



Senate

General Assembly

File No. 391

January Session, 2001

Substitute Senate Bill No. 419

Senate, April 23, 2001

The Committee on Judiciary reported through SEN. COLEMAN of the 2nd Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

AN ACT CONCERNING THE REMOVAL OF A FIDUCIARY.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 45a-242 of the general statutes is repealed and the following
2 is substituted in lieu thereof:

3 (a) [If any] The court of probate having jurisdiction may, upon its
4 own motion or upon the application and complaint of any person
5 interested or of the surety upon the fiduciary's probate bond, after
6 notice and hearing, remove any fiduciary if: (1) The fiduciary becomes
7 incapable of executing [his] such fiduciary's trust, neglects to perform
8 the duties of [his] such fiduciary's trust, wastes the estate in [his] such
9 fiduciary's charge, or fails to furnish any additional or substitute
10 probate bond ordered by the court, [the court of probate having
11 jurisdiction may, upon its own motion, or upon the application and
12 complaint of any person interested or of the surety upon the
13 fiduciary's probate bond, after notice and a hearing, remove such
14 fiduciary] (2) lack of cooperation among cofiduciaries substantially

15 impairs the administration of the estate, (3) because of unfitness,
16 unwillingness or persistent failure of the fiduciary to administer the
17 estate effectively, the court determines that removal of the fiduciary
18 best serves the interests of the beneficiaries, or (4) there has been a
19 substantial change of circumstances or removal is requested by all of
20 the beneficiaries, the court finds that removal of the fiduciary best
21 serves the interests of all the beneficiaries and is not inconsistent with a
22 material purpose of the governing instrument and a suitable
23 cofiduciary or successor fiduciary is available.

24 (b) The court of probate, after notice and hearing, may accept or
25 reject the written resignation of any fiduciary, but such resignation
26 shall not be accepted until such fiduciary has fully and finally
27 accounted for the administration of [his] such fiduciary's trust to the
28 acceptance of such court.

29 (c) Trustees appointed by a testator to execute a trust created by will
30 and testamentary guardians may resign or be removed, and the
31 vacancies filled by the court having jurisdiction in the manner
32 provided under this section, unless otherwise provided by the will.

33 (d) Except as otherwise provided in subsection (c) of this section,
34 upon the death, removal or acceptance of the resignation of any
35 fiduciary before the completion of [his] such fiduciary's duties, the
36 court of probate may appoint a suitable person to fill the resultant
37 vacancy and such successor fiduciary shall give a probate bond.

38 (e) All suits in favor of or against the original fiduciary shall survive
39 to and may be prosecuted by or against the person appointed to
40 succeed [him] such fiduciary.

JUD *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

OFA Fiscal Note

State Impact: None

Affected Agencies: Probate Court (Judicial Department)

Municipal Impact: None

Explanation

State Impact:

The bill clarifies and expands the instances when the probate court can remove a fiduciary. Passage of the bill would not result in any fiscal impact on the probate court system.

OLR Bill Analysis

sSB 419

AN ACT CONCERNING THE REMOVAL OF A FIDUCIARY.**SUMMARY:**

This bill allows the probate court to remove a fiduciary if:

1. lack of cooperation among cofiduciaries substantially impairs the administration of the estate;
2. the court determines that removal best serves the beneficiaries' interest because of the unfitness, unwillingness, or persistent failure of the fiduciary to administer the estate effectively; or
3. there has been a substantial change of circumstances, or all beneficiaries request removal and the court finds that (a) removal best serves the interests of the beneficiaries and is consistent with the material purposes of the governing instrument and (b) a suitable cofiduciary or successor fiduciary is available.

Under current law, the probate court may remove a fiduciary who becomes incapable of executing his trust, neglects to perform his duties, wastes the estate, or does not furnish any additional or substitute probate bond the court orders.

As under current law, the bill allows the court, after notice and a hearing, to remove a fiduciary on its own motion or on the application and complaint of either the surety on the fiduciary's probate board or anyone interested in the estate.

EFFECTIVE DATE: October 1, 2001

BACKGROUND***Fiduciary***

A fiduciary is a trustee, conservator, guardian, executor, administrator, or person in a similar position that others must rely on to exercise special care, good faith, and loyalty in dealing with their money or property.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute

Yea 38 Nay 0