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Raised Bill 932
Public Hearing: 3-6-17

TO: MEMBERS OF JUDICIARY COMMITTEE
FROM: CONNECTICUT TRIAL LAWYERS ASSOCIATION (CTLA)
DATE: MARCH 6, 2017

**RE: SUPPORT OF RAISED BILL 932, AN ACT ESTABLISHING A STATUTORY
CAUSE OF ACTION FOR INJURY TO PERSON OR PROPERTY BASED ON
NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS**

Connecticut case law currently recognizes claims for negligent infliction of emotional distress subject to proof of the following elements:

To succeed on a claim of negligent infliction of emotional distress, the plaintiff must establish that: "(1) the defendant's conduct created an unreasonable risk of causing the plaintiff emotional distress; (2) the plaintiff's distress was foreseeable; (3) the emotional distress was severe enough that it might result in illness or bodily harm; and (4) the defendant's conduct was the cause of the plaintiff's distress." *Carrol v. Allstate Ins. Co.*, 262 Conn. 433, 444, 815 A.2d 119 (2003). "In order to recover on a claim of negligent infliction of emotional distress, the plaintiff must prove that the defendant should have realized that its conduct involved an unreasonable risk of causing emotional distress and that distress, if it were caused, might result in illness or bodily harm." (Internal quotation marks omitted.) *McNamara v. Tournament Players Club of Connecticut, Inc.*, 270 Conn. 179, 197, 851 A.2d 1154 (2004): "This condition differs from the standard foreseeability of the risk of harm requirement for negligence liability generally in that it focuses more precisely upon the nature [*40] of the harm to be anticipated as a prerequisite to recovery even where a breach of duty might otherwise be found . . ." *Maloney v. Conroy*, 208 Conn. 392, 398, 545 A.2d 1059 (1988).



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This common law has been applied in circumstances where for instance, an insurance company negligently denied homeowner's insurance coverage and blamed its insured for arson causing significant emotional distress (*Carrol v. Allstate Ins. Co.*, 262 Conn 433); when a utility company wrongly attempted to remove a water heater from the home of a customer who it claimed was delinquent and implied to be a deadbeat in the presence of others. (*Urban v. Hartford Gas Co.*, 139 Conn. 301); negligent mutilation of a corpse (*Ginsberg v. Manchester Memorial Hospital*, 49 Conn. L. Rptr. 341); and negligent handling of cremated remains (*Reich v. Spencer*, Lexis 3255). With the exception of bodily remains, the courts have not extended emotional distress claims to other instances of loss or damage to personal property such as the loss of a deceased mother's rings by a hospital which had sentimental value to her children (*Costello v. Yale New Haven Health Servs. Corp.*, 2013 Conn. Super. Lexis 2877); or the negligent euthanizing of a family pet (*Myers v. City of Hartford*, 84 Conn. App. 395). The rationales espoused are various: (1) that loss or destruction of personal property is not reasonably expected to cause emotional distress and therefore such a claim does not meet the elements of a claim for negligent infliction of emotional distress as set forth above; (2) fears of flooding the courts with spurious and fraudulent claims; and (3) claims for emotional distress are not recognized for the loss of a loved one unless the claim is brought by a "bystander" who witnessed the tragedy, or it is a claim for loss of consortium by a spouse, so it would be incongruous to allow such claims for loss or destruction of personal property.

This bill seeks to establish a statutory cause of action for negligent infliction of emotional distress. By doing so, our legislature is properly recognizing that emotional harm is as injurious as physical harm; and that, under the limited circumstances where the prescribed elements can be met, compensatory damages are necessary and appropriate to provide a just remedy. As limited, this statutory cause of action acknowledges that there are circumstances where a person can suffer significant emotional harm from injury, loss or destruction to personal property that has understandable sentimental value; protects against a flood of lawsuits by adopting the restrictive elements prescribed; and solves any perceived incongruity by allowing these limited claims for emotional distress resulting from negligent injury to person or property.

This bill also allows costs and attorney fees at the discretion of the court. This is important as the legal value of a claim for emotional distress may pale in comparison to other types of bodily injury claims and practicality may then weigh against the pursuit of legitimate and deserving claims. By allowing a successful plaintiff to recover her costs and attorneys, only when a judge believes it just to do so, meritorious claims will see the light of a courtroom. Without this provision, this bill will unlikely have its necessary and intended effect.



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Finally, the statute of limitation is a 2 year statute of repose, unlike CGS 52-584, thus providing a more restrictive time frame within which a claim may be brought and, in addition to the bill's restrictive elements, further guards against any perceived flood of claims.

In sum, this bill strikes a fair balance between the inability to remedy an injurious loss at all and too liberal an allowance that some have concern that unjustifiable claims may be brought.

We respectfully urge your support for Bill 932.