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on behalf of the Connecticut Bankers Association

In Opposition to Senate Bill No. 429

AN ACT ADOPTING THE CONNECTICUT UNIFORM TRUST CODE

March 14, 2006

On behalf of the Connecticut Bankers Association (the "Bankers"), I respectfully request that the Judiciary Committee oppose Senate Bill 429, An Act Adopting the Connecticut Uniform Trust Code.

The proposed Connecticut Uniform Trust Code (CTUTC) is a dramatic and complete revision of the state's existing trust statutes. Connecticut's trust law is based on more than 200 years of common law and continues to work well for trust settlors and the fiduciaries who administer their trusts.

S.B. 429 is based on model legislation, the Uniform Trust Code (UTC), drafted by the National Conference of Commissioners on Uniform State Laws (NCCUSL). This bill has been raised in the Judiciary Committee in the last several years. The Bankers began their review of the CTUTC when NCCUSL first released the model act and since that time have consistently raised numerous concerns about the CTUTC's impact on settlors' expectations of privacy and permanency when creating trusts, and the safeguards in place for the fiduciaries vested with the duty of administering those trusts.

Since that time, many of the concerns raised by the Bankers have been voiced by other state legislatures considering the adoption of the UTC. Some resoundingly defeated the UTC and recently Arizona repealed the law after its passage. Others states made substantial revisions that reflected their interest in growing their trust business and protecting their citizens' historic rights and expectations.

Banks in Connecticut act as corporate trustees and manage billions of dollars in trust assets. The banking industry's goal is to keep Connecticut a desirable place for citizens to establish and keep trusts for existing and future generations of family members. The proponents of S.B. 429, some of whom act as trustees for their clients, typically do not manage their clients' investments and administer a much smaller percentage of the State's trust business. The uncertainty created by this major revision of Connecticut law will have a far greater impact on those corporate trustees who oversee the vast majority of Connecticut's trust business. We have and still have serious concerns that this proposed legislation will discourage Connecticut residents from creating in-state trusts, particularly when they can easily and readily send that business to other states.

It bears noting that in the fifteen states where the UTC has been enacted, the bankers and bar associations worked closely to arrive at compromise legislation that positively impacted their citizens and their trust business. This entailed revisions to the UTC's mandatory notice, trust termination and trust modification provisions, among others. These same issues were identified by the Bankers after a careful review by its Trust Task Force, comprised of its member banks' trust officers and trust counsel.

- This legislation is premature because it grants significant additional powers to the probate courts before the necessary reforms to the court system are in place.
- These additional powers include the ability to award monetary damages (currently a State Superior Court power) and to modify and terminate trusts of any size (currently limited to \$100,000).
- While the proponents of the Bill have included some seemingly positive changes in this year's legislation, new terms and new roles have been introduced that warrant additional study.
- These new terms include a "beneficiary surrogate," whose role in receiving notice on behalf of a beneficiary is a new concept in Connecticut trust law. Some states studying similar provisions have questioned the legal duty of the "beneficiary surrogate" and how a trustee should interface with him or her. This certainly requires further study rather than enacting a concept which would no doubt result in copious litigation to clarify it.
- S.B. 429 continues to include a default provision that would enable a remote, contingent remainder beneficiary to obtain a copy of a private trust agreement and statements of the trust's assets.
- The Bankers presented the Bill's proponents with a proposal to enact a "short form" version of the CTUTC during the 2005 session. While the "short form" version removed many controversial provisions, including the additional powers granted to the probate courts, it left many of the CTUTC's valuable features in place.

The Bankers look forward to working with the Committee and the proponents of the bill on just such a "short form" compromise.