

Legislative History for Connecticut Act

SB 1275	PA 90	1990
Senate - 1718 - 1723		FAX + Scanned (6)
HOUSE 3229 - 3232		(4)
JUD 2437, 2439-2440, <del>2634-2640</del> (2441-2442) 2634-2640		(12)
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Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate  
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Joint Standing Committee hearings, Judiciary. 1997:pt.8

Proceedings / Connecticut General Assembly, House. 1997 v.40:pt. 9

Proceedings / Connecticut General Assembly, Senate. 1997 v.40:pt.5

pick up where we left off and that the PT requested for Calendar Item 334, Page 18, be released and that we proceed with that bill.

THE CHAIR:

Without objection, so ordered.

THE CLERK:

Turning to Calendar Page 18, Calendar 334, File 543, Substitute for SB1275 An Act Concerning Probate Matters. Favorable Report of the Committee on Judiciary. The Clerk is in possession of one amendment.

THE CHAIR:

Senator Looney.

SEN. WILLIAMS:

Thank you, Madam President. Madam President, I move adoption of the Joint Committee's Favorable Report

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THE CHAIR:

Excuse me, Senator Williams, I recognized Senator Looney.

SEN. LOONEY:

Thank you, Madam President. Madam President, I would be exempting myself from the Chamber on this matter under Joint Rule 15.

THE CHAIR:

The Journal will so note. Senator Williams.

SEN. WILLIAMS:

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

THE CHAIR:

The question is on passage. Will you remark?

SEN. WILLIAMS:

Yes, Madam President. I would call LCO6166.

THE CLERK:

LCO6166 which will be designated Senate Amendment Schedule "A". It's offered by Senator Williams of the 29th District.

THE CHAIR:

Senator Williams.

SEN. WILLIAMS:

Thank you, Madam President. Madam President, this amendment deletes Section 4 in its entirety regarding spousal share and leaves the law in the current state as it is now.

THE CHAIR:

The question is on adoption of Senate Amendment "A". Will you remark further? Will you remark further? If not, all those in favor indicate by saying "aye".

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Senate

116  
May 7, 1997 001720

ASSEMBLY:

Aye.

THE CHAIR:

Opposed, "nay". Ayes have it. Motion carries.

Senator Williams.

SEN. WILLIAMS:

Thank you, Madam President. This bill contains numerous technical changes and other changes to the probate statutes.

I'll go through most of them here. Current law requires probate judges to pay specified percentages of their office's net income to the state treasurer for credit to the probate court administration fund and in that process, they must estimate quarterly payments to the treasurer if they anticipate that they will owe \$100 or more for that particular year.

This bill allows the probate court administrators to adopt regulations to carry out the purposes of the law in that it allows them to make one payment by December 31 if they estimate their offices will owe less than \$100, otherwise it requires four substantially equal estimated payments, each by the end of the calendar year.

In addition, it allows judges to increase or decrease their estimated payments at any time during

the year in which they are due by adjusting the payment due after the change.

Further, the bill requires probate judges to pay a 10% penalty for a deficiency in any of their quarterly estimated payments to the treasurer rather than for a deficiency in the total estimated payments for the entire year.

Under current law, probate judges for high volume courts may retain as net pay, the money earned by their courts after deducting the required payments to the state treasurer or their office's actual expenses, whichever is the higher, results in higher compensation.

In addition, this law refines the definition of high volume courts. It defines a high volume court as that with a district having an estimated population of at least 70,000 individuals for the calendar year preceding either, first of all, the election of that particular probate judge or secondly, any one year during their term so it would have to be 70,000 individuals just prior to the election of the probate judge or as the probate judge is sitting during the four year term if the population for that district crosses the 70,000 threshold.

Further, the bill grants probate courts the powers

available to superior courts in terms of law and equity in actions that the courts may take concerning financial accounts regarding certain fiduciaries and in that respect, it allows courts to remove or impose a surcharge on fiduciaries who fail to submit an accounting or act inappropriately with respect to the funds that are under the fiduciary's control.

In addition, the probate court would be able to enjoin the fiduciary from engaging in certain conduct with respect to the funds under their care.

In addition, the bill allows the probate court to reject a request to involuntarily appoint a conservator for the estate of a person or to reject a request to involuntarily appoint a conservator of the person for someone that it finds is incapable of caring for himself. That is, if the court finds that the individual or estate is properly cared for without the appointment.

Finally, Madam President, the probate court administrator must appoint a three judge panel to hold a hearing regarding tuberculosis commitments within 96 hours of a directive from the health director of a municipality. This bill clarifies that Saturdays, Sundays and legal holidays are excluded from that 96 hour deadline.

THE CHAIR:

Thank you, Senator. Will you remark further? Senator Fleming? Will you remark further? If not, would the Clerk please announce a roll call vote. The machine will be opened.

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 please return to the Chamber.

THE CHAIR:

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

THE CLERK:

Motion is on passage of SB1275 as amended by Senate Amendment Schedule "A". Total number voting, 36; necessary for passage 19. Those voting "yea", 35; those voting "nay", 0. Those absent and not voting, 1.

THE CHAIR:

The bill as amended is passed.

THE CLERK:

Calendar 3598, File 471, Substitute for HB5006 An

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177

House of Representatives

Tuesday, May 20, 1997

privilege?

Clerk, please call Calendar 547.

THE CLERK:

On page 23, Calendar No. 547, Substitute for SB1275, An Act Concerning Probate Matters as Amended by Senate Amendment Schedule A. Favorable report of the Committee on Judiciary.

DEPUTY SPEAKER HYSLOP:

Representative Fox.

REPRESENTATIVE FOX: (144th)

Thank you, Mr. Speaker.

I move acceptance of the Joint Committee's favorable report and passage of the bill.

DEPUTY SPEAKER HYSLOP:

Questions on acceptance and passage. Will you remark further?

REPRESENTATIVE FOX: (144th)

Thank you, Mr. Speaker.

This is what should be called an omnibus probate bill, which deals with a number of specifics relating to the operation of the courts. It provides for the adoption of regulations relating to estimated payments, specifies that the determination of whether a probate judge owes a penalty for estimated fund payments less than 70 percent of the amount actually due for the year

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House of Representatives

Tuesday, May 20, 1997

before for each quarter's payment. It allows a probate judge to be paid for more years under the potentially higher pay rules, grants powers in Superior Court judges to probate courts acting within their jurisdiction.

There is a Senate Amendment, Mr. Speaker. It is LCO6166. I would ask that that be called and that I be allowed to summarize.

DEPUTY SPEAKER HYSLOP:

Clerk, please call LCO6166 designated Senate Amendment A and the Representative has asked leave to summarize.

THE CLERK:

LCO6166 designated Senate A offered by Senator Sullivan, et al.

DEPUTY SPEAKER HYSLOP:

Representative Fox.

REPRESENTATIVE FOX: (144th)

Thank you, Mr. Speaker.

This amendment deletes one section of the bill, in particular, Section 4. It strikes that provision prohibiting people whose deceased spouses had executed their wills before marrying them, it did not provide for them, that will from electing to receive a one-third share of the estate for life and restricting them

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179

House of Representatives

Tuesday, May 20, 1997

to the share they would inherit if the spouse died without a will.

I move adoption of the amendment.

DEPUTY SPEAKER HYSLOP:

Questions on adoption of Senate A. Will you remark on Senate A? Will you remark on Senate A?

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

ASSEMBLY:

Aye.

DEPUTY SPEAKER HYSLOP:

Those opposed? Ayes have it. Senate A is adopted.

Will you remark further on the bill as amended?

Will you remark further on the bill as amended?

If not, staff and guests to the well of the House, the machine will be open.

THE 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.

DEPUTY SPEAKER HYSLOP:

Have all members voted? If all members have voted, please check the machine make sure that your vote is properly recorded.

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180

House of Representatives

Tuesday, May 20, 1997

The machine will be locked. Clerk will take a tally.

The Clerk will announce the tally.

THE CLERK:

SB1275 as amended by Senate A in concurrence with the Senate. Total number voting, 145; necessary for passage, 73. Those voting "yea" 145, those voting "nay" 0, absent not voting, 6.

DEPUTY SPEAKER HYSLOP:

Bill as amended passes.

Chamber stand at ease.

(HOUSE AT EASE)

DEPUTY SPEAKER HYSLOP:

Chamber will come back to order.

Clerk, please call Calendar 172.

THE CLERK:

On page 32, Calendar No. 172, HB5525, An Act Establishing a State Boxing Commission. Favorable report of the Committee on Appropriations.

DEPUTY SPEAKER HYSLOP:

Representative Fox.

REPRESENTATIVE FOX: (144th)

you very much. Next we have Judge Paul Kurmay to be followed by Philip Murphy and Louis Martin.

JUDGE PAUL KURMAY: Mr. Chairman, good afternoon, it's a pleasure to see you again and to be able to be here to testify on some very important matters that affect our probate system.

SB 1275HB 6860SB 1192HB 7048SB 1315

This in many respects is a watershed moment for Connecticut's probate courts. As you know, the phase out of the succession tax is already begun, as of January 1st. And its indirect impact on the probate system is also going to be felt very soon.

In the past, the probate courts depended heavily upon probate fees that were derived in part from reference to the succession tax return. As that return is no longer filed with the court, it was incumbent upon myself as administrator and other members of our probate assembly, together with members of the General Assembly, the Department of Revenue Services, to try to come up with an alternate funding mechanism that would sufficiently fund and adequately fund our probate courts.

We estimate that the funding gap caused by the succession tax phase out will be between \$3 and \$5 million annually in today's dollars. I'd like to walk through some of the provisions of the key items of legislation that are before you to show you how these elements will hopefully fill that gap.

Beginning with HB1276, that is an act that will increase both decedents' estate fees and non-decedents' estate fees. Let me first state that I am not happy to have to introduce legislation of this nature, no one likes to see increases in fees of any kind, and least of all myself.

However, since the legislature made it clear through it's leadership that we were to solve our dilemma from the inside, so to speak, in other words not to look to general revenues but to generate additional user fees from the people who come to our court.

15  
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JUDICIARY COMMITTEE

March 31, 1997

That will eventually have to be reconsidered as we address the entire issue of fund raising for the probate system. Because there is a limited point, after which you cannot increase fees any longer. I believe that we are at that point.

I hope I never have to come in for a funding increase based exclusively on probate fees in the future. But I think in the future the legislature will have to deal with the very realistic problem of having to come up with general revenues to fund our system.

I would also like to speak about HB1275. The first section of which is a revision of the Department of Revenue Services statutes regarding the estate tax. In order to make the estate tax more applicable to this funding problem that I've referred to we've had to clean it up and make it more of a parallel to the succession tax proposal.

There are three basic goals of that revision. One requires dual filing, both with the probate court and with the Department of Revenue Services in place of filing only with the probate court. And that is primarily sought from the Department itself.

They want to make sure that they have a tax return with payment in hand at the same time. So we respect and understand and defer to that position. The real estate language presently exists on succession taxes, would be replaced by the Connecticut real estate, I'm sorry the Connecticut estate tax would also create a similar tax lien under that mechanism.

The third element that's important in this proposal is the whole question of dispute resolution. Which we propose would remain as it has been with the probate court very effectively. We would like to point out that the department's, the Department of Revenue Service's bill, HB6860 which has already been the subject of a public hearing before Finance.

I left with the clerk of your committee, and I've

16  
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JUDICIARY COMMITTEE

March 31, 1997

sent the co-chairs copies of a bill that integrates both Section 1 of the proposal before you with HB6860 to make them consistent. So hopefully that can be passed as a substitute House Bill.

The other non-funding measures in HB1275, most of them are matters that have come out of the Law Revision Commission, which we support. Technical language that they may speak about. I have written testimony before you that can track those bits of legislation, but we are definitely in favor of them.

HB1192, deals with retirement benefits of probate judges. Sections 1, 2 and 4 deal specifically with the situation in which a number of probate courts might be consolidated in the future, either voluntarily or theoretically involuntarily.

This bill is designed to help alleviate the financial impact of a judge's having to retire and basically no longer being able to serve because of consolidation. This would add four years of credited service to that judges's present service.

As you know, it's 2% of benefits for each year served. Section 3 is a piece of special legislation that would add the term, probate judge, to that of the clerk of the court presently under that section 3. So that a judge serving less than 10 years having started his term after the age of 60 would still be entitled to a pension even though it was an extremely small one.

I would also like to support HB7048, which is a measure dealing with the disclaimer of joint real estate. Other members of the bar are present who will testify about that. I'm very much in favor of that proposal.

Finally, I also want to speak, primarily in a favorable manner, on HB1315, uniform and prudent investor act. My written comments address some of the problems that I have with that. But in speaking with members of the bar I am hopeful that we will be able to resolve the differences that we have so that we can come up with a compromise bill

that will be satisfactory to us and hopefully to you. I'd be happy to answer any questions that you might have on any number of these bills.

SEN. WILLIAMS: Thank you Representative Farr.

REP. FARR: Yes, to clarify my own mind. What's going to happen, when we finally phase out the succession tax, you're still going to need a waiver of the tax lien, if there's real property involved. (SB1275)  
(SB1276)

JUDGE PAUL KURMAY: Yes.

REP. FARR: And under these proposals you'll still have to file a tax return, but you'll now file it with the probate court and with the tax department simultaneously?

JUDGE PAUL KURMAY: Right, as you know, currently two copies of the tax return are filed with the court, the court files one with DRS, so they eventually get their own, we have our own.

This would require the taxpayer to split the filing immediately so that one goes to DRS and one goes to the courts. Presently DRS is the primary party which releases those liens. Under the proposal before you, as modified, the court would have that power.

So DRS would not be inundated with last minute request for releases or waivers of liens. The probate courts, 132 of them, would be able to give those waivers out, probably even more quickly and more expeditiously than DRS can right now.

REP. FARR: What about the waivers, if you have a stock that is a Connecticut corporation, you required the tax lien and waiver for that.

JUDGE PAUL KURMAY: Well, we don't, we don't address that issue. We're not involved with consents to transfer, except to try to facilitate them, that's primarily between the taxpayer and the commissioner's office.

Under \$600,000 I'm not sure what the policy of the

commission is going to be, the commissioner rather, you'd have to ask Commissioner Gavin about that. But that would not be done by the probate court in any event.

REP. FARR: But the fees for a, if there's no tax at all, and it's a \$400,000 estate. But if it includes real estate you're still going to get the same fees as you do now aren't you?

JUDGE PAUL KURMAY: No, probate fees based on real estate, if it's jointly held, would be substantially decreased on estates under \$600,000. From .2% to .3% down to .1%. So it's a substantial reduction if it is a fee based on jointly owned real estate.

REP. FARR: That's under the proposed.

JUDGE PAUL KURMAY: That's under the proposal.

REP. FARR: And if we made no change it would be the same.

JUDGE PAUL KURMAY: Well, if you made no change, eventually we're going to lose everything, because the tax itself is phased out and we would be left with solely owned property. The rate would stay the same, correct, but if it were jointly owned and you didn't do anything to fix this, we would get zero, nothing.

REP. FARR: Because you, because the statute talks about taxing the property?

JUDGE PAUL KURMAY: Exactly, in other words the probate fees are based upon gross taxable estate. Either on the S1 or on the inventory. If we don't get an S1 and we don't have to get an inventory because there's no solely owned property there's going to be a zero probate fee.

REP. FARR: Okay, thank you.

SEN. WILLIAMS: Other questions? Thanks very much.

JUDGE PAUL KURMAY: Senator, thank you.

Presently, if an application were to come to one of our courts on the Friday of a three-day weekend, it would be virtually impossible to comply with the present statute. This proposal would give our courts sufficient time to schedule the required hearing.

We strongly support this measure.

• Section 3 of this Bill would permit the Probate Court Administrator to adopt regulations to implement and enforce the payment of assessments by the various probate courts. In addition, it would make clear that each estimated quarterly payment, as well as the final yearly payment, must be within the parameters described in sub-section (i)(1). At present, there is some ambiguity in the statute which makes my office's enforcement of this provision extremely tenuous.

Sub-section (k) deals with the method of defining a high volume court, which essentially is any court whose district is at least 70,000 in population. This revision would make more explicit when and how that determination is made.

Lines 376 through 377 differ slightly, but importantly, from the original version submitted to your Committee. We have discussed this change with the Legislative Commissioner's office and they have no objection to the revision which I would now propose you substitute for those lines. In line 375, substitute the word "in" for the word "for". The remainder of lines 376 and 377 would read as follows: "JUDGE WAS ELECTED, THE YEAR IN WHICH THAT JUDGE WAS ELECTED OR ANY YEAR OF THAT JUDGE'S TERM OF OFFICE. The amount of.."

We strongly encourage your favorable consideration of this section.

• Section 4 This proposal amends C.G.S. §45a-175 to make it clear that the parties in an accounting before the probate court have the same remedies available to them as are available in the Superior Court. This proposal does not increase the jurisdiction of the probate courts, but rather makes its powers more explicit.

The existing statutes are not explicit as to whether the courts of probate can provide the same remedies as the Superior Court in an account proceeding, although it is my opinion that our courts do enjoy those powers implicitly. Pursuant to C.G.S. §45a-175, the court clearly has jurisdiction over the accounts of testamentary trustees, certain inter vivos trustees, guardians, conservators and executors and administrators.

The issue becomes one of the powers of the court once an account has been filed with the court. If an accounting has been rendered in which there has been obvious wrongdoing, it should be made clear that the courts of probate may remove the fiduciary and surcharge and reduce fees when necessary in any proceeding under its jurisdiction. There are some who presently argue that the probate courts only have the authority to approve or disapprove the account, and may not order the trustee to take action to correct the account. Although I strongly disagree with that overly narrow interpretation of the law, rather than become involved in a lengthy appellate review of our powers, it is more expeditious to spell out what the legislature's intent is.

• Section 5 is a proposal recommended by the Law Revision Commission, which would make clear that a surviving spouse taking under the provisions of Section 45a-257a (cases involving a testator who fails to provide by will for his surviving spouse who is married after the execution of the will) could not benefit twice by electing a statutory share under Section 45a-436 as well.

We agree with this technical revision and request your approval.

• Section 6 was also a proposal submitted by the Law Revision Commission, which addresses the manner in which the conservator of the person or of the estate of an individual may be appointed by the probate court. Presently, Section 45a-650 requires the court to appoint a conservator if it finds that the individual respondent is incapable, as that term is defined in the statute. This proposal would give the probate courts the ability to forego the appointment of a conservator if the affairs of an incapable ward are being managed properly without the appointment of a conservator.

The Conservatorship and Guardianship Standards Committee of the Probate Assembly and my Office would prefer slightly different language to that offered by the Law Revision Commission. In lieu of the suggested changes on lines 515 and 516, we would suggest the following: "UNLESS IT APPEARS TO THE COURT THAT

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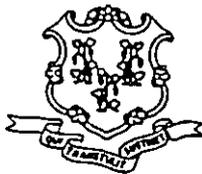
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# Connecticut General Assembly



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## Testimony of David L. Hemond Chief Attorney, Connecticut Law Revision Commission

to the Judiciary Committee

concerning Senate Bill No. 1275

An Act Concerning Probate Matters

March 31, 1997

Sections 2, 5, and 6 of Senate Bill 1275 would enact recommendations of the Law Revision Commission. In particular, enactment of section 5 of the bill is necessary to clarify a recent public act to avoid unnecessary litigation. The recommendations are as follows:

**Section 2. Revision of subsection (f) of 19a-265 to exclude Saturdays, Sundays, and Holidays from the time period for a hearing on a tuberculosis emergency commitment.**

Public Act 95-138 contained provisions for emergency commitment of certain persons with active infectious tuberculosis who pose a substantial and imminent likelihood of transmitting the infection to others and who have been unwilling to behave so as not to expose others to that risk. Subsection (f) of that public act, now section 19a-265 of the General Statutes, gives the person subject to the emergency commitment order the right to a prompt hearing before a three-judge court "within ninety-six hours of the issuance of such order of emergency commitment." That the ninety-six hour

deadline does not provide the Probate Court Administrator with adequate time to assemble the required three-judge court when the period extends over a weekend or holiday. The bill would exclude Saturdays, Sundays, and holidays from the ninety-six hour period so that the panel can be assembled within the required time.

**Section 5. Clarification of section 45a-257a concerning the spousal share of a new spouse who is not recognized in the will.**

In the 1996 legislative session, the General Assembly enacted Public Act 96-95 so that, effective on January 1, 1997, a will executed after that date is not automatically revoked by the testator's subsequent marriage. If the new spouse is not recognized in the will, the new law, now codified as section 45a-257a, provides that the spouse generally receives an intestate share, the share that the spouse would receive in the absence of the will. A technical revision is necessary to clarify that a spouse who takes that intestate share is not also eligible to elect a spousal share against the will, a form of "double dipping" that was not intended and that would prejudice other proper beneficiaries.

**Section 6. Revision of section 45a-650 concerning the appointment of conservators.**

Subsection (c) of section 45a-650 sets out the standards for appointment of a conservator. To appoint a conservator of the person, the probate court must find the respondent to be incapable of caring for himself or herself. To appoint a conservator of the estate, the probate court must find the respondent to be incapable of managing his or her affairs. The statute provides that if the probate court finds incapability, such a conservator "shall" be appointed. However, because there are many cases in which the respondent's person or estate are being adequately managed under current law without a conservator, the Law Revision Commission recommends that appointment of a conservator in such cases of incapability be subject to the sound discretion of the court. Section 6 would make an appropriate revision.

Please note that Probate Court Administrator F. Paul Kurmay is recommending a slight modification to the language contained in section 6 of the bill. After review, I am of the opinion that the language recommended by Judge Kurmay is preferable and should be incorporated in the bill.