

Legislative History for Connecticut Act

SB 580	(PA 59)	-	1998
House	1424-1429		(6)
Senate	1208-1211, 1252-1254		(7)
Judiciary	1042-1043, 1058, 1062-1063, 1352		(6)
			(19)

Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate and House of Representatives Proceedings

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H-785

CONNECTICUT  
GEN. ASSEMBLY  
HOUSE

PROCEEDINGS  
1998

VOL. 41  
PART 5  
1416-1754

gmh

House of Representatives

Tuesday, April 21, 1998

Mr. Speaker, I would move that this item be referred to the Committee on Planning and Development.

SPEAKER RITTER:

So ordered.

Clerk, please call Calendar 332.

CLERK:

On page 32, Calendar 332, Substitute for House Bill Number 5546, AN ACT CONCERNING HEALTH CARE FRAUD.  
Favorable Report of the Committee on Public Health.

SPEAKER RITTER:

Representative Godfrey.

REP. GODFREY: (110TH)

Mr. Speaker, I would move that this item be referred to the Committee on Human Services.

SPEAKER RITTER:

So ordered, sir.

Clerk, please call Calendar 419.

CLERK:

On page 20, Calendar 419, Substitute for Senate Bill Number 580, AN ACT CONCERNING MEDIATION, as amended by Senate Amendment Schedules "A" and "B".  
Favorable Report of the Committee on Judiciary.

SPEAKER RITTER:

Representative Lawlor from the 99th.

REP. LAWLOR: (99TH)

gmh

House of Representatives

Tuesday, April 21, 1998

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

SPEAKER RITTER:

The motion is on acceptance and passage. Please proceed, sir.

REP. LAWLOR: (99TH)

Thank you, Mr. Speaker. This bill simply clarifies that voluntary disclosure made during the course of a mediation which is not court ordered is not subject to further disclosure in court. In other words, it allows for confidential mediations to take place.

Mr. Speaker, the Senate adopted two amendments. The Clerk has LCO Number 2206. I would ask that the Clerk call and I be permitted to summarize.

SPEAKER RITTER:

What's the LCO number, sir?

REP. LAWLOR: (99TH)

2206 previously designated as Senate Amendment "A".

SPEAKER RITTER:

Clerk has LCO 2206, designated Senate "A". If he may call and Representative Lawlor would like to summarize.

gmh

House of Representatives

Tuesday, April 21, 1998

CLERK:

LCO Number 2206 offered by Senator Williams,  
Senate "A".

SPEAKER RITTER:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Mr. Speaker. Mr. Speaker, this amendment clarifies that an amendment previously adopted as part of House Bill 5505 shall take effect from passage. I urge adoption.

SPEAKER RITTER:

The question is on adoption. Will you remark further? If not, I will try your minds.

All in favor, signify by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER RITTER:

Opposed, no. The ayes have it. Senate "A" is  
adopted.

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Mr. Speaker. The Clerk has LCO Number 2205, previously designed as Senate Amendment "B". I would ask that the Clerk call and I be permitted to summarize.

gmh

House of Representatives

Tuesday, April 21, 1998

SPEAKER RITTER:

The Clerk has LCO 2205, previously designated as Senate "B". If he may call it and Representative Lawlor would like to summarize.

CLERK:

LCO Number 2205, Senate "B" offered by Senator Williams.

SPEAKER RITTER:

Representative Lawlor.

REP. LAWLOR: (99TH)

Thank you, Mr. Speaker. This amendment is technical in nature. It clarifies the meaning of the underlying bill. I would urge its adoption.

SPEAKER RITTER:

The question is on adoption. Will you remark further? If not, I will try your minds. All those in favor, signify by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER RITTER:

Opposed, no. Senate "B" is adopted.

Will you remark further on the bill, as amended by Senate "A" and Senate "B"?

If not, staff and guests come to the Well of the House. The machine will be opened.

gmh

House of Representatives

Tuesday, April 21, 1998

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 call machine to make sure your vote is properly cast. The machine will be locked.

Clerk, please take the tally.

Clerk, please announce the tally.

CLERK:

Senate Bill Number 580, as amended by Senate Schedules "A" and "B", in concurrence with the Senate

Total Number Voting	142
Necessary for Passage	72
Those voting Yea	142
Those voting Nay	0
Those absent and not voting	9

SPEAKER RITTER:

The bill passes.

Clerk, please call Calendar 260. Oh, I'm sorry, excuse me. Before we do that, please Representative Godfrey.

REP. GODFREY: (110TH)

Thank you, Mr. Speaker. Mr. Speaker, I would move

gmh

House of Representatives

Tuesday, April 21, 1998

for the suspension of our rules for the immediate  
transmittal of that last item to the Governor.

SPEAKER RITTER:

Any objection? Seeing no objection, our rules are  
hereby suspended so that the Governor can expeditiously  
sign this bill.

Now, the Clerk will please call Calendar 260.

CLERK:

On page 30, Calendar 260, Substitute for House  
Bill Number 5477, AN ACT CONCERNING DISCRIMINATORY  
BANKING PRACTICES. Favorable Report of the Committee  
on Banks.

SPEAKER RITTER:

The Honorable Whip from the proud City of  
Bridgeport, Representative Newton. You have the floor,  
sir.

REP. NEWTON: (124TH)

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

SPEAKER RITTER:

The motion is on acceptance and passage. Please  
proceed, sir.

REP. NEWTON: (124TH)

Thank you, Mr. Speaker. What this bill does is

S-421

CONNECTICUT  
GEN. ASSEMBLY  
SENATE

PROCEEDINGS  
1998

VOL. 41  
PART 4  
923-1255

Public Safety. Without objection, so ordered.

THE CLERK:

Calendar Page 15, Calendar 289, File 432,  
Substitute for SB580 An Act Concerning Mediation.

Favorable Report of the Committee on Judiciary. The  
Clerk is in possession of three amendments.

THE CHAIR:

Senator Williams.

SEN. WILLIAMS:

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

THE CHAIR:

The question is on passage. Will you remark?

SEN. WILLIAMS:

Madam President, what this bill does is to protect  
the confidentiality of negotiations in the mediation  
process and non-court ordered mediation and to that  
effect, there are two, well three amendments I'll call.

First I'll call LCO2206.

THE CLERK:

LCO2206 which will be designated Senate Amendment  
Schedule "A". It is offered by Senator Williams of the  
29th District.

THE CHAIR:

Senator Williams.

SEN. WILLIAMS:

I move adoption of the amendment.

THE CHAIR:

The question is on adoption. Will you remark?

SEN. WILLIAMS:

Madam President, this concerns the effective dates. Section 3 of the amendment is the effective date of this act. Section 2 of the amendment affects the community court bill which we passed earlier and the effective date on that bill was not correct and this would correct that situation.

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".

ASSEMBLY:

Aye.

THE CHAIR:

Opposed, "nay". Ayes have it. Senate "A" is adopted. Will you remark further on the bill? Senator Williams.

SEN. WILLIAMS:

Thank you, Madam President. I would call LC02205.

THE CLERK:

LCO2205 which will be designated Senate Amendment  
Schedule "B". It's offered by Senator Williams of the  
29th District.

THE CHAIR:

Senator Williams.

SEN. WILLIAMS:

Thank you, Madam President. This just clarifies  
language mostly from line 24 through 28 of the bill  
breaking out a fourth paragraph and retaining certain  
language regarding exceptions to the confidentiality.  
And I move adoption of the amendment.

THE CHAIR:

Question is on adoption. Will you remark? Will  
you remark? If not, all those in favor indicate by  
saying "aye".

ASSEMBLY:

Aye.

THE CHAIR:

Opposed, "nay"? Ayes have it. Senate "B" is  
adopted. Will you remark further on the bill? Senator  
Williams.

SEN. WILLIAMS:

If there's nothing further, I would move this to  
the Consent Calendar.

THE CHAIR:

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

THE CLERK:

Calendar 292, File 429, Substitute for SB411 An  
Act Concerning Commercial and Customer-Formula Feeds.  
Favorable Report of the Committee on Environment and  
Judiciary. The Clerk is in possession of two  
amendments.

THE CHAIR:

Senator Daily.

SEN. DAILY:

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

THE CHAIR:

The question is on passage. Will you remark?

SEN. DAILY:

Yes, thank you, Madam President. I would ask the  
Clerk to call LCO2629.

THE CLERK:

LCO2629 which will be designated Senate Amendment  
Schedule "A". It's offered by Senator Daily of the  
33rd District.

THE CHAIR:

Senate

Wednesday, April 15, 1998

001252

this morning, I should say. (APPLAUSE) And it's a boy! Thank you. (APPLAUSE)

THE CHAIR:

Thank you, Senator Eads. Congratulations, Jane. Before we do personal announcements, may we call the Consent Calendar.

THE CLERK:

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

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

Madam President, Third Consent Calendar begins on Calendar Page 1, Calendar 114, SB394.

Calendar Page 2, Calendar 120, Substitute for SB409.

Calendar 121, SB410.

Calendar 142, Substitute for SB408.

Calendar Page 13, Calendar 276, Substitute for SB610.

Calendar 278, Substitute for SB318.

Calendar 281, Substitute for SB600.

Calendar Page 14, Calendar 283, Substitute for SB604.

Calendar Page 15, Calendar 289, Substitute for SB580.

Calendar Page 16, Calendar 297, HB5616.

Calendar Page 15, Calendar 292, Substitute for SB411.

Calendar Page 21, Calendar 92, Substitute for SB306.

Calendar Page 22, Calendar 110, SB403.

Calendar Page 23, Calendar 127, Substitute for SB349.

Calendar 133, Substitute for SB481.

Madam President, that completes the Third Consent Calendar.

THE CHAIR:

Would you once again announce a roll call vote, please. The machine will be opened.

THE CLERK:

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

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 all members have

voted, the machine will be locked. The Clerk please take a tally.

THE CLERK:

Motion is on adoption of Consent Calendar No. 3.

Total number voting 35; necessary for adoption, 18; those voting "yea", 35; those voting "nay", 0. Those absent and not voting, 1.

THE CHAIR:

Consent Calendar is adopted. At this time the Chair will entertain points of personal privilege or announcements. Senator Harp.

SEN. HARP:

Thank you, Madam President. I'd like to announce that the Public Health Committee will meet tomorrow at 2:00 p.m. in Room 2D.

THE CHAIR:

Thank you, Senator. Are there other announcements? Senator Penn.

SEN. PENN:

Thank you, Madam President. Just to remind the members of the circle and all invited guests to the annual spring fling tomorrow night by the Black and Puerto Rican Caucus where we can do the electric slide.

THE CHAIR:

Thank you, Senator.

JOINT  
STANDING  
COMMITTEE  
HEARINGS

JUDICIARY  
PART 4  
992-1321

1998

since we have so many witnesses signed up to testify, if we can hold the testimony to three minutes, that would be greatly appreciated.

ROBERT REARDON: And I will do my best.

First of all, with respect to SB54 increasing the number of judges, the Connecticut Trial Lawyers Association supports that bill because of the desperate need for judges. It will increase the number by five a year for three years for a total of fifteen judges.

In 1988 there were approximately 10,000 cases pending on the civil side. There are now 22,000. That's an 85% increase. During that same period there's been a 15% increase in the number of judges in our state.

We're in desperate need of judges so that civil litigants are guaranteed their reasonably speedy trial and we urge you to endorse this bill so that we may finally get some relief from the oppressive civil backlog that now exists in this state.

SB566 provides raises for our sitting judges as well as for those that hopefully will be appointed if you pass the bill that I just spoke to. And in order to keep good judges on the bench and get good candidates for judicial appointments we must pay them fairly. I know Judge Ment has spoken to you briefly about this earlier. I won't spend a great deal more time on it except to tell you that the Connecticut Trial Lawyers Association recognizes that our judges are underpaid. They're paid less than partners of law firms in this state. They're paid less than 463 state employees and they are highly credentialed, highly qualified people and they're in need of an increase.

With respect to that bill there is one exception. We take no position on Section 2 which allows State Referees to sit on criminal arraignments and criminal jury selection without consent of the defendant, but we do ask that you not approve that portion of the bill which allows referees to sit on civil voir dire or decide challenges of prospective

jurors without consent of the parties.

Last year this Legislature agreed with the Connecticut Trial Lawyers Association that referees should not sit on civil jury cases without the consent of the parties. Likewise, the parties to a lawsuit should not have a referee decide issues regarding jury selection absent consent. As a practical matter in civil jury selection judges generally do not sit on the bench in any event. We think with the removal of the words from the bill "or civil case" with respect to Section 2 we would endorse the bill.

SB520 is Inter-Vivos Trusts bill which we conceptually support. It allow minors to have a structured settlement through the probate courts. We are going to work on the language of that bill with the Connecticut Bar Association and others. There are some concerns we have about some of the language, but we certainly conceptually support it.

And finally, two more bills and I'll be very brief. The mediation bill which is SB580. ADR is an important part of our process and confidentiality during ADR is of ultimate importance. We think that we must legislate confidentiality in order for alternative dispute resolutions to succeed in this state.

Finally, HB5545 is a bill concerning arbitration. Last year, as you may recall, 52549U was amended by Public Act 97-24 increasing the amount of claims from \$15,000 to \$50,000 that are subject to arbitration. It also included a change which would give the court discretion to determine which cases go in and do not go into this arbitration process.

CTLA is concerned with the fact that the court holds the final discretion to determine which cases go and don't go into the process and for that reason, submitted this bill. Since then we've met with Judge Joseph Pellegrino, the Chief Administrative Judge - Civil, and we have agreed to allow this legislation, Public Act 97-24 to remain in place during this year and revisit this issue next year after we see if the program is

your job evaluations here.

These are large consulting companies that do job evaluations for state and private.

So that there is a way that you evaluate jobs on their skills, effort, responsibilities, and working conditions.

REP. RORABACK: Thank you, Mr. Chairman.

SEN. WILLIAMS: Other questions? Thank you very much. Next we have Peter Costes to be followed by Deb Tedford and Terry Tuthill. And at that point we'll start re-alternating back and forth with the legislator and department head list and the public list.

PETER COSTES: Senator Williams, members of the Judiciary Committee, I'm Peter Costes, President of the Connecticut Bar Association which is more than 11,000 lawyers in this state, plaintiffs' lawyers, defendants' lawyers, corporate lawyers, trust of the estate lawyers, every kind of lawyer you can think of and we're committed to one thing, seeing a justice system that works in the state as I know you are.

I'm here to speak on behalf of the Association in favor of SB54 which is AN ACT INCREASING THE NUMBER OF JUDGES. SB566, AN ACT CONCERNING JUDGES, MAGISTRATES, AND REFEREES, and HB5694, AN ACT CONCERNING CORPORATIONS AND OTHER BUSINESS ORGANIZATIONS. I also have with me here Tom Clark, the Chairman of the Mediation Committee of the Alternative Dispute Resolution Section of the Connecticut Bar who would speak on SB580, AN ACT CONCERNING MEDIATION and Deborah Tedford, Chair of the Estates and Probate Section who will speak on SB520, AN ACT CONCERNING INTER-VIVOS TRUSTS. They have been separately signed up, Senator Williams.

With respect to SB54, I do not have to tell you. You've seen the statistics. The caseload is increasing each year. The backlog is increasing in terms of our civil backlog. And we have long

have got some bond money for will ultimately give us some relief because it will free up some of the court personnel that are doing clerical work, entering data processing, etc. that would then be able to do other things. And so I'm hopeful that there is some relief down the road.

Thank you.

PETER COSTES: Well, if I may. There was one first and important development this morning. Judge Ment did announce a -- let's call it a complex case program which to paraphrase the old expression, it's a small step for the caseload, but it's a very large step for the judicial to move towards the assigned docket and we're hopeful about that.

SEN. WILLIAMS: Let me just say before Mr. Clark begins that I would appreciate it if folks can try and keep their testimony to three minutes. I've tried to be accommodating, but I am going to have to interrupt folks. We've got over 60 people still signed to testify today. So we really do need to hold it to three minutes or less and when the bell rings I am going to have to interrupt and ask you to wrap it up.

Thanks.

TOM CLARK: I hope to take less than a minute. What I would like to say that having been on the Judiciary Committee about 20 years ago, I want you to know you do eventually forget how long these hearings are.

On SB580 which I'm speaking as a mediation bill and that's a bill I think that there's general support for. The attempt is to find another avenue for solving legal problems.

Specifically, returning to the bill, I'd like to ask on line 22 that the comma be removed after "discussions" and on line 24 that the comma be removed after "mediation". And also we would like this act not to apply to the court annexed mediation program. They will take care of their own rule making with regard to the court of annexed

mediation which is the formal program in the courts. Therefore, I propose that Section E that says, "this act shall not apply to court annexed mediation". Otherwise, the bill itself is simply one, attempting to make mediation a more efficient and effective form of solving problems in our state taking litigation out of the courts and into mediation.

If there are any questions, I'd be happy to respond.

SEN. WILLIAMS: Questions from our committee? Thank you both very much.

PETER COSTES: Thank you very much.

SEN. WILLIAMS: Next, Deb Tedford and Terry Tuthill to be followed by a panel, I believe, regarding magistrates.

DEBORAH TEDFORD: Hi. Senator Williams, Chairman -- or Representative Lawlor, members of the Judiciary Committee. I'm here to speak in favor of raised SB520 on behalf of the Connecticut Bar Association. My name is Deborah Tedford. I am the Chairman of the Estates and Probate Section of the Bar.

For your information, this bill, with some minor revisions, is supported by the Probate Court Administrator and the Connecticut Trial Lawyers and we're working with both of them to alleviate any small wording issues they might have.

To do this as quickly as I can, the Probate courts are responsible for many of the legal proceedings most fundamental to people in Connecticut, guardianships to deal with custody and property of our minor children, conservatorships to handle the care and financial management of the elderly and the incapable.

Most states in the United States allow courts to routinely establish trusts on behalf of protected people who are under their supervision. However, in Connecticut because our probate courts are courts of limited jurisdiction and because our statutes do

JOINT  
STANDING  
COMMITTEE  
HEARINGS

JUDICIARY  
PART 5  
1322-1686

1998

# Connecticut Council for Divorce Mediation

Post Office Box 256, Westport, Connecticut 06881-0256

(888) 236-CCDM ... (203) 254-0919

March 9, 1998

To: Members of the Judiciary Committee

From: Mary G. Marcus, Ph.D., Chair, Connecticut Council for Divorce Mediation's Legislation Committee

## RE: RAISED BILL NO. 580, AN ACT CONCERNING MEDIATION

The Connecticut Council for Divorce Mediation strongly supports Raised Bill 580. The Connecticut Council for Divorce Mediation is a state-wide professional organization of over 150 divorce and family mediators. Our members are attorney-mediators and therapist-mediators who engage in private divorce and family mediation and court-sponsored divorce and family mediation. Our organization's mission is to advance the practice of divorce mediation by establishing and preserving the highest standards of practice and integrity for divorce mediators, as well as to encourage research, study, and publication.

Divorce mediation is an ever more popular alternative to adversarial divorce. Divorce mediation is a cooperative problem-solving process in which an impartial mediator assists a divorcing couple to reach agreement on the issues of division of assets, division of liabilities, spousal support, and if the couple has children, on custody and child support. The process' success depends on open communication and full disclosure between the parties. Confidentiality is an essential ingredient of the divorce mediation process. Without confidentiality, parties are reluctant to be fully open in their communications.

Our neighboring states of Massachusetts (Section 23C or Mass. General Laws Chapter 233) and Rhode Island (Section 9-19-44 of Courts and Civil Procedure) have provisions for confidentiality of mediation in their statutes as do many other states. This confidentiality applies to the work product of mediation and mandates that a mediator cannot be compelled to disclose in subsequent judicial or administrative hearings, any communication made during the course of the mediation.

As you know, in Connecticut, court-sponsored mediations are governed by confidentiality as per Section 46b-53a of the Connecticut General Statutes which provides that "all oral or written communications made by either party to the mediator or made between the parties in the presence of the mediator, while participating in the mediation program conducted pursuant to subsection (a) of this section, are privileged and inadmissible as evidence in any court proceedings unless the parties otherwise agree."

The Connecticut Council for Divorce Mediation heartily endorses Raised Bill 580 because it extends the confidentiality of communications in mediation to private mediations.

Thank you for your consideration.

*Executive Committee:* Michael Becker, President, Westport ... Walter Marcus, Past President, Norwalk  
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