



General Assembly

January Session, 2001

Raised Bill No. 1052

LCO No. 3175

Referred to Committee on Judiciary

Introduced by:
(JUD)

AN ACT CONCERNING THE PRINCIPAL AND INCOME ACT.

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

1 (NEW) (a) A court shall not change a fiduciary's decision to exercise
2 a discretionary power conferred by sections 45a-542 to 45a-542ff,
3 inclusive, of the general statutes unless it determines that the decision
4 was an abuse of the fiduciary's discretion. A court shall not determine
5 that a fiduciary abused its discretion merely because the court would
6 have exercised the discretion in a different manner or would not have
7 exercised the discretion.

8 (b) The decisions to which subsection (a) of this section applies
9 include: (1) A determination under subsection (a) of section 45a-542c of
10 the general statutes of whether and to what extent an amount should
11 be transferred from principal to income or from income to principal;
12 and (2) a determination of the factors that are relevant to the trust and
13 its beneficiaries, the extent to which they are relevant, and the weight,
14 if any, to be given to the relevant factors, in deciding whether and to
15 what extent to exercise the power conferred by subsection (a) of
16 section 45a-542c of the general statutes.

17 (c) If a court determines that a fiduciary has abused its discretion,
18 the remedy is to restore the income and remainder beneficiaries to the
19 positions they would have occupied if the fiduciary had not abused its
20 discretion, according to the following rules: (1) To the extent that the
21 abuse of discretion has resulted in no distribution to a beneficiary or a
22 distribution that is too small, the court shall require the fiduciary to
23 distribute from the trust to the beneficiary an amount that the court
24 determines will restore the beneficiary, in whole or in part, to his or
25 her appropriate position; (2) to the extent that the abuse of discretion
26 has resulted in a distribution to a beneficiary that is too large, the court
27 shall restore the beneficiaries, the trust, or both, in whole or in part, to
28 their appropriate positions by requiring the fiduciary to withhold an
29 amount from one or more future distributions to the beneficiary who
30 received the distribution that was too large or requiring the beneficiary
31 to return some or all of the distribution to the trust; and (3) to the
32 extent that the court is unable, after applying subdivisions (1) and (2)
33 of this subsection, to restore the beneficiaries, the trust, or both, to the
34 positions they would have occupied if the fiduciary had not abused its
35 discretion, the court may require the fiduciary to pay an appropriate
36 amount from its own funds to one or more of the beneficiaries or to the
37 trust, or both.

38 (d) Upon a petition by the fiduciary, the court having jurisdiction
39 over the trust or estate shall determine whether a proposed exercise or
40 nonexercise by a fiduciary of a discretionary power conferred by
41 sections 45a-542 to 45a-542ff, inclusive, of the general statutes will
42 result in the abuse of the fiduciary's discretion. If the petition describes
43 the proposed exercise or nonexercise of the power and contains
44 sufficient information to inform the beneficiaries of the reasons for the
45 proposal, the facts upon which the fiduciary relies, and an explanation
46 of how the income and remainder beneficiaries will be affected by the
47 exercise or nonexercise of the power, a beneficiary who challenges the
48 proposed exercise or nonexercise has the burden of establishing that it
49 will result in an abuse of discretion.

Statement of Purpose:

To add the amendment passed by the National Conference of Commissioners on Uniform State Laws to the Principal and Income Act in order to maintain the uniform nature of the act.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]