

**CONNECTICUT DEFENSE LAWYERS ASSOCIATION  
TESTIMONY IN OPPOSITION TO S.B. No. 932 (RAISED) AN ACT ESTABLISHING A  
STATUTORY CAUSE OF ACTION FOR INJURY TO PERSON OR PROPERTY  
BASED ON NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS.**

I write on behalf of the Connecticut Defense Lawyers Association (“CDLA”) to express the CDLA’s opposition to the above-referenced bill, entitled “An Act Establishing a Statutory Cause of Action for Injury to Person or Property Based on Negligent Infliction of Emotional Distress.”

The CDLA is comprised of hundreds of Connecticut’s civil defense lawyers whose firms represent many thousands of defendants, both individuals and businesses, in Connecticut’s state and federal courts. The CDLA is greatly concerned about the repercussions the above-referenced bill will have on litigants, as well as on our courts.

The bill seeks to codify a cause of action for negligent infliction of emotional distress. As currently written, this bill would create a significant departure from common law, open the door to claims not currently cognizable, and expose defendants to legal fees not currently recoverable. Yet there is no need for the proposed codification of a claim for negligent infliction of emotional distress. There exists at common law a robust cause of action for negligent infliction of emotional distress and neither the judiciary nor recent events have suggested abandoning the common law framework in favor a statutory remedy.

Even if there were a problem that needed solving with a statute, this particular bill is flawed in two crucial respects. First, it appears to create expansive new liability for emotional distress damages resulting from injury to property. Second, it permits successful plaintiffs (and only plaintiffs) to recover attorneys’ fees not recoverable at common law.

### **Emotional Distress for Property Damage**

The common law measure of damages for negligent injury to property is the diminution of value of the damaged property. Damages for emotional distress suffered by the property's owner or others who become aware of the injury to the property are not recoverable at common law. In contrast, this bill would arguably permit owners of negligently damaged property (and perhaps even non-owners of such property) to make claims for negligent infliction of emotional distress.

The common law framework makes much more sense. For example, a driver who negligently backs his or her car up over a handbag or briefcase and destroys a cell phone may be liable for the value of the cell phone but should not be liable for the emotional distress caused by the loss of photos or videos on the cell phone. An oil company who negligently fails to deliver oil when scheduled, causing pipes to freeze and burst, may be liable for physical damage caused by the resulting flood, but should not be liable for emotional distress caused by the damage to property. Should those involved in auto accidents who suffer only property damage be invited to claim emotional distress damages? Are veterinarians going to have to insure themselves against emotional distress damages for veterinary malpractice? If a driver negligently destroys a much-beloved statue in the town square, should the driver be liable for the town's residents' emotional distress? Does the typical auto or homeowner's insurance policy *even insure* against a defendant policyholder's liability for emotional distress caused by negligent damage to another's property? The proposed reformulation of emotional distress claims could "open the floodgates" for all kinds of new claims like these and others and would undoubtedly have unintended negative consequences.

**Attorneys' Fees**

This bill would also permit recovery of attorneys' fees, but only for successful plaintiffs. The attorneys' fees provision is unreasonable and incompatible with fees historically available in negligence cases. Typically, causes of action for mere negligence do not provide for the recovery of attorney fees from the opposing party—an approach the CDLA endorses. However, if this bill progresses, because it lays the groundwork for the filing of frivolous negligent infliction of emotional distress claims for damage to property, the bill should be amended to permit the recovery of attorneys' fees only for prevailing *defendants*, not plaintiffs.

In sum, without any guidance or indication from our judiciary suggesting the need for the proposed departure from existing common law, and in light of the significant expansion of liability proposed, S.B. 932 is unnecessary and stands to cause significant uncertainty and harm to Connecticut's litigants and courts.

Respectfully Submitted,

**The Connecticut Defense Lawyers Association**



Stuart C. Johnson, President