

Legislative History for Connecticut Act

PA 95-82

AN ACT CONCERNING DIVISION OF TRUST FOR BENEFIT OF BENEFICIARIES

|                      |  |                    |      |
|----------------------|--|--------------------|------|
| <b>Act Number:</b>   | 82                                       | <b>Year:</b>       | 1995 |
| <b>Bill Number:</b>  | HB 6677                                  |                    |      |
| <b>Senate Pages:</b> | 1579-1582, 1648-1650, 2573,<br>2607-2608 |                    | (11) |
| <b>House Pages:</b>  | 1347-1353, 1729-1731, 2006-<br>2011      |                    | (16) |
| <b>Committee:</b>    | 1368-1370, 1440, 1500-1502               |                    | (7)  |
| <i>Judiciary</i>     |  |                    |      |
|                      |  | <b>Page Total:</b> | 34   |

Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate  
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S-375

CONNECTICUT  
GEN. ASSEMBLY  
SENATE

PROCEEDINGS  
1995

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1433-1818

resubmittals through.

THE CHAIR:

Question is on passage. Will you remark further?  
Will you remark? Senator Gunther?

SEN. GUNTHER:

If there's no objection, I'd ask that -- put it on  
the Consent Calendar.

THE CHAIR:

Question is on referral to the Consent Calendar.  
Without objection, so ordered.

THE CLERK:

On page 12, Calendar No. 194, Substitute for  
HB6677, An Act Concerning Division of Trust for Benefit  
of Beneficiaries. Favorable report from the Committee  
on Judiciary.

THE CHAIR:

Senator Upson.

SEN. UPSON:

Thank you, Madam President.

I move adoption of the joint committee's favorable  
report and passage of the bill. And I'd like --

THE CHAIR:

Question is on passage. Will you remark?

SEN. UPSON:

Yes. I'd like to call LCO5502.

THE CLERK:

Senate Amendment Schedule A, LCO5502.

THE CHAIR:

Senator Upson?

SEN. UPSON:

Yes. Madam President, there are two -- first of all, the bill I will explain -- well, I'll explain the bill for a second, if I may.

The bill will allow a trustee of a inter vivos trust or a trust that's set up at the time of a will or testamentary trust to divide trust funds into more than one. Now, let's say there's three beneficiaries and there's one trust fund and the article that sets up the trust fund does not allow for individual trusts. By operation of law, we pass this, then a trustee will be able to divide up the trust. And I'll explain why in a minute.

But the amendment are technical changes. The first one, on line 22, since a juvenile could be a beneficiary of a trust, we've allowed for notice to be given to that person through a guardian ad litem. So that line 22, after the word "funded", this is a notice provision, will say, "including a guardian ad litem, previously appointed by Probate Court." That's one change.

And the other one, and I think we have a grammar expert who's the current Probate Court administrator who wants me to change the word on line 56. "A trust that exists" to "a trust that exist", take out the word "s".

So I, first of all, like to ask for a -- call the amendment and ask for a vote on that. I guess by voice.

THE CHAIR:

Thank you. We are currently considering Senate Amendment A. Will you remark further? Will you remark?

If not, I'll try your minds. Those in favor, indicate by saying "aye".

ASSEMBLY:

Aye.

THE CHAIR:

Those opposed, "nay". The ayes have it. The amendment is adopted.

Senator Upson.

SEN. UPSON:

Yes, Madam President.

This is a 35 to 0 vote in the Judiciary Committee. And, again, what this will allow a trustee to do is to divide one trust into more than one part, if there are

more than one beneficiary.

The reason for this and I get this from the Connecticut Bar Association, etcetera, it's designed to allow trustees to deal with problems with the generation skipping tax, which is a federal tax.

It will not take away from the state revenues; has nothing to do with the CIT or Connecticut State income tax. This is purely allowing for a trustee to take the benefit of a federal tax exemption by dividing up the trust, if that would help, into more than one vehicle, even though the vehicle, the original trust did not allow for that.

If there's no objection, I'd ask that this be -- go on Consent Calendar. Thank you.

THE CHAIR:

The question now is to place this on the Consent Calendar. Without objection, so ordered.

THE CLERK:

On page 13, Calendar No. 196, HB5835, An Act Concerning Education For Chiropractors, as amended by House Amendment Schedule A, LCO6218. A favorable report from the Committee on Public Health.

THE CHAIR:

Senator Gunther.

SEN. GUNTHER:

easy, if you are interested in playing and, from what I understand, from the history of this tournament, Madam President, the Senate needs as many players as they can get.

So please come see me if you're interested in playing. Thank you.

THE CHAIR:

Thank you, Senator Munns.

Will you remark -- any other announcements or points of personal privilege?

If not, would the Clerk please call the Consent Calendar?

THE CLERK:

On page 2, Calendar No. 55, SB166.

On page 2, Calendar No. 96, HB5717.

On page 3, Calendar No. 103, SB618.

On page 4, Calendar No. 125, SB616.

On page 5, Calendar No. 135, SB528.

On page 8, Calendar No. 165, SB1054.

On page 9, Calendar No. 174, SB1139.

On page 9, Calendar No. 175, SB193.

On page 9, Calendar No. 179, HB6734.

On page 10, Calendar No. 183, HB6153.

On page 11, Calendar No. 188, HB6787.

On page 12, Calendar No. 192, HB6210.

On page 12, Calendar No. 193, HB6651.

On page 12, Calendar No. 194, HB6677.

On page 13, Calendar No. 196, HB5835.

On page 13, Calendar No. 197, HB6494.

On page 13, Calendar No. 198, HB6828.

On page 13, Calendar No. 200, SB897.

On page 13, Calendar No. 201, SB882.

On page 14, Calendar No. 206, SB1026.

On page 15, Calendar No. 208, SB1057.

On page 22, Calendar No. 81, SB894.

On page 22, Calendar No. 111, SB1036.

On page 24, Calendar No. 176, HJR28.

On page 24, Calendar No. 177, HJR30.

THE CHAIR:

Thank you. Would the Clerk please announce the pendency of a roll call vote. The machine will be open. We're voting on the Consent Calendar.

THE CLERK:

An immediate roll call vote has been ordered in the Senate. All Senators please return to the Chamber.

An immediate roll call vote has been ordered in the Senate. All Senators please return to the Chamber.

THE CHAIR:

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

THE CLERK:

Total number of Senators voting, 35; necessary for passage, 18. Those voting "yea", 35; those voting "nay", 0.

THE CHAIR:

The Consent Calendar is adopted.

Senator Fleming?

SEN. FLEMING:

Yes, Madam President.

Just -- I notice people packing up and we're not quite done and I wouldn't want anyone to ruin a perfect attendance record.

We do have some PT's that we have to go back to, so we will be here a little bit longer.

THE CHAIR:

Thank you, Senator Fleming.

THE CLERK:

On page 6, Calendar No. 154, Substitute for SB1100, An Act Authorizing the Drug Testing of Drivers of Certain Commercial Motor Vehicles.

SEN. FLEMING:

Madam President?

THE CHAIR:

Senator Fleming.

SEN. FLEMING:

S-378

CONNECTICUT  
GEN. ASSEMBLY  
SENATE

PROCEEDINGS  
1995

VOL. 38

PART 8

2543-2919

Calendar. Without objection, so ordered.

SEN. FLEMING:

Calendar 194, Substitute for HB6677, File 659.

Madam President, I would move that to the Consent  
Calendar.

THE CHAIR:

Motion is to refer this item to the Consent  
Calendar. Without objection, so ordered.

SEN. FLEMING:

Calendar Page 28, Calendar 285, Substitute for  
HB6664 is pass retained.

Calendar 168, SJR11 is pass retained.

Calendar 247, Substitute for SJR35 is pass  
retained.

Calendar 157, Substitute for HB6552 is marked Go.

Madam President, that completes the markings of  
today's Calendar.

THE CHAIR:

Thank you, Senator Fleming. Before we begin with  
today's Calendar, I will ask if there are any points of  
personal privilege or announcements. Are there any  
points of personal privilege or announcements? Seeing  
none, excuse me, Senator Sullivan.

SEN. SULLIVAN:

Thank you very much, Madam President. The other

Page 22, Calendar 421, Substitute for HB6730.

Page 27, Calendar 135, Substitute for SB528.

Page 27, Calendar 194, Substitute for HB6677.

THE CHAIR:

The motion before us is adoption of the Consent Calendar. Senator Fleming.

SEN. FLEMING:

Yes, thank you, Madam President. Madam President, I would like to request that Calendar 389, Substitute for HB6995, File 650 which is on Calendar Page 16 be removed from the Consent Calendar and marked Go.

THE CHAIR:

That item is removed from the Consent Calendar and marked Go. Senator Rennie.

THE CLERK:

An immediate roll call has been ordered in the Senate. Will all Senators please return to the Chamber.

THE CHAIR:

The machine will be open.

THE CLERK:

An immediate roll call has been ordered in the Senate on the Consent Calendar. Will all Senators please return to the Chamber.

THE CHAIR:

Have all members voted? If so, the machine will be locked. The Clerk please take a tally. Please announce the tally.

THE CLERK:

Total number voting, 36; necessary for passage, 19. Those voting "yea", 36; those voting "nay", 0.

THE CHAIR:

The Consent Calendar is adopted. At this time, the Chair will entertain any points of personal privilege or announcements.

Seeing none, would the Clerk return to the Call of the Calendar.

THE CLERK:

Page 3, Calendar 85, Substitute for SB76, An Act Concerning the Establishment of Deadlines for the Processing of Applications for State Economic Development Assistance. Favorable Report of the Committee on Commerce, File 108.

THE CHAIR:

Senator Guglielmo.

SEN. GUGLIELMO:

Yes, Madam President. I move adoption of the Joint Committee's Favorable Report and passage of the bill.

H-723

CONNECTICUT  
GEN. ASSEMBLY  
HOUSE

PROCEEDINGS  
1995

VOL. 38

PART 4

1123-1462

House of Representatives

Wednesday, April 19, 1995

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

The Clerk will announce the tally, please.

CLERK:

House Bill 6153, as amended by House "A"

Total Number Voting 145

Necessary for Passage 73

Those voting Yea 145

Those voting Nay 0

Those absent and not voting 6

DEPUTY SPEAKER HARTLEY:

The bill, as amended, is passed. Will the Clerk please call Calendar 105?

CLERK:

On Page 9, Calendar 105, Substitute for House Bill Number 6677, AN ACT CONCERNING DIVISION OF TRUST FOR BENEFIT OF BENEFICIARIES. Favorable Report of the Committee on Judiciary.

DEPUTY SPEAKER HARTLEY:

The distinguished Chairman of the Judiciary Committee, Representative Lawlor.

REP. LAWLOR: (99th)

Thank you very much, Madam Speaker. I move acceptance of the Joint Committee's Favorable Report

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House of Representatives

Wednesday, April 19, 1995

and passage of the bill.

DEPUTY SPEAKER HARTLEY:

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

REP. LAWLOR: (99th)

Thank you, Madam Speaker. I will. Many states allow for trustees to divide trust and Connecticut would like to join that list. This bill authorizes a trustee to divide an existing trust if the trustee finds that it is in the best interest of the beneficiaries to do so. The separate trust provisions must be identical to the original trust provision and the division of the trust actually has to take place on a percentage basis or a fractional basis, based on the fair market value of the trust at the time of the division.

Madam Speaker, I would urge passage of the bill.

DEPUTY SPEAKER HARTLEY:

The motion is on passage. Will you remark? Further remarks? Representative Radcliffe of the 123rd.

REP. RADCLIFFE: (123rd)

Thank you, Madam Speaker. Madam Speaker, I rise in support of the bill. I think it is something that will allow trustees greater flexibility to assist

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001349  
144

House of Representatives

Wednesday, April 19, 1995

beneficiaries, but there are a couple of sections of the bill that I think ought to be clarified for the record.

So through you, Madam Speaker, if I may, a question for the proponent of the bill?

DEPUTY SPEAKER HARTLEY:

Representative Lawlor.

REP. RADCLIFFE: (123rd)

Through you, Madam Speaker, beginning on line 16, subsection (1), it talks of notice to the beneficiaries of a trust. I take it that this notice should be sent by the trustee and not by the probate court given jurisdiction in a later portion of the bill. Is that correct? Through you, Madam Speaker.

DEPUTY SPEAKER HARTLEY:

Representative Lawlor.

REP. LAWLOR: (99th)

That's correct, Madam Speaker. Later on in the bill, it does clarify that it is incumbent upon the trustee to prove that, to demonstrate that to the court.

REP. RADCLIFFE: (123rd)

Now, through you, Madam Speaker, under this bill, without the approval of the trustee, may an individual beneficiary petition for distribution because of the

tax advantages available to him or to her? Through you, Madam Speaker.

DEPUTY SPEAKER HARTLEY:

Representative Lawlor.

REP. LAWLOR: (99th)

Through you, Madam Speaker. I believe the answer is no. I believe the beneficiary may only object to the proposed division of the trust and the form for that would be in the Probate Court.

REP. RADCLIFFE: (123rd)

Thank you, Madam Speaker. That's my understanding too that it would have to be at the request of the beneficiary, but we do have in section (d) the language that indicates that this shall not exclude or abridge any other rights or procedures, on line 54 or 55. So through you, Madam Speaker, if a trust instrument gave that right to a beneficiary, would that trust instrument be given effect notwithstanding this statute? Through you, Madam Speaker.

DEPUTY SPEAKER HARTLEY:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Madam Speaker. To the extent that the trust existed before October 1st of this year this legislation does not affect it.

House of Representatives

Wednesday, April 19, 1995

If that question arose in the future, I believe that the terms of the trust would govern.

DEPUTY SPEAKER HARTLEY:

Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Thank you, Madam Speaker. Then I would assume that under those circumstances, if a trust were written and that trust gave a beneficiary the ability or the standing in and of itself, to seek some sort of distribution of the estate or some sort of splitting for advantageous tax purposes, that even if the trustee disagreed with that request of the beneficiary, the trust instrument would control over the statute which only gives that power to the trustee? Is that correct? Through you, Madam Speaker.

DEPUTY SPEAKER HARTLEY:

Representative Lawlor.

REP. LAWLOR: (99th)

Through you, Madam Speaker. Yes, that is correct and Madam Speaker, I would like to clarify something I just mentioned which was inaccurate. This does apply to trust created before on, and after October 1, 1995, not simply those created after October 1st. So I was mistaken.

REP. RADCLIFFE: (123rd)

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House of Representatives

Wednesday, April 19, 1995

Alright. Thank you, Madam Speaker. In many trust instruments, you will also have a provision that says that the laws of a particular state would control and that state may not be Connecticut. So, through you, Madam Speaker, if there were a trust instrument that said that laws of the State of Massachusetts or Hawaii would control rather than the laws of the State of Connecticut, would that provision be given effect, notwithstanding the statute? Through you, Madam Speaker.

DEPUTY SPEAKER HARTLEY:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you, Madam Speaker. Yes, it would.

DEPUTY SPEAKER HARTLEY:

Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Alright. Thank you.

DEPUTY SPEAKER HARTLEY:

Further remarks? If there are no further remarks, will the staff please come to the well? Members, please take your seats. The machine will be opened.

CLERK:

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

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House of Representatives

Wednesday, April 19, 1995

roll call. Members to the Chamber, please.

DEPUTY SPEAKER HARTLEY:

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

CLERK:

|                             |     |
|-----------------------------|-----|
| House Bill 6677             |     |
| Total Number Voting         | 146 |
| Necessary for Passage       | 74  |
| Those voting Yea            | 146 |
| Those voting Nay            | 0   |
| Those absent and not voting | 5   |

DEPUTY SPEAKER HARTLEY:

The bill is passed. Will the Clerk please return to the Call? Calendar 165.

CLERK:

On Page 13, Calendar 165, Substitute for Senate Bill Number 1036, AN ACT CONCERNING REMONSTRATION TO LIQUOR PERMITS. Favorable Report of the Committee on General Law.

DEPUTY SPEAKER HARTLEY:

Representative Fox of the 144th, you have the floor, sir.

REP. FOX: (144th)

H-724

CONNECTICUT  
GEN. ASSEMBLY  
HOUSE

PROCEEDINGS  
1995

VOL. 38

PART 5

1463-1852

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001729

House of Representatives

Tuesday, May 2, 1995

|                         |     |
|-------------------------|-----|
| Total number Voting     | 146 |
| Necessary for passage   | 74  |
| Those voting Yea        | 146 |
| Those voting Nay        | 0   |
| Those absent not voting | 5   |

SPEAKER RITTER:

Bill as amended passed. Clerk please call

Calendar 105.

CLERK:

On page twenty-four, Calendar 105. Substitute for  
House Bill Number 6677. AN ACT CONCERNING A DIVISION  
 OF TRUST FOR BENEFIT OF BENEFICIARIES. As amended by  
 Senate Amendment Schedule "A" Favorable report of the  
 Committee Judiciary, Senate, adopted Senate Amendment  
 Schedule "A" on April 26, 1995.

SPEAKER RITTER:

The Honorable Representative from 114th District  
 Representative Scalettar you have the floor madam.

REP. SCALETTAR: (114th)

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

SPEAKER RITTER:

Motion on acceptance and passage, please proceed  
 madam.

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House of Representatives

Tuesday, May 2, 1995

001730

REP. SCALETTAR: (114th)

Thank you Mr. Speaker. This Bill would authorize the trustee of inter-vitalist trust or a testamentary trust to divide the trust. And it gives the trustee the ability to take advantage of various tax laws.

SPEAKER RITTER:

Could you remark?

REP. SCALETTAR: (114th)

Mr. Speaker the Clerk has LCO 5502, may he call and I be permitted to summarize?

SPEAKER RITTER:

Clerk has LCO 5502 if he may call and Representative Scalettar would like to summarize.

REP. SCALETTAR: Mr. Speaker.

SPEAKER RITTER:

Hold on one second, let the Clerk call the amendment.

SPEAKER RITTER:

It's Senate "A" it's a previously adopted Senate amendment. Why don't we stand at ease for a moment.

REP. GODFREY: (110th)

Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Representative Godfrey.

REP. GODFREY: (110th)

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House of Representatives

Tuesday, May 2, 1995

001731

I move that this item be passed temporarily.

DEPUTY SPEAKER PUDLIN:

What a good idea sir. Hearing no objection the item is PR'd, I'm sorry I correct that PT'd. Clerk please call Calendar 87.

CLERK:

On page three, Calendar 87. Substitute for House Bill Number 6604. AN ACT CONCERNING BANK INVESTMENTS AND MORTGAGE LOANS AND N.O.W. ACCOUNTS. Favorable report of the Committee on Banks.

REP. MCCA VANAGH: (12th)

Mr. Speaker.

DEPUTY SPEAKER PUDLIN:

Representative McCavanagh.

REP. MCCA VANAGH: (12th)

Mr. Speaker I move Joint Committee's Favorable report and passage of the Bill.

DEPUTY SPEAKER PUDLIN:

Questions on acceptance and passage will your remark?

REP. MCCA VANAGH: (12th)

Mr. Speaker this bill makes a number of changes, clarifications and technical corrections to state chartered banks, mortgage loan and investment powers. Limits on debt and equity securities, exemptions for

H-725

CONNECTICUT  
GEN. ASSEMBLY  
HOUSE

PROCEEDINGS  
1995

VOL. 38

PART 6

1853-2264

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144

House of Representatives

May 9, 1995

chamber on legislative business. That Representative Boughton has missed votes being in his district on legislative business.

DEPUTY SPEAKER HYSLOP:

The transcript will so note.

REP. COLLINS: (117th)

Also Representative Wasserman, may have missed votes out of the chamber on legislative business.

DEPUTY SPEAKER HYSLOP:

The transcript will so note.

REP. COLLINS: (117th)

Thank you Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Eberle.

REP. EBERLE: (15th)

Thank you Mr. Speaker could the transcript note that Representative Amann may have missed votes this morning due to being out of the chamber on legislative business?

DEPUTY SPEAKER HYSLOP:

The transcript will so note. The Clerk will return to the call of the calendar.

CLERK:

On page thirty-three, calendar 105. Substitute  
for House Bill Number 6677, AN ACT CONCERNING DIVISION

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House of Representatives

May 9, 1995

OF TRUST FOR BENEFIT OF BENEFICIARIES. As amended by Senate Amendment Schedule "A". Favorable report of the Committee on Judiciary. The Senate adopted Senate "A" on April 26, 1995.

DEPUTY SPEAKER HYSLOP:

Representative Scalettar.

REP. SCALETTAR: (114th)

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

DEPUTY SPEAKER HYSLOP:

Question is on acceptance and passage, will you remark further?

REP. SCALETTAR: (114th)

Mr. Speaker, this bill authorizes the trustee of an intervivals or a testamentary trust to divide the trust among beneficiaries if it is in the best interest of the beneficiaries to do so.

DEPUTY SPEAKER HYSLOP:

Will you remark further on the bill?

REP. SCALETTAR: (114th)

Thank you Mr. Speaker, the bill gives the trustee greater flexibility and the ability to take advantage of favorable tax elections by dividing the trust among beneficiaries. It sets out specific procedures,

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House of Representatives

May 9, 1995

including notice to each beneficiary. Mr. Speaker, there is a Senate amendment to this bill, will the Clerk please call LCO 5502, Senate Amendment "A", and I be permitted to summarize.

DEPUTY SPEAKER HYSLOP:

Will the Clerk please call LCO 5502, designated as Senate Amendment "A"? The Representative has asked leave to summarize.

CLERK:

LCO Number 5502 designated Senate "A" offered by Senator Upson.

DEPUTY SPEAKER HYSLOP:

Representative Scalettar.

REP. SCALETTAR: (114th)

Thank you Mr. Speaker. Mr. Speaker I urge rejection of Senate Amendment "A" which attempts to indicate that in any instance where a beneficiary is to be given notice, or must give notice that a guardian of the beneficiary should also be given notice and has the right to give such notice. However, Senate Amendment "A" does not make the corrections in all of the appropriate places, nor does it include all of the types of guardians which may be at issue.

I therefore urge rejection of the amendment and I will follow-up with a separate amendment to make the

kmr

147

House of Representatives

May 9, 1995

necessary changes.

DEPUTY SPEAKER HYSLOP:

Question is on rejection, will you remark further, on Senate Amendment "A"? Question is on rejection? If not, we'll try your minds, all those in favor of rejection, signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER HYSLOP:

Those opposed, nay. The ayes have it. Senate "A" is rejected. Representative Scalettar.

REP. SCALETTAR: (114th)

Thank you Mr. Speaker. The Clerk has LCO 6416, will he call and I be permitted to summarize?

DEPUTY SPEAKER HYSLOP:

Will the Clerk please call LCO 6416, designated House "A", the Representative has asked leave to summarize.

CLERK:

LCO Number 6416, designated House "A" offered by Representative Scalettar, et al.

DEPUTY SPEAKER HYSLOP:

Representative Scalettar.

REP. SCALETTAR: (114th)

Thank you Mr. Speaker. Mr. Speaker, this

House of Representatives

May 9, 1995

amendment clarifies that in this bill, wherever notice is to be given to a beneficiary or a beneficiary has a right to bring any actions under the bill, the provision will also apply to any guardian or guardian ad litem of the beneficiary. I move adoption of the amendment Mr. Speaker.

SPEAKER RITTER:

I had to move this down, that's the first time that's happened to me in a long time. Question is on adoption, will your remark further madam? Will you remark further? If not I'll try your minds. All those in favor signify by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER RITTER:

Opposed nay. The ayes have it, will you remark further on this bill? If not, as amended, staff and guests please come to the well of the House, the machine will be open.

CLERK:

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

SPEAKER RITTER:

Have all members voted? Please check the roll

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149

House of Representatives

May 9, 1995

call machine to make sure that your vote is properly cast. The machine will be locked and the Clerk will please take the tally. The Clerk will please announce the tally.

CLERK:

House Bill Number 6677 as amended by House "A"

|                             |     |
|-----------------------------|-----|
| Total number voting         | 145 |
| Necessary for passage       | 73  |
| Those voting Yea            | 144 |
| Those voting Nay            | 1   |
| Those absent and not Voting | 6   |

SPEAKER RITTER:

Bill as amended passes. At this time I will ask for points of personal privileges or announcements. Representative Fritz of the 90th.

REP. FRITZ: (90th)

Thank you Mr. Speaker. For the purpose of an announcement.

SPEAKER RITTER:

I'm leery of your announcements, but please proceed madam.

REP. FRITZ: (90th)

I could sing you a song about bygones being bygones.

SPEAKER RITTER:

JOINT  
STANDING  
COMMITTEE  
HEARINGS

JUDICIARY  
PART 4  
1093-1502

1995

44  
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JUDICIARY

February 24, 1995

LAUGHLIN MCLEAN: There was a shorthand provision in the Senate Bill which attempted to get at these same things. What we are suggesting is that--the Law Revision Commission has made a very thorough study with lots of help from lots of people.

SEN. UPSON: Good.

LAUGHLIN MCLEAN: I would prefer their language.

SEN. UPSON: Thank you very much. Paul Boudreau.

PAUL BOUDREAU: Boudreau.

SEN. UPSON: Boudreau. Connecticut Bar Association, Estate Section. You mean finally have a consensus?

PAUL BOUDREAU: Consensus?

SEN. UPSON: It is usually very difficult to do that in the Connecticut Bar Association.

PAUL BOUDREAU: Good afternoon Senator Upson, members of the Judiciary Committee. My name is Paul Boudreau. I am an attorney with Cummings and Lockwood in Hartford. I am vice chair of the Estates and Probate Section of the Connecticut Bar Association and as such, head our Legislative Reaction Committee.

I want to thank you for the opportunity to speak in support of five bills that we have submitted this year.

SEN. UPSON: Legislative Reaction Committee?

PAUL BOUDREAU: Yes.

SEN. UPSON: (INAUDIBLE - NOT USING MICROPHONE)

PAUL BOUDREAU: HB 6677 SB 911 HB 6671 SB 910 SB 912  
We are reactive. There are five bills we have endorsed this year affecting the probate court will, estates and conservatorships.

The first two bills, I will spend the bulk of my time on because they have not been addressed by any other speaker.

45  
gmh

JUDICIARY

February 24, 1995

The first bill is HB6677 providing for the division of a trust for the benefit of beneficiaries. The Internal Revenue Code contains provisions allowing tax elections or allocations to be made with respect to a portion of a trust. These elections will eventually benefit children and grandchildren of the decedent by reducing estate and generation skipping taxes. To facilitate the administration of a trust, if these elections have been made, it is generally better to take a single trust and separate it into an elected portion and an unelected portion.

SEN. UPSON: You are not talking about trusts for different people? One person, but with different portions?

PAUL BOUDREAU: Correct. The key here is --

SEN. UPSON: Give me an example.

PAUL BOUDREAU: The trust -- there is a single trust for a group of beneficiaries or for one single beneficiary. That trust would be divided into two separate trusts, both with exactly identical terms as the original trust.

SEN. UPSON: So if I left three -- I had one trust and to three children. You do separate trusts or you could do --

PAUL BOUDREAU: Actually, this bill would not go that far. It would simply take that one trust for three children and create two separate trusts with both for all three of the children. And the only difference in the two trusts is that for IRS purposes, there have been certain tax elections that have been made with respect to the first trust, but not the second trust.

An example might be that upon the surviving spouse's death, the first trust might be subject to death taxes whereas the second trust would not. If you were to do --- say the original trust, sixty percent of that trust would be subject to death taxes. We have found that it is better to have one trust which is fully subject to death taxes and

another identical trust representing forty percent of the initial value which is not.

SEN. UPSON: So, if Wollenberg were here he would have said, aren't you doing the lawyer's work that they haven't done?

PAUL BOUDREAU: I couldn't agree more. This is really for the general practitioner who is not otherwise addressed as part of the --

SEN. UPSON: (INAUDIBLE)

PAUL BOUDREAU: Exactly. So this is really, to that extent, does facilitate it where it has not been addressed in the document.

SEN. UPSON: This bill is being promulgated by CBA or?

PAUL BOUDREAU: It is being supported by the CBA and it is my understanding with conversations with Linda Dowd, with the Probate Court Administrator's Office has no objection to it.

SEN. UPSON: Does anyone have any questions on that? Representative Doyle.

REP. DOYLE: (INAUDIBLE)

SEN. UPSON: Alright.

PAUL BOUDREAU: In that case, let me move on to the second piece of legislation which has not been discussed today. This is SB911. And the purpose - - this is powers of trustees who are also trust beneficiaries. So the key to understanding this statute is we are looking at a situation where there is a trustee of a trust who at the same time, is also a beneficiary of that trust.

And the purpose of this statute is in that circumstance where a trustee is also a beneficiary, is to restrict the power of that trustee -- I would think of it as somewhat of an anti-self dealing statute.

If the trustee beneficiary's powers are not

1           **TO:           JUDICIARY COMMITTEE**

2           **FROM:        F. PAUL KURMAY, PROBATE COURT ADMINISTRATOR**

3           **RE:           S.B. 622 - AAC CONCERNING APPOINTMENT OF A GUARDIAN**  
4                    **AD LITEM**

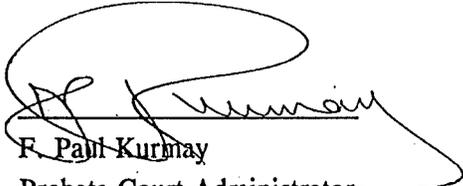
5                    **S.B. 913 - AAC CONFIDENTIALITY OF APPEALS FROM**  
6                    **PROBATE COURT**

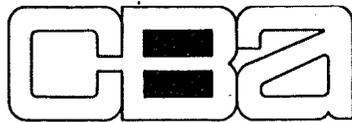
7                    **S.B. 911 - AAC POWERS OF TRUSTEES WHO ARE ALSO TRUST**  
8                    **BENEFICIARIES**

9                    **H.B. 6677 - AAC DIVISION OF TRUST FOR BENEFIT OF**  
10                   **BENEFICIARIES**

11           There are four proposals before this Committee today that I would like to briefly  
12           comment on.

- 13           1.     S.B. 622 - AAC Concerning Appointment of a Guardian Ad Litem is not really  
14                    a probate matter. It addresses the appointment of a guardian ad litem in Superior  
15                    Court cases where child abuse is alleged. We would, therefore, defer to Judge  
16                    Ment or his staff for comments on this proposal.
- 17           2.     S.B. 913 - AAC Confidentiality of Appeals from Probate Court clearly involves  
18                    the administration of the Superior Court system and, we would defer to Judge  
19                    Ment for his comments and position on this matter.
- 20           3.     S.B. 911 - AAC Powers of Trustees Who Are Also Trust Beneficiaries and H.B.  
21                    6677 - AAC Division of Trust for Benefit of Beneficiaries were proposed by the  
22                    Connecticut Bar Association and since members of that august body will be  
23                    testifying this morning, I would defer to their comments on these two proposals.

24                      
25                    F. Paul Kurmay  
26                    Probate Court Administrator  
27                    State of Connecticut



**Connecticut Bar Association**

H.B. NO. 6677 (RAISED)  
AN ACT CONCERNING DIVISION OF TRUST FOR BENEFIT OF BENEFICIARIES

TESTIMONY ON BEHALF OF THE CONNECTICUT BAR ASSOCIATION'S  
ESTATES AND PROBATE SECTION  
BY PAUL L. BOURDEAU, ESQ.

Prepared for Presentation to the  
Judiciary Committee  
Hearing Date: February 24, 1995

The Estates and Probate Section of the Connecticut Bar Association strongly supports passage of this legislation pertaining to trusts and estates.

Trustees acting under a Will or an inter vivos trust instrument created by an individual's estate plan should have statutory authority to divide the trusts they administer into two or more separate, but identical, trusts for situations in which a division would be in the best interests of the beneficiaries of the trusts. Passage of this bill will provide that needed authority.

Our Section believes that the proposed legislation will avoid the potential need to determine whether a Trustee has this power to divide trusts in individual situations by litigation or by appeals in tax proceedings. Although attorneys who are specialists in trust and estate matters can successfully address this issue in drafting Wills and trusts for

their clients, too often the issue is left unaddressed by clients and their attorneys who may not be familiar with the tax and legal considerations involved.

For tax purposes, the Internal Revenue Service has taken a position that, unless a Trustee has been granted authority by legislation or by the express terms of the governing trust instrument to divide a trust into separate, identical shares, then the IRS will presume that such authority does not exist. That position can negate the ability of a Trustee to qualify a trust for certain tax elections and exemptions provided by federal estate, gift and generation-skipping transfer tax law.

For example, a Trustee might wish to elect to qualify only part of a trust for certain marital deduction purposes under the federal estate tax law, or to treat one part of a trust as entirely exempt from federal generation-skipping transfer tax. But, without express authority to segregate the part that qualifies for such deduction or exemption, the IRS position is that every distribution of the trust is partly exempt and partly nonexempt. That unnecessarily complicates the trust administration and increases the risk of error in reporting tax liabilities. To facilitate estate planning, to reduce the possibility of oversight in the drafting of trust instruments, and to avoid the continual need to resolve this issue by tax audits and appeals, it is recommended that standard authority be established as a matter of Connecticut law for all Trustees. Raised Bill No. 6677 proposes to establish such

standard authority, and the Estates and Probate Section asks for your approval of that Bill.

Similar legislation has been adopted in more than one dozen states.

Paul L. Bourdeau  
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Chair, Legislative Reaction Committee of  
The Connecticut Bar Association's  
Estates and Probate Section

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