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CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1991

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1902-2229

WEDNESDAY
May 22, 1991

002225

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The Appropriations Committee will meet tomorrow morning at 10:30 in Room 2C. The Appropriations Committee will meet tomorrow morning at 10:30 in Room 2C. Thank you.

THE CHAIR:

Thank you very much, Senator. Senator Przybysz.

SENATOR PRZYBYSZ:

Thank you, Madam President. I would also like to announce that the Human Services Committee will meet ten minutes before the start of the House Session tomorrow outside the Hall of the House.

THE CHAIR:

Senator Herbst.

SENATOR HERBST:

Thank you, Madam President. Another announcement. The GAE Committee will be meeting a half hour before the first session in Room 2B.

THE CHAIR:

Thank you very much, Senator. Excuse me, you want to say that again?

SENATOR HERBST:

They will be meeting tomorrow a half hour before the Session of the House in Room 2B.

THE CHAIR:

Thank you very much, Senator. Senator DiBella.

SENATOR DIBELLA:

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Thank you, Madam President. The Finance Committee will be meeting tomorrow one half hour before the opening of the House Session in Room 2E.

THE CHAIR:

Senator Sullivan.

SENATOR SULLIVAN:

Thank you, Madam President. There will be a meeting of the Education Committee tomorrow morning at 9:45, notices have been distributed to the members of the Committee. Thank you.

THE CHAIR:

Thank you. Would anyone else wish to make an announcement? Any further announcements? Any points of personal privilege? Senator O'Leary.

SENATOR O'LEARY:

Thank you, Madam President. Are there any further Agendas on the Clerk's desk?

THE CLERK:

Madam President the Clerk is in possession of Senate Agenda #2 for Wednesday, May 22, 1991, copies of which have been distributed.

THE CHAIR:

Thank you very much, Mr. Clerk. Senator O'Leary.

SENATOR O'LEARY:

Madam President, I move that all items on Senate

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Agenda #2 dated Wednesday, May the 22nd, 1991, be acted upon as indicated and that the Agenda be incorporated by reference into the Senate Journal and Senate Transcript.

THE CHAIR:

Thank you very much, Senator. Is there any objection? Any objection? Hearing none, so ordered.

SENATE AGENDA #2

1. MATTERS RETURNED FROM COMMITTEE - to be tabled for the Calendar and Printing

Appropriations

Substitute SB81 AN ACT REQUIRING HAZARDOUS WASTE SITE INFORMATION TO BE KEPT WITH PUBLIC RECORDS.

5/1 Senate referred PD bill to APP (New File)_

2. BUSINESS FROM THE HOUSE

COMMITTEE ON CONFERENCE - to be tabled for the Calendar

Judiciary

Substitute SB5057 AN ACT CONCERNING THE CODE OF ETHICS FOR PUBLIC OFFICIALS

5/16 Senate Rejected House "A"

5/21 House Re-adopted House "A"

END SENATE AGENDA #2

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Senate

Thursday, May 20, 1999

Calendar 517, Substitute for HB5764. HB 5765

Calendar 518, Substitute for HB6685.

Calendar Page 18, Calendar 94, Substitute for
SB993.

Calendar Page 19, Calendar 112, Substitute for
SB1048.

Calendar 147, Substitute for SB942.

Calendar Page 20, Calendar 160, SB1289.

Calendar Page 21, Calendar 223, Substitute for
SB112.

Calendar 230, Substitute for SB1245.

Calendar 232, Substitute for SB1015.

Calendar Page 23, Calendar 256, Substitute for
SB994.

Calendar Page 24, Calendar 294, Substitute for
HB6835.

Calendar 302, Substitute for SB1092.

Calendar Page 25, Calendar 320, Substitute for
SB1019.

Calendar Page 26, Calendar 349, Substitute for
HB6659.

Calendar 351, HB5725. HB 6725

Calendar Page 27, Calendar 362, Substitute for
HB6639.

Calendar 376, Substitute for SB1139.

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Senate

Thursday, May 20, 1999

Calendar Page 28, Calendar 269, Substitute for SB1228.

Madam President, that completes the First Consent Calendar.

THE CHAIR:

Thank you, Mr. Clerk. Would you once again 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 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 announce the tally.

THE CLERK:

Motion is on adoption of Consent Calendar No. 1.

Total number voting, 35; those voting yea, 35; those voting nay, 0. Those absent and not voting, 1.

THE CHAIR:

The Consent Calendar is adopted. Senator Jepsen.

SEN. JEPSEN:

Thank you, Madam President. This concludes our

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House of Representatives

Wednesday, April 21, 1999

Will the Clerk please call Calendar 143?

CLERK:

On page four, Calendar 143, Substitute for House Bill Number 6835, AN ACT CONCERNING FIDUCIARY POWERS AND ENVIRONMENTAL HAZARDS. Favorable Report of the Committee on Judiciary.

SPEAKER LYONS:

Representative Mike Lawlor of the 99th district. You have the floor, sir.

REP. LAWLOR: (99TH)

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

SPEAKER LYONS:

The question before the Chamber is on acceptance and passage. Will you remark?

REP. LAWLOR: (99TH)

Thank you, Madam Speaker. This bill is rather technical. It clarifies that a fiduciary does have the power to conduct inspections to determine compliance with an environmental law whenever the fiduciary is in charge of disposing of a particular piece of paper. It was not clear under the current law whether or not they have that power. In fact, it's been argued they do not have that power.

This was presented to our committee, in essence, as a recommendation without opposition. It's an appropriate extension of the powers of a fiduciary and I would urge passage.

SPEAKER LYONS:

The question before the Chamber is on acceptance and passage. Will you remark further on the bill that is before us? Will you remark?

If not, will staff and guests please come to the Well? Will members take their seats? The machine will be opened.

CLERK:

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

SPEAKER LYONS:

Have all the members voted? They need to hurry because the machine is going to be shut. If all the members have voted, the machine will be locked and the clerk will take a tally. Representative Pudlin, how would you like your vote to be recorded?

REP. PUDLIN: (24TH)

I forgot to push my button, Madam. In the affirmative, please.

SPEAKER LYONS:

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It will be recorded in the affirmative, sir.

The Clerk will please announce the tally.

CLERK:

House Bill Number 6835

Total Number Voting	143
Necessary for Passage	72
Those voting Yea	143
Those voting Nay	0
Those absent and not Voting	8

SPEAKER LYONS:

The bill passes.

Will the Clerk please call Calendar 185.

CLERK:

On page seven, Calendar 185, Substitute for House Bill Number 6730, AN ACT CONCERNING THE MEMBERSHIP OF THE LONG-TERM CARE PLANNING COMMITTEE. Favorable Report of the Committee on Public Health.

SPEAKER LYONS:

Representative Villano. Sir, you have the floor.

REP. VILLANO: (91ST)

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

SPEAKER LYONS:

The question before the Chamber is on acceptance

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735-1051

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to support it on policy grounds, these claims ought to be granted today rather than relying upon a change in the statute.

CMRS. JESSE FRANKL: I'm sorry.

REP. LAWLOR: I think we ought to start granting these claims today rather than having to wait until we change the law because clearly it's an occupational disease in my view.

CMRS. JESSE FRANKL: I'm having a meeting with the Commissioners on the 8th and I will raise that issue, sir.

REP. LAWLOR: Okay.

CMRS. JESSE FRANKL: On the 12th. I'm sorry.

SEN. WILLIAMS: Further questions? Thank you very much.

CMRS. JESSE FRANKL: Thank you very much.

SEN. WILLIAMS: Next, Judge Paul Kurmay to be followed by Deborah Fuller.

JUDGE PAUL KURMAY: Good afternoon, Mr. Chairman, members of the committee. It's a pleasure to see you and to be able to testify before you once again. This will be a very brief presentation, both orally and in my written testimony.

HB 6858
HB 6835

I'm here in support of four bills. The first is HB6685, AN ACT CONCERNING PROBATE MATTERS. This is basically the work product of the Probate Committee of the Law Revision Commission. I know that Attorney David Hemond from the Commission is here and I would defer to him on the answering of any technical questions. It is a technical bill. We support it. We worked together on it and we certainly support it.

The second bill is HB6856, AN ACT CONCERNING VIRTUAL REPRESENTATION. That was part of the intro vivos bill that I heard you support and give a joint favorable. So, that's really irrelevant. It's already incorporated in that. We certainly support

it.

The third bill is HB6858, AN ACT CONCERNING THE PRINCIPAL AND INCOME ACT. Both the Probate assembly and my office support this proposed legislation which was submitted by the state and probate section of the Connecticut Bar Association. It's technical in nature but would give greater flexibility to those utilizing these instruments and would also give greater flexibility to judges when the instrument is not specific regarding the allocation of principal and income. So, we support that.

The final bill is HB6835, concerning fiduciary powers and environmental hazards. That's an extremely technical bill. The written testimony that I've given you that you may have before you suggests that some very modest language in terms of revisions that would inject a standard of reasonableness into the proposed legislation in terms of the conduct of the fiduciary that he or she be able to do certain things under a reasonable person standard.

With those changes, we are in support of this bill that has been coming before the Legislature for the last two or three years.

That would conclude my formal remarks unless you have any questions that I'd be happy to answer.

SEN. WILLIAMS: Thank you. Any questions? Thank you very much.

JUDGE PAUL KURMAY: Thank you.

SEN. WILLIAMS: Next, Deborah Fuller to be followed by David Hemond and Jim Smith.

REP. LAWLOR: Before you start, Attorney Fuller, is John Cvejanovich here? Mr. Cvejanovich, you signed up on the wrong list. Could you just speak to our committee staff and just to get you onto the right one.

DEBORAH FULLER: Good afternoon. My name is Deborah

HB 6856
HB 6836

not the issue or --

DEBORAH TEDFORD: In all 49 other states?

REP. FARR: No, I just wondered what triggered this bill. You're stating -- you're clarifying something which I didn't think was unclear in the first place and that raises the question of who thinks it's unclear.

DEBORAH TEDFORD: Several good state planning attorneys felt that it was not clear in Connecticut, not that it was the -- the answer was negative, but that it was not clear and thought it would be a safe feature to have it clarified.

REP. FARR: Maybe you can have somebody sent --

DEBORAH TEDFORD: I can certainly do that.

SEN. WILLIAMS: Any further questions? Thank you very much.

DEBORAH TEDFORD: Thank you very much.

SEN. WILLIAMS: David Stara to be followed by Dennis LaGanza.

DAVID STARA: Senator Williams, Representative Lawlor, members of the Judiciary Committee. Good afternoon.

Thank you for the opportunity to appear before you to address HB6835, AN ACT CONCERNING FIDUCIARY POWERS AND ENVIRONMENTAL HAZARDS.

I appear today as Chair of the Environmental Problem Subcommittee of the Estates and Probate Executive Committee of the Bar Association. I'm here to support HB6835 and respectfully request the committee consider an amendment to eliminate the language regarding refusal of property.

HB6835 would grant specific authority to executors and trustees to deal with environmental problems. It would apply only in those instances in which the fiduciary powers act is incorporated into a will or

trust instrument. The Fiduciary Powers Act enjoys wide spread use throughout Connecticut. It benefits members of the general public by allowing the incorporation of specific and detailed powers into documents that would otherwise be much more difficult to include by members of the Bar.

This particular bill contains specific authority enabling a fiduciary to comply with environmental laws and avoid risk or liability to the estate or trust. Specifically, it authorizes the fiduciary to inspect property, determine the application of environmental laws, to reimburse itself for the expenses of such investigations, to remediate property from paying for that remediation with trusts in the estate funds, and to institute necessary legal actions to comply with environmental laws and regulations.

In short, the raised bill is good for the public because it encourages fiduciaries to be pro-active in complying with environmental laws in protecting the estate and trust from liability.

We respectfully request that you consider deleting the language in the current subsection (7) of section 45a-234 which deals with the refusal, the ability of a fiduciary to refuse property, and when we originally drafted this legislation, when our subcommittee drafted this legislation, we attempted to improve that language, but now believe that it should be deleted in its entirety. The law refusal is contained in Chapter 802g - the law of disclaimer in Connecticut. We think it could be confusing and even inconsistent with the disclaimer statute to have refusal language in the fiduciary powers act.

We therefore encourage the committee to act favorably on HB6835 subject to that amendment.

I would be pleased to answer any questions you may have.

SEN. WILLIAMS: Thank you. Any questions? Thanks for your testimony.

Dennis LaGanza. Is Dennis LaGanza here? To be followed by Jim Traynor.

DENNIS LAGANZA: Good afternoon, Senator Williams, Chairman Lawlor. My name is Dennis LaGanza. I'm counsel to the Insurance Association of Connecticut, a trade association representing insurers doing business in the State of Connecticut.

I'm here to speak to you today in opposition to two bills, HB6719, AN ACT ABOLISHING THE FIREMAN'S RULE and HB6721, AN ACT CONCERNING THE LOSS OF FILIAL OR PARENTAL CONSORTIUM.

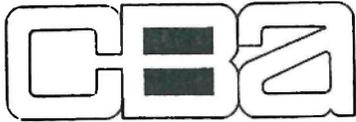
First, with respect to the fireman's bill. What this bill would do is treat firemen as invitees, policemen and firemen when they come onto your property. Connecticut currently properly recognizes the lower standard of care for these individuals when they enter onto a person's property in the performance of their duty and the reason they do that is that policemen and firemen are trained to confront hazardous duties. They enter into the profession knowingly and frankly, it's their job to encounter these types of situations.

Taxpayers pay to train them. They pay their salaries and they pay the workers' compensation benefits. It's patently unfair to hold the landowner responsible for the commission of a tort when that fireman or policeman is entering on that property to perform the very function that that emergency created.

I would submit to you that firemen and policemen already have protections available to them in the forms of workers' compensation and specifically, they have enhanced benefits for survivors.

I would also like to speak with you concerning the loss of filial or parental consortium. What this bill would do is overturn the Supreme Court's decision this summer in Mandilla vs. East Haddam. Mandilla held that Connecticut does not recognize a cause of action for loss of parental consortium.

HB 6721



Connecticut Bar Association

Testimony Of David L. Sfara, Member, Estates & Probate Section
of the Connecticut Bar Association Concerning Raised House
Bill No. 6835, An Act Concerning Fiduciary Powers and Environmental Hazards
Before the Judiciary Committee
March 1, 1999

Senator Donald E. Williams, Jr., Co-Chairman
Representative Michael P. Lawlor, Co-Chairman
Members of the Judiciary Committee

Thank you for the opportunity to appear before the committee to address House Bill 6835, **An Act Concerning Fiduciary Powers and Environmental Hazards**. I appear before the committee this afternoon in my capacity as chairman of the environmental issues subcommittee of the executive committee of the Estates & Probate Section of the Connecticut Bar Association. There are approximately 800 members of the section. The section **supports the intent** behind House Bill 6835, and commends the committee for raising the bill. However, **we respectfully request that the committee, before it acts on HB 6835, amend the bill to omit the authority of a fiduciary to refuse property**, as I will address in my remarks. If the bill is so amended, the section respectfully requests that the committee act favorably on the bill.

HB 6835 would grant specific authority to executors and trustees to deal with environmental problems. The bill would also benefit the general public by making these powers more easily accessible to drafters of wills and trusts who prepare these documents for individuals.

The Fiduciary Powers Act (Conn. Gen. Stat. §45a-233 et seq.) allows the incorporation of necessary powers in a will or trust instrument. The Act is useful to members of the public whose wills and trusts are prepared by the general practitioner who, in the absence of the statute, may not have the time or expertise to fully consider all powers that are desirable for inclusion in such documents. It also benefits individuals whose documents are prepared by a specialist, who may more efficiently and economically incorporate such powers in wills and trust instruments.

The Fiduciary Powers Act has evolved and has been improved in the thirty years since its original enactment. It now includes 39 general powers in §45a-234 and 27 additional powers in §45a-235. The Estates and Probate Section of the CBA supports amendments to the Fiduciary Powers Act to grant authority to executors and trustees to respond to environmental issues.

The intent of the proposed amendments in HB 6835 is to modify the statutes so as to **enable fiduciaries to take necessary actions to respond to environmental problems and to minimize or avoid the risk of liability for environmental problems**. House Bill 6835 would:

- Authorize the fiduciary to inspect property to determine the application of environmental laws;

- allow the fiduciary or potential fiduciary reimbursement for expenses of environmental investigations;
- authorize payment for remediation from trust or estate funds; and
- authorize the fiduciary to institute, continue or settle legal actions.

We believe that language specifically granting authority with respect to these issues, as provided in HB 6835, is desirable and should be part of the Fiduciary Powers Act.

The Estates & Probate Section respectfully requests that HB 6835 be amended to delete the language authorizing a fiduciary to refuse certain estate property. The authority concerning refusal of property is covered in Chapter 802g, Disclaimer of Property, Conn. Gen. Stat. §45a-578 et seq. Including refusal language in the Fiduciary Powers Act may unnecessarily confuse a fiduciary or even conflict with the disclaimer statutes. We therefore recommend that it be deleted. I have attached to my remarks a proposed amendment that details how this can be accomplished.

Again, thank you for raising House Bill 6835, **An Act Concerning Fiduciary Powers and Environmental Hazards**, and allowing me to speak on behalf of the Estates & Probate Section of the CBA in support of the bill. **The Estates & Probate Section of the CBA supports HB 6835, subject to the amended language below. On behalf of the section, I respectfully request that the committee act favorably on the bill as amended.** Thank you and I would be pleased to answer any questions you may have.

Proposed Amendment to House Bill 6835

The Estates & Probate Section of the Connecticut Bar Association respectfully requests that the Judiciary Committee amend House Bill 6835, **An Act Concerning Fiduciary Powers and Environmental Hazards** as follows:

- In line 3, delete "and Refuse"
- In line 7, delete the closing bracket and "The"
- In line 8, delete "(a) such property is"
- Delete line 9 in its entirety
- In line 10, delete "administrator of the decedent's estate, or (b)"
- In line 11, delete "by the decedent"
- Delete line 12 in its entirety
- In line 13, delete "the trust under which the fiduciary is acting"
- In line 14, insert a closing bracket after the period
- In line 23, delete "The powers"
- Delete lines 24 to 26, inclusive, in their entirety