

Act Number:	09-029	
Bill Number:	1092	
Senate Pages:	1735-1743, 1918, 1935, 1937-1938	13
House Pages:	3287-3304	18
Committee:	Judiciary: 5228-5229, 5387-5389	5

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consent calendar. Is there objection? Seeing none, so ordered.

THE CLERK:

Calendar page 14, Calendar Number 519, File Number 760, substitute for Senate Bill 1092, AN ACT CONCERNING THE CLIENT SECURITY FUND, favorable report of the Committee on Judiciary. Clerk is in possession of an amendment.

THE CHAIR:

Senator McDonald.

SENATOR McDONALD:

Thank you, Mr. President. Mr. President, I move acceptance of the joint committee's favorable report and passage of the bill.

THE CHAIR:

The question before the chamber is acceptance and passage. Do you care to remark further?

SENATOR McDONALD:

I would like to, Mr. President.

Mr. President, members of the circle may recall that earlier this year in the context of a budget mitigation package, we swept \$2 million from the client security fund as part of a much broader proposal. Mr. President, after that action we had

an opportunity to explore in more detail the origins of the Client Security Fund and the purposes it serves. Based upon that investigation, the Judiciary Committee raised this concept and voted on it to restore the \$2 million to the Client Security Fund, because this fund is a critical component of the operations of the judicial branch. And in particular, this fund is used to reimburse clients who are the victims of theft or fraud or defalcation by their attorneys.

It is funded by an assessment of the fee on all attorneys and judges, workers' comp commissioners, family support magistrates; anybody, frankly, under the authority of the judicial branch and the rules of practice for the Superior Court.

Mr. President, the -- there's a substantial question, I think, about whether we had the authority in the first place to remove this funding because of its administration and supervision by the judicial branch. And I would -- I believe that the Clerk has in his possession, an amendment, LCO number 6112. I ask that it be called and I be granted leave to summarize.

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THE CHAIR:

Would the Clerk please call LCO 6112 to be designated Senate A.

THE CLERK:

LCO 6112, which has been designated Senate Amendment Schedule A. Is offered by Senator McDonald of the 27th District, et al.

THE CHAIR:

Senator McDonald.

SENATOR McDONALD:

Mr. President, I move adoption of the amendment.

THE CHAIR:

Question is adoption of Senate A. Do you care to remark further?

SENATOR McDONALD:

Yes, Mr. President. Mr. President, this amendment would further clarify what, I believe, was always the original intention and that is that the Client Security Fund be used for that purpose to secure to clients funds that have been wrongfully taken from them. And under this amendment, Mr. President, it would make it clear that the state treasurer holds those funds for the

sole and exclusive purpose as designated in our statutes and that the client security funds are not tax revenues and should not be transferred or credited to the general fund, or any other fund under our law.

THE CHAIR:

Thank you, sir. Do you care to remark further on Senate A? Senator Kissel.

SENATOR KISSEL:

Thank you very much, Mr. President. Just a couple of questions through you to the proponent of the amendment.

THE CHAIR:

Please proceed, sir.

SENATOR KISSEL:

Is it my understanding that some attorneys who are concerned about what was taking place regarding this fund that they had brought suit against the State of Connecticut? Through you, Mr. President.

THE CHAIR:

Senator McDonald.

SENATOR McDONALD:

Thank you, Mr. President. Through you, and I

thank Senator Kissel for the question. It's probably something I should have put on the record, because it's an excellent point.

After we took action on the budget mitigation package, a group of very esteemed lawyers in the state brought a class-action lawsuit against the Governor for relating to the transfer of these funds, and that class-action lawsuit is currently pending in the Superior Court. My understanding, from published reports, is that the Governor has agreed not to do anything with these funds pending the outcome of that litigation because of the profoundly important legal questions raised in that litigation.

If this amendment and the underlying bill passes and the Governor acquiesces in it, I believe that that lawsuit would become moot and we could avoid needless litigation in the Superior Court about an issue with which we apparently all have come to have a greater understanding and appreciation for. And I thank Senator Kissel for the question.

THE CHAIR:

Senator Kissel.

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SENATOR KISSEL:

And it's more than just our judges and our court houses and all the support staff that make our judicial system great, but it's the attorneys that practice in the state of Connecticut and the vast, vast, vast majority do so extraordinarily well. And times are difficult and attorneys are struggling, but by and large, the system is still working extremely well and we need to have that security fund in place as one of the pillars to hold up public confidence in the system.

Also, we need to be mindful and respectful of the separation of powers in branches of government and I think this goes a long way towards that end as well. And I applaud the proponent of the amendment and stand in strong support thereof. Thank you, Mr. President.

THE CHAIR:

Thank you, Senator. Item before the chamber is Senate Amendment Schedule A. Will you remark further? Senator Roraback.

SENATOR RORABACK:

Thank you, Mr. President. Good afternoon.

THE CHAIR:

Good afternoon.

SENATOR RORABACK:

Mr. President, I rise in support of this amendment. There's no doubt that the State is going through very difficult economic times and that we're looking in every available nook and cranny for dollars to help us balance our budget, but as great as our needs are, for those individuals who are the victims of fraud perpetrated by their lawyers, for us to put our fingers into the fund that's created for their benefit, for their protection, to me, crosses a line. And I think that this bill will safeguard those dollars.

Hopefully, Mr. President, we won't have lawyers stealing from their clients and hopefully this fund will grow over the years in such a way that it's no longer needed, but sadly, I think experience suggests that that won't be the case and for that reason, I think we're well advised to keep our hands off and make sure those funds are available for those poor souls who are victimized by the bad acts of their attorneys. So I urge support of the amendment. Thank you, Mr.

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President.

THE CHAIR:

Thank you, sir.

Are there any further remarks on Senate A?

Any further remarks on Senate A? If not, the
Chair will try your minds. The item before the
chamber is Senate Amendment Schedule A. All in
favor of Senate A, please indicate by saying, aye.

SENATORS:

Aye.

THE CHAIR:

All opposed say, nay.

The ayes have it. Senate A is adopted.

Will you remark further on the bill as
amended? Will you remark further on the bill as
amended? Senator Looney.

SENATOR LOONEY:

Mr. President, if we might stand at ease for
just a moment.

THE CHAIR:

The chamber will please stand at ease.

(Chamber at ease.)

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SENATOR LOONEY:

Mr. President.

THE CHAIR:

Senator Looney.

SENATOR LOONEY:

Yes. Thank you. Thank you, Mr. President.
Mr. President, if -- would move that the bill is
amended be referred to the Committee on Finance
Revenue and Bonding.

THE CHAIR:

The motion is to refer to the Committee on
Finance Revenue and Bonding. Is there objection?
Is there objection? Seeing none, so ordered.

Mr. Clerk.

THE CLERK:

Calendar Number 524, File Number 809,
substitute for Senate Bill 876, AN ACT CONCERNING
LIABILITY OF NURSING HOME OWNERS FOR NEGLECT AND
ABUSE OF NURSING HOME RESIDENTS, favorable report
of the Committees on Aging, Public Health and
Appropriations. Clerk is in possession of
amendments.

THE CHAIR:

Senator Prague.

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Calendar 471, Senate Bill Number 1128, Mr. President, I move to refer this item to the Committee on Public Safety and Security.

THE CHAIR:

Motion is to refer item to Public Safety and Security.

Seeing no objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President. Calendar 473, PR.

Calendar 490, PR.

Calendar 502, PR.

Moving to calendar page 42, Calendar 519, Senate Bill Number 1092, Mr. President, I move to place this item on the Consent Calendar.

THE CHAIR:

Motion on the floor to place the item on Consent.

Seeing no objection, so ordered.

SENATOR LOONEY:

Thank you, Mr. President. Calendar 541, PR.

Moving to Disagreeing Actions on calendar page 42, Calendar 375, Senate Bill 1021, Mr. President, I move to place this item on the Consent Calendar.

THE CHAIR:

Motion is on the floor to place the item on the

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items placed on the first Consent Calendar.

THE CHAIR:

Thank you. Clerk, if you could please call for a roll call vote, I will open the machine.

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 on the Consent Calendar, will all Senators please return to the chamber.

THE CHAIR:

Have all Senators voted? If all Senators have voted, please check your vote. The machine will be locked.

Mr. Clerk, please call the tally.

THE CLERK:

The motion is on adoption of Consent Calendar
Number 1:

Total Number Voting	36
Necessary for Adoption	19
Those Voting Yea	36
Those Voting Nay	0
Those Absent/Not Voting	0

THE CHAIR:

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Consent Calendar Number 1 passes.

Senator Looney.

SENATOR LOONEY:

Thank you. Thank you, Mr. President. Mr. President, I would move for suspension for immediate transmittal to the House of Representatives of item on calendar page 42, Calendar 519, Senate Bill 1092, An Act Concerning the Client's Security Fund, that was included in the immediately preceding vote on the Consent Calendar.

THE CHAIR:

Motion is to suspend down to the House Calendar 519.

Without objection, so ordered, sir.

SENATOR LOONEY:

Yes, thank you, Mr. President. Mr. President, as the second order of the day, I would ask the Clerk to call the item on calendar page 22, Calendar 595, Substitute for House Bill 6648.

THE CHAIR:

Mr. Clerk.

THE CLERK:

Turning to calendar page 22, a matter marked second order of the day, Calendar Number 595, File

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Thank you, Mr. Speaker. I'd like to make a motion that this item be referred to the Committee on Education.

DEPUTY SPEAKER ALTOBELLO:

I've heard that idea floating around. Without objection, without objection, so ordered. The House will stand at ease.

Chamber at ease.

Speaker Donovan in the Chair.

SPEAKER DONOVAN:

The House will come back to order.

Representative Olson.

REP. OLSON (46th):

Good evening, Mr. Speaker. I move for suspension of the rules for immediate consideration of Senate Bill 1092.

SPEAKER DONOVAN:

The motion is suspension of rules for immediate consideration of 1092. Is there any objection? Is there any objection? Hearing none, the rules are suspended for immediate consideration of that item.

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Clerk, please call Substitute Senate Bill
1092.

THE CLERK:

Substitute for Senate Bill Number 1092, AN ACT
CONCERNING THE CLIENTS SECURITY FUND.

SPEAKER DONOVAN:

Representative Lawlor.

REP. LAWLOR (99th):

Good evening, Mr. Speaker.

SPEAKER DONOVAN:

Good evening, Representative.

REP. LAWLOR (99th):

Mr. Speaker, I move acceptance of the joint
committee's favorable report and passage of the bill
in concurrence with the Senate.

SPEAKER DONOVAN:

Question is on acceptance of the joint
committee's favorable report and passage of the bill
in concurrence with the Senate. You may proceed,
Representative.

REP. LAWLOR (99th):

Thank your Mr. Speaker. Mr. Speaker the
underlying bill, which was amended by the Senate,
essentially says that the fund known as the Client's

Security Fund is not -- is a special segregated fund and not part of -- it cannot be appropriated for other purposes by the Legislature. However, Mr. Speaker, the Senate adopted an amendment. The Clerk has LCO Number 6112 previously designated as Senate Amendment A. I'd ask the Clerk to call and I be allowed to summarize.

SPEAKER DONOVAN:

Will the Clerk please call LCO 6112, which is designated Senate Amendment A.

THE CLERK:

LCO Number 6112, Senate A, offered by Senator Williams, et al.

SPEAKER DONOVAN:

The Representative seeks leave of the chamber to summarize. Is there objection to summarization? If not, Representative, you may proceed with summarization.

REP. LAWLOR (99th):

Thank you, Mr. Speaker. In essence, the amendment accomplishes the same goal. In other words, protection of the funds deposited into this fund and not treating them as a -- an account from which money can be appropriated by the Legislature. It does it in

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a slightly different way. It requires the payments into the fund which are assessed at a rate of \$110 per licensed attorney per year. There is an exception for attorneys who are licensed, but who do not earn a living practicing law. If you earn less than \$450 per year as an attorney, then you're allowed to pay one-half of the fee which is \$55. It's is an annual payment.

Under this amendment the payment will be made to the judicial branch. The funds would be collected by -- would be recorded with the state comptroller and deposited with the state treasurer and it, once again, makes clear that this is not an account which can be appropriated by the Legislature. It is being held in trust to expend money for two purposes, which are already set out in statute.

Number one, to compensate victims of lawyer misconduct, in other words, misappropriation of funds by attorneys that type of thing. The second purpose is to assist in attorney assistance type programs, where an attorney may have a substance abuse issue or perhaps a gambling issue which has -- which may ultimately cause him to engage, or her, engage in this type of conduct. And so those are the two existing

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purposes of the fund. This simply says this money is to be held in trust for that purpose alone. I urge adoption, Mr. Speaker.

SPEAKER DONOVAN:

Question on adoption of Senate Amendment A. Will you remark? Remark further? Representative O'Neill.

REP. O'NEILL (69th):

Yes. Thank you, Mr. Speaker. I have a quick question. It relates to line 16 of the amendment and it is the deletion contained therein where they delete the words "any interest earned from the fund shall be credited to the fund." And I'm trying to figure out what effect that deletion has, because I don't see -- or to see if that's, in effect, compensated for or otherwise dealt with in the language found elsewhere, particularly the language that begins on line 17.

So I guess the question is, would interest earned from the fund be credited to the fund? Is it -- is there a language that causes that to happen somewhere else in the amendment? Through you Mr. Speaker.

SPEAKER DONOVAN:

Representative Lawlor.

REP. LAWLOR (99th):

Thank you Mr. Speaker. Well, I can say that I

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did not participate in the drafting of this amendment, so I can't say with any certainty what was intended by the drafters. However, in my opinion the plain language set -- establishes a discrete fund. I believe the money can be invested by the state treasurer so that it would -- so interest would accrue. And I think based on the plain language of the amendment the only purpose for which that money can be expended would be the purposes enumerated under the existing law.

So I think you get to the same result with the language in the amendment, although I would acknowledge that it might be better to make it explicit, but I think it's plain enough based on the language and I think that's what the treasurer would do. It would -- there would be some interest generated, and that interest would continue to accrue to the fund. And once accrued to the fund it can only be expended for those two enumerated purposes. Through you, Mr, speaker.

SPEAKER DONOVAN:

Thank you, Representative.

Representative O'Neill.

REP. O'NEILL (69th):

Okay. Thank you, Mr. Speaker. I certainly hope that if there's any question in terms of the authority of the treasurer to credit the interest, although at current interest rates, it's not a lot of money, but still going forward at least, that the -- any interest that accrues to the fund would stay in the fund or accrues based on the fund. And perhaps, that's implicit in the notion that the monies are not to be transferred or credited, but I thank the Chair of the Judiciary Committee for that amplification on the language and hopefully, it deals with any question that might arise.

I would urge support of the amendment. I think it's an another way to approach the problem that we are trying to deal with in the bill. Thank you, Mr. Speaker.

SPEAKER DONOVAN:

Thank you, Representative.

Will you remark further on the amendment?
Will you remark further on the amendment? If not, let me try your minds. All those in favor of the amendment, please signify by saying, aye.

REPRESENTATIVES:

Aye.

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SPEAKER DONOVAN:

All those opposed, nay.

The ayes have it. The amendment is adopted.

Will you remark further out the bill as amended?

Representative Rowe.

REP. ROWE. (123rd):

Thank you. Good evening, Mr. Speaker. Briefly, I'm certainly rising in support. Many, many, many lawyers as is evidenced by the litigation that was brought are -- were very troubled by this, what essentially was a fund sweep. And while we're all going to vote, I think, in favor of this and pass it along, I do think it's a good time to remark, perhaps, that fund sweeps are not a way to get out of this budget deficit and this fiscal crisis that we're in. It's short sighted and there are consequences to it.

So as another day goes on and, you know, we march toward sine die and June 30th, and with no, I'm seeing anyway, meaningful progress toward resolving our budget issues. I would just -- I just wanted to make that comment, but if I can ask Representative Lawlor a quick question, through you. Does -- do you expect, Representative Lawlor, that the litigation, which I think was brought on behalf of all lawyers who pay

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into the Client Security Fund, if we pass this and the Governor signs it, will that litigation be withdrawn?

SPEAKER DONOVAN:

Representative Lawlor.

REP. LAWLOR (99th):

Thank you, Mr. Speaker. I can't speak to what specifically the plaintiffs in that litigation will do. I am aware that there is a scheduled -- I don't know whether it's a conference call or a court appearance in that matter tomorrow. I believe they have participated in the discussions which led up to the crafting of both the bill and the amendment tonight. So I can only assume that the end result would be a withdrawal of that action once this is signed into law by the Governor.

I don't what the Governor's plans are. I'm not sure if we're transmitting this immediately tonight. Unless and until it's signed and takes effect, doesn't solve the problem, but I believe that's the game plan at the moment. Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Rowe.

REP. ROWE (123rd):

Thanks for that answer. I appreciate that and I

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urge adoption, and then vote on the Consent Calendar, then go home. Thank you Mr. Speaker.

SPEAKER DONOVAN:

Representative O'Neill.

REP. O'NEILL (69th):

Yes I also would urge support of the now amended bill by all members of the chamber. I think it deals with the problem. I just would make the comment, and I think I made this earlier when we're in committee that this is an unfortunate example but one that perhaps we should keep in mind about the decision-making process here.

Had we but had a public hearing on this aspect, this concept of the fund sweep, particularly with respect to the Client Security Fund, we might not have included the Client Security Fund in the piece of legislation that we tried to address the deficit in the current fiscal year. And I think that it highlights the need for having more public participation in the process as we are moving through this as much as possible.

It's not always possible to have a public hearing on every aspect of every bill, but certainly this is an example where I think we would have benefited from

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having the input of the public. Thank you Mr.
Speaker.

SPEAKER DONOVAN:

Thank you Representative.

Representative Green.

REP. GREEN (1st):

Thank you Mr. Speaker. Mr. Speaker just one clarification because I'm -- I think that I heard that the intent of this bill, as amended, was to make sure the funds that use, for its purposes, with the Client Security Fund. And on lines 36, it's bracketed out, any interest earned from the fund. I thought Representative Lawlor might have stated that any interest from the fund would also have to be returned to the fund. Is that true, through you Mr. Speaker?

SPEAKER DONOVAN:

Representative Lawlor.

REP. LAWLOR (99th):

Thank you Mr. Speaker. Sorry. Just to be clear, the way this is set up, it would be sort of a unique fund, because I think what -- sorry -- what was lost in the original establishment of the fund and the way it was set up in terms of how it would be accounted for and how the payments would be made and who would

actually collect the money, I think it didn't appropriately respect the legitimate separation of powers issue between the branches.

Attorneys are basically officers of the judicial branch that are licensed by the judicial branch and the assessment of \$110 per attorney per year was authorized by the Legislature, but it's really intended to carry out an endeavor which is certainly unique to the judicial branch. So what this language does in the amendment, in my opinion, is it makes clear that this is simply a trust fund being held on behalf of the judicial branch for the enumerated purposes, and that the money would be in a segregated account, not subject to appropriation by the legislature. And that my interpretation is that any interest which accrues on that account which is being held in trust for the enumerated purposes would continue to accrue to that fund.

It -- by law if this were to become law, it cannot be expended for any other purpose. So assuming there is interest accruing it would -- it can only be expended for this purpose. To me, that's the claim, that's the clear reading of the language. It could have been more explicit, no question, but I think it's

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nonetheless clear on its face and that's what, in effect, would end up happening. Through you, Mr, speaker.

SPEAKER DONOVAN:

Thank you Representative.

Representative Green.

REP. GREEN (1st):

Thank you Mr. Speaker, and thank Representative Lawlor for that answer. However, to me, to be, I think, plain and clear and more explicit, you probably shouldn't have put the brackets in to have the question being raised as to why are you taking that language out.

But through you, Mr. Speaker, just to be clear on legislative intent, the intent of this bill and the intent of this legislation is to say that all funds should go into that -- all of the funds collected should go into the Client Security Funds, and legislative intent is that all interest of the funds for the Client Security Fund should also go into that fund. For legislative intent is Rep -- through you, Mr. Speaker, is Representative Lawlor saying yes or no?

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Representative Lawlor.

REP. LAWLOR (99th):

Thank you, Mr. Speaker and I think it's appropriate to be explicit in the discussion here in the Legislature. I am aware that people are watching what we're doing here today far and wide. And because of this anticipated court hearing tomorrow, and it's our goal to resolve this and it's the legislative intent that any money deposited into the account, if it accrues interest, that interest should be retained in the account and could only be expended for the purpose enumerated in the existing state statute consistent with the Client Security Fund. Through you, Mr. Speaker.

SPEAKER DONOVAN:

Representative Green.

REP. GREEN (1st):

Thank you, Mr. Speaker and thank you, Representative Lawlor.

SPEAKER DONOVAN:

Representative Heinrich.

REP. HEINRICH (101st):

Thank you Mr. Speaker. Mr. Speaker, I'd like to elaborate slightly on -- on some things that

Representative O'Neill was saying earlier. He mentioned that more information would have been better earlier on in this process when we were talking about whether or not to take funds from the Client Security Fund. And I'd like to expand that, Mr. Speaker, to say that in all the deliberations with regard to these non-appropriated funds, more information would definitely have been better earlier on.

We spent as a chamber, as members, an awful lot of time trying to find information on billions of dollars which have been set aside in non-appropriated funds. And trying to find that information, frankly, Mr. Speaker, was like pulling teeth. Many of these funds have never been looked at for years and years and years, and been sitting unused or some of them are being used, but we don't know for what. And we've been trying to get this information, and I caution us on creating what has been called a unique fund that is even further removing the monies away from transparency and what we can look at.

We've had an awful lot of trouble finding out what's happening in the non-appropriated funds and now we're creating a unique fund that is going to have absolutely no transparency to this chamber and to the

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people who are working with it. And so I understand the purpose of not taking these funds. I understand why we are looking for a solution to end this lawsuit. I think there are multiple ways to find solutions, but I personally don't feel that this is the one. And so I might be the only one in the chamber, Mr. Speaker, but I will be voting against the bill. Thank you Mr. Speaker.

SPEAKER DONOVAN:

Thank you, Representative.

Representative Dillon.

REP. DILLON (92nd):

Thank you, Mr. Speaker. That was quick. I just want to rise in support of this. Two of my neighbors are plaintiffs in this case. There's very strong feeling. I understand and respect some of the comments that have been made. There's a -- there's a reason why some of these funds are non-lapsing and it could have been easily found out if anyone had asked.

There's very often a fund where there's no activity for three years and there's a \$5 million claim and it's gone. That's one of the reasons these particulars -- and this fund were supposedly segregated by statute which was then altered by this

General Assembly.

So I do respect what folks are saying and I think we did have some very surprising findings from some of the things that seem to be held on the side, particularly in DSS, but it's also true that this was created by statute. And I'm glad that we're taking this action, particularly, because as I mentioned two of my neighbors are plaintiffs and will be very pleased to see that we're taking action to remedy this. Thank you.

SPEAKER DONOVAN:

Thank you, Representative.

Will you remark further on the bill as amended? Remark further on the bill as amended? If not, staff and guests come to the well of the House. Members take their seats. The machine will be open.

THE CLERK:

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

SPEAKER DONOVAN:

Have all the members voted? Have all the members voted? Have all members voted? Please check the board and make sure your vote has been properly cast.

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

THE CLERK:

Senate Bill 1092, as amended by Senate A in concurrence with the Senate.

Total Number Voting	142
Necessary for Passage	72
Those voting Yea	139
Those voting Nay	3
Those absent and not voting	9

SPEAKER DONOVAN:

The bill is passed in concurrence with the Senate.

Will the Clerk please call Calendar 262.

THE CLERK:

On page 1, Calendar 262, House Bill Number 5809, AN ACT NAMING THE STATE'S SHELLFISH RESEARCH VESSEL THE JOHN H. VOLK, favorable report of the Committee on Environment.

SPEAKER DONOVAN:

Representative Olson.

REP. OLSON (46th):

Good evening, Mr. Speaker.

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joint negotiations that have been accepted under the federal guidelines.

SENATOR MCDONALD: Thank you very much. Any further questions? Thanks for your time. Houston Putnam Lowry, followed by Doug Mahoney.

HOUSTON PUTNAM LOWRY: Thank you, Mr. Chairman, my name is Houston Lowry. I appear today on behalf of the Connecticut Bar Association, two different sections. One is the section of international law and one is the ADR section. In light of the late hour, I will be a little bit unorthodox.

I will say that we, the section on International Law, supports Senate Bill 1088, an Act Providing for a Local Jurisdiction for Victims of Tortious Conduct. I don't believe anyone has expressed any disapproval of it so I will keep my comments short.

The next bill I appear on behalf of and in support of is 6628, an Act Adopting the Uniform Arbitration Act that Provides (inaudible) has been talked about extensively. Barry Hawkins, I thought, did an excellent job so I won't spend much time on that.

So I'll spend my last little bit on Senate Bill 1092, an Act Concerning Choice of Law with Respect to Commercial Transactions, which the International Law Section supports. This, basically, says that if parties to a transaction -- a commercial transaction, not a consumer transaction, not an employment transaction, but a commercial transaction, choose Connecticut law, that the Connecticut courts will accept their choice even though the law has no other rational connection to

the state of Connecticut. This is in accord with what other states have done. It tracks the New York law on this topic. The California Civil Code has a similar provision, as does the Delaware code, the Florida code and the Illinois codes, all of which are cited in my written testimony and you've got three sets of written testimony on those three bills which I incorporated by reference. I don't think it's going to open a door and cause a problem because it's not saying you can choose any law, it's not talking about choice of forum, it's choice of law and we're only saying, that as Connecticut legislators, you know that you have adopted a good set of rules, generally speaking and we will allow commercial parties in commercial transactions to do that.

And so, in light of the hour, I propose to stop and say I'll be happy to answer questions on any of those three bills.

SENATOR MCDONALD: Thank you very much, both for the testimony and the brevity of it. Appreciate it on a Friday afternoon. Are there any questions? Thanks very much. Doug Mahoney, followed by Henry Beck. Is Mr. Beck here?

DOUG MAHONEY: Good afternoon, Senator McDonald and members of the Committee. My name's Doug Mahoney. I practice law in Bridgeport. I'm here on behalf of the CTLA to testify in favor of two bills. The first bill is Senate Bill 1026, which is essentially a fairness bill. As you all know, in order to bring certain claims you need to file certain notices to bring those claims within certain time constraints and those time constraints can be as quick as 90 days up to one year. The most

HB 6577

**JOINT
STANDING
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PART 17
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2009



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Testimony of Houston Putnam Lowry
 Chair, International Law & Practice Section of the Connecticut Bar Association
Senate Bill 1092, An Act Concerning Choice of Law with Respect to Commercial Transactions
 Judiciary Committee
 March 20, 2009

Senator McDonald, Representative Lawlor and members of Judiciary Committee, thank you for the opportunity to comment in **support** of Senate Bill 1092, An Act Providing Local Jurisdiction for Victims of Tortious Conduct. My name is Houston Putnam Lowry¹. I serve on the Executive Committee of International Law & Practice Section of the Connecticut Bar Association. The section supports Senate Bill 1092 because it will promote international trade.

The bill substantially tracks New York general obligation §5-1401.² The predictability of contractual provisions is very important in international trade. A commercial contractual provision between parties of equal bargaining position should mean what it says. Currently under Connecticut law, such a provision might not be enforced because the transaction has no reasonable relationship to Connecticut.

For the past thirty years, the Connecticut legislature has worked hard to modernize its law to face the challenges of modern international trade. Parties can recognize this and elect to choose Connecticut law to govern their relationship, even though Connecticut has no other role in the transaction. Connecticut should not thwart the power of commercial parties to choose Connecticut law to govern their transaction.

Other states have similar legislation, such as California Civil Code §1646.5,³ Delaware Code §2708(a),⁴ Florida §685.101,⁵ and 735 Ill. Compiled Statutes §105/5-5.⁶

¹ A member of Brown & Welsh, P.C.

² §5-1401. Choice of law. 1 The parties to any contract, agreement or undertaking, contingent or otherwise, in consideration of, or relating to any obligation arising out of a transaction covering in the aggregate not less than two hundred fifty thousand dollars, including a transaction otherwise covered by subsection one of section 1-105 of the uniform commercial code, may agree that the law of this state shall govern their rights and duties in whole or in part, whether or not such contract, agreement or undertaking bears a reasonable relation to this state. This section shall not apply to any contract, agreement or undertaking (a) for labor or personal services, (b) relating to any transaction for personal, family or household services, or (c) to the extent provided to the contrary in subsection two of section 1-105 of the uniform commercial code.

2. Nothing contained in this section shall be construed to limit or deny the enforcement of any provision respecting choice of law in any other contract, agreement or undertaking.

³ Notwithstanding Section 1646, the parties to any contract, agreement, or undertaking, contingent or otherwise, relating to a transaction involving in the aggregate not less than two hundred fifty thousand dollars (\$250,000), including a transaction otherwise covered by subdivision (a) of Section 1301 of the Commercial Code, may agree

For these reasons, the Connecticut Bar Association's Section of International Law requests the Judiciary Committee **favorably report Senate Bill 1092.**

I would be happy to answer any questions from members of the committee.

that the law of this state shall govern their rights and duties in whole or in part, whether or not the contract, agreement, or undertaking or transaction bears a reasonable relation to this state. This section does not apply to any contract, agreement, or undertaking (a) for labor or personal services, (b) relating to any transaction primarily for personal, family, or household purposes, or (c) to the extent provided to the contrary in subdivision (c) of Section 1301 of the Commercial Code.

This section applies to contracts, agreements, and undertakings entered into before, on, or after its effective date; it shall be fully retroactive. Contracts, agreements, and undertakings selecting California law entered into before the effective date of this section shall be valid, enforceable, and effective as if this section had been in effect on the date they were entered into; and actions and proceedings commencing in a court of this state before the effective date of this section may be maintained as if this section were in effect on the date they were commenced.

⁴ The parties to any contract, agreement or other undertaking, contingent or otherwise, may agree in writing that the contract, agreement or other undertaking shall be governed by or construed under the laws of this State, without regard to principles of conflict of laws, or that the laws of this State shall govern, in whole or in part, any or all of their rights, remedies, liabilities, powers and duties if the parties, either as provided by law or in the manner specified in such writing are, (i) subject to the jurisdiction of the courts of, or arbitration in, Delaware and, (ii) may be served with legal process. The foregoing shall conclusively be presumed to be a significant, material and reasonable relationship with this State and shall be enforced whether or not there are other relationships with this State.

⁵ (1) The parties to any contract, agreement, or undertaking, contingent or otherwise, in consideration of or relating to any obligation arising out of a transaction involving in the aggregate not less than \$250,000, the equivalent thereof in any foreign currency, or services or tangible or intangible property, or both, of equivalent value, including a transaction otherwise covered by s. 671.105(1), may, to the extent permitted under the United States Constitution, agree that the law of this state will govern such contract, agreement, or undertaking, the effect thereof and their rights and duties thereunder, in whole or in part, whether or not such contract, agreement, or undertaking bears any relation to this state.

⁶ §5-5. Choice of law. The parties to any contract, agreement, or undertaking, contingent or otherwise, in consideration of or relating to any obligation arising out of a transaction covering in the aggregate not less than \$250,000, including a transaction otherwise covered by subsection (1) of Section 1-105 of the Uniform Commercial Code, may agree that the law of this State shall govern their rights and duties in whole or in part, whether or not the contract, agreement, or undertaking bears a reasonable relation to this State. This Section shall not apply to any contract, agreement, or undertaking (i) for labor or personal services, (ii) relating to any transaction for personal, family, or household services, or (iii) to the extent provided to the contrary in subsection (2) of Section 1-105 of the Uniform Commercial Code. Nothing contained in this Section shall be construed to limit or deny the enforcement of any provision respecting choice of law in any other contract, agreement, or undertaking.

Statement

Insurance Association of Connecticut

Judiciary Committee

March 20, 2009

SB 1092, An Act Concerning Choice Of Law With
Respect To Commercial Transactions

The Insurance Association of Connecticut is opposed to SB 1092, An Act Concerning Choice Of Law With Respect To Commercial Transactions.

SB 1092 seeks to alter the choice of applicable state law that governs commercial transactions currently in place by permitting a party to select the forum without regard to the relation of the transaction to the forum. Under current law the choice of applicable state law is limited to states that have a "reasonable relation" to the transaction.

SB 1092 essentially removes the "reasonable relation" language by permitting the choice, "whether or not such transaction bears a reasonable relation to this state." Currently, contract drafters are limited in those states they can choose for a choice of law clause to those states that have a "reasonable" relationship to the parties and the contract. As such, a party can reasonably presume the state law that will control the contract if a dispute arose. Changing the current nexus requirement could result in the Connecticut law controlling a contract unsettling the very law and democratic values of the state with a nexus to the parties of the contract.

For the above stated reasons, the IAC strongly urges your rejection of SB 1092.