



Senate

General Assembly

File No. 266

January Session, 2001

Substitute Senate Bill No. 1057

Senate, April 12, 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 BENEFICIARY INTERESTS IN FIDUCIARY MATTERS.

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

1 Section 1. (NEW) As used in sections 1 to 6, inclusive, of this act:

2 (1) "Fiduciary matters" means (A) any property or interest in
3 property held as part of a trust; (B) actions by or against a trust or by or
4 against the trustee of such trust, in its capacity as such trustee; (C)
5 proceedings for the interpretation of any document creating a trust or
6 other instrument pursuant to which property is held by a trustee; (D)
7 accountings, whether intermediate or final, of any trustee; and (E) any
8 other matters concerning the administration of a trust. Any reference
9 to a trust in this act shall include both testamentary and
10 nontestamentary trusts.

11 (2) "Represent" shall not be construed to permit a person who has
12 not been admitted as an attorney under the provisions of section 51-80

13 of the general statutes to serve as legal counsel for any other person in
14 a fiduciary matter.

15 Sec. 2. (NEW) To the extent there is no conflict of interest between
16 the holder of a power of appointment and the persons represented
17 with respect to the particular question or dispute: (1) The sole holder
18 or all coholders of any power of appointment, whether or not
19 presently exercisable, shall represent the potential appointees; and (2)
20 the sole holder or all coholders of a power of revocation or a general
21 power of appointment, including one in the form of a power of
22 amendment, shall also represent the takers in default of the exercise
23 thereof.

24 Sec. 3. (NEW) To the extent there is no conflict of interest between
25 the representative and the person represented or among those being
26 represented with respect to a particular question or dispute: (1) A court
27 appointed conservator or guardian of the estate may represent and
28 bind the estate that the conservator or guardian controls; (2) a court
29 appointed conservator or guardian of the person may represent and
30 bind the ward if a conservator or guardian of the ward's estate has not
31 been appointed; (3) an agent having authority to do so may represent
32 and bind the principal; (4) a trustee may represent and bind the
33 beneficiaries of the trust; (5) an executor or administrator of a
34 decedent's estate may represent and bind persons interested in the
35 estate; and (6) if a conservator or guardian has not been appointed, a
36 parent may represent and bind the parent's minor or unborn child.

37 Sec. 4. (NEW) Unless otherwise represented, a minor, incapacitated
38 or unborn individual, or a person whose identity or location is
39 unknown and not reasonably ascertainable, may be represented by
40 and bound by another person having a substantially identical interest
41 with respect to the particular question or dispute, but only to the
42 extent there is no conflict of interest between the representative and
43 the person being represented.

44 Sec. 5. (NEW) (a) If the court determines that an interest is not
45 represented under sections 2 to 4, inclusive, of this act, or that the
46 otherwise available representation might be inadequate, the court may
47 appoint a guardian ad litem to receive notice, give consent, and
48 otherwise represent, bind and act on behalf of a minor, incapacitated
49 or unborn individual, or a person whose identity or location is
50 unknown. A guardian ad litem may be appointed to represent several
51 persons or interests.

52 (b) A guardian ad litem may act on behalf of the individual
53 represented with respect to any fiduciary matter, whether or not a
54 judicial proceeding is pending.

55 (c) In making decisions, a guardian ad litem may consider general
56 benefit accruing to the living members of the individual's family.

57 Sec. 6. (NEW) (a) Notice to a person who may represent and bind
58 another person under sections 2 to 5, inclusive, of this act, has the same
59 effect as if notice were given directly to the other person.

60 (b) The consent of a person who may represent and bind another
61 person under sections 2 to 5, inclusive, of this act, is binding on the
62 person represented, unless the person represented objects to the
63 representation before the consent would otherwise have become
64 effective.

65 (c) Sections 2 to 5, inclusive, of this act shall apply to all judicial
66 proceedings and all nonjudicial settlements, agreements or acts
67 pertaining to fiduciary matters.

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:

While the bill defines and clarifies various definitions regarding fiduciary matters and representation issues, it is not anticipated that passage would result in any fiscal impact to the court.

OLR BILL ANALYSIS

sSB 1057

AN ACT CONCERNING BENEFICIARY INTERESTS IN FIDUCIARY MATTERS.**SUMMARY:**

Under current law, in proceedings involving trusts and trustees' fiscal affairs, courts appoint a guardian ad litem to represent the interests of unborn, minor, or incompetent people in order to bind them to the outcome of the proceedings. (A guardian ad litem is a person, often an attorney, the court appoints to represent someone's interest during a legal proceeding.)

The bill authorizes, and in some cases requires, people to represent the interests of and bind a minor, an incapacitated or unborn person, or someone whose identity or location is unknown and not reasonably ascertainable in trust matters covered by the bill if: (1) they have a substantially identical interest with respect to the particular question or dispute and (2) there is no conflict of interest between the representative and the person being represented.

The bill specifies circumstances under which these people's interests can be represented by conservators, guardians, agents, trustees, executors, administrators, and parents.

Under the bill, notice to a person's representative has the same effect as notice to the person himself. The representative's consent is binding on the represented person unless the person objects before the consent would otherwise have become effective (see COMMENT).

The bill allows a court to appoint a guardian ad litem to represent a minor, incapacitated or unborn person, or someone whose identity or location is unknown if it determines that his interest is not represented or that the representation may be inadequate. It allows a guardian ad litem to (1) act on behalf of the person represented concerning any

trust-related matter the bill covers, whether or not a judicial proceeding is pending and (2) consider general benefits accruing to the living members of an individual's family when making decisions. The bill (just as in the case of current law) authorizes the court to appoint a guardian ad litem to represent several people or interests.

The bill specifies that it does not authorize someone to serve as legal counsel who is not a licensed attorney.

EFFECTIVE DATE: October 1, 2001

TRUST MATTERS

The bill covers the following trust-related matters:

1. any property or property interest held in trust,
2. legal proceedings against or by a trust or by or against the trustee,
3. proceedings to interpret any document creating a trust or other instrument under which a trustee holds property,
4. accountings of any trustee, and
5. any matters concerning the administration of a trust.

The bill applies to all judicial proceedings and all nonjudicial settlements, agreements, or acts related to these trust matters.

CONSERVATORS, GUARDIANS, AGENTS, TRUSTEES, EXECUTORS, AND PARENTS

With respect to trust-related matters, under certain circumstances, the bill authorizes:

1. a court-appointed conservator or guardian of the estate to represent and bind the estate he controls;
2. a court-appointed conservator or guardian of the person to

represent and bind the ward if a conservator or guardian of the ward's estate has not been appointed;

3. an agent, with authority to do so, to represent and bind the principle;
4. a trustee to represent and bind the trust's beneficiaries;
5. an executor or administrator of a decedent's estate to represent and bind people interested in the estate;
6. a parent to represent and bind his minor or unborn child unless a guardian has been appointed for the child.

It appears that current law already authorizes this.

The bill grants this authority only to the extent there is no conflict of interest between the representative and the person represented, or among those being represented concerning a particular question or disputes.

POWER OF APPOINTMENT

The bill requires the sole holder or all co-holders of any power of appointment, whether or not they can currently exercise the power, to represent potential appointees. It also requires the sole holder or all co-holders of a power of revocation or a general power of appointment to represent those who obtain property when the holder does not exercise the power. These requirements only apply to the extent there is no conflict of interest between the holder of a power of appointment and the people represented and they are not otherwise represented.

BACKGROUND

Power of Appointment

A power of appointment is the authority given by a property owner (donor) to someone (donee) to designate or reappoint the person or people who are to receive the property upon the death of the donor or donee, or at some other point of time.

Authority to Appoint Guardian ad Litem

The law authorizes the Superior or Probate Court to appoint a guardian ad litem for any minor or incompetent, undetermined or unborn person, in any matter before it if it appears to the court that they have or may have an interest in the proceeding. The appointment is not mandatory but is within the court's sound discretion. The law allows the court to appoint one guardian for two or more people (CGS § 45a-132).

COMMENT***Notice To Represented Person***

The bill makes a representative's consent binding unless the person objects to the representation before the consent becomes effective. But the bill does not require a prior court determination that the interests were substantially identical, there was no conflict of interest, and that the representation was otherwise adequate. Thus, under the bill, a person might be bound by a representative's decision without notice.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable Substitute
Yea 40 Nay 0