

# Judiciary Committee JOINT FAVORABLE REPORT

**Bill No.:** HB-7104

AN ACT CONCERNING ADOPTION OF THE CONNECTICUT UNIFORM

**Title:** TRUST CODE.

**Vote Date:** 4/8/2019

**Vote Action:** Joint Favorable Substitute

**PH Date:** 2/15/2019

**File No.:**

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## **SPONSORS OF BILL:**

Judiciary Committee

## **REASONS FOR BILL:**

This bill was brought to the attention to the committee by the Estates and Probate Section of the Connecticut Bar Association, the Connecticut Bankers Association, and the Office of the Probate Court Administrator. There are currently many problems with the state of the Uniform Trust Code (UTC). Many of the aspects of the UTC have not been updated for nineteen years and case law regarding the UTC is archaic. Connecticut's outdated laws have cost the state many billions of dollars because a significant amount of people who have held trusts in the state during the previous nineteen years, since the UTC was last updated, have moved their trusts out of the state, to other states that have more beneficiary-friendly codes. This bill reforms the dated code in four main aspects of the current code: the trust code, directed trusts, qualified dispositions in trust, and rules against perpetuities. The updates to the trust code align the UTC with the courts, especially with probate courts, who face most of the issues regarding trust disputes. The alterations to directed trusts, qualified dispositions in trust, and rule against perpetuities establish procedures for irrevocable trusts and directed trusts, along with the extensions of the perpetuities period for new trusts from 90 years to 800 years.

## **SUBSTITUTE LANGUAGE:**

Section 2d was added to the bill to eliminate the possibility of the bill to be in conflict with federal law. No aspect of the bill should be interpreted as to be in conflict with federal law. Section 3 (27) added the term and definition for "terms of a trust" to clear up any ambiguity that the bill may have had in its previous forms.

## **RESPONSE FROM ADMINISTRATION/AGENCY:**

### **CT Office of the Probate Court Administrator, Probate Court Administrator, Paul J.**

**Knierim:** Supports changes to the trust code and takes no position on the changes to directed trusts, qualified dispositions in trust, and rule against perpetuities. Wants the committee to be aware of the language in the bill regarding the beneficiary's right to information, creditors' rights, and attorney's fee awards.

**CT Department of Social Services:** Opposes bill because the bill "does not identify critical issues the Code seeks to address and it is not clear how the Code will accomplish the stated purpose. The proposed changes to the Code could potentially endanger estate plans, affect eligibility for public assistance, and interfere with special needs and pooled trusts established for disabled persons to qualify for public assistance". Takes issue with the "many instances of confusing and unclear language".

## **NATURE AND SOURCES OF SUPPORT:**

### **CT Bar Association, Vice Chair of the Estates & Probate Section of the CT Bar**

**Association, Kelley Galica Peck:** Supports bill because the bill will "encourage wealthy and middle class families to remain in Connecticut" and it is a "comprehensive law covering the creation, administration, modification, and termination of trusts". Points to the increased number of CT residents moving their financial instruments out of CT to financial advisors in more favorable jurisdictions such as New Hampshire because of their "modern trust" system.

### **Waterbury Regional Children's Probate Court, Administrative Judge, Domenick N.**

**Calabrese:** Supports bill because "it creates a comprehensive, organized, and modern trust code" and the bill is "an opportunity to effectively update Connecticut's trust statutes". Takes issue with Section 58 of the bill because it "neglects to grant authority to the Probate Court in awarding costs, expenses, and attorney's fees".

## **NATURE AND SOURCES OF OPPOSITION:**

**Nirenstein, Horowitz Associates P.C., Atty. Barry D. Horowitz:** Opposes bill because Sec. 5, Sub Secs. (7), (8), and (11) "grants the Probate Court unfettered discretion to interfere with a trust that is supposed to be primarily outside of probate court jurisdiction" and they are not to trust clients' benefit. This bill would also "remove the right of people to protect their privacy by placing these provisions in the mandatory section of the Code".

**Nirenstein, Horowitz Associates P.C., Associate Atty. Edward Lowe:** Opposes bill because the bill "imposes two particularly draconian restrictions on those creating a trust as part of their estate planning". Supports many other aspects of bill, but cannot support bill with Section 5(b)(7) and Section 5(b)(8)

**Nirenstein, Horowitz Associates P.C., Atty. John McCann:** Opposes bill until "allowing the settlor to waive notice and reporting requirements" and limiting "notice and reporting requirements to spouse rather than all qualified beneficiaries and restore ability of settlor to waive duty to inform and report for beneficiaries under the age of 25".

