up question. By removing the specific definition, I imagine we're trying to write a more broadly fashioned statute so that many possible sets of facts might in fact fit into it and it would be a question of the individual circumstances, through you, Mr. Speaker.

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Representative Mintz.

REP. MINTZ: (140th)

Yes, through you, Mr. Speaker, yes, in fact, that would be left up to the courts to decide each individual fact pattern.

REP. KRAWIECKI: (78th)

Thank you.

SPEAKER BALDUCCI:

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

REPRESENTATIVES:

Aye.

SPEAKER BALDUCCI:

Opposed nay.

The ayes have it.

The amendment is adopted.

Will you remark further on the bill as amended?

REP. MIGLIARO: (80th)

Mr. Speaker.

SPEAKER BALDUCCI:

Representative Migliaro of the 80th.

REP. MIGLIARO: (80th)

Thank you, Mr. Speaker. I have a question, through you, Mr. Speaker, to the proponent of the bill, if I

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may.

SPEAKER BALDUCCI:

Please proceed, sir.

REP. MIGLIARO: (80th)

Yes, Mr. Speaker. On line 105 to 110 on the bill in the file copy, the only question I have, it uses the word abandonment, that I don't believe, unless you can direct me someplace else into the file, what constitutes abandonment and how long a period of time is considered an abandonment?

SPEAKER BALDUCCI:

Representative Mintz, do you care to respond?

REP. MINTZ: (140th)

Yes, Mr. Speaker, basically we attempted to define abandonment, but we just deleted that abandonment with that amendment and there's a court case, Cantor v. Bloom that states --.

REP. MIGLIARO: (80th)

I can't hear him, Mr. Speaker.

REP. MINTZ: (140th)

I apologize. In Cantor v. Bloom abandonment, and I'm quoting as a question of fact in the finding or conclusion of the trial court is conclusive of that fact. Abandonment of a wife has been defined by this court as the act of a husband who voluntarily leaves

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his wife without an intention not to return her and not to resume his marital duties towards her or to claim his marital rights. So that's the Supreme Court's definition and I think that's probably what would hold until the Supreme Court changes its mind again.

REP. MIGLIARO: (80th)

Through you, Mr. Speaker.

SPEAKER BALDUCCI:

Representative Migliaro.

REP. MIGLIARO: (80th)

The reason why I raised that question, I know that under the abandonment law, to constitute, what constitutes that if somebody should take it upon themselves to leave, I thought there was a statutory period of seven years which would constitute abandonment, but you're saying, willful intent, voluntary leaves, you're saying that the court will sit in judgment on that specific area and be in judgment whether abandonment has occurred or not, so there is actually no specific time element involved, and if that's the proper answer, I'd like to hear it.

SPEAKER BALDUCCI:

Representative Mintz.

REP. MINTZ: (140th)

That's correct, it would be a question of fact for

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the court to decide and there's no specific time period that I know of.

REP. MIGLIARO: (80th)

Thank you, Mr. Speaker.

SPEAKER BALDUCCI:

Thank you, Representative Migliaro. Will you remark further on the bill as amended?

REP. NANIA: (63rd)

Mr. Speaker.

SPEAKER BALDUCCI:

Representative Nania of the 63rd.

REP. NANIA: (63rd)

Thank you. Two questions, through you, to Representative Mintz. The first is if abandonment is a question of intention, then it's my understanding that the court will have to decide what was in the person's mind, is that correct, through you?

SPEAKER BALDUCCI:

Representative Mintz.

REP. MINTZ: (140th)

Through you, Mr. Speaker, the court will have to determine what the intent of the actor was, yes.

REP. NANIA: (63rd)

So that if a person changes their intent even moments before death, would that be sufficient to

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satisfy the rule?

REP. MINTZ: (140th)

Through you, Mr. Speaker, that would be a question of fact that the court would have to decide.

REP. NANIA: (63rd)

Well, the reason I ask the question, through you, Mr. Speaker, is that that kind of fact determination is going to be extraordinarily difficult and that really leads to my second question, which is, what is the need, through you, for this amendment?

I'll ask the question again. Why do we need this? What's it for?

SPEAKER BALDUCCI:

Representative Mintz.

REP. MINTZ: (140th)

Through you, Mr. Speaker, is the questioner asking the need for the bill itself?

REP. NANIA: (63rd)

Yes, through you, Mr. Speaker.

REP. MINTZ: (140th)

Through you, Mr. Speaker, to clarify that a person who abandons his wife and a person who abandons his spouse is not entitled to share whether there is a will or there's not a will. The statute presently is constituted saying that if you abandon, you can't take

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under a will. This just says you also can't take under a situation where there is no will.

REP. NANIA: (63rd)

Mr. Speaker, I have problems with that because what we are talking about now is the thinking process and I am sure that no person sits down with themselves and says, "Am I leaving my spouse" with specific intention to constitute abandonment "or am I just leaving him or her for some period of time, or what am I doing."

Now, it seems to me that the rule ought to be bright and clear. You either are married or your aren't married. I don't think anybody is paying any particular attention. I think this is a bad rule. I don't think I'm going to say any more.

REP. FARR: (19th)

Mr. Speaker.

SPEAKER BALDUCCI:

Representative Farr.

REP. FARR: (19th)

Mr. Speaker, through you, a question to Representative Mintz. Representative Mintz, I'm somewhat troubled by the bill after the amendment. Whose burden would it be for the spouse to show -- who would the burden be on as to the issue of whether the spouse did in fact abandon the deceased spouse, through

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you, Mr. Speaker, to Representative Mintz?

SPEAKER BALDUCCI:

Representative Mintz, do you care to respond?

REP. MINTZ: (140th)

Yes, through you, Mr. Speaker, basically it's exactly the same way it is today and my understanding of that is the burden is on the estate to show that they're not entitled to -- that the abandonment has taken place and not entitled to the share.

REP. FARR: (19th)

Through you, Mr. Speaker, to Representative Mintz, am I to understand then that the only real change that this bill will make is that under the present law the spouse that abandons is not entitled to the election, but this broadens that to say not only is a spouse who abandons not entitled to an election, but also not entitled to take if there is no will. Is that correct?

REP. MINTZ: (140th)

Through you, Mr. Speaker, yes, that's correct.

REP. FARR: (19th)

And I guess the major concern I then have with that. Doesn't this then open the door to litigation in every single case in which there is in fact the separation of the parties prior to death, litigation potentially by any other heir who might come in and in

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fact raise this issue?

Aren't we really inviting a lot of litigation by doing this, through you, Mr. Speaker, to Representative Mintz.

SPEAKER BALDUCCI:

Representative Mintz.

REP. MINTZ: (140th)

Through you, Mr. Speaker, the situation today is that potential for litigation exists where there is a will. All this does is makes it clear that in fact it's a policy of the State of Connecticut that if you abandon your spouse, you're not entitled to share in their estate if there is no will.

SPEAKER BALDUCCI:

Representative Farr.

REP. FARR: (19th)

Thank you. I'm troubled by the bill simply because it seems to me that by broadening this that this language is in fact going to invite an awful lot of litigations with a fact that I perceive to be very difficult to prove one way or the other. Thank you.

SPEAKER BALDUCCI:

Will you remark further on the bill?

Representative Emmons of the 101st.

REP. EMMONS: (101st)

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Thank you, Mr. Speaker. Mr. Speaker, through you, a question to the proponent of the bill.

SPEAKER BALDUCCI:

Please proceed, Representative Emmons.

REP. EMMONS: (101st)

Representative Mintz, let me just use a hypothetical so that I have it clear in my mind what we're doing. If there is a couple who has separated and there are children and one spouse has the children, it doesn't really make any difference who has the children, but they have not had any communication and one spouse has not supported them and does not appear to be coming back.

In that case, one of them died, let's say the spouse who was not taking care of the children, he stayed alive, but the spouse that was taking care of the children died. That estate of hers would go to those children by will and even though -- or by no will, but that the spouse, for whichever reason that they may have that they have not gotten divorced, which many people do not or they do not even have legal separation, it would assume that they did have a legal separation and the property would flow as if they were legally separated.

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Representative Mintz.

REP. MINTZ: (140th)

Thank you, Mr. Speaker. If it's my understanding of your hypothetical, if abandonment can be shown to the satisfaction of the court, the property would pass to the children and not to the abandoning spouse.

That's correct.

REP. EMMONS: (101st)

Thank you, and through you, one other questions, Mr. Speaker. What would constitute, in your mind, and I guess for legislative intent, abandonment?

SPEAKER BALDUCCI:

Representative Mintz.

REP. MINTZ: (140th)

Yes, I'll quote the Cantor v. Bloom language again that abandonment is the act of a spouse who voluntarily leaves the other spouse with the intention not to return and not to resume marital duties towards that spouse. For legislative intent, that is the Supreme Court language that I believe is still the common law today.

REP. EMMONS: (101st)

Thank you. Through you, just one more question, Mr. Speaker. One of the previous speakers asked the question of, you know, how does one prove "the intent

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that abandonment is occurring?" Now I would assume or think that if one spouse left another and there was no communications or no support money or not visitations that that would be abandonment on a voluntary basis.

SPEAKER BALDUCCI:

Representative Mintz.

REP. MINTZ: (140th)

Yes, through you, Mr. Speaker, I would agree with you to that. I think that would create a sufficient set of facts to warrant that finding of fact by a court.

REP. EMMONS: (101st)

Thank you, Mr. Speaker.

REP. KRAWIECKI: (78th)

Mr. Speaker.

SPEAKER BALDUCCI:

Representative Krawiecki.

REP. KRAWIECKI: (78th)

Thank you, Mr. Speaker. The Clerk has an amendment, LC05736. Would he please call and read. I'm sorry. Summarize. I'll summarize.

SPEAKER BALDUCCI:

The Clerk please call LC05736, designated House "B".

CLERK:

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LC05736, designated House "B", offered by  
Representative Krawiecki.

SPEAKER BALDUCCI:

Is there objection to summarization? Seeing none,  
please proceed, Representative Krawiecki.

REP. KRAWIECKI: (78th)

Mr. Speaker, Members of the House, I notice that  
the amendment is being distributed a little late. I  
don't think it's anything particularly exotic. It  
deals with the situation where an administrator or an  
executor would be making a distribution to a foreign  
national and under various treaties and laws of our  
various nations you must distribute to the consul  
generals of those nations and this would simply hold  
harmless the executor or administrator against any  
claim that might result from the heir who might  
potentially never receive their benefit.

I would move adoption and I'll explain further.

SPEAKER BALDUCCI:

The question is on adoption. Will you remark?

REP. KRAWIECKI: (78th)

Yes, Mr. Speaker, Members of the House, what this  
proposal contemplates doing, and as an example, in many  
eastern European countries if there is an heir who is  
alive, as an example, in a foreign country, the

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distribution never occurs to those as individuals. What happens is, based on treaty and foreign laws, the distribution must go to a consul general and a representative of that foreign country. The executor of the administrator, after they've gone through the probate process and their do their certificate of distribution and the like to the individuals who would be the heirs in the foreign country, give up the asset that is to be distributed and it goes to the consul general representatives and they have no way of ever knowing whether the distribution ever reaches the ultimate heir and what this is attempting to do is simply hold harmless the executor or the administrator from any potential liability from those heirs who they have never seen or know about and yet are ordered to make the distribution in that fashion.

I would urge adoption of the amendment.

SPEAKER BALDUCCI:

Will you remark?

REP. FRANKEL: (121st)

Mr. Speaker.

SPEAKER BALDUCCI:

Representative Frankel.

REP. FRANKEL: (121st)

I think the amendment is worthy of our

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consideration. I believe, however, we should P-T this matter in order for it to be properly understood. Moreover, it appears to me at first blush in need of some help.

I would observe that in line 46 and 47, the words "as required by said government." That's the key that triggers the immunity. "As required by said government" could be as, if you will, by a governmental edict or order or it could be as required by said government as someone interprets, as the government, that foreign country may have in statute.

I think it needs help in that regard and, Mr. Speaker, I'll move that the amendment be P-T'd, which I believe will carry the main motion.

SPEAKER BALDUCCI:

The question is on passing temporarily. Is there objection? Seeing none, so ordered. Before we move along are there any further announcements or Points at this time before we move along with the Calendar?

REP. MCCAVANAGH: (12th)

Mr. Speaker.

SPEAKER BALDUCCI:

Representative McCavanagh of the 12th.

REP. MCCAVANAGH: (12th)

Mr. Speaker, a Point of Personal Privilege.

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Mr. Speaker.

DEPUTY SPEAKER SMOKO:

Representative Frankel.

REP. FRANKEL: (121st)

May this item be referred to the Committee on Finance.

DEPUTY SPEAKER SMOKO:

Is there objection to referring this bill to Finance? If not, the bill is referred.

CLERK:

Page 6, Calendar 169, Substitute for HB6793. AN ACT CONCERNING THE DISTRIBUTION OF INTESTATE ESTATES.

Favorable Report of the Committee on JUDICIARY.

REP. MINTZ: (140th)

Mr. Speaker.

DEPUTY SPEAKER SMOKO:

Representative Mintz of the 140th.

REP. MINTZ: (140th)

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

DEPUTY SPEAKER SMOKO:

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

REP. MINTZ: (140th)

Yes, just for history, we moved passage of the

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bill --.

DEPUTY SPEAKER SMOKO:

DEP. The history of the bill, Representative Mintz, the bill as amended by House "A" is before us and when we last visited this House "B" was pending before the House.

REP. MINTZ: (140th)

DEP. That's correct and I'll yield to Representative Krawiecki at this point in time.

DEPUTY SPEAKER SMOKO:

Representative Krawiecki, do you accept the yield?

REP. KRAWIECKI: (78th)

Yes, Mr. Speaker. At that time I withdraw that amendment.

DEPUTY SPEAKER SMOKO:

Is there objection to withdrawal of House "B"? If not, the amendment is withdrawn? Will you remark further on this bill as amended?

REP. MINTZ: (140th)

Yes, Mr. Speaker.

DEPUTY SPEAKER SMOKO:

Representative Mintz.

REP. MINTZ: (140th)

Yes, just for the record, the issue that was presented by Representative Krawiecki is a very complex

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issues which we will work on some time in the future to try and see if we can come up with something together.

DEPUTY SPEAKER SMOKO:

Thank you, sir. Will you remark further on this bill as amended?

REP. MINTZ: (140th)

Yes, Mr. Speaker.

DEPUTY SPEAKER SMOKO:

Representative Mintz, I apologize, sir.

REP. MINTZ: (140th)

Well, at this time I'll yield to Representative Jaekle for a friendly amendment.

DEPUTY SPEAKER SMOKO:

Representative Jaekle, do you accept the yield, sir?

REP. JAEKLE: (122nd)

Yes, Mr. Speaker, I do. The Clerk has an amendment, LC05722. Would the Clerk please call and may I be permitted to summarize.

DEPUTY SPEAKER SMOKO:

The Chamber is in possession of LC05722, which will be designated House "C". Will the Clerk please call the amendment.

CLERK:

LC05722, designated House "C", offered by

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Representative Jaekle.

DEPUTY SPEAKER SMOKO:

DEP Representative Jaekle has requested leave to summarize the amendment. Is there objection? If not, Representative Jaekle, for summarization.

REP. JAEKLE: (122nd)

Thank you, Mr. Speaker. I believe this makes what I would call a technical amendment to Section 45-266 of the General Statutes, which concerns affidavit in lieu of administrations of small estates. We amended some sections last year. There is one section -- basically, you file affidavits rather than an application for admission of a will to probate and letters of administration. That language, filing an affidavit and acting on an affidavit appears in several sections except Subsection (e) and the amendment just really conforms the language of our law to both the practice and the other subsections of the same law to really exchange the word affidavit for application where it is appropriate to make the law, I believe, technically correct and I move adoption of the amendment.

DEPUTY SPEAKER SMOKO:

The question is on adoption of House Amendment Schedule "C". Will you remark further? Will you remark?

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REP. JAEKLE: (122nd)

DEPU Mr. Speaker.

DEPUTY SPEAKER SMOKO:

all Representative Jaekle.

REP. JAEKLE: (122nd)

REP Thank you, Mr. Speaker. In explaining the amendment, in summarizing the amendment I hope I have explained the need for it. It really is about a simple change of that. One gets to file an affidavit in lieu of administration for small estates when the estate is valued at less than \$20,000. It's a streamline process which does not require the filing of an application for formal probate proceedings.

Unfortunately, our law still has a reference to if an application is filed, then the court may do certain things. Well, for small estates an application is not file, an affidavit is, and this makes the change to that second so that the court can take the appropriate action when only affidavit is filed in small estates, since applications are not filed. Thank you.

DEPUTY SPEAKER SMOKO:

Thank you, sir. Will you remark further on this amendment? Will you remark? Representative Mintz.

REP. MINTZ: (140th)

Yes, in the spirit of bipartisan cooperation, I

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urge support of the amendment.

DEPUTY SPEAKER SMOKO:

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

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER SMOKO:

All those opposed.

The amendment is adopted.

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House Amendment Schedule "C".

In line 1, before "Section" insert "Section 1."

After line 119, add section 2 as follows:

"Sec. 2. Section 45-266 of the general statutes is repealed and the following is substituted in lieu thereof:

(a) The surviving spouse of any person who dies, or if there is no surviving spouse, any of the next of kin of such decedent, or if there is no next of kin or if such surviving spouse or next of kin refuses, then any suitable person whom the court deems to have a sufficient interest may, in lieu of filing an application for admission of a will to probate or letters of administration, file an affidavit in the court of probate or letters of administration, file an affidavit in the court of probate in the district wherein the decedent resided, stating, if such is the case, that all debts of the decedent have been paid in the manner prescribed by section 45-204c, at least to the extent of the fair value of all of the decedent's assets, when (1) such decedent leaves property of the type described in subsection (b) of this section and (2) the aggregate value of any such property as described in subsection (b) of this section does not exceed the sum of twenty thousand dollars. In addition such affidavit shall state that the decedent either did, or did not, receive aid or care from the state,

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which shall also include aid or care from the department of veterans' affairs, whichever is true.

(b) Such property includes: (1) A deposit in any bank; (2) equity in shares in any savings and loan association, federal savings and loan association or credit union, doing business in this state; (3) corporate stock or bonds; (4) any unpaid wages due from any corporation, firm, individual, association or partnership located in this state; (5) a death benefit payable from any fraternal order or shop society or payable under any insurance policy for which the decedent failed to name a beneficiary entitled under the bylaws and regulations of such order or society or under the terms of such insurance policy to receive such death benefit; (6) other personal property, tangible or intangible, including a motor vehicle or motor vehicles and a motor board or motor boats registered in his name; or (7) an unreleased interest in a mortgage with or without value.

(c) Thereafter, except as provided in subsection (e) of this section, the judge of probate for such district shall issue a decree finding that no probate proceedings have been instituted in connection with the estate of such decedent and authorizing either the holder of such property or the registrant thereof, including the authority issuing the registration, to transfer the same or pay the amount thereof to the persons legally entitled thereto. The court of probate may issue such certificates and other documents as may be necessary to carry out the intent of this section. If the petitioner indicates in such affidavit that the assets listed in such affidavit or a portion thereof are necessary to pay the funeral director who buried such decedent or to pay debts due for the last sickness of the decedent, the court may order the payment of such assets directly to such funeral director or to those creditors to whom debts are due for the last sickness of the decedent to the extent necessary to pay their preferred claims for funeral expenses or expenses for the decedent's last sickness, or may order such assets sold and the proceeds from such sale paid directly to the funeral director or such creditors. If the petitioner indicates in such affidavit that the decedent received public assistance or institutional care from the state of Connecticut, the court shall not issue a decree until thirty days after notification to the department of administrative services. Any decree issued by the court may authorize the surviving spouse or next of kin, or some suitable person whom the court deems to have a sufficient interest, to release an

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interest in any mortgage reported under the provisions of this section.

(d) If there is no surviving spouse or next of kin of a person who dies leaving property as described in this section, the funeral director who buried such decedent or any creditor to whom a debt is due for the last sickness of the decedent may file in such court of probate an affidavit as described in this section that such funeral director or any creditor to whom a debt is due for the last sickness of the decedent has a lawful preferred claim for funeral expenses or expenses for the decedent's last sickness. Thereupon such court may, in its discretion, authorize either the holder of such property or the registrant thereof, as aforesaid, to transfer the property or pay from the property the amount of such claim, or to pay proceeds from the sale of any such assets ordered sold by the court, to such funeral director or any creditor to whom a debt is due for the last sickness of the decedent, in satisfaction of the amount of the claim of each.

(e) If an AFFIDAVIT IS FILED UNDER SUBSECTION (a) OF THIS SECTION IN LIEU OF AN application [is filed] FOR ADMISSION OF A WILL TO PROBATE OR LETTERS OF ADMINISTRATION and the fair value of the property of the decedent exceeds the total amount of claims, including any amounts allowed to the family under section 45-250, the court shall proceed as follows: (1) If no purported last will and testament is found, the court shall order distribution of the excess in accordance with the laws of intestate succession; (2) if the decedent left a duly executed last will and testament and the will provides for a distribution which is the same as that under the laws of the intestate succession, the court shall order distribution of the excess in accordance with the laws of intestate succession; (3) if the decedent left a duly executed last will and testament and the will provides for a distribution different from that under the laws of intestate succession, and the heirs at law of such decedent sign a written waiver of their right to contest the will, the court shall order the excess to be paid in accordance with the terms of the will; (4) if the will directs a distribution different from the laws of intestate succession, and the heirs at law do not waive their right to contest the admission of such will, the will shall be offered for probate in accordance with section 45-167. In such case, the court may issue a decree under this section only if the persons entitled to take the bequests under the will consent, in writing, to the distribution of the

bequests in accordance with the laws of intestate succession. If the claims against the estate exceed the value of the property of such decedent, the claims shall be paid in accordance with the priorities set forth in section 45-204c. As used in this subsection, the terms "will" includes any duly executed codicil thereto.

(f) Any such transfer or payment shall, to the extent of the amount so transferred or paid, discharge the registrant or holder of such property from liability to any person on account thereof.

(g) As a condition of such transfer or payment, the registrant or holder may require the filing of appropriate waivers, the execution of a bond of indemnity and a receipt for such transfer or payment.

(h) The authority issuing the transfer of registration shall charge a fee of three dollars for the transfer of each motor vehicle and a fee of one dollar for the transfer of each motor boat under this section.

(i) Any transfer or payment under the provisions of this section shall be exempt from taxation under the provisions of chapter 219.

(j) (1) Any person to whom such transfer or payment has been made shall be likeable for the value thereof to the commissioner of revenue services for any succession or transfer tax on the property transferred or payment made and to the executor of administrator of the estate of the decedent thereafter appointed.

(2) The commissioner of revenue services shall be given notice by the court of probate of the issuance of any such decree upon such form as may be provided by said commissioner unless such surviving spouse or next of kin, or other suitable person whom the court deems to have a sufficient interest, files with the court of probate a sworn return provided for by chapter 216, in which event the judge of probate may incorporate in the decree a statement that the commissioner of revenue services has issued a finding that no succession or transfer tax is due, or that any such tax computed by him as due has been paid. Such statement shall be conclusive evidence of the consent by the commissioner of revenue services to the transfer or payment of such property as provided in this section free from any claim for such tax, notwithstanding any provision in chapter 216 to the contrary."

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House of Representatives

Thursday, April 6, 1989

DEPUTY SPEAKER SMOKO:

Will you remark further on this bill as amended?  
 Will you remark further? If not, will all staff and  
 guests please come to the well of the House, all staff  
 and guests to the well. The machine will be opened.

CLERK:

The House of Representatives is now voting by roll.  
 Members please report to the Chamber. The House of  
 Representatives is voting by roll call. Members to the  
 Chamber please.

DEPUTY SPEAKER SMOKO:

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

Will the Clerk please announce the tally.

CLERK:

HB6793, as amended by House "A" and "C".

Total Number Voting	143
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Necessary for Passage	72
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Those voting Yea	143
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Those voting Nay	0
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Those absent and not Voting	8
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DEPUTY SPEAKER SMOKO:

The bill as amended is passed.

DEPUTY SPEAKER POLINSKY:

S-290

CONNECTICUT  
GEN. ASSEMBLY  
SENATE

PROCEEDINGS  
1989

VOL. 32

PART 3

741-1136

WEDNESDAY  
April 12, 1989

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Calendar 202, HB7341, I move to the Consent Calendar.

THE CHAIR:

Without objection, so ordered.

SENATOR O'LEARY:

Calendar 203, Substitute HB7344, I refer to the  
Committee on Education.

THE CHAIR:

Without objection, so ordered.

SENATOR O'LEARY:

Calendar 204, Substitute HB7375, I move to the  
Consent Calendar.

THE CHAIR:

Without objection, so ordered.

SENATOR O'LEARY:

Calendar 205, Substitute HB5985, I move to the  
Consent Calendar.

THE CHAIR:

Without objection, so ordered.

SENATOR O'LEARY:

Calendar 206, Substitute HB6789, I move to the  
Consent Calendar.

THE CHAIR:

Without objection, so ordered.

SENATOR O'LEARY:

Page 12, Calendar 207, Substitute HB6793, I move to

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the Consent Calendar.

THE CHAIR:

Without objection, so ordered.

SENATOR O'LEARY:

Calendar 208 is marked Passed Retaining. Calendar 209, HB7414, I refer to the Committee on Appropriations.

THE CHAIR:

Without objection, so ordered.

SENATOR O'LEARY:

Calendar 210, Substitute HB7473, I move to the Consent Calendar.

THE CHAIR:

Without objection, so ordered.

SENATOR O'LEARY:

Page 15, under Matters Returned from Committee, the second item, Calendar 68 is marked Go. Under Disagreeing Actions, Calendar 86, SB801 I refer to the Committee on Appropriations.

THE CHAIR:

Without objection, so ordered.

SENATOR O'LEARY:

Page 16, Calendar 88 is marked Go. Calendar 36 is marked Passed Temporarily. Calendar 114 is marked Go. Calendar 171 is marked Go. On Page 17, Calendar 211 is

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SB725, Calendar Page 5, Calendar 166, Substitute SB769.  
Calendar 168, SB871. Calendar Page 6, Calendar 169,  
Substitute SB849. Calendar 177, Substitute SB731.

Calendar 178, Substitute SB147. Calendar Page 7,  
Calendar 179, Substitute SB869.

Calendar Page 9, Calendar 191, Substitute HB7285.  
Calendar 192, Substitute HB7348. Calendar Page 10,  
Calendar 196, Substitute HB6068. Calendar 195,  
Substitute HB7325. Calendar 199, HB7192. Calendar  
200, Substitute HB7264.

Calendar Page 11, Calendar 202, HB7341. Calendar  
204, Substitute HB7375. Calendar 205, Substitute  
HB5985. Calendar 206, Substitute HB6789. Calendar  
Page 12, Calendar 207, Substitute HB6793. Calendar  
210, Substitute for HB7473.

THE CHAIR:

Any changes or omissions? Senator Smith.

SENATOR SMITH:

Thank you, Mr. President. Just a clarification. I  
think the Clerk may have inadvertently identified one  
of the Consent items on Page 10 as 195. I suspect that  
is 197, is that correct?

THE CLERK:

What page?

THE CHAIR:

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Excuse me, are you trying to identify the item as 197?

THE CLERK:

I believe it is 196 or 197. They are both on the Consent Calendar. Calendar 195 is not on the Consent Calendar.

SENATOR SMITH:

I know it isn't. That's why I questioned why it was called. If you could just read 8 and 9 again, I would appreciate it.

THE CHAIR:

Mr. Clerk.

THE CLERK:

Rereading Calendar Page 8, there is nothing on Page 8 on the Consent Calendar. On Page 9, Calendar 191, Substitute HB7285. Calendar 192, Substitute HB7348.

THE CHAIR:

Okay. Any changes or omissions? Senator O'Leary.

SENATOR O'LEARY:

Thank you. Please read Page 10 as well.

THE CLERK:

And on Page 10, Calendar 196. Substitute HB6068, Calendar 197, Substitute 7325. Calendar 199, HB7192. Calendar 200, Substitute HB7264.

THE CHAIR:

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Any changes or omissions? The machine is open.  
Please record your vote. Senator Daniels. Has  
everyone voted? The machine is closed. Clerk please  
tally the vote.

The result of the vvote:

35 Yea

0 Nay

The Consent Calendar is adopted.

Senator McLaughlin.

SENATOR MCLAUGHLIN:

Thank you, Mr. President. Briefly, I would just  
like to make a special point of personal privilege to  
the members. I'm not sure of my exactness of my  
remarks, but a special visitor is here today. My  
sister and my brother-in-law, Mr. & Mrs. Vincent Bowe.  
I don't think they have been up here in the 9 years  
that I have been here to pay a visit. I guess my  
sister, Meghan has once, and I would like to welcome  
them. (Applause)

THE CHAIR:

Call the next item please.

THE CLERK:

Returning to Calendar Page 1, Calendar 173, SJ37,  
RESOLUTION CONFIRMING THE NOMINATION OF JOHN DONNELLY,  
M.D. OF WEST HARTFORD, TO BE A LAY MEMBER OF THE

JOINT  
STANDING  
COMMITTEE  
HEARINGS

JUDICIARY  
PART 3  
764-1173

1989



**State of Connecticut**  
**Probate Administration**

OFFICE OF THE  
PROBATE COURT ADMINISTRATOR

March 6, 1989

186 NEWINGTON ROAD  
WEST HARTFORD, CONNECTICUT 06110-2320  
(203) 566-7897

TO: The Judiciary Committee  
FROM: Judge Ralph D. Lukens, Probate Court Administrator  
RE: Proposed Bill 6793, An Act Concerning The Distribution of Intestate Estates

I am here to indicate my strong support for H.B. 6793 which would clarify the provisions of General Statutes section 45-273a pertaining to spousal abandonment by expressly providing that the abandonment issue applies to both testate and intestate estates.

As you well know, section 45-273a, "Succession upon death of spouse, Election against will, Intestate succession," sets out the rules concerning estate distribution to the surviving spouse. Subsection (a) provides for the right of spousal election and a family allowance where the decedent left a will. An exception to the general rule is set out in the last sentence of subsection a:

"The provisions of this section with regard to the statutory share of the surviving husband or wife in the property of the other shall not apply to any case in which, by written contract made before or after marriage, either party has received from the other what was intended as a provision in lieu of such statutory share; nor shall either party be entitled to such statutory share who, without sufficient cause, abandoned the other and continued such abandonment to the time of the other's death (emphasis provided)."

The provisions regarding distribution to a surviving spouse in an intestate situation are then set out in subsection (b).

Although it appears from the face of this statute that the abandonment exception applies only to the statutory share, it has long been my contention that the legislature never intended to provide that in an intestate estate a spouse could abandon a husband or wife without affecting his or her rights of inheritance. Rather, it seems quite clear that the apparent application of the exception to testate estates was the inadvertent result of Public Act 73-36, which consisted of a new order of distribution of intestate estates being placed after the phrase dealing with abandonment, and Public Act 80-476 which led to the renumbering of the elective share and intestate share

Page two

provisions as part of a technical revision of the probate statutes. Prior to 1973, the elective share and intestate share provisions were placed together and were both governed by the abandonment exception. Furthermore, a review of the legislative history of Public Act 73-36 reveals that the issue of abandonment was never considered or discussed in the deliberations. One must conclude that the placement of the new order of distribution after the phrase concerning abandonment had no pertinence to the abandonment exception and the technical revision in Public Act 80-476 inadvertently placed the abandonment exception where it had not been before the technical revision.

Section 45-273a of the General Statutes now can be interpreted to provide that the abandonment exception applies only when there is a will. The bill before you, H.B. 6793, would clarify that the abandonment exception applies to testate and intestate estates alike by providing that a surviving husband or wife shall not be entitled to an elective share or intestate share in the property of the other, if such surviving spouse, without sufficient cause, abandoned the other and continued such abandonment to the time of the other's death.

An example of the resulting injustice is easily understood. Assume a husband abandons his wife, without cause, and leaves her with three minor children to raise and provide for. Assume further that the wife is then negligently killed in an automobile accident and the total amount of the settlement to her estate is \$100,000.00. If she died intestate and the abandonment section DOES NOT APPLY to intestate estates, the abandoning husband gets the entire \$100,000.00. If the abandonment section DOES APPLY to intestate estates, the three minor children would share the \$100,000.00 equally. This is a much more equitable result and certainly appears to be what the prior legislative intent was.

We would ask that you give this bill your joint favorable support.