

Legislative History for Connecticut Act

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HB 7315	PA 185	1991
House 4556-4567		(12)
Senate 1877, 1899-1901, 2083-2088		(10)
Judiciary 1117, 1119-1120		(3)

Total- 25 p.

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CONNECTICUT  
GEN. ASSEMBLY  
HOUSE

PROCEEDINGS  
1991

VOL. 34  
PART 12  
4314-4697

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House of Representatives

Wednesday, May 8, 1991

DEPUTY SPEAKER POLINSKY:

The bill as amended is passed. The Clerk please return to the Call of the Calendar.

CLERK:

Kindly turn to Page 8, Calendar 469, Substitute for House Bill 7315, AN ACT CONCERNING POWER OF FIDUCIARIES TO DEAL WITH ENVIRONMENTAL HAZARDS. Favorable Report of the Committee on Judiciary.

REP. MINTZ: (140th)

Madam Speaker.

DEPUTY SPEAKER POLINSKY:

Representative Mintz of the 140th.

REP. MINTZ: (140th)

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

DEPUTY SPEAKER POLINSKY:

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

REP. MINTZ: (140th)

Yes, Madam Speaker. What this bill does, it gives fiduciaries in estates, the power to take any action necessary to deal with or prevent problems created by environmental hazards.

The Clerk has an amendment, LCO6360. I ask that he

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call and I be allowed to summarize.

DEPUTY SPEAKER POLINSKY:

Will the Clerk please call LCO Number 6360 which shall be designated House Amendment "A".

CLERK:

LCO6360, House "A", offered by Representative  
Tulisano.

DEPUTY SPEAKER POLINSKY:

The gentleman has asked leave of the Chamber to summarize. Is there objection? Seeing no objection, please proceed, Sir.

REP. MINTZ: (140th)

Thank you, Madam Speaker. What this amendment does is changes the section under which we're adding this new provision to the section of the statutes which lists the powers of the fiduciaries that are granted under the statutes. Instead of the section that says there are additional powers that may be granted.

So we want to make sure that fiduciaries have this power to deal with these environmental problems and I move adoption.

DEPUTY SPEAKER POLINSKY:

Motion is on adoption of House "A". Will you remark further? Will you remark further? If not, let us try your minds. Representative Ward.

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REP. WARD: (86th)

Thank you, Madam Speaker, I thought I heard the explanation but to make sure I have it clear, may I just ask a question, through you, to the proponent.

DEPUTY SPEAKER POLINSKY:

Please proceed.

REP. WARD: (86th)

Representative Mintz, then with this change from section 28 to 39, it will be included in any reference to simply all of the powers under the short form reference, this power will be included. It will not have to be separately listed. Is that correct?

REP. MINTZ: (140th)

Through you, Madam Speaker, that's correct. It's changing it from section 40a-35, 28 to section 45a-234-39, so yes, you're right.

DEPUTY SPEAKER POLINSKY:

Representative Ward.

REP. WARD: (86th)

Through you, Madam Speaker, then if a document was previously executed, with the short form reference, is this power now part of the powers in the previous document?

DEPUTY SPEAKER POLINSKY:

Representative Mintz.

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REP. MINTZ: (140th)

Through you, Madam Speaker, I believe that it will only affect documents that are executed from this date forward, but I'm not really sure.

DEPUTY SPEAKER POLINSKY:

Representative Ward.

REP. WARD: (86th)

Thank you, Madam Speaker, I guess I'll make it less enlightening. My assumption was when it was added to the short form that you wouldn't have to then go back and amend the documents, but I may be incorrect, and I was just trying to at least get the intention of the proponent.

I thought by moving this, the intention was if you've given a general short form reference to fiduciary powers it was intended to include this power. And let me just ask if that is, in fact, your intention.

REP. MINTZ: (140th)

Through you, Madam Speaker, for legislative intent, if it is allowable to add this power to already executed documents, that would be the intent of the proponent of this piece of legislation. But I can't give you a direct answer whether or not the courts will allow that or not.

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REP. WARD: (86th)

Thank you, Madam Speaker.

DEPUTY SPEAKER POLINSKY:

Thank you, Sir. Will you remark further on this bill as amended? Representative O'Neill.

REP. O'NEILL: (69th)

Just a quick question, through you, Madam Speaker, to the proponent.

DEPUTY SPEAKER POLINSKY:

Please frame your question, Sir.

REP. O'NEILL: (69th)

The way I read the OLR Report and the way I had understood this, it was only supposed to apply to people who had executed wills or trusts. Is that correct, Madam Speaker, through you?

DEPUTY SPEAKER POLINSKY:

Representative Mintz.

REP. MINTZ: (140th)

Through you, this is for fiduciaries under wills or trusts, yes.

REP. O'NEILL: (69th)

So if I understand it correctly, then, unless there's something in the amendment that I'm not picking up on, this would not apply to people to have executed short form powers of attorney or any other kinds of

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powers of attorney, through you, Madam Speaker.

DEPUTY SPEAKER POLINSKY:

Representative Mintz.

REP. MINTZ: (140th)

Through you, Madam Speaker, my understanding of Representative Ward's question, if you're referring back to that was the short form wills.

REP. O'NEILL: (69th)

Through you, Madam Speaker, perhaps I should address a question to Representative Ward.

DEPUTY SPEAKER POLINSKY:

Please frame your question, Sir. Representative Ward, prepare yourself.

REP. O'NEILL: (69th)

Were you referring to short form wills or short form statutory powers of attorney? Through you, Madam Speaker.

DEPUTY SPEAKER POLINSKY:

Representative Ward, do you care to respond?

REP. WARD: (86th)

Through you, Madam Speaker, I was referring to the Fiduciary Powers Act which you could reference in a will or other document, and by saying you incorporate all things in 45-a-234, the short form, the Fiduciary Powers Act, you can simply make that reference and

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you've included all 38 and now all 39 powers in that section.

There's a subsequent section where if you want to include the power, you have to spell out which subsection of that statute you want to include. That's what I was referring to. The question really was, if you've incorporated in a document a trust or a will, all the powers in 45a-234, have you now also incorporated this new power that we're adding.

The answer to the question was, that was the intent. Through you, Madam Speaker.

DEPUTY SPEAKER POLINSKY:

Representative O'Neill, does that satisfy you.

REP. O'NEILL: (69th)

I just want to make sure. Then in no way, shape or form, through you, Madam Speaker, to the proponent, this was not meant to refer to powers of attorney.

REP. MINTZ: (140th)

Through you, Madam Speaker, that's correct.

REP. O'NEILL: (69th)

Then I must have misunderstood what the discussion was relating to. I'm sorry, Madam Speaker.

DEPUTY SPEAKER POLINSKY:

Will you remark further on this bill as amended?

Representative Chase.

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REP. CHASE: (120th)

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

DEPUTY SPEAKER POLINSKY:

Please frame your question.

REP. CHASE: (120th)

Thank you. Madam Speaker, if currently a fiduciary or trustee is handling the clean up of some hazardous material, let's say asbestos, is that fiduciary in violation of the Fiduciary Powers Act?

DEPUTY SPEAKER POLINSKY:

Representative Mintz.

REP. MINTZ: (140th)

Through you, Madam Speaker, I believe, unless he has approval of the probate court right now, he might be in violation, but the purpose of this is to clarify that they would not be in violation in the future.

DEPUTY SPEAKER POLINSKY:

Representative Chase.

REP. CHASE: (120th)

So that if a trustee or fiduciary, excuse me, thank you, Madam Speaker, again, through you. So that if a fiduciary or trustee is taking remedial action to contain or clean up or remove environmental hazards, then he may be in violation, some violation?

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DEPUTY SPEAKER POLINSKY:

Representative Mintz.

REP. MINTZ: (140th)

Through you, Madam Speaker, that's why we're doing this bill, to make sure that they're not in violation.

DEPUTY SPEAKER POLINSKY:

Representative Chase.

REP. CHASE: (120th)

Thank you, Madam Speaker, that's all. Thank you, Madam Speaker.

DEPUTY SPEAKER POLINSKY:

Thank you. Will you remark further?

Representative Krawiecki.

REP. KRAWIECKI: (78th)

Thank you, Madam Speaker. I found the questioning of Representative Ward and Mintz interesting and to the Chamber, I would just point out to you that in section 45a-233, sub c which deals with incorporation of certain powers by reference in will or trust instrument, the language is perfectly clear that it's at the time of the signing of the documents and as such, I think that would have to be the clear interpretation of the statute, notwithstanding anything else we may wish it to be.

DEPUTY SPEAKER POLINSKY:

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Thank you, Sir. Will you remark further on this bill as amended? Representative Mintz.

REP. MINTZ: (140th)

Yes. We just also found that section and Representative Krawiecki is absolutely correct, but you can't blame us for trying.

DEPUTY SPEAKER POLINSKY:

Will you remark further on this bill as amended? Will you remark further? If not, all members take their seats. Staff and guests to the well of the House. Staff and guests to the well of the House.

I just found my place. It was such a wonderful bill. All those in favor of the House "A", please indicate by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER POLINSKY:

Those opposed, nay. The ayes have it. The amendment is adopted and ruled technical.

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House Amendment Schedule "A".

Delete lines 1 and 2 and insert the following in lieu thereof:

"Section 45a-234 of the general statutes is amended by adding subdivision (39) as follows:"

In line 3, delete "(28)" and insert "(39)" in lieu thereof

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DEPUTY SPEAKER POLINSKY:

Will you remark further on the bill as amended?  
Will you remark further? If not, will all members  
please take their seats. Staff and guests to the well  
of the House. The machine will be opened.

CLERK:

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

DEPUTY SPEAKER POLINSKY:

Have all members voted? Have all members voted and  
is your vote properly recorded? If all members have  
voted, the machine will be locked and the Clerk will  
take a tally. The Clerk please announce the tally.

CLERK:

House Bill 7315 as amended by House "A".

Total number voting 144

Necessary for passage 73

Those voting yea 144

Those voting nay 0

Those absent and not voting 7

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DEPUTY SPEAKER POLINSKY:

The bill as amended is passed.

REP. FRANKEL: (121st)

Madam Speaker.

DEPUTY SPEAKER POLINSKY:

Representative Frankel.

REP. FRANKEL: (121st)

Madam Speaker, at this time I should like to move for the Suspension of our Rules to take up an item that is one starred on today's Calendar. The item appears on Page 13 of your Calendar. It is Calendar Number 517, Substitute for House Bill Number 5578, File Number 603, entitled AN ACT VALIDATING CERTAIN LATE FILINGS RELATED TO APPLICATIONS FOR PROPERTY TAX RELIEF FOR ELDERLY, ETC. from the Committee on Finance, Revenue and Bonding. The motion is for the Suspension of our Rules for the immediate consideration of this item.

DEPUTY SPEAKER POLINSKY:

Is there objection to Suspension of the Rules regarding Calendar 517? Seeing no objection, please proceed, Sir.

REP. FRANKEL: (121st)

Madam Speaker, would you ask the Clerk to please call the bill in question. I will yield the floor with the permission of the Chamber, to Representative

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CONNECTICUT  
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SENATE

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PART 5  
1514-1901

001877

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Calendar 411, Substitute HB6190. Calendar 413, HB7228  
and Calendar 414, Substitute HB7315, I move those to  
the Consent Calendar.

THE CHAIR:

Thank you very much, Senator. Is there any  
objection to moving Senate Calendar 410, Substitute  
HB7338, Senate Calendar 411, Substitute HB6190,  
Calendar 413, HB7228 and finally, Senate Calendar 414,  
Substitute HB7315 to the Consent Calendar? Is there  
any objection? Hearing none, so ordered.

SENATOR O'LEARY:

The only other item on that page is Calendar 412  
and that's marked Passed Retaining. On Page 12,  
Calendar 415 is marked Passed Temporarily. Calendar  
416, Substitute HB7334 I move to the Consent Calendar.

THE CHAIR:

Is there any objection to moving Senate Calendar  
416, Substitute HB7334 to the Consent Calendar? Any  
objection? Senator Upson. There is an objection.  
Senator O'Leary.

SENATOR O'LEARY:

Madam President, I would change the marking to Go.

THE CHAIR:

Thank you.

SENATOR O'LEARY:

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THE CHAIR:

Thank you very much, Mr. Clerk. The issue before the Chamber is the Consent Calendar #1 dated May 15, 1991. Mr. Clerk, would you please read the items that have been placed on the Consent Calendar.

THE CLERK:

Madam President, the 1st Consent Calendar begins on Page 1, Calendar 351, SR32. Calendar 352, SR33. Calendar Page 2, Calendar 353, SR34. Calendar 365, HJ109. Calendar 366, HJ110. Calendar 367, HJ111. Calendar 368, HJ112. Calendar Page 3, Calendar 369, HJ113. Calendar 370, HJ114. Calendar Page 7, Calendar 390, Substitute HB6100.

Calendar Page 10, Calendar 409, HB7139. Calendar Page 11, Calendar 410, Substitute HB7338. Calendar 411, Substitute HB6190. Calendar 413, HB7228. Calendar 414, Substitute HB7315. Calendar Page 13, Calendar 426, Substitute HB5773. Calendar 427, HB6304. Calendar 428, HB6873.

Calendar Page 14, Calendar 431, Substitute HB7288. Calendar 433, Substitute HB6020. Calendar 434, Substitute HB7378. Calendar Page 18, Calendar 23, SB397. Calendar 84, Substitute SB656. Calendar 179, Substitute SB851. Calendar Page 19, Calendar 304, Substitute SB876. Calendar Page 20, Calendar 423,

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HJ59. Calendar 424, HJ63. Madam President, that completes the first Consent Calendar.

THE CHAIR:

Thank you very much, Mr. Clerk. You have heard the items on the Consent Calendar. The machine is open. You may record your vote.

SENATOR O'LEARY:

Madam President.

THE CHAIR:

Senator O'Leary.

SENATOR O'LEARY:

I'm sorry that I wasn't quick enough. On Page 11, Calendar 414. I would like to remove that from the Consent Calendar and mark it Pass Retaining.

THE CHAIR:

Thank you very much, Senator. On Calendar 414, File 667, HB7315 has been removed from the Consent Calendar and will be marked Passed Retaining. The machine is open. You may record your votes on the balance of the Consent Calendar. Thank you very much. The machine is closed.

The result of the vote.

35	Yea
0	Nay
1	Absent

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The Consent Calendar is adopted.

Mr. Clerk, continue under Favorable Reports.

THE CLERK:

Madam President, the Clerk is in possession of Senate Agenda #2 dated Wednesday, May 15, 1991, copies of which have been distributed.

THE CHAIR:

Thank you very much, Mr. Clerk. Senator O'Leary. Senate Calendar #2.

SENATOR O'LEARY:

Thank you, Madam President. I move that all items on Senate Agenda #2 dated May the 15th, 1991 be acted upon as indicated and that the Agenda be incorporated by reference into the Senate Journal and Senate Transcript.

THE CHAIR:

Without objection, so ordered.

SENATE AGENDA #2

1. SENATE BILLS FAVORABLY REPORTED - to be tabled for the Calendar and printing

Appropriations

Substitute SB833 AN ACT CONCERNING THE DUTIES OF THE COMMISSIONER OF MENTAL HEALTH

Appropriations

WEDNESDAY  
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001901

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The Consent Calendar is adopted.

Mr. Clerk, continue under Favorable Reports.

THE CLERK:

Madam President, the Clerk is in possession of Senate Agenda #2 dated Wednesday, May 15, 1991, copies of which have been distributed.

THE CHAIR:

Thank you very much, Mr. Clerk. Senator O'Leary. Senate Calendar #2.

SENATOR O'LEARY:

Thank you, Madam President. I move that all items on Senate Agenda #2 dated May the 15th, 1991 be acted upon as indicated and that the Agenda be incorporated by reference into the Senate Journal and Senate Transcript.

THE CHAIR:

Without objection, so ordered.

SENATE AGENDA #2

1. SENATE BILLS FAVORABLY REPORTED - to be tabled for the Calendar and printing

Appropriations

Substitute SB833 AN ACT CONCERNING THE DUTIES OF  
THE COMMISSIONER OF MENTAL HEALTH

Appropriations

JOINT  
STANDING  
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JUDICIARY

April 12, 1991

-- are not allowed to be excessive. It is against the law for a rate to be unfairly discriminatory, to be excessive or to be inadequate. However, the commissioner is not given the ability to deny a rate increase if it is in fact excessive and so prior rate approval makes a great deal of sense from the perspective of administrative waste.

There's been discussion about why rates are going up. One of those considerations is administrative waste within the industry and issues around investments. We have to be able to take a look at that. I also think it's important to look at a good driver discount in addition to these liability questions so that people who are good drivers can get a statutorily guaranteed discount, not just discounts that are discussed or offered by the industry.

In terms of -- one last thing, in terms of the question of this year, we also think that a solution has to be comprehensive and we feel very strongly that this is a good year to do that. We are a part of the group that met with Commissioner Googins and we're excited about the opportunity to negotiate and put together a consensus proposal that met all sides and are anxious to do that.

We think that part of that has to not just include protecting the rights of consumers, but also an affirmative and proactive approach that gives people increased rights in terms of prior rate approval and other issues. Thank you.

SEN. AVALONE: Suzanne Walsh.

ATTY. SUZANNE WALSH: Good afternoon, Senator Avallone and Members of the Committee. I'm Suzanne Brown Walsh, an attorney with the firm of Copp Berall Wellette Carta & Sluis. I'm here today to testify on behalf of the Connecticut Bar Association in support of two bills.

The first is Committee HB6285, AN ACT CONCERNING QUALIFIED DOMESTIC TRUSTS. The second, Raised HB7315, AN ACT CONCERNING THE POWER OF FIDUCIARIES TO DEAL WITH ENVIRONMENTAL HAZARDS.

SEN. AVALONE: Nothing to do with automobiles?

The second bill I'd like to speak about, Raised HB7315, is basically an amendment to the Connecticut Fiduciary Powers Act. Now that act simply provides a mechanism whereby you can incorporate fiduciary powers into instruments without listing them. You can incorporate them by reference to the statute.

The statute does not now contain any powers for dealing with environmental hazards. We, being the Estates and Probate Section of the Connecticut Bar, feel that these powers are absolutely vital. Fiduciary liability in this area has been greatly expanded by federal statutes. Those statutes provide for liability without fault or strict liability.

They impose liability on a fiduciary which owns possibly contaminated property without regard to when the hazard was created, whether it was created due to fault of the fiduciary and how much the cost of the cleanup is. Fiduciaries are personally liable for the cleanup costs to the extent that those costs exceed trust assets, and as many of you may be aware, the cost of these cleanups are just staggering.

Now I don't believe that the State Legislature has the power to limit liability which is created under a federal law. All this bill does is allow fiduciaries to make site assessments and basically assess damage or otherwise deal with it.

As it is now drafted, the bill does not expressly say that a fiduciary can expend a estate or trust assets to deal with environment --. I'm sorry, it's HB7315. Therefore, with your permission, I would like to submit a redraft of the bill, not to lengthen it in any way, but to simply make sure that the bill expressly says that a fiduciary would be allowed to expend estate or trust assets to deal with an environmental hazard.

I believe Shawmut Bank, I saw a statement from them today. They're Corporate Law Department has suggested this change and when we initially drafted the bill we did expressly include that provision,

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and if that's all right with you, I'd like to submit that on Monday, if that's possible. Thank you. Thank you very much.

SEN. AVALLONE: Bob Buyak.

ROBERT BUYAK: Chairman Avallone, Members of the Committee, my name is Robert Buyak. I'm the Director of Environmental Protection Division of Law Enforcement. I'm here to speak in favor of Raised HB7351.

Essentially, this bill would give our conservation officers the same powers with respect to criminal matters in the enforcement of law as sheriffs, policemen or constables in respective jurisdictions and the reason we're asking for this authority is that conservation officers, like state police officers and municipal police officers complete the minimum training at the academy which is 560 hours required by law and they also meet all mandated training standards.

After that, our officers essentially spend most of their time fishing -- checking for fish and wildlife violations, boating violations. However, we run into situations that we can enforce. So we have a difficult situation with our officers. When they're on patrol they see a lot of activity and they can't enforce the law and they have to turn it over to another agency.

Now of 52 agencies that were surveyed, there were seven of them that did not have full police authority according to this Wildlife Management Institute project. It isn't our intent to become another state police department or another municipal police department. Our intent is to be more effective and efficient and give our officers the opportunity to enforce the law as they come upon violations.

As it is now we have what we call a shopping list and the officers have to keep track of what they can and can't enforce. It's spelled out under 26-6 of the General Statutes and in addition to that, when we receive additional authorities which recently we received authority that would enforce shellfish laws and regulations, they have to amend