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H.B. 5538 -- Unconscionability premarital agreements

Judiciary Committee Public Hearing -- March 3, 2006
Testimony of Raphael L. Podolsky

Recommended Committee action: **REJECTION OF THE BILL**

Existing Connecticut law authorizes a court to refuse to enforce a prenuptial agreement if it was unconscionable when it was signed or if it would be unconscionable to enforce the agreement at the time that enforcement is sought. This bill eliminates the authority of the court to review such agreements for unconscionability at the time of enforcement. The statute should not be changed.

- Dissolution of marriage is an equitable proceeding, and the court should always be able to consider equitable factors. The bill attempts to convert divorce actions from proceedings in which the judge can consider a wide range of elements impacting fairness into actions whose sole purpose is rigidly to enforce a contract, regardless of the consequences that may ensue.

- It deprives the parties of an essential protection which is already established by long-standing law. Although the statutory provision in question was not adopted until 1995, C.G.S. 46b-36g codified the existing Connecticut case law. For example, in McHugh v. McHugh, 181 Conn. 482, 436 A.2d 8 (1980), 15 years before the statute, the Supreme Court said: "An antenuptial agreement will not be enforced where the circumstances of the parties at the time of the dissolution are so far beyond the contemplation of the parties at the time the agreement was made as to make enforcement of the agreement work an injustice."

- It ignores the reality that unanticipated changes in the circumstances of the parties, including their health, their employability, their income, and their behavior during the marriage, may make enforcement of a premarital agreement unconscionable, even though the agreement may have seemed reasonable when it was made.

- It ignores modern court cases, for which the trend is to treat spouses as having a quasi-fiduciary obligation to each other.

- It assumes a problem that does not exist. Judges do not easily reject agreements based on unconscionability at the time of enforcement; and such rejections are invariably the result of an effort to prevent substantial injustice.