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In support of H.B. 7104
An Act Concerning Adoption of the Connecticut Uniform Trust Code

Judiciary Committee
February 15, 2019

Senator Winfield, Senator Kissel, Representative Stafstrom, Representative Rebimbas and members of the Judiciary Committee, thank you for the opportunity to speak in support of H.B. 7104, An Act Concerning Adoption of the Connecticut Uniform Trust Code. Connecticut trust law is woefully out of date.

There are very few statutory rules governing trusts. Case law on the subject is fractured, often contradictory and, in most cases, more than a 100 years old, and completely out of step with modern trends in trust law.

The dearth of modern, workable trust law in Connecticut is harming the Connecticut economy. The financial services sector is the largest component of the Connecticut economy. "According to the US Census Bureau, it is the highest paying industry in the state, with over $16B in annual payroll, more than $3.5B more than the next highest industry. It represents one-fifth of the Connecticut economy."[1] However, over the past 20 years a number of modern trust laws adopted in other states encourage Connecticut residents to move their financial investments out of Connecticut to financial advisors in more favorable jurisdictions. For example, when New Hampshire adopted legislation similar to H.B. 7104, the trust industry in that state quadrupled, from $93B in trust assets in 2004 to $419B in trust assets managed by New Hampshire trust companies in 2015.[2] Similarly, South Dakota saw an explosion of trust business when it adopted modern trust legislation. According to the South Dakota Department of Labor and Regulation, in 2015, South Dakota trust companies held $175B in assets within the state, an increase of 45% in a two year period.[3]

This is a zero sum game. Trust assets are leaving states like Connecticut because of our antiquated trust laws and are migrating into New Hampshire and other modern trust jurisdictions. This exodus materially and adversely impacts Connecticut's financial services industry and, consequently, Connecticut's economy as a whole. A robust fiduciary

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[1] "Top 5 Industries in Connecticut: Which Parts of the Economy are Strongest?" Newsmax, July 26, 2017
[2] "Trust Fund Effort Pays off for NH" New Hampshire Union Leader, February 28, 2015.
[3] "Why South Dakota is a Tax Haven for the Rich" Rapid City Journal, April 10, 2016

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services component of our financial services industry will provide good, higher wage jobs for trust officers, financial advisors, accountants and attorney. This economic boon will generate more revenue for the state.

H.B. 7104 will encourage wealthy and middle class families to remain in Connecticut. Many middle class residents of Connecticut create trusts, and are beneficiaries of trusts. We must have adequate laws to protect all of them. By modernizing our trust law, we encourage all residents to remain in Connecticut.

The Uniform Trust Code (UTC) is a codification of the common law of trusts. It was first completed 19 years ago and has since been adopted by 35 states and the District of Columbia. Illinois is also currently considering adoption.

The UTC is a comprehensive law covering the creation, administration, modification, and termination of trusts. It imposes strict fiduciary duties on trustees and holds them accountable to trust beneficiaries. Most of Connecticut's thin trust laws date back to the mid-19th century and do not address the issues facing modern trustees. For example, the UTC addresses newer financial instruments, such as digital assets. Enacting H.B. 7104 will help Connecticut estate planners by allowing them to draft trusts for their clients with greater certainty that the terms of the trusts are enforceable under our state law. It will also prevent unnecessary litigation by clarifying and codifying our current trust laws, many of which are contained in court decisions.

Of particular importance, H.B. 7104 sets forth in clear terms the scope of probate court jurisdiction relative to trusts, and addresses the concurrent jurisdiction of probate and superior courts. The bill is NOT intended to change the common law regarding the scope of probate court powers and jurisdiction over trusts, but simply aims to avoid the ambiguity and confusion that is prevalent in trust-related probate matters. Section 15(c) of the act makes clear that the superior courts retain jurisdiction over testamentary trusts, as they always have, when the controversy require a remedy that cannot be addressed in the probate court because the probate court lacks the power to provide an adequate remedy, such as the inability of the probate court to offer a jury trial or to award damages or other equitable remedies that are not expressly granted to the probate courts by statute.

Twenty years ago, most trusts were drafted with a single trustee who served multiple roles: custodian of trust assets, accountant, investor, administrator, and liaison with the beneficiaries. In today's era of specialization, it is common to divide a trustee's traditional duties among two or more parties who have special expertise. The terms of a trust might constrain the trustee to act only as directed by an investment advisor, or a distribution director. We call these arrangements "directed trusts," and the non-trustee who holds some power over trust assets is called a "trust director." Following a two-year drafting process, the Uniform Law Commission approved the new Uniform Directed Trust

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Act (UDTA). Directed trusts require cooperation between trust directors and directed trustees. Under our current trust law, only the directed trustee is a fiduciary, and can be liable for breach of trust. Thus, currently it is not clear whether a trust director is liable for ordering the directed trustee to act. Trust directors may act with impunity if they believe they are shielded from liability, and directed trustees may not want to follow directions if they fear legal liability. Clarity requires drafting attorneys to use another state's law, and those states benefit from that resulting business, instead of Connecticut.

The UDTA addresses these issues by assigning each person fiduciary duties based on their role under the terms of the trust. For example, a trust director charged with overseeing investments has all the traditional duties of a trustee, but only with respect to investing trust assets. Under that same trust, a trustee who is not responsible for investing cannot be held responsible for investment decisions constituting a breach of trust. Each trust director and directed trustee is a fiduciary with respect to their specific functions as assigned by the terms of the trust, and a directed trustee has an additional duty. Directed trustees who are directed to commit "willful misconduct" can be held liable if they act as directed. This standard was adopted from the Delaware statute on directed trusts, which has proven workable.

Therefore, under a directed trust, the beneficiaries of a trust have *greater* protection than they would under a traditional trust structure: The trustee's traditional fiduciary duties are allocated between trustees and trust directors according to their function under the terms of the trust. In other words, the trustee's duties can be divided among several parties, but may not be reduced in the aggregate. In additional, the directed trustee cannot commit willful misconduct, even if directed to do so by a trust director. This is an additional safeguard to protect beneficial interests.

Connecticut is also behind the times in adopting some form of domestic asset protection trust laws, which exists now in at least 20 states. Twenty-five years ago, Connecticut adopted uniform legislation following the avalanche if support around the country for the creation of limited liability companies to expand and enhance the ability of our residents to limit liability in business affairs. Similarly, trusts have taken on a more significant role in the ability for individuals to limit their liability. The law is not designed to allow an individual to evade current or known creditors, but to provide some level of protection against future creditors after a prescribed statute of limitations has run. As a result of these statutes, many individuals move all or a portion of their significant investments to states with these favorable asset protection trust statutes. Connecticut residents are removing a substantial amount of their wealth out of Connecticut to states as near-by as Rhode Island and New Hampshire to protect those assets. The lack of such laws in Connecticut does not prevent the use of these trusts, it merely prevents Connecticut banks and trust companies, and other professional Trustee, from managing these trusts.

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H.B. 7104 was drafted by Estates and Probate Section of the Connecticut Bar Association with substantial input from the Connecticut Bankers Association and the Office of the Probate Court Administrator as stakeholders most impacted by the need for strong trust law in Connecticut. It will represent a major advancement for Connecticut trust law. I ask for your support, and I welcome your questions about this legislation.

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