

Legislative History for Connecticut Act

HB 6813 PA 297 1991

House 5355-5359
9212-9217

Senate 2960-2964, 3011

Judiciary 191-194

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CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
1991

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5070-5460

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House of Representatives

Wednesday, May 15, 1991

DEPUTY SPEAKER POLINSKY:

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

CLERK:

Page 12, Calendar 570, Substitute for House Bill 6813, AN ACT ADOPTING THE UNIFORM FRAUDULENT TRANSFER ACT AND REPEALING ARTICLE 6 OF THE UNIFORM COMMERCIAL CODE. Favorable Report of the Committee on Judiciary.

DEPUTY SPEAKER POLINSKY:

The gentleman from Norwalk, Representative Mintz.

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, thank you, Madam Speaker. This bill puts into statute the Fraudulent Transfer Act which is designed to protect creditors. It allows creditors to have a court void a fraudulent transfer if it was a sham or to hide assets. The current statute states only that such transfers can be void. It does not detail what is and what is not a fraudulent transfer and this bill sets

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out the procedure.

At this point, I would yield to Representative Varese for a friendly amendment.

DEPUTY SPEAKER POLINSKY:

Representative Varese, do you accept the yield?

REP. VARESE: (112th)

Yes, Madam Speaker, thank you.

DEPUTY SPEAKER POLINSKY:

Please proceed, Sir.

REP. VARESE: (112th)

Madam Speaker, I would request the Clerk to call LCO Number 5495.

DEPUTY SPEAKER POLINSKY:

The gentleman has asked the Clerk to call LCO Number 5495 which shall be designated House Amendment "A".

CLERK:

LC05495, House "A", offered by Representative Varese.

DEPUTY SPEAKER POLINSKY:

Does the gentleman wish to summarize.

REP. VARESE: (112th)

Well, it's a short amendment. I would request the Clerk to read it.

DEPUTY SPEAKER POLINSKY:

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The Clerk please read.

CLERK:

Delete sections 13 to 16, inclusive, in their entirety and substitute the following in lieu thereof:

"Sec. 13. Section 52-552 of the general statutes is repealed."

DEPUTY SPEAKER POLINSKY:

Representative Varese.

REP. VARESE: (112th)

Madam Speaker, I would move the amendment.

DEPUTY SPEAKER POLINSKY:

The question is on adoption of House "A". Will you remark, Sir?

REP. VARESE: (112th)

Yes, Madam Speaker. This amendment merely reinserts the bulk sales act for the State of Connecticut and the bulk sales act in essence allows creditors to be notified prior to the sale of businesses in the State.

DEPUTY SPEAKER POLINSKY:

The question is on adoption of House "A". Will you remark further? Will you remark further? If not, let us try your minds. All those in favor, please indicate by saying aye.

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Aye.

DEPUTY SPEAKER POLINSKY:

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

Will you remark further on this 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.
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. I would ask the Clerk to please record Polinsky in the affirmative.

The Clerk please announce the tally.

CLERK:

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House Bill 6813 as amended by House "A".

Total number voting	146
Necessary for passage	74
Those voting yea	145
Those voting nay	1
Those absent and not voting	5

DEPUTY SPEAKER POLINSKY:

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

Are there any announcements or points of personal privilege? Representative Fox of the 144th.

REP. FOX: (144th)

Thank you, Madam Speaker. Madam Speaker, a few moments ago, Representative Betkoski introduced the fourth grade class from the Bungee School up in Seymour. The second group has now arrived and I'm happy to say that seated here with me in a member of that class is one of my many nieces, Beatrice Kenney. If Beatrice and the rest of her classmates would stand, I'm sure we would give them all our usual warm welcome.

(Applause)

DEPUTY SPEAKER POLINSKY:

Now the Clerk may return to the Call of the Calendar. Excuse me, we have another point of personal privilege. Representative Dyson.

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Thank you very much, Senator. Would anyone else wish to remark? Are there any further remarks? If not, Senator Morton, would you like to place it on the Consent Calendar?

SENATOR MORTON:

Madam President, if there's no objection, I'd like to move this to the Consent Calendar.

THE CHAIR:

Thank you very much, Senator. Is there any objection in placing Senate Calendar #491, Substitute SB558 on the Consent Calendar? Is there any objection? Hearing none, so ordered.

Mr. Clerk.

THE CLERK:

Madam President, it's my understanding we can go back to Calendar #487 on Page 6, File #665 and #759. Substitute HB6813, AN ACT ADOPTING THE UNIFORM FRAUDULENT TRANSFER ACT, as amended by House Amendment Schedule "A". Favorable Report of the Committee on Judiciary.

SENATOR AVALLONE:

I believe I already moved.

THE CHAIR:

Yes, you have Senator. Now we were going to go do LCO7309.

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THE CLERK:

LC07309, designated Senate Amendment Schedule "A"
offered by Senate Casey of the 31st District et al.

THE CHAIR:

Thank you very much. Senator Avallone, do you wish to introduce the amendment?

SENATOR AVALLONE:

Yes. I would move the amendment. I would request permission to summarize and waive its reading.

THE CHAIR:

Please proceed, Senator.

SENATOR AVALLONE:

Yes. What the amendment does is indicate that espousal transfers, any transfer between a husband and wife, even if it was for no consideration, which took place before the occurrence of a debt, would not be subject to a claim of fraudulent conveyance, if in fact, that particular loan had not been repaid. If that transfer takes place after the debt has been incurred, then it is subject to a fraudulent conveyance.

THE CHAIR:

Thank you very much, Senator. Would anybody else wish to remark on Senate Amendment Schedule "A"? Any further remarks? If not, please let me know your mind.

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All those in favor of Senate Amendment Schedule "A",
LC07309, please signify by saying aye.

SENATORS:

Aye.

THE CHAIR:

Opposed. Ayes have it. The amendment is adopted.

Mr. Clerk.

THE CLERK:

It's my understanding that LC07179 is not to be
called. Senator Upson has LC07320, designated Senate
Amendment Schedule "B" offered by Senator Upson of the
15th District.

THE CHAIR:

Do you wish to have that withdrawn, Senator Upson?

SENATOR UPSON:

Yes.

THE CHAIR:

Thank you.

THE CLERK:

No further amendments, Madam President.

SENATOR AVALLONE:

If I may respond on the bill itself.

THE CHAIR:

Please do, sir.

SENATOR AVALLONE:

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We have article 6 of the Uniform Commercial Code which has been repealed which also dealt with these instances of creditors' rights and in particular as they relate to transfers of property for less than adequate consideration. This bill tightens up existing law, expands common law rights of creditors, and in fact, increases the rights of people to collect monies owed to them in the event someone tries to take property away which was available to the creditor.

Consideration is the price paid for a particular piece of property, so if one pays fair market value for a piece of property or sells it for fair market value, then the creditor is not going to make you subject to a fraudulent transfer. If, however, there is insufficient consideration or no consideration then that property becomes subject to the creditor.

THE CHAIR:

Thank you very much, Senator Avallone. Would anyone else wish to remark on Senate Calendar #487, HB6813 as amended? Are there any further remarks? Anyone else wish to comment? If not, Senator Avallone.

SENATOR AVALLONE:

Thank you, Madam President. I would move it to Consent.

THE CHAIR:

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Thank you very much, Senator. Is there any objection in placing the Senate Calendar #487, Substitute HB6813 on the Consent Calendar? Is there any objection? Hearing none, so ordered.

Mr. Clerk.

THE CLERK:

Calendar Page 10, Calendar #540, File #770, Substitute HB6911, AN ACT IMPLEMENTING THE CHILD CARE DEVELOPMENT AND IMPROVEMENT ACT OF 1990 AND PROVIDING FOR PARENT PARTICIPATION IN STATE-FUNDED CHILD DAY CARE PROGRAMS. Favorable Report of the Committee on Appropriations. Clerk is in possession of two amendments.

THE CHAIR:

Thank you very much. The Chair would recognize Senator Przybysz.

SENATOR PRZYBYSZ:

Thank you, Madam President. I would move acceptance of the Joint Committee's Favorable Report and passage of the bill in concurrence with the House and I would ask that both amendments not be called.

THE CHAIR:

Not be called?

SENATOR PRZYBYSZ:

Yes.

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that have been placed on Consent.

THE CLERK:

The 4th Consent Calendar, Madam President begins on Page 6, Calendar 487, Substitute HB6813. Calendar 491, Substitute SB558. Calendar Page 9, Calendar 539, Substitute SB859. Calendar Page 10, Calendar 545, Substitute HB6833.

Calendar Page 12, Calendar 569, Substitute HB7311. Calendar 570, Substitute HB7116. Calendar Page 19, Calendar 446, Substitute SB911. Calendar Page 20, Calendar 516, Substitute SB676. Calendar 526, Substitute SB844. Calendar Page 22, Calendar 221, SB832. Calendar Page 25, Calendar 103, Substitute HB6860.

THE CHAIR:

Thank you very much, Mr. Clerk. You have heard the items that have been placed on the Consent Calendar #4 for the date May 31, 1991. The machine is open. You may record your vote. Thank you. The machine is closed.

The result of the vote.

35 Yea

0 Nay

1 Absent

The Consent Calendar #4 is adopted.

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To reiterate, the Professional Insurance Agents of Connecticut respectfully submit this bill should not be supported, should be opposed as not being in the best interest of the citizens. There's no need, in this bill, for a market delivery systems, as our system now more than adequately meets the needs of the consumer, and finally would only result in expanding the possible scope of the liability and financial ruin that the citizens of the state would be asked to make.

I think the last speaker spoke regarding banks being in the real estate business. He said they don't do a great job in that. I hope they don't want to come into our business and do not such a great job in insurance. I think we do an adequate job. Any questions? Thank you.

SEN. AVALLONE: Thank you. Mr. Lowry.

HOUSTON LOWRY: Senators and Representatives, my name is Houston Lowry. I'm wearing two hats today. The first one is as the Legislative Sub-Committee Chair of the Connecticut Bar Association Section of International Law and World Peace. We wish to indicate our support for HJ72 concerning the Convention on Trusts. This is a resolution which urges the United States to become a party to this convention. The United States has already signed it. Ratification of this is expected before the United States Senate sometime during 1991, and we think a statement by this body would be helpful in getting the United States Senate to act favorably on this private international law issue.

Putting on my other hat, I wish to speak about HB6813, AN ACT ADOPTING THE UNIFORM FRAUDULENT TRANSFER ACT IN REPEALING ARTICLE 6 OF THE UNIFORM COMMERCIAL CODE. I've submitted written testimony on that and also supplementary testimony which will be given to you by the Clerk after the hearing, I believe. A couple of points which I'd like to make. One, with regard to uniform commercial code article 6, the uniform commissioners, the National Conference of Uniform Commissioners on Foreign Laws has recommended repeal. We have found that over the years, it has not addressed the needs that it was stated to meet.

Supposedly it was designed to prevent from absconding with proceeds. There has never been in 35 years, a case with those particular facts. Parties can get a security interest on article 9 to prevent this problem. It was also designed to prevent sales at less than fair market value which the Uniform Fraudulent Transfers Act allows people to address that issue. Therefore, we think article 6 is simultaneously too large and too restrictive. It doesn't address its stated purpose.

The Uniform Fraudulent Transfers Act codifies and expands on an existing Connecticut statute, 52-552. It has the two classical standards, actual fraudulent conveyance and a constructive fraudulent conveyance. But it does have two special features I'd like to point out to the Committee, in addition to just generally saying we support it. One, it does have a provision which provides for preferences to insiders, this means relatives, people closely connected to you, if you pay a debt to them within one year and you are insolvent, that debt can be recovered. It's important that the Committee understand that this is included in the bill. It is in accord with general bankruptcy law.

The second item appears at line 125 of the bill. The words "strict foreclosures" were inserted, which is the subject of my supplemental testimony. We believe that strict foreclosures should be included within the ambit of the act. We recognize that Connecticut is unique in that position. We understand that some people are opposed to it, but we prefer to have it included. The bill is still workable even if it is excluded. If any representative or senator has any comments or questions, I'd be happy to answer them.

SEN. AVALLONE: Thank you very much. Patricia Shea.

ATTY. PATRICIA SHEA: Good morning, Mr. Chairman, HB 6866
Members of the Committee. For the record, my name is Patricia Shea and I am counsel to the Insurance Association of Connecticut. The IAC is a trade association of insurance companies domiciled in the state.

I'm here today to speak in opposition to HB6866, AN ACT CONCERNING THE SALE OF LIFE AND HEALTH INSURANCE BY NON-BANK BANKS. This bill would permit non-bank banks to sell life and health insurance. A non-bank bank is, in this state, there is only one, it is an institution which lends money but does not accept demand deposits. Our position is that the federal government and the state of Connecticut have statutorily prohibited banks from entering the business of insurance. The reasons for this traditional separation briefly are possibility of credit tie-ins, conflict between banking regulation and insurance regulation and what has grown to be most important recently, bank solvency questions.

So we continue to maintain that there should be this separation, and we do not think that there should be created an exception for one entity in allowing them to sell life and health insurance. Any questions?

SEN. AVALLONE: If not, thank you very much. Scott Murphy.

SCOTT MURPHY: Thank you Mr. Chairman, Members of the Committee. My name is Scott Murphy and I'm here as a member of the Connecticut Law Revision Commission speaking on behalf of HB6813, which is AN ACT TO REPEAL ARTICLE 6 OF THE COMMERCIAL CODE AND ADOPT IN CONNECTICUT THE UNIFORM FRAUDULENT TRANSFERS ACT. I served as Chairman of the Connecticut Law Revision Commission's Advisory Committee that was formed to study the recommendation of the Uniform Laws Commissioners in this regard.

You've heard from Mr. Lowry and perhaps you'll hear from others in support of the bill on its merits. I thought what I might do very quickly for you is describe the process by which the bill was considered by the Law Revision Commission Advisory Committee when it was charged, when the Law Revision Commission was charged to review the Uniform Laws Commissioner's proposal by your Committee. As is often in the case of the Law Revision Commission, we formed an Advisory Committee which in this case, consisted of 12 members, the number of attorneys with practice

representing buyers, sellers, lenders involved in the kinds of transactions that are affected by the bill, representative of Connecticut Business and Industry Association, representative of the National Association of Credit Managers, although that gentleman did not participate in the final recommendation of our Committee, two law professors, Neil Scanlon of UCONN and Charles Hatt from the University of Bridgeport.

We met approximately five times in 1990 for an hour and a half to two hours in each session. I can tell you there was vigorous debate on the proposal of the Uniform Laws Commissioners which as you may know, was in the first instance to repeal article 6, but in the alternative, to adopt rather extensive revisions to it. At the end of that process of deliberation and debate, the Members of the Advisory Committee supported in full, with only one member favoring revision of the repeal, supported fully the bill that you see before you repealing article 6 and adopting the more modern Uniform Fraudulent Transfers Act in Connecticut.

Without going into the technical details of either, I might just offer that the strong sense of Committee Members at the end of that process was that article 6 in its present form is at best unnecessary and at worst is an impediment, quite often, operating unfairly to parties to the transaction to buyers and sellers of businesses. It's unnecessary, I think, given the modern laws transactions, bankruptcy and fraudulent conveyance coupled with modern credit information and reporting procedures which were simply unavailable and unknown at the time that the sales act was first adopted near the turn of the century.

At its worst it is intended to punish innocent parties in transactions, act as a trap for the unwary where technical non-compliance may result in a transaction being voided where in fact no harm has been done and they charge a buyer of inventory where he has paid no benefit and certainly has acted in good faith.

I support the bill as did the Advisory Committee.
Thank you.