

PA10-031

HB5281

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**CONNECTICUT
GENERAL ASSEMBLY
HOUSE**

**PROCEEDINGS
2010**

**VOL.53
PART 4
895– 1168**

Mr. Speaker, I rise to move items to today's Consent Calendar. The items are as follows: Calendar Number 130, Calendar Number 272, Calendar Number 317 and Calendar Number 348. We will be taking action on these later in today's session.

HB5215
HB5535
HB5376
HB5281

Thank you, Mr. Speaker.

SPEAKER DONOVAN:

Thank you, madam.

Without objection, these items are placed on today's Consent Calendar.

Will the Clerk please call Calendar Number 330?

THE CLERK:

On page one, Calendar 330, Senate Joint Resolution Number 17, RESOLUTION CONFIRMING THE NOMINATION OF THE HONORABLE DAVID A. DEE OF AVON TO BE A MEMBER OF THE JUDICIAL REVIEW COUNCIL AS AN ALTERNATE FAMILY SUPPORT MAGISTRATE, favorable report of the Committee on Executive and Legislative Nominations.

SPEAKER DONOVAN:

I'd like to call on the Chair of Executive and Legislative Nominations, Representative Janowski.

REP. JANOWSKI (56th):

Thank you, Mr. Speaker.

ch/gdm/gbr
HOUSE OF REPRESENTATIVES

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Technology.

SPEAKER DONOVAN:

Deputy Majority Leader Olson, you have the floor,
madam.

REP. OLSON (46th):

Thank you, Mr. Speaker.

Mr. Speaker, we are about to vote on today's
Consent Calendar. We are going to be voting on items
that we moved previously to the Consent -- previously
in today's session to the Consent Calendar. They are
Calendar Numbers 130, 272, 317, 348 and 306.

HB5215 HB5635
HB5376 HB5281
HB5529

- Thank you, Mr. Speaker.

SPEAKER DONOVAN:

Question before us is on passage of the bills on
today's Consent Calendar. Will you remark? Will you
remark?

If not, staff and guests please 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 the chamber. The House is voting
today's Consent Calendar by roll call. Members to the
chamber.

SPEAKER DONOVAN:

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

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

Would the Clerk please announce the tally?

THE CLERK:

On today's Consent Calendar.

Total Number voting	144
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Necessary for adoption	73
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Those voting Yea	144
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Those voting Nay	0
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Those absent and not voting	7
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SPEAKER DONOVAN:

Consent Calendar passes.

Will the Clerk please call Calendar 259?

THE CLERK:

On page 17, Calendar 259, Substitute for House Bill Number 5442, AN ACT CONCERNING ABSENTEE VOTING BY MEMBERS OF THE MILITARY AND BY CITIZENS LIVING ABROAD, favorable report of the Committee on Government Administration and Elections.

SPEAKER DONOVAN:

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**CONNECTICUT
GENERAL ASSEMBLY
SENATE**

**PROCEEDINGS
2010**

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Mr. Clerk.

THE CLERK:

Calendar 453, File Number 559, House Bill
5281, AN ACT CONCERNING AMENDMENTS TO THE
CONNECTICUT UNIFORM PRINCIPAL AND INCOME ACT,
favorable report of the Committee on Judiciary.

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 in concurrence with the House.

THE CHAIR:

The question before the chamber then is
acceptance and passage in concurrence. Will you
remark further?

SENATOR MCDONALD:

Yes, Mr. President, just briefly. This bill
is necessary to conform Connecticut's Uniform
Principal and Income Act with federal IRS rules
governing the reporting of receipts and expenses
for income beneficiaries and remainder
beneficiaries in the absent of a trust. And I

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should say, Mr. President, that again, this a --
the work product of a thoughtful group of
individuals in the Estate and Probate section of
the Connecticut Bar Association who have put in a
lot of time with respect to this legislation. I
know of no opposition to it.

THE CHAIR:

Thank you, Senator.

Will you remark further? Senator Kissel.

SENATOR KISSEL:

Thank you very much, Mr. President.

Through you, a couple of questions to the
proponent.

THE CHAIR:

Please frame your question.

SENATOR KISSEL:

My understanding, through you, Mr. President,
my understanding is that this eliminates a
requirement that more payments are allocated to
income to obtain an estate marital -- a state tax
marital deduction. I'm just wondering what that's
all about. Through you, Mr. President.

THE CHAIR:

Senator McDonald.

SENATOR MCDONALD:

Thank you, Mr. President.

Mr. President, I -- I can't profess to be an expert on this. It is, essentially, a federal estate tax issue under Title 26 of the United States Code and deals with -- with the qualifications for marital deductions for -- under federal law for life estate with the appointment of a -- with the power of an appointment in the surviving spouse.

I do apologize to Senator Kissel. It's not an area of the law of which I have a great deal of expertise. In fact, that's why we rely heavily on the very detailed and extensive collaboration by the Estates and Probate section of the Bar Association on issues such as this.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much. And I appreciate that very honest response. I certainly don't have a vast amount of estate and tax -- I had some -- I was happy to do well in some of my tax courses in law school but that was the last time tax law and

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I ever met up.

I'm just wondering by way of just a generalized background question, what, indeed, is the Uniform Principal and Income Act, I mean, what -- what does it generally try to do and why are we even legislating regarding it?

THE CHAIR:

Senator McDonald.

SENATOR MCDONALD:

Thank you, Mr. President.

Through you to Senator Kissel, my understanding is that the Principal and Income Act, essentially, establishes ground rules for fiduciaries that are administering trusts, and the rules relate to how property is allocated between principal and income and how it's reported for federal tax purposes, how it's treated with respect to the trusts that might be created, and how be -- remainder beneficiaries under those trust can receive any of the residual assets of the trust, which are known as the corpus of the trust. When the trust expires, it creates a certain ground rules, if you will, for the fiduciaries to -- to follow, and it sets forth

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their discretionary authority within the parameters of the act and how they can necessarily allocate between assets -- between principal and interest. Through you, Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much, Mr. President.

I have no further questions. Clearly, this is an area where scholars and lawyers with great expertise drill down very deep to make their decisions. I'm sure that there's an awful lot of investment bankers and other such folks that pay close attention to some of these nuanced changes. And I think these are particularly fruitful areas to seek out the general wisdom of our colleagues in the Bar Association that work with this day in and day out. Sometimes these bills are difficult to get one's arms around, whether one's a practicing attorney or not, because it's such a specialized field of practice. And unfortunately, in our Judiciary Committee as much as we try to have laser-like attention to a variety of issues, when you get issues this nuanced and this

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particularized, the public hearings are rather brief. There's not an awful lot of debate or discussion regarding these bills. Occasionally, though, they do come back to necessitate further changes down the road, but, in this instance, it appears that it's smooth sailing ahead unless we hear otherwise. And with that I'm happy to support the bill. Thank you, Mr. President.

THE CHAIR:

Thank you, Senator.

Are there any other remarks to be made? Do you care to remark further? If not, Senator McDonald.

SENATOR MCDONALD:

Thank you, Mr. President.

Mr. President, if there's no objection, might this item be placed on the consent calendar?

THE CHAIR:

Without objection, this item may be placed on the consent calendar.

Mr. Clerk.

THE CLERK:

Calendar page 16, Calendar Number 455, File Number 550, House Bill 5542, AN ACT MAKING MINOR,

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THE CLERK:

Immediate roll call has been ordered in the Senate on the consent calendar. Will all Senators please return to the chamber? Immediate roll call has been ordered in the Senate on the consent calendar. Will all Senators please return to the chamber?

Mr. President, the items placed on the first consent calendar begin on calendar page 1, Calendar Number 485, Senate Joint Resolution Number 45; Calendar 486, Senate Joint Resolution Number 46.

Calendar page 8, Calendar Number 299, House Bill number 5251.

Calendar page 9, Calendar 372, House Bill 5252.

Calendar page 10, Calendar 383, Substitute for House Bill 5249.

Calendar page 11, Calendar 402, Substitute for Senate Bill 447.

Calendar page 15, Calendar 452, Substitute for House Bill 5376; Calendar 453, House Bill 5281.

Calendar page 16, Calendar 455, House Bill 5542; Calendar 456, Substitute for House Bill

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5247, Calendar 457, Substitute for House Bill

5406.

Calendar page 17, Calendar 464, House Bill

5530.

Calendar page 23, Calendar 75, Substitute for
Senate Bill 229.

Calendar page 24, Calendar Number 98,
Substitute for Senate Bill 312.

Mr. President, that completes those items
placed on the first consent calendar.

THE CHAIR:

Thank you, Mr. Clerk.

If you would announce the vote again, the
machine will be opened.

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 the members voted? Have all the
members voted? The machine will be closed.

Mr. Clerk, please call the tally.

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SENATE

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THE CLERK:

Motion's on adoption of Consent Calendar
Number 1.

Total number of voting	35
Those voting Yea	35
Those voting Nay	0
Those absent and not voting	1

THE CHAIR:

The consent calendar passes.

Are there any points of personal privilege or
announcements?

Senator Gomes.

SENATOR GOMES:

I'd just like it -- thank you, Mr. President.

I'd just like it to be noted that I missed a
vote today on Senate Bill 168, and I was out of
the area. And if I'd been here, I would have
voted in the affirmative.

THE CHAIR:

Thank you, sir. The Journal is so noted.

SENATOR GOMES:

Thank you.

THE CHAIR:

Any further points?

**JOINT
STANDING
COMMITTEE
HEARINGS**

**JUDICIARY
PART 5
1360 – 1697**

2010

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jr/gbr JUDICIARY COMMITTEE

March 12, 2010
10:00 A.M.

will receive a salary increase of up to 80,000.

Norwich, I don't think which is touched by the redistricting, made in 2008 \$87,000 and will receive a nice increase up to 110,000.

So judges are receiving -- even though their districts weren't touched by the redistricting will be receiving a salary increase.

REP. O'NEILL: Okay.

Thank you, Mr. Chairman..

REP. FOX: Thank you.

Are there any other questions?

JUDGE KATHLEEN MURPHY: Thank you very much, Representative Fox.

REP. FOX: Next is John Ivimey. Good afternoon.

JOHN IVIMEY: Thank you, Representative Fox and members of the Judiciary Committee.

I'm John Ivimey. I'm vice chairman of the Estate and Probate Section of the bar association, and first I'd just like to on behalf of the bar association draw your attention to the written testimony of Suzanne Brown Walsh, who apologizes for not being able to be here, and she is writing on behalf of -- in support of Senate Bill 426, The Act Concerning the Connecticut Uniform Adult Protective Proceedings Jurisdiction Act.

HB5281

I am not an expert on the go-between on that act, but I understand that there's been a lot of discussions back and forth on that, and the bar association certainly supports what the

Estate and Probate Section supports.

I'm here mainly to talk in support of House Bill 5281, An Act Concerning Amendments to the Connecticut Uniform Principal and Income Act.

We have a current version of the Connecticut Uniform Principal and Income Act, but a couple of years ago the Uniform Laws Commission proposed an amendment to the act which has been adopted in many states to raise two concerns with the existing law.

These are concerns that address a problem for our residents which arise because the drafting attorney of the trust didn't put in provisions or didn't think about situations that could arise.

The most important one is very often we draft trusts to qualify for the marital deduction to defer estate tax until the death of its surviving spouse.

If you have a retirement plan that's payable to that trust, the federal government requires that you have certain provisions in the trust agreement in order for the trust to qualify for the marital deduction.

It's very easy not to know about that provision and to leave it out, and so the amendment to the uniform principal and income act would just, in essence, write that into every -- every document.

What it concerns is the internal income -- a marital trust in order to qualify for the federal exemption has to pay out all the income to the surviving spouse.

The concern is what's the internal income --

what's -- it concerns the internal income of the requirement plan and whether that actually has to be paid out to the trust so it can be then, in turn, distributed out to the spouse.

That's going to be different than the required minimum distribution from the trust, so there's -- the proposed change just fixes that to make sure that, you know, it's written into the document.

And the second change concerns an entity at this time, like an LLC or partnership, that -- that might pay out income to a specific trust, and then that trust requires that the income be distributed out to the beneficiary.

Since the entity, like the partnership or an LLC, is a passthrough entity that results in tax automatically out to the entities, that people have run into a problem where they have to distribute out all the income to the beneficiary of the trust even though that doesn't pass all the income tax liability out to the beneficiary, and then there's no money -- it's conceivable there would be no money in the trust to pay the income tax liability.

This changed in the Principal and Income Act just corrects that or fixes that so that there would always be enough, the ability to pay the income tax liability and then pay the net amount out to the beneficiary.

So there are two relatively -- pretty technical changes. They're uniform changes which are being proposed in all 50 states, all states that have adopted the Uniform Principal and Income Act, and it should just be something for the benefit of our residents where they wouldn't get caught because the

drafting attorney didn't think of a particular provision.

REP. FOX: Thank you.

Are there any other questions? Any questions from members of the committee?

Representative O'Neill.

REP. O'NEILL: Are there trusts out there that have provisions where if we change the law, it's going to perhaps invalidate them or require that they have to be reconstructed in some way because they have a different provision from what this one calls for?

JOHN IVIMEY: To the best of my knowledge, no. In terms of the -- the main purpose, the marital deduction provision, the only drafting that I'm aware of that has been done is drafting put in the provision that matches the provision that's in here.

For the -- for the entity issue, the only thing the trust is going to require is all the income to be paid out, and all this is going to do is it's just going to say what is the income that's going to be distributed out.

So, you know, I can't just say absolutely not, but I can't imagine one that would have to be changed. As far as I'm concerned, no, there aren't any that are going to have to be changed.

REP. O'NEILL: Because there are other reasons why people draft trusts. I agree, most of the time people are focused on marital deduction and trying to take advantage of federal tax code provisions and that sort of thing, but sometimes people draft trusts for other

reasons.

JOHN IVIMEY: And in -- in regards to the retirement plans and the new provision, that's only going to be applied -- it only applies to trusts that are -- are intent -- the intent of them is to qualify for the federal marital deductions, so that that has been contemplated.

REP. O'NEILL: Okay. Thank you, Mr. Chairman.

REP. FOX: Thank you.

Are there any other questions? Seeing none, thank you very much, sir.

JOHN IVIMEY: Thank you very much.

REP. FOX: Next is Marilyn Denny. Good afternoon.

MARILYN DENNY: Good afternoon, members of the Judiciary Committee.

SB371

My name is Marilyn Denny, and I am a staff attorney at Greater Hartford Legal Aid. As such, we -- I represent elderly people, and I have done a fair amount of work in the probate court system in the last year few years.

I'm here to testify in favor of Raised Bill 426, it's a Uniform Jurisdiction Act, but I am going to endorse the fact that I was one of many people who worked for a very long time with the private bar to change the proposal that was raised at the last legislative session to make it comport more with the conservatorship law that was recently passed by the Legislature.

And I think that there are some changes that were made by Legislature drafters, and there

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**Testimony of John R. Ivimey, Esq.
Vice Chair, the Estates and Probate Section
Connecticut Bar Association**

IN SUPPORT OF

HB 5281

**AN ACT CONCERNING AMENDMENTS TO THE
CONNECTICUT UNIFORM PRINCIPAL AND INCOME ACT**

**Judiciary Committee
March 12, 2010**

Thank you for the opportunity to appear before the Committee to comment on House Bill 5281. My name is John Ivimey. I am a principal of Reid and Riege, PC in Hartford, Vice Chair of the Connecticut Bar Association Estates and Probate Section and a fellow of the American College Trust and Estate Counsel.

The Estates and Probate Section proposed this bill regarding amendments to the Connecticut Uniform Principal and Income Act. The Principal and Income Act governs how a trust allocates receipts and expenses as between income beneficiaries and remainder beneficiaries. While in many cases, creators of trusts are free to determine in the document how these items should be allocated, the Principal and Income Act is a "default" rule that governs in the absence of specific direction. Connecticut adopted this version of the Uniform Principal and Income Act in 1999.

The changes proposed in House Bill 5281 are quite technical in nature but can be quite important in certain circumstances. The first change has to do with how receipts from a deferred compensation plan, such as an IRA are treated when paid to a trust that is intended to qualify for the federal estate tax marital deduction. It is not uncommon for the owner of an IRA account to provide that the proceeds upon his or her death are paid to a trust for the surviving spouse. This is particularly true in the case of second marriages. Oftentimes, the plan is that the payment to this trust will qualify for the federal and state marital deduction so that no estate tax is paid in the first estate but is postponed until the surviving spouse dies. The most typical way of providing for this outcome (called the 'marital deduction') is through a "QTIP Marital Trust" where the surviving spouse must receive all of the trust income. In rulings that were issued a few years ago, the IRS provided that if

the trust is properly structured, then the marital deduction would be available. However, those IRS rulings required that special provisions be included in the trust document.

The IRS found that the default provisions in statutes such as the Connecticut Uniform Principal and Income Act were not adequate to comply with the tax requirements. Accordingly, the proposed amendment to the Connecticut statute provides that even where the trust agreement itself does not include the provisions required by IRS, a payment to a trust otherwise qualifying for the marital deduction will be eligible. The change in the statute provides that "internal income" of the IRA itself (meaning interest and dividends) may be withdrawn at all times by the surviving spouse.

The second change has to do with the allocation of income taxes for trusts that receive receipts from a "pass through entity" like a partnership, LLC or an S corporation. Under some interpretations of the existing statute, a problem can arise where a trust is required to distribute all of its income to a trust beneficiary and it receives a distribution from a pass through entity. In general, this cash distribution is treated as income and would pass through to the beneficiary. However, there can be instances where the taxable income attributable to the pass through entity that must be reported by the trust exceeds the cash distribution. In other words, the trustee would have an income tax obligation but not have cash available with which to pay the tax. This change would in effect allow the trustee to withhold a portion of the cash in order to pay the income tax liability.

These are modest but important changes to our Uniform Principal and Income Act. On behalf of the Estates and Probate Section, I urge the Committee to approve House Bill 5281.