

Legislative History for Connecticut Act

SB 287	PA 159	1996
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JOINT
STANDING
COMMITTEE
HEARINGS

INSURANCE
AND
REAL ESTATE
PART 1
1-306

1996
INDEX

000020

12

sds INSURANCE AND REAL ESTATE February 27, 1996

functions such as eating and eliminating.

There are two areas of concern I would like to discuss. First we are concerned that an adequate length of stay be guaranteed not only to mothers covered by public or private insurance but to uninsured women as well. Therefore, we ask the Committee to consider a new section requiring hospitals to observe the same childbirth and maternity protocols and length of stay provisions regardless of whether or not they have insurance coverage for the patient. This language is included as Sections 3 in the House version of the bill, HB 5313 which was recently raised by the Public Health Committee. And we urge this Committee to consider that section favorably as well.

Secondly, we wish to make very clear that nothing in this proposed legislation nor in our strong support for it should be misunderstood to imply that two or four day hospital stays are mandatory or even best for all women. This legislation only requires that coverage is available, not required and that neither a mother nor her health care provider should be penalized if she needs to stay longer or if she wishes to go home as soon as possible.

Thank you very much for considering this important health issue.

SEN. DeLUCA: Thank you, Leslie. Are there questions, members of the Committee? Thank you for coming this morning. Next is John Frey to be followed by Senator Gaffey.

JOHN FREY: Thank you, Mr. Chairman. Good morning. My name is John Frey. I'm Chairman of the Connecticut Real Estate Commission. The Department of Consumer Protection and the Connecticut Real Estate Commission would like to go on the record in support of SB 287 which is designed to eliminate, in most instances, the automatic offering of sub agency, which is the current practice in the real estate industry. If this proposed bill is enacted, we will go a long way in eliminating much of the

000021

13

sds INSURANCE AND REAL ESTATE February 27, 1996

confusion that has existed for many years over whom an agent is representing.

Because of misunderstandings which sellers, buyers, and agents have experienced in the laws of agency, law suits throughout the country have increased and often times innocent parties have become the victims. Much time has been devoted to this problem by both regulators and the industry representatives in Connecticut and it is their consensus that this proposal makes the most sense. And I would note that the Real Estate Commission in January voted unanimously to support this bill and I would like to thank the Connecticut Association of Realtors for all their work in studying this issue.

We would recommend an effective date of June 1, 1997 which differs from the proposed bill, so that it will allow for the necessary time to provide training for all of Connecticut's 20,000 licensees. It is our intent to revise the Department regulations to require a three hour education module on agency law to be completed during the next renewal period. In fact, we have already met with the UCONN Center for Real Estate and Urban Economic Studies to help us draft a course outline.

I wish to thank you for the opportunity to be heard and would be pleased to answer any questions you might have.

SEN. DeLUCA: Thank you, John. Just one quick question. When you said you would require a three hour component of, would that be of the twelve or in addition to the twelve?

JOHN FREY: It would be of the twelve.

SEN. DeLUCA: It would be of the twelve. So therefore you would be mandating of the twelve hours needed, real estate law --

JOHN FREY: Fair housing.

SEN. DeLUCA: Fair housing and this one, if it were to pass, mandatory nine of the twelve hours.

000022

14

sds INSURANCE AND REAL ESTATE February 27, 1996

JOHN FREY: Right. This agency law would be just required over the next two year period.

SEN. DeLUCA: Just over that two year period.

JOHN FREY: As we phase it in.

SEN. DeLUCA: As we get over this.

JOHN FREY: Right.

SEN. DeLUCA: Then it would become part of the real estate law in the future, correct?

JOHN FREY: Exactly, yes.

SEN. DeLUCA: Thank you.

JOHN FREY: Thanks.

SEN. DeLUCA: Any further questions. Thank you for coming this morning. The next is Senator Gaffey.

SEN. GAFFEY: Good morning, Mr. Chairman.

SEN. DeLUCA: Good morning, Senator.

SEN. GAFFEY: Members of the Committee. The last time I, the last time I testified in favor of the legislation extending maternity care I made the comment that this is an experience that men will never be able to understand nor appreciate. And there was, I remember, during at least the agency head and legislator portion of the testimony, mostly men testifying on this bill. So let me introduce you to my wife, Kathy, who wanted to come up and testify on this bill in favor of SB 330.

KATHY GAFFEY: Good morning. As my husband told this Committee on January 16, at the hearing, on September 21 I gave birth to our child, Colleen at 7:35 p.m. At 6:00 the next evening we were waiting to be discharged with our 22 and a half hour old baby. The reality of the last 24 hours had barely set in and I could hardly believe that I was getting ready to go home. The nurse on duty that evening was trying to give Colleen her PKU test as

000038

30

sds INSURANCE AND REAL ESTATE February 27, 1996

Gene, I can't read this one either but it seems like Marconi. Am I close? Are you testifying together?

GENE MARCONI: With the Committee's permission.

SEN. DeLUCA: Fine. If it saves time, it's very much to our permission. Then following these two people will be John Salisbury.

MARY PARENTE: Good morning, Senator DeLuca and members of the Committee. My name is Mary Parente and I'm a broker at Cheshire Real Estate. I'm here speaking in support of Raised Bill No. 287, An Act Concerning Real Estate Brokerage Practices. The bill primarily affects real estate licensees such as myself for participants in multiple listing services. Approximately 65 percent of all residential transactions are conducted through cooperating brokerage arrangement generated through the Multiple Listing Services, which I will explain to you. The listing broker places a listing on the MLS service and makes a blanket offer to pay a cooperating broker a portion of the commission if that cooperating broker procures a buyer willing to purchase the property. Traditionally, even though the cooperating broker had a working relationship with the buyer, the cooperating broker actually represented the seller as a subagent. The listing broker and the cooperating broker work together to consummate the transaction. Please keep in mind, however, that the seller was vicariously liable for everything that the subagent did and said even though the seller may not have known the identity of that subagent.

Recently, buyers have also sought to be represented and the market has responded to that demand by providing buyer representation. In fact, the Legislature with the support of the Department of Consumer Protection, the Real Estate Commission, and the Connecticut Association of Realtors increased the ability of buyers to obtain such representation when it modernized the license law. The increased use of buyer's representation has had some unforeseen consequences however. The use of both subagency and buyer representation in the

000039

31

sds INSURANCE AND REAL ESTATE February 27, 1996

market has created situations where brokerage firms inadvertently practice undisclosed dual agency because the law inputs the knowledge of one salesperson in a firm to all other salespeople in that firm.

This imputation of knowledge creates a situation where an entire firm and all of its salespeople become dual agents when a salesperson in the firm has shown a property as a subagent and another salesperson in the same firm represents a buyer who is now interested in the property. This creates confusion within the real estate brokerage firm in tracking what property salespeople have shown and in what agency capacity. And it creates confusion among the buying public due to the fact that the buyer may be told in the middle of a transaction that the buyer representative that they were working with has now become a dual agent because someone else in that firm has shown the same property as the subagent.

Further confusion is created because there is currently no means for the real estate licensee to definitely know when the licensee has obtained the consent of the buyer and the seller to a dual agency relationship. The bill seeks to alleviate this confusion by eliminating the blanket offer made to subagents through Multiple Listing Service systems and creating a safe harbor in the form of a dual agency consent agreement. If blanket offers of subagency cannot be made through Multiple Listing Systems the practical effect for consumers using such systems is that the listing broker will always be, will always represent the seller and the cooperating broker will always represent the buyer with one exception. And that exception is that if the buyer wishes to purchase a property which is listed with the same real estate brokerage firm with whom the buyer is working, in that event the real estate brokerage firm would be a disclosed dual agent and would have the ability to use the safe harbor created in the bill.

Sellers would also benefit in that they would no longer be vicariously liable for what a cooperating broker acting a subagent said or did because all

000040

32

sds INSURANCE AND REAL ESTATE February 27, 1996

cooperating brokers would be representing the buyer. The bill therefore lessens the confusion which the current state of the law creates with real estate licensees, real estate brokerage firms, buyers and sellers and will allow the market to work in a smoother manner while at the same time meeting the buyer's demands for increased representation and decreasing the liability sellers currently have with the use of subagents.

The bill also deals with confidential information problems which is currently confronting real estate brokerage firms. As a matter of stand now, a real estate licensee is obligated to tell a current client anything which the real estate licensee learned while representing a previous client. This obviously creates tensions for real estate licensees in handling confidential information which the licensee learned in the course of a past relationship and does not meet with the expectations of a real estate licensee's client that confidential information provided to the licensee will remain confidential. The bill, therefore, seeks to remove the licensee's obligation to disclose confidential information obtained from a past client to a current client thus insuring that the confidential information given to a real estate licensee will always remain confidential.

I would ask that you make this bill effective for listing and buyer representation agreements entered into after June 1, 1997. I understand that the Real Estate Commission wishes to use this time to conduct training programs for licensees. Given the confusion which is in the marketplace I certainly support the Commission's desire to have such a training program.

EUGENE MARCONI: For the record, Senator, I'm the staff attorney for the Connecticut Association of Realtors. To the credit of the Department of Consumer Protection and the Real Estate Commission, they both recognized that there were problems in this area. And the proposal that is before you in the Raised Bill represents a lot of effort on behalf of both industry and regulators to try and

solve the problems that are currently out there in the marketplace while at the same time making sure that consumers, both buyers and sellers, receive some benefits from this bill and are protected by it. So this is very much a cooperative effort on the part of industry and the regulators.

SEN. DeLUCA: Thank you. I'm aware of that also Mr. Marconi. Further comments, questions from members of the Committee? Thank you both.

MARY PARENTE: Thank you.

EUGENE MARCONI: Thank you.

SEN. DeLUCA: Next is John Salisbury to be followed by Bob Kehmna.

JOHN SALISBURY: Senator DeLuca and members of the Committee, I'm here, my name is John Salisbury and I serve as the President and Chief Executive Officer of several corporations that serve the Public Housing Industry and located in Cheshire, Connecticut. I'm here at the invitation of Representative Mazzoccoli. This legislation would not affect our organizations, as it's proposed, one way or the other. But he felt that the development and growth of the two companies, the two insurance companies that I chair or had, are themselves testimony to the potential economic development and impact that the captive insurance companies could have in this state if SB 329 was adopted. And I have submitted written testimony and I'm going to do some brief excerpts from that testimony.

SEN. DeLUCA: That would be very much appreciated.

JOHN SALISBURY: Okay. And I think that just to trace our development, we started in June of '87. And at that time I was the first employee. We started with approximately three million in capital and six million dollars in annualized premiums. Today we have total surplus of around thirty six million and in fact total assets of around 125 million in that one company. It has the best rating of FP 6 and provides liability insurance coverage to Public Housing Authorities across the United States.

000090



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February 27, 1996

STATEMENT ON RAISED COMMITTEE BILL # 287
AN ACT CONCERNING REAL ESTATE BROKERAGE PRACTICES

for submission to the Insurance and Real Estate Committee

by
Connecticut Association of REALTORS®, Inc.

Good Morning. My name is Mary Parente and I am the broker of Cheshire Real Estate, Inc. I am here speaking in support of Raised Bill # 287, An Act Concerning Real Estate Brokerage Practices.

The Bill mainly effects real estate licensees, such as myself, who are participants in Multiple Listing Services. Approximately 65% of all residential real estate transactions are conducted through a cooperating brokerage arrangement generated through the Multiple Listing Services, which I will explain. The listing broker places a listing on the MLS service and makes a blanket offer to pay any cooperating broker a portion of the commission if that cooperating broker procures a buyer willing to purchase the property. Traditionally, even though the cooperating broker had a working relationship with the buyer, the cooperating broker represented the seller as a subagent. Please keep in mind that the seller was also vicariously liable for everything the subagent said and did even though the seller did not know the identity of the subagent. The listing broker and the cooperating broker worked together to consummate the transaction.

Buyers have also sought to be represented, and the market has responded to that demand by providing buyer representation. In fact, the Legislature, with the support of the Department of Consumer Protection, the Real Estate Commission and the Connecticut Association of REALTORS®, increased the ability of buyers to obtain representation when it modernized the License Law. The increased use of buyer's representation has had some unforeseen consequences. The use of both subagency and buyer representation in the market has created situations where brokerage firms inadvertently practice undisclosed dual agency because the law imputes the knowledge of one salesperson in a firm to all the other salespeople. This imputation of knowledge creates a situation

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000091

**STATEMENT ON RAISED COMMITTEE BILL # 287
AN ACT CONCERNING REAL ESTATE BROKERAGE PRACTICES**

February 27, 1996

Page 2

where an entire firm, and all of its salespeople, become dual agents because a salesperson in a the firm has shown property as a subagent and another salesperson in the same firm represents a buyer who is now interested in the property. This creates confusion within the real estate brokerage firm in tracking what properties salespeople have shown and in what agency capacity, and it creates confusion among the buying public because a buyer may be told in the middle of a transaction that the buyer representative they were working with is now a dual agent because someone else in the firm had shown the same property as a subagent. Further confusion is created because there currently is no means for a real estate licensee to definitely know when the licensee has obtained the consent of the buyer and the seller to a dual agency relationship.

The Bill seeks to alleviate this confusion by eliminating the blanket offer made to subagents through multiple listing service systems and creating a safe harbor in the form of a Dual Agency Consent Agreement. If blanket offers of subagency cannot be made through Multiple Listing Services systems, the practical affect for consumers using such systems is that the listing broker will always represent the seller and the cooperating broker will be representing the buyer. The only exception to this would be if a buyer wishes to purchase a property which is listed with the same real estate brokerage firm with whom the buyer is working. In that event, the real estate brokerage firm would be a disclosed dual agent and would have the ability to use the safe harbor created in the Bill. Sellers would also benefit in that they would no longer be vicariously liable for what a cooperating broker acting as a subagent said or did because all cooperating brokers would be representing the buyer.

The Bill therefore lessens the confusion which the current state of the law creates with real estate licensees, real estate brokerage firms, buyers and sellers and will allow the market to work in a smoother manner while at the same time meeting the buyers' demands for increased representation and decreasing the liability sellers currently have with the use of subagents.

The Bill also deals with the confidential information problem which is currently confronting real estate brokerage firms. As matters stand now, a real estate licensee is obligated to tell a current client anything which the real estate licensee learned while representing a previous client. This obviously creates tensions for real estate licensees in handling confidential information which the licensee learned in the course of a past relationship and does not meet with the expectations of a real estate licensee's client that confidential information provided to the licensee will remain confidential. The Bill therefore

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000092

**STATEMENT ON RAISED COMMITTEE BILL # 287
AN ACT CONCERNING REAL ESTATE BROKERAGE PRACTICES**

February 27, 1996

Page 3

seeks to remove the licensee's obligation to disclose confidential information obtained from a past client to a current client thus ensuring that the confidential information given to a real estate licensee will always remain confidential.

I would ask that you make this Bill effective for listing and buyer representation agreements entered into on and after June 1, 1997. I understand that the Real Estate Commission wishes to use the time to conduct agency training programs for licensees. Given the confusion which is in the marketplace, I certainly support the Commission's desire to have such a training program.

Thank you, and I would be pleased to take any questions which the committee may have.

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000093

COMMITTEE BILL # 287

AN ACT CONCERNING REAL ESTATE BROKERAGE PRACTICES

The Department of Consumer Protection and the Connecticut Real Estate Commission would like to go on record in support of Bill No. 287 which is designed to eliminate, in most instances, the automatic offering of subagency; which is the current practice in the real estate industry. If this proposed bill is enacted, it will go a long way in eliminating much of the confusion that has existed for many years over whom an agent is representing. Because of misunderstandings which sellers, buyers and agents have experienced in the laws of agency, lawsuits throughout the country have increased and often times, innocent parties have become the victims.

Much time has been devoted to this problem by both regulators and industry representatives in Connecticut and it is their consensus that this proposal makes the most sense.

We would recommend an effective date of June 1, 1997 so that it will allow for the necessary time to provide training for all of Connecticut's licensees. I wish to thank you for the opportunity to be heard and will be pleased to answer any questions you might have.

H-755

CONNECTICUT
GEN. ASSEMBLY
HOUSE

PROCEEDINGS
1996

VOL. 39
PART 14
4683-5058

004871

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189

House of Representatives

Monday, May 6, 1996

seated, the machine is 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 PRO TEMPORE PUDLIN:

If all the members have voted and your votes are properly recorded the machine will be locked. Clerk please take a tally. Clerk please announce that tally.

CLERK:

HB5569 as amended by House "A" and "B."

Total number Voting	145
Necessary for passage	73
Those voting Yea	84
Those voting Nay	61
Those absent and not voting	5

SPEAKER PRO TEMPORE PUDLIN:

Bill passes. Mr. Clerk 501 please.

CLERK:

On page ten, Calendar 501, substitute for SB287.

AN ACT CONCERNING REAL ESTATE BROKERAGE PRACTICES. As amended by Senate amendment schedule "A." Favorable report of the Committee on Judiciary.

SPEAKER PRO TEMPORE PUDLIN:

Good evening Representative Amann.

004872

190

kmr

House of Representatives

Monday, May 6, 1996

REP. AMANN: (118th)

Good afternoon Mr. Speaker. Mr. Speaker I move for acceptance of the joint committee's favorable report and passage of the bill in concurrence with the Senate.

SPEAKER PRO TEMPORE PUDLIN:

On acceptance and passage in concurrence, proceed sir.

REP. AMANN: (118th)

Mr. Speaker the Clerk has an amendment LCO 3968.

SPEAKER PRO TEMPORE PUDLIN:

Clerk please call LCO 3968, Senate "A."

CLERK:

LCO 3968, Senate "A" offered by Senator DeLuca.

SPEAKER PRO TEMPORE PUDLIN:

Senate "A", do you want to summarize or do you want it read?

REP. AMANN: (118th)

Permission to summarize please Mr. Speaker?

SPEAKER PRO TEMPORE PUDLIN:

Proceed sir.

REP. AMANN: (118th)

Mr. Speaker, this is a purely technical amendment that basically says licensees can be anybody. So we make sure that this technical change will make only

004873

191

kmr

House of Representatives

Monday, May 6, 1996

people with expertise or who are qualified to do this particular practice Mr. Speaker, I move for its adoption.

SPEAKER PRO TEMPORE PUDLIN:

Will you remark further on "A"? Will you remark?

If not, I'll try your minds. All those in favor of "A" signify by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER PRO TEMPORE PUDLIN:

Opposed nay, ayes have it, "A" is adopted. Will
you remark further on the bill as amended?

Representative Amann.

REP. AMANN: (118th)

Yes, Mr. Speaker the Department of Consumer Protection and the Connecticut Real Estate Commission went on record in support of SB287 which is designed to eliminate in most instances the automatic offering of subagency which is the current practice in the real estate industry.

Mr. Speaker, the bill will go a long way, I believe, in eliminating much of the confusion which has existed for many years over whom an agent is representing because the misunderstanding with sellers, buyers, and agents have experienced in the laws of the

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004874
192

House of Representatives

Monday, May 6, 1996

agency. Lawsuits throughout the country have increased and oft times innocent parties have become the victims. Lots of time basically has been devoted to this problem by both regulatory and industry representatives in Connecticut and it's in their consensus that the proposal make the most sense. I move for passage of this bill. But Mr. Speaker at this time I also would like to yield, I should say to Representative Radcliffe.

SPEAKER PRO TEMPORE PUDLIN:

Representative Radcliffe do you accept the yield sir?

REP. RADCLIFFE: (123rd)

I do Mr. Speaker, and I assume the purpose of the yield is to go through a couple of the sections of the bill that's before us in terms of what they do. As the proponent, the distinguished chairman of the Real Estate and Insurance Committee quite correctly indicated, the purpose of this bill is to conform existing law to existing practice.

Particularly in regards to subagency. This would require written approval for a subagency relationship between a broker and an individual consumer. It establishes a form which the parties must sign for purposes of disclosure to indicate the dual agency

004875

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193

House of Representatives

Monday, May 6, 1996

relationship which is common in the brokerage practice and does advocate the common laws to some degree in the area of buyer-brokers.

The information once signed on this form, and once acknowledge by both parties would be presumed to be the free and voluntary act of the individual and a presumption is thereby created. There are certain disclosure requirements for a broker. He must disclose certain facts about the property, certain facts need not be disclosed in this type of dual agency relationships, just as the assets, liabilities and income of one of the parties.

This is to insulate a party who has initially dealt with a broker from having to disclose certain information to the buyer. This shield does not extend to portions of the, to the material defects in the property, it doesn't extend to the problems which the broker and the buyer or the seller would otherwise have an obligation to disclose to a ready, willing and able buyer.

So this will allow our real estate laws regarding dual agencies to conform to what has become an existing practice and it will also provide additional protections to the consumer at the same time. That's about it.

004876

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194

House of Representatives

Monday, May 6, 1996

SPEAKER PRO TEMPORE PUDLIN:

Representative Amann.

REP. AMANN: (118th)

I move for passage.

SPEAKER PRO TEMPORE PUDLIN:

On passage, will you remark? If not, staff and guests to the well of the House members please be seated, the machine is 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 PRO TEMPORE PUDLIN:

If all members have voted and your votes are properly recorded, the machine will be locked. Clerk please take a tally. Clerk please announce the tally.

CLERK:

SB287 as amended by Senate amendment "A" in concurrence with the Senate.

Total Number Voting	146
Necessary for Passage	74
Those voting Yea	146
Those voting Nay	0
Those absent and not voting	4

SPEAKER PRO TEMPORE PUDLIN:

004877

kmr

195

House of Representatives

Monday, May 6, 1996

Bill passes. Clerk please call 572.

CLERK:

On page fourteen, Calendar 572, substitute for SB263. AN ACT CONCERNING VARIOUS SOLID WASTE PROGRAMS. As amended by Senate amendment schedule "B." Favorable report of the Committee on Appropriations.

SPEAKER PRO TEMPORE PUDLIN:

Representative Stratton. Let's do this one deliberatively.

REP. STRATTON: (17th)

Thank you Mr. Speaker. I move acceptance of the joint committee's favorable report and passage of the bill in concurrence with the Senate.

SPEAKER PRO TEMPORE PUDLIN:

On acceptance and passage, remark madam.

REP. STRATTON: (17th)

Thank you Mr. Speaker. The Clerk has an amendment LCO 5968, previously designated Senate "B" will he please call and I be allowed to summarize?

SPEAKER PRO TEMPORE PUDLIN:

Clerk please call LCO 5968, Senate "B."

CLERK:

LCO 5968, Senate "B" offered by Senator Cook.

SPEAKER PRO TEMPORE PUDLIN:

The lady has asked leave of the Chamber to

S-390

CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1996

VOL. 39
PART 3
618-992

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17

Senate

Tuesday, April 2, 1996 000862

THE CHAIR:

Without objection, so ordered.

SEN. FLEMING:

Calendar Page 8, Calendar 157 is marked Go.

Calendar 158. Madam President, I would move that
that be referred to the Committee on Judiciary.

SB 416

THE CHAIR:

Without objection, so ordered.

SEN. FLEMING:

Calendar 159. Madam President, I would move that
that be referred to the Committee on Judiciary.

SB 287

THE CHAIR:

Without objection, so ordered.

SEN. FLEMING:

Calendar 160 is marked pass retained.

Calendar 161. Madam President, I would move that
that item be referred to the Committee on Finance,
Revenue and Bonding.

SB 450

THE CHAIR:

Without objection, so ordered.

SEN. FLEMING:

Calendar 162 is pass retained.

On Calendar Page 9, Calendar 163 is marked pass
retained.

Calendar 164 is marked Go.

S-393

CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1996

VOL. 39
PART 6
1702-2040

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295

Senate

Wednesday, April 17, 1996 001761

good points, and perhaps he can sit down and talk about this.

THE CHAIR:

Senator DiBella.

SEN. DIBELLA:

I will be more than glad to accommodate the good Senator's request.

THE CHAIR:

Is that alright?

SEN. SMITH:

If the Clerk could withdraw my Amendment, I would appreciate it. Thank you.

THE CHAIR:

Alright. Senator Kissel.

SEN. KISSEL:

At this point in time, I would like to move this to the Consent Calendar if there's no objection Madam President.

THE CHAIR:

Without objection, so ordered. Mr. Clerk.

THE CLERK:

Page 26, Calendar 159, Substitute for Senate Bill No. 287, File 179. AN ACT CONCERNING REAL ESTATE BROKERAGE PRACTICES. Favorable Report of Committee on Insurance, and Judiciary. Clerk has two amendments.

THE CHAIR:

Senator DeLuca. And may we have some quiet please.

SEN. DELUCA:

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

THE CHAIR:

Proceed.

SEN. DELUCA:

I believe the Clerk has amendments. I would ask the Clerk to call LCO-3968.

THE CLERK:

Senate Amendment Schedule "A" LCO-3968, introduced by Senator DeLuca.

SEN. DELUCA:

I would move passage of the, adoption of the Amendment, and ask permission to summarize.

THE CHAIR:

Would you remark further?

SEN. DELUCA:

Yes, what this Amendment does is it strikes the word "licensee" in the underlying bill, and inserts "broker." It was a concern expressed that licensee in the bill would enable someone without necessary

experience, and having just received a license, could then act in this capacity on behalf of a broker, and therefore could make some serious mistakes.

So these concerns are the Department, the insurance industry, thought were serious enough and so we brought forth this Amendment, and hopefully this will make this underlying bill correct and address the concerns of the group of people who brought them to our attention.

THE CHAIR:

Would you remark further? Will all those in favor signify by saying aye.

SENATORS:

Aye.

THE CHAIR:

Opposed nay. So carried. Proceed, Senator DeLuca.

SEN. DELUCA:

I believe the Clerk has another Amendment.

THE CLERK:

Senator Amendment Schedule "B" LCO-4824,
introduced by Senator Looney.

THE CHAIR:

Senator Looney.

SEN. LOONEY:

Thank you Madam President. Madam President, I move adoption of the Amendment and ask leave to summarize.

THE CHAIR:

Would you remark further please?

SEN. LOONEY:

Yes, thank you Madam President. What the Amendment will do in Line 15 of the bill that refers to a conclusive presumption that a person is given his informed consent to a dual agency relationship with a real estate licensee, which the Amendment would change that to be, a rebuttable presumption.

It is a consumer protection oriented amendment, Madam President, because it would then give a little bit more scope to a consumer who would not be foreclosed from saying, from being able to make an allegation that perhaps he had been misled or signed such a document without full knowledge or full information.

The underlying language of the bill would basically foreclose someone who later on came to a fuller knowledge than he had at the time of signing the relationship agreement, that there might have been something lacking to his full understanding. What the Amendment would do is say that it would be a

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299

Senate

Wednesday, April 17, 1996

001765

rebuttable, rather than a conclusive presumption.

THE CHAIR:

Would you remark further? Senator DeLuca.

SEN. DELUCA:

Thank you Madam President. I would oppose this Amendment on a number of, for a number of reasons. First of all, by saying rebuttable what we're saying here is after somebody signs consent, there really isn't, that they really aren't signing consent.

They can change their mind later. So why are we having them sign. Certainly, this was also brought the attention of a number of people, by the same people who brought the Amendment forth that I did. They met with me and I also talked to them about this after the fact.

When I spoke to them about this, they said well we reviewed the bill again, and we talked to this attorney in New York who reviewed it and gave us this, this suggestion. My opposition is that an attorney in New York is advising these people about the laws of the State of Connecticut. That's my second argument.

Thirdly, these people have put out a number of papers, I believe two or three after having met with me, and sent out all this information which I think has been confusing to the issue. So for these three reasons, but mainly the fact that rebuttable and

kmg

300

Senate

Wednesday, April 17, 1996

001766

conclusive means that I didn't really mean to sign that, so I didn't really mean that. So then this doesn't mean anything.

That might be in some terms considered consumer protection, or consumer friendly, but I believe when you sign a contract, it shouldn't be that I didn't really mean that. We play for keeps, not for fun.

THE CHAIR:

Senator Jepsen.

SEN. JEPSEN:

Thank you Madam President. It's unusual that I stand in support of Senator DeLuca over Senator Looney, my friend and colleague, but I do in this instance, for the reasons he stated most of the first. Someone who signs a consent form, put it this way, there are limits, I think to how far we want to intervene on behalf of people who have signed a form giving their consent.

Do we now turn around when you sign a medical consent form and make that a rebuttal presumption that somehow, gee I said it was okay to do that operation, but I have changed my mind on the basis of what I know now, and I didn't really mean to give my consent for that procedure. A consent form is a consent form. I don't think that you have to be a, have gone to law

kmg

301

Senate

Wednesday, April 17, 1996

001767

school to understand it. When you sign a consent, you're consenting to what was on page, and what you say you ought to mean.

I also think that it will create a bit of a chilling effect among brokers because you'd be worried, even though you have signed consent forms in your hands saying that you may be the buying/selling broker, you have those consent forms, but you would never be sure that you would be beyond litigation.

And so I think that it's better that we have a clean stark rule, that's easily understood. And frankly, is understood most easily by simply by what's written on the paper in plain English. So, I'm opposed to this Amendment.

THE CHAIR:

Senator Bozek.

SEN. BOZEK:

Thank you Madam President. I think the arguments that are, that we've heard just a minute ago, just recently, fly in the face of trying to protect the consumer. As I look around this circle, virtually everyone in here is old enough to really know better.

And I think that's on all sides of this issue. If people who, in one way or another, if they haven's been duped, they've been led into something by a number of

different circumstances, if not themselves, certainly their friends or relatives.

Now, I want to set aside all the legal ears here who are attorneys and who are maybe speaking for their profession, and certainly I'm going to guess that they're probably divided themselves.

And on a humorous side, as a friend of mine once said, the attorneys are only half right, because the attorney on the other side is wrong. But the argument to compare somebody who wants to disengage in a contractual agreement in a real estate area, that might involve some money might be young people wishing to buy property that in some other fashion, the holder of the money hasn't been up front with them.

But to compare that to a medical operation, I mean, it's a poor argument. I'd like to see the arguments that are fair, that are comparative, and hold water. The simple argument here is, are we going to give the consumer a chance.

If it's a good sale, they don't have to worry about their document. It's going to go down. And I'm sure the percentages of those that don't move forward are a small percentage. And on a good faith business man, if for some reason he had to go back on this thing and sign, give the check back, you know what good faith

kmg

303

Senate

Wednesday, April 17, 1996

001769

business that is for that real estate agent the next time somebody else is looking for a home, or looking for a different home, because that one had some, there was some hook in there.

I think that the Amendment proposed by Senator Looney is right in line with actually what's good for the consumer, and the business people. Thank you.

THE CHAIR:

Senator Looney.

SEN. LOONEY:

Thank you Madam President. For the second time, I just want to reiterate that the intent is just to not foreclose a consumer from being in a position to at least have a forum to make the allegation that a, the signature was perhaps done not with full knowledge.

There is always, if the signed agreement is made, the very fact that the signature creates a certain degree of presumption that it was a, was validly made. But it leaves the opportunity, this Amendment would leave a greater scope for the consumer to have standing, to bring in issues of fairness or lack of knowledge, lack of information, lack of full consent, that I think is an appropriate protection. And at this time, Madam President, I would ask for a roll call on the Amendment.

THE CHAIR:

Senator Sullivan.

SEN. SULLIVAN:

Thank you Madam President. I think the concerns expressed by Senator Looney and others are good cautions. However, I think there is at least an alternative interpretation as to what we mean when we say irrebuttable presumption as to the signature and as to the document.

I would disagree with the New York lawyer who advised that that makes impossible any raising of questions about the capacity to sign that document, or about duress, or about coercion, or about any number of other circumstances which we would continue to want to have protection for the consumer on.

I do not think those are compromise, those grounds for challenging this contract or compromise by this language. I think it does strike a better balance. I will agree with Senator Jepsen. I will agree with Senator DeLuca, and I would urge that we go forward with the underlying bill, without this Amendment. I think it does not do a disservice to the protection of the consumer.

THE CHAIR:

Senator DeLuca.

SEN. DELUCA:

Thank you Madam President. I would just like to clarify something that Senator Bozek said. If you look beyond this Amendment to the underlying bill, this is not a contract to buy any real estate. It does not, it does not in any way involve the passing of money or checks.

The underlying bill says that the broker must indicate to the person whether they represent the buyer or the seller. It is consumer protection. That is what the underlying bill is. To let the person know that they are not supposedly representing them as a buyer, while they're actually a seller.

This clarifies the broker responsibility and the consumer will then know. As all the signature is needed, it is to say that I understand that you as a broker represents me as a buyer, or a seller. That's basically all it is. No deal has been consummated. They might not have even seen a piece of property.

They may decide to not even to go anywhere. But as all it says is you represent me as either the buyer or the seller. So therefore, this is consumer protection underneath the rebuttable say, on the converse if you sign this consent, saying I understand that you represent me as a seller, and then you retreat

it later on, that could jeopardize the broker's, the broker's ability to collect a commission. So that would be protection for both, when you consider the underlying bill.

THE CHAIR:

Senator Bozek, for the second time.

SEN. BOZEK:

Thank you Madam President. Thank you very much for the explanation Senator DeLuca. And it doesn't change my position, although it does make it clearer as to some of the protections of the area that the Amendment would cover.

I still have in mind the protection of the signator, in order to protect the consumer. I still believe that in essence that by protecting one, you protect both, and it enters into a good business practice within our state. Thank you very much though for your explanation.

THE CHAIR:

Further comments? If not, Mr. Clerk would you announce the pendency of a roll call vote. And the machine will be open.

THE CLERK:

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

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

THE CHAIR:

The machine is open so cast your votes. We are voting on Senate "B" 4824, on Senate Bill 287. Has everyone voted? The machine is now closed. Mr. Clerk would you give me the tally please.

THE CLERK:

Total Number Voting	35
Necessary for passage	18
Those voting Yea	7
Those voting Nay	28

THE CHAIR:

The Amendment is defeated. Senator DeLuca.

SEN. DELUCA:

Thank you Madam President. And I think I partially explained this bill earlier that this reduces the confusing existing as to whom a sub-agent is representing in any real estate transaction brought about by expansion of the buyer representation issue.

It establishes standards of confidential information on clients, and informed consent on a dual agency. And as indicated by the previously adopted Amendment, it indicates that it is the broker's responsibility and it may be signed at any time in the

transaction period.

THE CHAIR:

Do you comment further?

SEN. DELUCA:

If there is no objection, I would move this to
Consent.

THE CHAIR:

Without objection, so ordered. Mr. Clerk.

THE CLERK:

Page 27, Calendar 179, File 216, Substitute for
Senate Bill No. 454. AN ACT REPEALING CHARTER
REQUIREMENTS THROUGH THE LEGISLATURE. Favorable Report
of Committee on Insurance, and Judiciary. Clerk has
one amendment.

THE CHAIR:

Senator DeLuca.

SEN. DELUCA:

I would move acceptance of the Joint Committee's
Favorable Report and passage of the bill.

THE CHAIR:

Will you remark further?

SEN. DELUCA:

I believe there's an Amendment, I'm not sure who's
name it's under.

THE CLERK:

S-393

CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1996

VOL. 39
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kmg

377

Senate

Wednesday, April 17, 1996

001843

Page 28, Calendar 185, Substitute for Senate Bill
No. 475, File 226. AN ACT CONCERNING GRANTS FROM THE
CULTURAL HERITAGE DEVELOPMENT ACCOUNT. Favorable
Report of Committee on Commerce, and Appropriations.

SEN. FLEMING:

Madam President.

THE CHAIR:

Senator Fleming.

SEN. FLEMING:

Yes, Madam President, at this time I would move
that that item be referred to the Committee on
Education.

THE CHAIR:

Without objection, so ordered.

THE CLERK:

We got the Consent Calendar #2.

THE CHAIR:

Would the Clerk please call the Consent Calendar.

THE CLERK:

An immediate roll call in the Senate on Consent
Calendar. Would Senators return to the chamber. An
immediate roll call on the Consent Calendar. Would the
Senators return to the chamber.

Page 9, SB 335 Calendar 334. Page 16, SB 301 Calendar 377.
Page 18, HB 5085 Calendar 390. Page 25, SB 33 Calendar 151. Page

kmg

377

Senate

Wednesday, April 17, 1996

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Page 9, SB 335 Calendar 334. Page 16, SB 301 Calendar 377.

Page 18, HB 5085 Calendar 390. Page 25, SB 33 Calendar 151. Page

SB 416 SB 287 SB 417
 26, Calendar 158 and 159. Page 27, Calendar 170 and
SB 454 SB 344
 179. Page 28, Calendar 195.

THE CHAIR:

Would the Clerk please announce the roll call, machine is open, members may vote.

THE CLERK:

An immediate roll call on Consent Calendar #2 in the Senate. All Senators return to the chamber. An immediate roll call on Consent Calendar #2. Will all Senators please return to the chamber.

THE CHAIR:

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

THE CLERK:

Total Number Voting	35
Necessary for passage	18
Those voting Yea	35
Those voting Nay	0

THE CHAIR:

The Consent Calendar is adopted. Senator Sullivan.

SEN. SULLIVAN:

Madam President, for purposes of a point of personal privilege, if I may.