

Legislative History for Connecticut Act

HB 6858	PA 164	1999
SENATE:	2867, 2945-2946	3p.
HOUSE:	3527-3533	7p.
Judiciary:	829, 830, 853-859, 958, 959, 1001-1003	9p.
		Total - 19 p.

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

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S-437

CONNECTICUT
GEN. ASSEMBLY
SENATE

PROCEEDINGS
1999

VOL. 42
PART 9
2862-3160

453 is to be passed temporarily.

454 PR.

467 passed temporarily.

501 PR.

Page 5, Calendar 505 is Go. 525 PR.

528 to be passed temporarily.

529 PR. 536 PR.

537 is to be passed temporarily.

Page 6, 538 is Go.

548 and 553 are PR.

555 is Go.

557, Substitute for HB6858, I move to the Consent

Calendar.

THE CHAIR:

Without objection, so ordered.

SEN. JEPSEN:

Page 7 is single-starred.

Turning to page 11. Calendar 101 is to be passed temporarily.

Madam President, I made a mistake. On page 3, Calendar 374 is to be marked Go.

I wish Senator Prague had been here for the earlier marking.

Page 11, Calendar 101, is to be passed temporarily.

Senate

Friday, June 4, 1999

And Calendar page 6, Calendar No. 557, Substitute
for HB6858.

Madam President, that completes the first Consent
Calendar.

THE CHAIR:

Thank you, sir. Would you once again announce a
roll call vote on the Consent Calendar, the machine will
be open.

THE CLERK:

The Senate is now voting by roll call on the
Consent Calendar. Will all Senators please return to
the Chamber. The Senate is now voting by roll call 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. 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:

Senate

Friday, June 4, 1999

The Consent Calendar is adopted. Senator Jepsen.
Senator Jepsen.

SEN. JEPSEN:

Madam President, I would ask that the Senate stand in -- actually I would move for immediate transmittal of all items acted upon for immediate transmission to the House.

THE CHAIR:

Without objection, so ordered.

SEN. JEPSEN:

Thank you, Madam President. At this time I would ask the Senate stand in recess for approximately one hour. And we'll try and keep it to one hour so that members can eat dinner and caucus. It's my understanding that both caucuses will be meeting.

THE CHAIR:

Without objection, Senate stands in recess subject to the Call of the Chair.

(Recess till 8:01 p.m.)

THE CHAIR:

The Senate will please come to order. Before we begin with the Calendar, I would ask if there are any points of personal privilege or announcements? Senator

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CONNECTICUT
GEN. ASSEMBLY
HOUSE

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gmh

House of Representatives

Friday, May 28, 1999

Necessary for Passage	70
Those voting Yea	138
Those voting Nay	0
Those absent and not Voting	13

SPEAKER PRO TEMPORE HARTLEY:

The bill, as amended is passed.

Will the Clerk kindly return to the call, Calendar 264, please.

CLERK:

On page 4, Calendar 264, Substitute for House Bill Number 6858, AN ACT CONCERNING THE PRINCIPAL AND INCOME ACT. Favorable Report of the Committee on Judiciary.

SPEAKER PRO TEMPORE HARTLEY:

Representative Doyle, you have the floor, sir.

REP. DOYLE: (28TH)

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

SPEAKER PRO TEMPORE HARTLEY:

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

REP. DOYLE: (28TH)

Thank you, Madam Speaker. What this bill does is it's a follow-up to our 1998 passage of Uniform Prudent Investment Act - Investor Act and basically it involves

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Friday, May 28, 1999

the allocation of income and principal for existing trust instruments and what it does is in the new age where a lot of our stocks do not distribute as much income and they basically just increase your capital appreciation. In this situation, it gives discretion to the fiduciary or trustee to allocate proceeds from the sale of stocks between the principal of the trust and the income beneficiary of the trust.

And to make clear, this bill does not apply unless the trust instrument is silent as to the re-allocation assets between principal and income.

And along those lines, I'd like to have the Clerk please call and I be allowed to summarize LCO Number 8280.

SPEAKER PRO TEMPORE HARTLEY:

The Clerk is in possession of LCO 8280, to be designated House Amendment "A". Would the Clerk please call?

CLERK:

LCO 8280, House "A" offered by Representative Tulisano.

SPEAKER PRO TEMPORE HARTLEY:

Representative Doyle has asked leave to summarize. Without objection, you may proceed, sir.

REP. DOYLE: (28TH)

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Thank you, Madam Speaker. What this amendment does is clarify that this bill applies to any trust in the past or in the future retroactively in the future only if the trust instrument is silent as to rules governing the application or the re-allocation of assets between the principal and income. It makes sense because it just provides clarity and better intent for the original trust, for the original settler.

I move its adoption.

SPEAKER PRO TEMPORE HARTLEY:

The question is adoption of House Amendment "A". Will you remark further? Will you remark further on House Amendment "A"?

If not, I will try your minds. All those in favor, please signify by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER PRO TEMPORE HARTLEY:

Those opposed, nay. The ayes have it. The amendment is adopted and ruled technical.

Will you remark further? Representative Doyle.

REP. DOYLE: (28TH)

Thank you, Madam Speaker. The Clerk has another amendment, LCO 9010. May the Clerk please call and I be allowed to summarize?

gmh

House of Representatives

Friday, May 28, 1999

SPEAKER PRO TEMPORE HARTLEY:

The Clerk is in possession of LCO 9010 to be designated House "B". Will the Clerk please call?

CLERK:

LCO Number 9010, House "B" offered by
Representative Godfrey, et al.

SPEAKER PRO TEMPORE HARTLEY:

Representative Doyle has asked leave to summarize and you may proceed without objection.

REP. DOYLE: (28TH)

Thank you, Madam Speaker. What this amendment does it involves a recent IRS --

SPEAKER PRO TEMPORE HARTLEY:

Excuse me, Representative Doyle. Representative Prelli.

REP. PRELLI: (63RD)

Thank you, Madam Speaker. We're not in possession of the amendment.

SPEAKER PRO TEMPORE HARTLEY:

Thank you, sir. The Chamber will stand at ease until the entire membership is in possession of House "B".

(Chamber at ease)

SPEAKER PRO TEMPORE HARTLEY:

The Chamber will please come to order.

gmh

House of Representatives

Friday, May 28, 1999

Representative Doyle, you have the floor, sir.

REP. DOYLE: (28TH)

Thank you, Madam Speaker. What this amendment does is recently the IRS authorized states to reform certain charitable trusts and for different reasons. This bill would authorize and permit our Superior Courts and Probate Courts to reform these charitable trusts in accordance with the IRS's recent ruling and the net result is if the petitioner goes to the Probate Court or Superior Court to reform the trust, the end result is that these trusts, these charitable trusts that were reformed would yield higher payments to the beneficiaries and also could receive more favorable tax treatments. It's technical, but just improves the charitable trusts and I move its adoption.

SPEAKER PRO TEMPORE HARTLEY:

The question is adoption of House Amendment "B".
Will you remark further on the amendment?

Representative Prelli -- excuse me, Representative Roraback. You have the floor, sir.

REP. RORABACK: (64TH)

Thank you, Madam Speaker. Briefly in support of the amendment, it does allow certain trusts to be reformed in a way which makes sense for their beneficiaries and I urge the Chamber's support.

gmh

House of Representatives

Friday, May 28, 1999

Thank you, Madam Speaker.

SPEAKER PRO TEMPORE HARTLEY:

Thank you, sir.

Will you remark further on House "B"?

If not, I will try your minds. All those in favor, please signify by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER PRO TEMPORE HARTLEY:

Those opposed, nay. The ayes have it. The amendment is adopted and ruled technical.

Will you remark further on the bill, as now amended? Will you remark further?

If not, staff and guests please come to the Well. Members, please take your seats. The machine will be opened.

CLERK:

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

SPEAKER PRO TEMPORE HARTLEY:

Have all the members voted? Please check the roll call machine to see that your vote is properly recorded.

If so, the machine will now be locked and the Clerk will please take a tally.

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The Clerk will please announce the tally.

CLERK:

House Bill Number 6858, as amended by House
Amendment Schedules "A" and "B"

Total Number Voting	138
Necessary for Passage	70
Those voting Yea	138
Those voting Nay	0
Those absent and not Voting	13

SPEAKER PRO TEMPORE HARTLEY:

The bill, as amended passes.

Will the Clerk please return to the Call of the
Calendar, Calendar 433.

CLERK:

On page 28, Calendar 433, Substitute for House Bill
Number 7093, AN ACT CONCERNING DOMESTIC VIOLENCE.

Favorable Report of the Committee on Appropriations.

SPEAKER PRO TEMPORE HARTLEY:

Representative Lawlor, 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 PRO TEMPORE HARTLEY:

The motion is acceptance and passage. Will you

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735-1051

1999

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

You think it should be --

GARY WATERHOUSE: I think it should be narrow, sir.

REP. FARR: Okay. Thank you.

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

GARY WATERHOUSE: Thank you.

SEN. WILLIAMS: Deborah Tedford to be followed by David Stara.

DEBORAH TEDFORD: Good afternoon, Chairman Williams, Chairman Lawlor, members of the Judiciary Committee.

My name is Deborah Tedford and I'm currently the chair of the Estates and Probate Section of the Connecticut Bar Association.

HB 6856

I'm here to speak on behalf of three bills that our group is sponsoring this year. The first is raised HB6858. The Connecticut Uniform Principal and Income Act.

HB 6857

In 1997 this Legislature passed the Uniform Prudent Investor Act, which you may recall, to help modernize investment activities for trustees and other fiduciaries.

To make this act function as best possible, the National Commission on Uniform Laws, which writes these uniform bills, we don't make them up out of thin air, conceived this companion bill, the Uniform Principal and Income Act to go together with the Uniform Prudent Investor bill. The idea behind this bill is several fold.

First, there are many types of investment instruments that are common today that did not exist back in the late 50's or early 60's which is when our current Income and Principal bill as passed and was written. In addition, and perhaps just as significantly, this bill would allow a trustee or other fiduciary to make an adjustment between income and principal to be fair and

reasonable among the different trust beneficiaries. My written testimony explains this in more detail because it's a complex and different part of the law that is unique, but to summarize, it allows the trustee to try to achieve the maximum possible gains for the trust from an investment perspective and then within certain prescribed limits, make a fair adjustment between income beneficiaries and remaindermen.

The Bar Association has worked on this bill together with Dave Hemond of the Law Revision Commission and we feel that this bill is a very important compliment to our successful Uniform Prudent Investor statute and therefore strongly urge its passage.

I'd also like to speak on two other bills, HB6856, virtual representation. And then raised HB6857, AN ACT CONCERNING MERGER OF TRUST INSTRUMENTS.

I'm going to summarize very briefly. Virtual representation because I think it's confused a number of people including a previous person who spoke before me this afternoon.

Every year, many times per year, probate courts appoint attorneys to represent children, grandchildren and other beneficiaries of trust who may not really need separate representation and this is not representation all together. It's separate representation. This results in often expensive charges of legal fees to trusts and other similar court matters and criticism of the attorneys and courts involved. The virtual representation bill is an attempt to resolve this awkward matter as other states have done.

Stated as simply as I can, the bill will allow courts not to appoint an attorney to represent a group of trust beneficiaries if that group's legal interests are adequately represented by another group. And I think the only way to explain this is by example.

For example, if Mr. Smith is a beneficiary of the trust, and his minor children are also trust



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TO: MEMBERS OF THE JUDICIARY COMMITTEE
OF THE
GENERAL ASSEMBLY

FROM: JUDGE F. PAUL KURMAY, PROBATE COURT ADMINISTRATOR

RE: MISCELLANEOUS PROBATE BILLS

DATE: MARCH 1, 1999

It is a pleasure to appear before you once again, in order to offer testimony regarding several of the probate-related bills which are the subject of today's public hearing. Allow me to address each such bill separately.

1. H.B. 6685 AAC Probate Matters.

This bill consists of several technical amendments to existing statutes as recommended and submitted by the Probate Committee of the Law Revision Commission. Since the written testimony submitted by the Commission accurately and completely explains each aspect of the bill, I will not summarize the proposed legislation.

My office has helped develop these recommendations and we fully support them. If anyone has any questions about them, I would be happy to answer them.

2. H.B. 6856 AAC Virtual Representation

This proposal was contained within Raised Bill 1008 (AAC A Bill of Rights for Beneficiaries of Living Trusts), which was the subject of a public hearing on February 8, 1999. I spoke in favor of that proposal and offered written testimony to which you are invited to refer. I'm not sure why this portion of that bill has been scheduled for another public hearing. In any event, we support it. However, we strongly recommend the passage of the entire Raised Bill 1088 for the reasons stated in my previous written testimony.

HB 6858
HB 6835

3. H.B. 6858 AAC the Principal and Income Act

This measure was reviewed and approved by the Connecticut Bar Association, with the support of this Office and Judge Robert K. Killian, Jr., President of the Connecticut Probate Assembly. We support the bill and defer all questions to the spokespersons of the Bar Association who are present to answer your questions regarding any of the technical or other aspects of this legislation. We encourage your passage of the bill.

4. H.B. 6835 AAC Fiduciary Power and Environmental Hazards

While we support this proposal in principal, we do suggest making some modest changes in the draft to provide a reasonableness standard for the fiduciary to follow in making environmental decisions. In particular, we suggest the following changes:

- a. In line 29, between the word "any" and "action" insert the word, "reasonable."
- b. In line 34, between the word "any" and "amount" insert the word, "reasonable."
- c. In line 35, delete the phrase "in its sole discretion."
- d. In line 47, between the word "any" and "remedial" insert the word, "reasonable."

TESTIMONY ON RAISED BILL NUMBER 6858
ON BEHALF OF THE CONNECTICUT BAR ASSOCIATION
March 1, 1999

Chairman Williams, Chairman Lawlor and Members of the Judiciary Committee:

My name is Deborah Tedford, and I am speaking on behalf of the Connecticut Bar Association. I am currently chair of the Estates and Probate Section of the CBA. I appreciate the opportunity to speak before you on behalf of Raised Bill Number 6858, the Connecticut Principal and Income Act.

In 1997, the Connecticut legislature passed the Uniform Prudent Investor Act, a bill that modernized investing for trustees by encouraging such well-established principals as diversification, delegation and modern portfolio theory. Better investing relies on the concept of total return: the trustee or other fiduciary should strive to increase the total trust funds by the best investment means available. This often leads to an emphasis on stocks or similar types of equity investments, which currently may produce substantial principal growth, but little or no available income. In other investment climates, the late 1970's or early 1980's, for example, the opposite was true. Stocks produced only lackluster growth, while bonds and even treasury bills paid 17% or 18% annually. Of one thing we may be certain: the investment world will always be changing. Investing for total return can therefore produce very uneven results for the income beneficiaries and remaindermen of a trust as different markets cycle up and down. The new Connecticut Uniform Principal and Income Act is both a response to this problem and a needed clarification of the principal and income treatment of many new forms of investments that did not exist in the 1960's when our last act was drafted.

The National Commission on Uniform Laws has worked on this new Uniform Principal and Income Act in tandem with the Uniform Prudent Investor Act. The two comprehensive statutes were conceived to work in tandem, and directly complement each other. We therefore strongly recommend your consideration of the new Uniform Act, which we have revised slightly to accommodate and conform to our local law.

One of the most important features of Raised Bill Number 6858 is Section Four, a new concept that allows a trustee to adjust between principal and income to the extent the trustee considers necessary, if the trustee has managed trust assets as a prudent investor, followed the trust terms and new allocation rules in the act, and yet believes he or she is unable to produce a result that is fair and reasonable to all of the beneficiaries. For example, in a

trust that pays income to an elderly widow, and whose corpus or principal will pass to her nieces and nephews on her death, the trustee may find that in 1998 the stock indices returned 30% on average while the bond markets returned only 5%. If a trustee is investing for total return, he should invest primarily in stocks. But the same stock index that grew 30% last year paid dividends of slightly over 1%, not enough for our elderly widow, the income recipient, to live on. If the trustee invest primarily in bonds or treasury bills, the widow does much better, but the nieces and nephew as remaindermen of the trust complain loudly that the trustee has missed tremendous opportunities for trust growth, which will inure to their benefit when their aunt dies. The new proposed act would allow the trustee to invest primarily in stocks (or whatever investment strategy is currently in favor) for total return, and then, under Section Four, adjust between the two classes of beneficiaries. The trust as a whole and both sets of beneficiaries do better when the trustee can invest for maximum growth, as long as this adjustment is permitted.

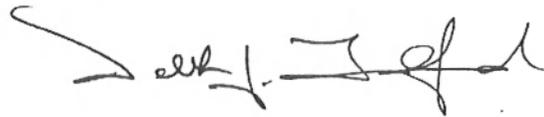
Please understand that this power to adjust does not give the trustee the right to act in an arbitrary and unfettered fashion, re-writing the trust instrument to his or her choosing. Section Four also provides many restrictions, requirements and qualifications that the trustee and courts must consider in exercising this allocation adjustment. For example, this act is not intended as a collection device to allow a beneficiary's creditors access to a trust they were previously restricted from reaching. Section Four (c) *prohibits* a trustee from making any adjustment between principal and income if it would not "significantly increase the funds actually available to the beneficiary," *i.e.*, if those funds would wind up in the hands of a creditor and not the beneficiary. As an example, a grantor may have restricted the trust terms to protect a spouse or disabled child to the greatest extent possible. The intent of this new uniform act is not to re-write the trust terms and undo these protections for the benefit of creditors or other parties who are not trust beneficiaries; the intent of the act is simply to allow reasonable adjustments between income recipients and remaindermen, both beneficiaries of the trust. If an adjustment does not provide actual benefit to the trust beneficiaries themselves, then the trustee may not make such an adjustment. Further, an adjustment must be fair and reasonable: it may not be made with an eye to undoing the trust itself, and allowing significant erosion of trust principal when that was not contemplated or desired by the person who established it. A trustee must look to the nature and the purpose of the trust, the circumstances of the beneficiaries and the settlor's intent in establishing the trust before making any adjustments under Section Four.

For the majority of trusts, this act will primarily assist the trustees in investing for the best possible trust return, and then adjusting the results

between the income beneficiaries and trust principal in a fair and reasonable way. It is designed to be as flexible as possible, as we know that today's hot investment trends may be cold as leftover porridge tomorrow, when some new investment strategy captures the market's fancy.

The National Commission on Uniform Laws has created a law that tries to be "just right" in helping fiduciaries to manage trust funds, juggling the rights of income recipients, remaindermen and constantly changing investment markets. This act will help Connecticut maintain its position as a good state for trust business, and improve the financial well-being of trust beneficiaries.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Deborah J. Tedford". The signature is fluid and cursive, with a long horizontal stroke at the end.

Deborah J. Tedford
Chair, Estates and Probate Section
Connecticut Bar Association