

Legislative History for Connecticut Act

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|-----------|------------------------------------|-------------|
| PA 01-114 | SB419 | <u>2001</u> |
| Judiciary | 3073-3075, 3171-3175, 3186-3189 | (12) |
| Senate | 2011-2018, 2022-2023 | (10) |
| House | 4720-4727 VOL. 44 PT. 14 | (8) |
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JOINT
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HEARINGS

JUDICIARY
PART 9
2814-3185

2001

what we said, as the legislators debated it, but they also look at what you say as you try and explain what the problem is, why this is a solution or what your concerns are. So it's very important this procedure, we're involved in today.

And finally, if you provided written testimony, that also is kept with the bill throughout the history as a statute and that is also referred back to later on as people try and determine what the Legislature was trying to do.

There will be legislators coming and going today. There are other meetings taking place in the building. Every member of this committee is also a member of other committees. That's why there are some coming and going.

And finally, these proceedings, I believe, are being televised by the Connecticut Television Network and you'll probably see this on cable t.v. later on this week, as will other members of the public. So it's very important, this process you're involved in and we appreciate your participation today.

Having said that, let me first call the members of the State official list. First is Linda Dow from the Probate Court system.

LINDA DOW: Mr. Chairman, members of the committee, good morning, good afternoon. My name is Linda Dow. I'm counsel to the Probate Court Administrator's Office. I'm here to speak on behalf of S.B. 419, AN ACT CONCERNING THE PETITION FOR CHANGE IN TRUSTEE.

The Probate Courts of the State of Connecticut handle about 20,000 decedent's estates each year. Approximately 9,000 of which are testate. As you are aware, over the last ten years, a series of Connecticut banks were either declared insolvent or for other reasons, were acquired by larger banks. There many state estates in Connecticut in which the testator, by will, had selected a small hometown bank as Trustee, recognizing both the local personnel and reasonable fees. But at the time of the death of the testator, that local bank

no longer existed.

The law clearly provides that in an event of an acquisition, the acquiring bank will succeed to the fiduciary appointments of the failed or merged bank. This leaves many beneficiaries of trust, usually those that are close family members, in the untenable position of having a large out-of-state corporate trustee handling their family trust, while paying fees that the family members, the beneficiaries, feel are very unreasonable.

This bill would allow our Probate courts to remove a corporate trustee and appoint a successor if the court finds there's been a substantial change in circumstances, if we removal serves the best interest of all of the beneficiaries, and if a suitable corporate trustee is available to serve.

This bill would give our judges more discretion and would permit our courts to follow, more closely, the wishes of the decedent and his family.

We would urge your favorable support of this bill and if you have any questions, I'd be happy to answer them.

REP. LAWLOR: Thank you. Are there questions?
Representative Farr.

REP. FARR: In looking at the bill, I guess what struck me is the term "substantial change in circumstances".

I think that goes beyond what you're describing. Substantial change - it doesn't say substantial change in whose circumstance. I mean, is this the beneficiary of the trust? Is this - it just says, "substantial change in circumstances."

LINDA DOW: Well, of course, we'd like to construe it to mean that if Union Trust was appointed and that bank was eaten up by Fleet Boston --

REP. FARR: Right, I know where you're going. I'm just wondering whether this is, as drafted, is either perhaps too broad or too narrow and wouldn't we be

better off if we changed the language a little that talks specifically about the circumstance where one corporate trustee is replacing another corporate trustee?

LINDA DOW: We'd be pleased, Representative. Our office would be pleased to work with any committee members to come up with acceptable language to everyone.

REP. FARR: Okay. Thank you.

REP. LAWLOR: Are there other questions? Senator Roraback.

SEN. RORABACK: Thank you, Mr. Chairman and good afternoon, Attorney Dow. Thank you for being here this afternoon.

Do you know, are there any Probate Judges that are here today that are going to testify on this?

LINDA DOW: I'm not sure any of our Judges are here, Senator. They maybe coming later, but they will be submitting written testimony in favor of this proposal.

SEN. RORABACK: And I just would question, in your role in the Probate Court administration, how big an issue is this on a regular basis for your member judges?

LINDA DOW: I would say it is a problem that is substantial. We get phone calls about this all the time from our judges, from attorneys who are representing families, from family members themselves where this has happened. We have a substantial problem with this.

SEN. RORABACK: Thank you. I appreciate your testimony and thank you, Mr. Chairman.

REP. LAWLOR: Are there other questions? If not, thank you very much.

LINDA DOW: Thank you.

REP. LAWLOR: Next is Chief Salvatore and Chief

MICHAEL DELGASS: And if I could add one more thing, Representative Farr. Most dynastic trusts, very long term trusts are much more complicated documents that attempt to be much more robust than a short term trust. Therefore, it's probably unwise for someone who hasn't done a lot of them or isn't very familiar with drafting them to just accidentally create one.

REP. FARR: Frankly, I'm just trying to get my assets to last to the end of my life.

FRANK BERRALL: With the stock market going down, that could be a problem.

REP. FARR: My 401K is a 201K now.

SEN. COLEMAN: Any further questions? If not, thank you, gentleman, very much.

MICHAEL DELGASS: Thank you.

FRANK BERRALL: Thank you very much.

IRVING SCHLOSS: Thank you very much.

SEN. COLEMAN: The next speaker is Anthony Ludovico.

ANTHONY LUDOVICO: Senator Coleman, members of the Judiciary Committee, my name is Anthony Ludovico. I am a practicing attorney. I confine my practice to trust estates, estate planning matters.

I'm here to ask your support for committee S.B. 419, AN ACT CONCERNING A PETITION FOR CHANGE IN TRUSTEE.

I've left you with some written testimony which I apologize for. It's rather lengthy and rather than read that to you, I would just like to offer a couple of comments with regard to the bill.

Notably in Section B of the bill, the probate court would be authorized to remove a corporate trustee if it finds that there has been a substantial change in circumstances. I believe Representative

Farr asked about that earlier today. And also if there is a suitable successor corporate trustee available.

My concern there is that things have changed over the years and although a person in the 1940's might have designated a local bank to serve as trustee, today we see many more types of trustees acting, professional trustees. Indeed, the Uniform Prudent Investor Act takes into account the fact that individuals are more qualified today. Law firms have within their walls trust departments to accommodate their clients' needs.

There are fewer smaller banks around. So if you remove a small - I'm sorry, a large bank, you may not find that successor corporate trustee. My suggestion would be that perhaps you consider a change of language there to delete the word "corporate" and perhaps include words that would refer to an independent or professional trustee.

In addressing Representative Farr's concern earlier, how do you define a substantial change in circumstances? I worry about that too and I think you'll find in my testimony some suggested factors that you might want to spell out in the statute to guide the probate court in making a determination that factors have changed.

For instance, you might not want to appoint a family member who has a non-adverse interest as a trustee, successor/trustee. You could upset the tax consequences to the beneficiaries.

You might want to specify that the probate court take into account the reasons for designating the corporate trustee it did and whether the current large corporate trustee carries out those purposes.

So those are the two thoughts I have for the bill. I do commend it to your favorable action. I can testify to the fact that as an individual attorney, I am called upon at least once or twice a year from families all over the country desiring to change the current corporate trustee. In some instances, there's no remedy because the instrument is totally

silent.

I'd be happy to entertain any questions you may have.

SEN. COLEMAN: Are there questions? Representative Farr.

REP. FARR: Why don't we just change this language to say that when there's been a change of the corporate trustee? I mean, isn't that what we're getting at here?

Why put in a substantial change in circumstances? I mean, I had a situation where I had an elderly client and they had a trust and they set up the trust in Society for Savings and it was a block away and they would go over and talk to the trust officer and everything and then one day Society disappeared and the next thing they knew, their trust was with Fleet and they had a 1-800 number and they would have to call somebody in Rhode Island. And they were very dissatisfied with that circumstances and I understand that. But why don't we just say if there's a successor corporate trustee?

ANTHONY LUDOVICO: I think you've got a good point, Representative Farr. However, I don't think it's the mere change in the trustee that triggers the desire. It's the fact that the new trustee may not have the local office maybe located in Rhode Island. It may have a fee schedule that is intolerable, that is out of proportion to the size of the trust and there are other factors that bear upon the beneficiary's desire to bring it back home to local administration.

REP. FARR: But I'm just wondering why, at least one of the factors isn't the change in the corporate entity?

ANTHONY LUDOVICO: It could well be.

REP. FARR: I mean, what you have here is the situation that the trust was set up with Fleet Bank as the trustee and now you come - you open it up to

somebody coming in and saying well, there's been a change in circumstances and I don't know if that's what we're getting at here. And I wonder why we don't at least make a threshold that the corporate entity changes.

ANTHONY LUDOVICO: I think that's a perfectly valid point. The overriding concern I have is that we provide some remedy to the beneficiary to allow an approach to the Probate Court.

REP. FARR: Thank you.

SEN. COLEMAN: Do you have any concern that there maybe any opportunities to misuse this change in the law if this bill were to pass? For example, a spend thrift just doesn't like the way the trustee is treating him or her?

ANTHONY LUDOVICO: Yes, Senator Coleman. I hear you and I think that's why I think like Representative Farr, would like to see a bill that specifies some of the considerations that the Probate Court must consider in making its findings. For instance, you may have a beneficiary who is never satisfied and continues to come back with a petition for change of trustee every two years until he finds one that will do his bidding. You want to avoid that abusive situation.

SEN. COLEMAN: Alright, I'll talk to Representative Farr. Apparently, I was out of the room when he made his suggestions, but I'll find out from him what they were.

Thank you very much. Any further questions?
Senator Roraback.

SEN. RORABACK: Thank you, Mr. Chairman. And thank you, Tony, for hanging out all day for your three minutes in the sun.

REP. FARR: If this is sun.

SEN. RORABACK: First of all, Representative Farr has once again come upon a stroke of genius. I think that really what this bill is intended to address

is that situation where there has been a change in the corporate trustee. So that ought to be the threshold criteria and we can probably forget about the language that talks about a substantial change of circumstances other than that.

And to answer Senator Coleman's question, I think that Section B imposes upon the Probate Court the obligation to make a finding that the changes are in the best interest of the beneficiaries. So clearly, that's a guard against potential abuses.

But I guess my question for you, Tony was, you came up here and spent all day sitting around. Are you being paid to be here or you're just here because you have an interest in the subject matter and think this is the right thing to do?

ANTHONY LUDOVICO: No, I sincerely believe this is a good bill. I do have clients and it takes me time to analyze those trust instruments and, unfortunately, in too many instances there is just no remedy. I think it's time that we do something. There is dissatisfaction when a corporation merges into another. There was, in the old days, loyalty to the local bank. There are new community banks that can very well serve. There are law firms that we should take it into consideration that have trust departments. So this is a good bill and I wouldn't have come if I didn't think it should be supported.

SEN. RORABACK: Thank you for your testimony. Thank you, Mr. Chairman.

SEN. COLEMAN: Thank you, Senator. Any further questions? If not, thank you, Mr. Ludovico.

ANTHONY LUDOVICO: Thank you.

REP. LAWLOR: Next, is the Roos family testifying together? Jessica, Linda, and Ken Roos.

JESSICA ROOS: Hello. My name is Jessica Roos. I am a victim of sexual assault and am here for you to hear my voice and tell you why this statute is so important.

SB 483

JOINT
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HEARINGS

JUDICIARY
PART 10
3186-3581

2001



STATE OF CONNECTICUT
OFFICE OF THE
PROBATE COURT ADMINISTRATOR

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ADMINISTRATOR
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ASSISTANT TO THE ADMINISTRATOR

March 26, 2001

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To: Judiciary Committee
From: Linda A. Dow, Chief Counsel, Probate Court Administration
Re: S.B. 419, A.A.C. A Petition for Change in Trustee

Thank you for the opportunity to testify on Senate Bill 419, a proposal which our office strongly supports.

The probate courts handle more than 20,000 decedent's estates each year; approximately 9,000 of which are testate.

As you are aware, over the last ten years a series of Connecticut banks were either declared insolvent or for other reasons were acquired by larger banks. There are many estates in Connecticut in which the testator, by will, selected a small home-town bank as trustee recognizing local personnel and reasonable fees; but at the time of the death of the testator, the local bank no longer existed.

The law clearly provides that in the event of an acquisition, the acquiring bank will succeed to the fiduciary appointments of the failed or merged bank. This leaves many beneficiaries [usually close family members] in the untenable position of having a large out-of-state corporate trustee handling their family trust, while paying fees that the families feel are unreasonable.

This bill would allow the court to remove a corporate trustee and appoint a successor if the court finds that there has been a substantial change in circumstances, removal serves the best interests of all the beneficiaries, and a suitable corporate trustee is available. This bill would give our judges more discretion and would permit the courts to follow more closely the wishes of the decedent and the family.

We would urge your support of this bill.



CONNECTICUT BANKERS ASSOCIATION

March 26, 2001

To: Members of the Judiciary Committee

From: Connecticut Bankers Association

Re: Senate Bill 419, An Act Concerning A Petition for Change in Trustee

Position: Support

The CBA is supportive of the changes proposed in S. B. 419.

On a national basis, many states are now reviewing change of trustee and other trust issues as they are detailed in the Uniform Trust Act, drafted by the Uniform Law Commissioners in Washington, D. C. As this bill moves through the legislative process, we encourage the legislature to adhere to the concepts detailed in Section 706 of the UTA language, which applies to changes in trustees.

The trust business is extremely sensitive to competitive advantages from state to state. During the late 1980's a significant amount of trust business was lost to other states with more favorable trust laws, such as Florida and Texas.

These changes as proposed in S. B. 419 and close adherence to the UTA concepts and language, will ensure that Connecticut trust providers will be able to compete on a level playing field with other states.

SB419/01session

STATEMENT IN SUPPORT OF COMMITTEE BILL No. 419
AN ACT CONCERNING A PETITION FOR CHANGE IN TRUSTEE

As a practicing attorney familiar with trusts and estate planning, I respectfully urge the Judiciary Committee of the General Assembly and all legislators to vote favorably in support of Committee Bill No. 419.

I. Background Information About Trusts

A trust is an arrangement in which an owner of property transfers title to a trustee who agrees to manage the property for the benefit someone designated by the owner. There are two categories of trusts: On one hand, there are those established by an agreement between two parties during their lifetimes. Called inter vivos trusts, these agreements may be amendable, revocable or irrevocable. On the other hand is the category of trusts established by a person in his or her will. These are called testamentary trusts and, since they do not come into being until the testator has died, they are unamendable. Except as provided in the will, they are seldom terminable, except in rare situations with approval of a court.

II. Explanation of the Need for Legislation

In most well drafted inter-vivos trusts today, there is generally some provision governing procedures for changes of trustee upon resignation, removal or incapacity or death. That has not always been the case. However, there are still in existence many older inter vivos documents which did not include a provision for change of trustee. Some of these were agreements with a local bank at a time when the parties never contemplated that the trustee bank would go out of existence or merge into another institution. Some of these were drafted by skilled attorneys, relying upon the common law precept that "The law will not allow a valid trust to fail for want of a trustee; a court could always be asked to appoint a successor in the event of vacancy in the office of trustee. There are others drafted by lay persons, even bankers who named their own institutions as trustee, during an era before Connecticut's Bank-Bar litigation.

Among testamentary trusts, on the other hand, it is not unusual to find no provision in the Will for removal or change of trustee. Typically, these trusts are drafted with the understanding that, although a testator may nominate an executor or trustee in the document, statute ultimately grants the probate court the authority to make the appointment or removal of such fiduciaries. Unless the court or a beneficiary finds some breach of duty by an incumbent trustee, there is little likelihood that the trustee will be removed.

The selection of a trustee is a decision that is usually carefully made by a person establishing a trust. Knowing that the fiduciary will have control over his or her property, often an individual will select the bank with whom he or she has maintained a loyal account relationship. He or she is more apt to select that bank than one with which the individual has had no relationship. Likewise, a trust beneficiary is more apt to accept the bank designated by the individual who established the trust, than a bank that has succeeded the initial named trustee.

However, in order to maintain continuity in the office of trustee, Connecticut General Statutes as well as federal banking law stipulate that when one bank acquires or merges with another, the

resultant institution has a duty to accept the trusteeship and other fiduciary responsibilities of the bank which it had acquired. Somehow, perhaps in the zeal to retain the business revenue from their newly acquired accounts, banks seem to interpret that duty as a "right" to retain the accounts. If the trust instrument is silent as to removal or change of trustee, the beneficiary's wishes with regard to choice of trustee seem often to be treated as irrelevant, and all that seems to matter is the bank's decision to retain an account or to resign if the account is unprofitable.

III. Committee Bill No. 419 Can Provide A Necessary and Appropriate Remedy

This Bill would allow a trust beneficiary to petition the probate court to change a trustee in the situations described above. Perhaps the wishes of the beneficiary could be accorded greater respect if the proposed legislation includes a stipulation that, in making its findings as described in Section (b) of the Bill, the probate court must take into consideration certain factors to ensure that a change of trustee would be appropriate. Among these factors might be:

- (i) the reasons for the petition and whether or not action by the incumbent trustee, with or without court intervention, is available to address adequately the petitioner's concerns without a change of trustee,
- (ii) the intention of the person who established the trust in designating the trustee, to the extent that such intention can be discerned from a reading of the will or trust instrument,
- (iii) whether or not all of the beneficiaries of the trust assent to the petition, or whether or not a change of trustee would be in the best interest of all of the beneficiaries of the trust,
- (iv) the imminence of a scheduled termination of the trust or of the beneficiary's interest which might render a change of trustee unnecessary or superfluous,
- (v) any indications that the concerns of the petitioner may have been adequately addressed by one or more previous petitions for change of trustee or other action of the trustee or of the court,
- (vi) the need to ensure that adverse tax consequences are not incurred by the designation of a trustee who lacks independence of control or influence by the beneficiary,
- (vii) the need to ensure that the incumbent trustee or the successor trustee will maintain a degree of impartiality with regard to all beneficiaries and will avoid conflicts of interest, and
- (viii) the need to ensure that the incumbent and any successor trustee is familiar with standards of fiduciary conduct, trust administration, and investments so as to minimize the risk of breach of trust or failure in carrying out the purposes for which the trust was established.

Further, I would respectfully suggest that the requirement that there be a suitable successor corporate trustee available, as described in Line 11 of the Bill, is unduly restrictive and unnecessarily precludes the possibility of appointing a professional trustee other than another corporate trustee.

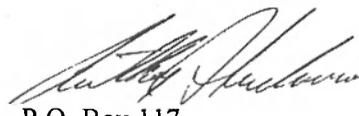
With these considerations, the proposed legislation would appear to provide a remedy for those who presently feel trapped and frustrated by the silence and lack of recourse in documents which were intended to make them the objects of a beneficial interest. Committee Bill 419 is worthy of support and, respectfully, I commend it for your prompt attention.

Thank you for the opportunity to provide these observations. I remain available to address questions you may have.

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S-457

CONNECTICUT
GEN. ASSEMBLY
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PROCEEDINGS
2001

VOL. 44
PART 7
1799-2156

pat

51

Senate

May 17, 2001

THE CHAIR:

Thank you, Sir.

THE CLERK:

Calendar Page 20, Calendar 294, File 391,
Substitute for S.B. 419 An Act Concerning the Removal of
a Fiduciary. Favorable Report of the Committee on
Judiciary and Banks. The Clerk is in possession of an
amendment.

THE CHAIR:

Senator Coleman.

SEN. COLEMAN:

Thank you, Madam President. Madam President, I
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. COLEMAN:

This bill, Madam President, provides that a probate
court upon a proper motion and after notice and a
hearing, may remove a fiduciary for a number of reasons.

First of all would be lack of cooperation in a
situation where there are co-fiduciaries and the lack of
cooperation between those co-fiduciaries and peers for
the purpose of the trust.

Secondly, it would be ineffective administration of

pat

52

Senate

May 17, 2001

the trust.

A third reason would be the best interests of the beneficiaries are not being served.

And another reason would be a change, a substantial change in circumstances.

Upon any of those reasons, and after putting a proper motion before a probate court and after notice and a hearing is had, a fiduciary can be removed.

There is an amendment which I would like to call or have called, Madam President, LCO6512. Would the Clerk please call?

THE CLERK:

LCO6512 which will be designated Senate Amendment Schedule "A". It is offered by Senator Coleman of the 2nd District et al.

THE CHAIR:

Senator Coleman.

SEN. COLEMAN:

Madam President, I move adoption of the amendment.

THE CHAIR:

The question is on adoption. Will you remark?

SEN. COLEMAN:

And may I have permission to summarize the amendment? This amendment, Madam President, would merely provide that a successor corporate fiduciary

pat

53

Senate

May 17, 2001

should not be removed in the manner that would discriminate against state bank or national banking associations, nor shall any consolidated state bank or national banking association or any receiving state bank or national banking association be removed solely because it is a successor fiduciary as defined by the appropriate statutes.

I move adoption of the amendment, Madam President.

THE CHAIR:

The question is on adoption. Will you remark further? Senator Smith.

SEN. SMITH:

Thank you, Madam President. Through you a question to the proponent. In line 2 of the amendment it says the removal shall not be done in such a manner as to discriminate against state banks or national banking associations.

Could you explain to me what that means. How would one have a removal that would be discriminatory against a state bank or national banking association?

THE CHAIR:

Senator Coleman.

SEN. COLEMAN:

Through you, Madam President, I believe what the amendment seeks to accomplish is to take into

pat

54

Senate

May 17, 2001

recognition the fact that there have been a lot of mergers of banks and many of the entities that are involved in the role of fiduciary are the result of some of those mergers and to the extent that national banking associations have acquired banks, what the amendment seeks to do is not to have those national banking associations removed from their role as fiduciary merely because they have acquired banks.

There must be some other reason.

And similarly, with respect to state banks, because they may be smaller, if they're doing the job that is not administrating the trust ineffectively, for example, then those state banks should not be, there should not be an application that is approved seeking the removal of those state banks merely because they are state banks.

THE CHAIR:

Senator Smith.

SEN. SMITH:

Thank you, Madam President. I can see in the second half of the amendment where the word nor appears in line 3 and in lines 3, 4, 5, and 6 talks about removing the fiduciary solely because of its status as a national or state bank, and I think that's where the Senator's response was going.

pat

55

Senate

May 17, 2001

The first half of it, though, on lines 1, 2 and 3, the existence of the word nor, in the third line indicates that there are two reasons. The one that appears in the first phrase nor the one that appears in the second phrase and I think you fairly summarized for me what happens in the second half of the phrase, but not in the first half.

The first half talks about in addition to those things you just described, removing a bank solely because it's a successor fiduciary. It also talks about another thing that cannot happen and what cannot happen is that the removal be in such a manner as to discriminate.

And I just, I'm having a hard time understanding what that discriminatory manner in the removal of a fiduciary would be.

SEN. COLEMAN:

Through you, Madam President.

THE CHAIR:

Senator Coleman.

SEN. COLEMAN:

Senator Smith, I think that the whole purpose of the amendment is to make clear that mergers and acquisitions would not constitute under the language of the bill, the substantial change of circumstances that's

pat

56

Senate

May 17, 2001

referred to in the bill.

Through you, Madam President.

THE CHAIR:

Thank you, Senator. Well, if that's all the amendment is designed to do, that makes, that's fine. There's extra language in there that I don't understand and I don't think is needed. I think the language after the word nor handles the situation you're talking about.

I don't know what the language before that means, if it's simply to highlight the language after the word nor. I guess it's fine as it is but that would kind of make it unnecessary.

So assuming that it doesn't mean anything other than what follows the word nor, then I guess I understand it and I can support it. But if there is something it's supposed to mean, I can't figure it out and I don't think we've shed any light on that here.

I, as well do some probate court work, and removal of fiduciary is no easy task, although sometimes it's necessary and I just, you're precluding someone from doing something here and I can't understand what it is we're precluding. We're precluding somebody from doing something. I'm not sure, could you shed any more light on that?

THE CHAIR:

pat

57

Senate

May 17, 2001

Senator Coleman.

SEN. COLEMAN:

Thank you, Madam President. Senator Smith, 12USC . Section 215, Subsection F, a federal statute, prohibits the enactment of state laws which would discriminate against national banks and so the language of the amendment is merely there to make it clear that such discrimination is not the intent, or would not be the intent of the statute that is the result of passage of this amendment. Through you, Madam President.

THE CHAIR:

Senator Smith.

SEN. SMITH:

Thank you, Madam President. That answers my question. Thank you.

THE CHAIR:

Will you remark further on Senate Amendment "A". Will you remark further? If not, I will try your minds. All those in favor indicate by saying "aye".

ASSEMBLY:

Aye. Aye. Aye. Aye. Aye. Aye.

THE CHAIR:

It's going to be one of those days, isn't it?

Those opposed, "nay"? The ayes have it. The amendment is adopted. Will you remark further on this

pat

58

Senate

May 17, 2001

wonderful bill as amended? Senator Coleman.

SEN. COLEMAN:

Madam President, if there are no further remarks, I would move this item be placed on the Consent Calendar.

THE CHAIR:

Thank you so much, Sir.

SEN. COLEMAN:

Thank you, Madam President.

THE CHAIR:

Without objection, so ordered.

THE CLERK:

Calendar 321, File 450, Substitute for S.B. 1316 An Act Concerning the Filing of Limited Liability Documents With the Secretary of the State. Favorable Report of the Committee on Judiciary and Government Administration and Elections.

THE CHAIR:

Senator Coleman.

SEN. COLEMAN:

Madam President, we're awaiting an amendment on this particular bill. May I request that it be passed temporarily.

THE CHAIR:

We'll pass this item temporarily.

THE CHAIR:

pat
Senate

62 002022

May 17, 2001

Calendar Page 12, Calendar 462, Substitute for H.B. 6642.

Calendar 463, Substitute for H.B. 6660.

Calendar 464, Substitute for H.B. 6740.

Calendar 465, H.B. 6628.

Calendar Page 13, Calendar 476, H.B. 5307.

Calendar Page 14, Calendar 483, Substitute for H.B. 6796.

Calendar Page 17, Calendar 290, Substitute, correction, Calendar 209, Substitute for S.B. 1389.

Calendar 214, Substitute for S.B. 1219.

Calendar Page 19, Calendar, correction. On Page 17 it was Calendar 214, Substitute for S.B. 1209.

Calendar Page 19, Calendar 264, Substitute for S.B. 1381.

Calendar Page 20, Calendar 294, Substitute for S.B. 419.

Calendar Page 21, Calendar 323, Substitute for S.B. 177.

Calendar Page 24, Calendar 486, S.R. 25.

Madam President, that completes the First Consent Calendar.

THE CHAIR:

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

pat

63

Senate

May 17, 2001

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. The Clerk please announce the tally.

THE CLERK:

Motion is on adoption on Consent Calendar No. 1.

Total number voting 36; necessary for passage, 19. Those voting "yea", 36; those voting "nay", 0. Those absent and not voting, 0.

THE CHAIR:

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

Last chance. Are there any announcements or points of personal privilege? Seeing none, Mr. Clerk.

THE CLERK:

Madam President, the Clerk is in possession of Senate Agendas No. 2 and 3 for Thursday, May 17, 2001,

H-852

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GEN. ASSEMBLY
HOUSE

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gmh

32

House of Representatives

Wednesday, May 30, 2001

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| Necessary for Passage | 72 |
| Those voting Yea | 143 |
| Those voting Nay | 0 |
| Those absent and not Voting | 7 |

SPEAKER LYONS:

The bill, as amended passes.

Will the Clerk please call Calendar 552.

CLERK:

On page 17, Calendar 552, Substitute for S.B. 419.

AN ACT CONCERNING THE REMOVAL OF A FIDUCIARY.

Favorable Report of the Committee on Banks.

SPEAKER LYONS:

Representative Feltman, you have the floor, sir.

REP. FELTMAN: (6TH)

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. FELTMAN: (6TH)

Yes, Madam Speaker. The purpose of this bill is to widen the circumstances under which the Probate Court can relieve a fiduciary, a trustee of their duties under a trust.

gmh

33

House of Representatives

Wednesday, May 30, 2001

It's not limited to the incapacity of the trustee and what this would allow is for the beneficiaries of the trust to petition the court for removal, if they feel they are not getting the kind of service that they have been used to getting from the trustee due to lack of cooperation between trustees and substantial changes in circumstances.

In addition, the Senate adopted a bill, an amendment, which I would like to ask the Clerk to call and be granted permission to summarize. It's LCO Number 6512.

SPEAKER LYONS:

The Clerk has, in his possession, LCO 6512 which has been designated Senate "A". Would the Clerk please call. The gentleman has asked leave to summarize.

CLERK:

LCO Number 6512, Senate "A" offered by Senators Coleman and Roraback.

SPEAKER LYONS:

Representative Feltman.

REP. FELTMAN: (6TH)

Yes. Thank you, Madam Speaker. The purpose of this amendment is to make clear that a substantial change --

REP. WARD: (86TH)

Madam Speaker.

gmh

34

House of Representatives

Wednesday, May 30, 2001

SPEAKER LYONS:

I apologize. Representative Prelli, for what purpose do you rise?

REP. PRELLI: (63RD)

I apologize, Madam Speaker and I know it's a Senate amendment, but our people don't seem to have a copy of it yet and if we could wait a minute until we get a copy, please.

SPEAKER LYONS:

Very efficient, as always. We'd be happy to wait.

And Representative Feltman, I believe you were in the process of explaining the bill, amendment.

Please proceed, sir.

REP. FELTMAN: (6TH)

Thank you, Madam Speaker. And I trust my colleagues on the other side have a copy of this amendment which actually was co-sponsored and initiated, as I understand, by Senator Roraback. And the purpose of this is to clarify the substantial change in circumstances under the bill is not the merger of a bank or a trust company with another bank or trust company. That alone, without further ramifications, does not, by itself, constitute substantial change in circumstances.

On the other hand, if that merger or consolidation or change of ownership did produce a change in the

gmh

35

House of Representatives

Wednesday, May 30, 2001

service or fees, that might be considered as a substantial change in circumstances.

And the purpose of this amendment is to assure that the fiduciary, if the fiduciary is a banking institution would not be discriminated against because of a change in ownership or a change in organization purely on that basis.

So I move adoption of the amendment.

SPEAKER LYONS:

The question before the Chamber is on adoption. The question before the Chamber is on adoption. Will you remark further?

If not -- Representative Powers.

REP. POWERS: (151ST)

Thank you, Madam Speaker. A quick question, through you, to the proponent of the amendment, please.

SPEAKER LYONS:

Please frame your question, Madam.

REP. POWERS: (151ST)

Thank you. Representative Feltman, is this is a bill that came through Banks or something? I don't remember discussing banks in terms of the fiduciary bill.

Through you, Madam Speaker.

SPEAKER LYONS:

gmh

36

House of Representatives

Wednesday, May 30, 2001

Representative Feltman.

REP. FELTMAN: (6TH)

If the lady will bear with me for a moment, I'll be able to research that for her.

Yes, according to the computer print-out, it did go through Banks and was approved by the Banks Committee at some point, on May 10th.

SPEAKER LYONS:

Representative Powers.

REP. POWERS: (151ST)

I believe I heard him say it did exit Banks with a positive JF. Is that correct?

Through you, Madam Speaker.

SPEAKER LYONS:

Representative Feltman.

REP. FELTMAN: (6TH)

That's what this report indicates, yes. Banks' favorable report of the Committee on Banks.

SPEAKER LYONS:

Representative Powers.

REP. POWERS: (151ST)

Thank you. So I assume we're being efficient and merging two bills and that way we're doing a better job?

Through you, Madam Speaker, is that the idea with this?

gmh

37

House of Representatives

Wednesday, May 30, 2001

SPEAKER LYONS:

Representative Feltman.

REP. FELTMAN: (6TH)

No. What I meant to indicate, through you, Madam Speaker, was that the underlying bill had gone through the Banks Committee, but this language was - this Senate Amendment was compromised language that was proposed by consumer advocates, i.e., those who are beneficiaries of trusts together with the Bankers Association, who worked together to collaborate to produce the compromised language in the Senate.

SPEAKER LYONS:

Representative Powers.

REP. POWERS: (151ST)

Okay. Thank you, Madam Speaker. So I'm understanding both issues, both the underlying bill and the amendment, it went through Banks, exited Banks with a positive JF?

Through you, Madam Speaker. Am I correct?

SPEAKER LYONS:

Representative Feltman.

REP. FELTMAN: (6TH)

No, Representative Powers, that's not correct. What I had said was that the underlying bill went through the Banks. The amendment was subsequent to the

gmh

38

House of Representatives

Wednesday, May 30, 2001

Banks Committees' action on the bill, but it was legislation that the representatives of that industry did have a great deal of input into.

SPEAKER LYONS:

Representative Powers.

REP. POWERS: (151ST)

Thank you, Madam Speaker. I thank the gentleman for his answers.

I guess I'm going to find some folks from Banks and ask them their viewpoint on this amendment.

Thank you.

SPEAKER LYONS:

Will you remark further on the amendment that is before us? Will you remark further?

If not, let me try your minds.

All those in favor, please signify by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER LYONS:

Those opposed, nay. The ayes have it. The amendment
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, come to the Well.

Members, take your seats. The machine will be opened.

gmh

39

House of Representatives

Wednesday, May 30, 2001

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? Have all the members voted? The machine is still open.

Have all the members voted? Have all the members voted? One of us forgot to vote, but we're coming back.

Have all the members voted? Have all the members voted? Would the members please check the board to make sure that your vote is accurately recorded?

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

The Clerk will please announce the tally.

CLERK:

S.B. 419, as amended by Senate Amendment Schedule "A", in concurrence with the Senate

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| Total Number Voting | 141 |
| Necessary for Passage | 71 |
| Those voting Yea | 141 |
| Those voting Nay | 0 |
| Those absent and not Voting | 9 |

SPEAKER LYONS:

The bill, as amended passes.