

CBA LEGISLATIVE AGENDA

September 2018

The Connecticut Bar Association has authorized Association positions on the following issues for the 2018-2019 regular legislative session of the Connecticut General Assembly:

Elimination of Transcription Services. The CBA, on behalf of the Executive Committee, Litigation, Appellate Advocacy, Estates & Probate, Human Rights and Responsibilities, Law Librarians, Administrative Law and Education Law sections **oppose** legislation seeking the elimination of transcription services for public hearings at the legislature. Legislative intent will be missing in that dialogue between the person testifying and the legislator will not be available through transcription. Approved by the House of Delegates, June 18, 2018; expires end of 2021 Legislative session.

Threatening of Judges. The CBA, on behalf of the Executive Committee, **supports** legislation to increase penalties for threatening judges when the threat is related to the victim's official duties. Approved by the House of Delegates, September 19, 2016; expires end of 2019 Legislative session.

Civil Gideon. The CBA, on behalf of the Pro Bono Committee, **supports** legislation of a pilot program for counsel for indigents in civil restraining orders under CGS 46b-15. Currently applicants and respondents without sufficient funds lack access to counsel. This bill arises out of the Task Force for Right to Counsel in Civil Matters. Approved by the House of Delegates, September 18, 2017; expires end of 2020 Legislative session.

Tax on Legal Services. The CBA, on behalf of the CBA Executive Committee, **opposes** the imposition of any tax on legal services. Approved by the House of Delegates, December 11, 2017; expires end of 2020 Legislative session.

Legal Services to Homeless Veterans. The CBA, on behalf of the Pro Bono Committee, **supports** Congressional legislation in HR2703 (Legal Services to Homeless Veterans Act of 2017) that would amend Title 38, United States Code, to authorize the Secretary of Veterans Affairs to award grants or enter into contracts with public and private entities to provide pro bono legal services to homeless veterans and veterans at risk of homelessness. Such grants and contracts are subject to the availability of funds. Approved by the House of Delegates, June 19, 2017; expires end of 2020 Legislative session.

Conversion Therapy. The CBA, on behalf of the HRR & LGBT Sections, **supports** "An Act Concerning the Protection of Youth from Conversion Therapy" for which this bill protects youth under 18 years of age as these sections have long supported protecting of the LGBT community from discrimination and bully behavior from those who cannot accept the person as they are. Approved by the House of Delegates, March 20, 2017; expires end of 2019 Legislative session. (PA17-5).

Pro hac vice admission. The CBA, on behalf of the Unauthorized Practice of Law Committee supports a modification to Rule 2-16 of the Rules of Practice which provides for pro hac vice admission to non-admitted attorneys to appear in state and municipal agency, board and commission proceedings on the same terms and conditions for pro hac admission in Superior Court proceedings. The proposed rule change would clarify that any such requests go to the Judicial Branch, even if no court proceeding is pending. Approved by the House of Delegates, December 10, 2015; expires December 10, 2018.

Revised Uniform Arbitration Act. The CBA, on behalf of the Alternative Dispute Resolution Section and the Litigation Section, supports the Revised Uniform Arbitration Act as promulgated by the National Conference of Commissioners on Uniform State Laws, now called the Uniform Law Commission. Approved by the House of Delegates, June 20, 2016; expires end of 2019 Legislative session.

A CBA Section has an authorized position on the following issues during the 2018-2019 regular legislative session of the Connecticut General Assembly:

Alternative Dispute Resolution Section:

UNCITRAL Model Law on International Commercial Arbitration. The Alternative Dispute Resolution Section supports the revisions to the UNCITRAL Model Law on International Commercial Arbitration (CGS Statutes Title 50a). The revisions clarify a number of points not well-covered when the Model Law was drafted in 1985: interim measures of protection and to modernize the required form for an arbitration agreement. Approved by the House of Delegates, June 20, 2016; expires end of 2019 Legislative session.

UNCITRAL Model Law on Internal Commercial Conciliation (Mediation). The Alternative Dispute Resolution Section supports the UNCITRAL Model Law on Internal Commercial Mediation. While mediation used to be a rare thing, it has become more mainstream. It is used in international cases as well as domestic cases. Since there is an international "standard", it would keep Connecticut competitive internationally to have it. Approved by the House of Delegates, June 20, 2016; expires end of 2019 Legislative session.

Appellate Law Section:

Separation of Powers. The Appellate Advocacy section and the Litigation section opposes legislation in SB505 that may violate the separation of powers because it may interfere with a core judicial function, namely, how the Supreme Court and Appellate Court should decide appeals and what issues they may consider to reach those decisions. Also in SB 505 there may have unforeseen consequences on the ability of the Supreme Court and Appellate Court to correct grave constitutional error, plain error, or other instances of manifest injustice. Approved by the Executive Committee, J\April 16, 2018; expires end of 2019 Legislative session.

Business Law Section:

Establishing Benefit Limited Liability Companies. The **Business Law section supports** legislation creating a Connecticut Benefit Limited Liability Companies Act similar to the Connecticut Benefit Corporation Act. Approved by the House of Delegates, December 12, 2016; expires end of 2019 Legislative session.

Series LLC. The Business Law section **supports** legislation that will provide the ability to use one LLC to create divisions of the LLC in a series so each series can hold separate assets, potentially separate management, and retain legal independence from each division in the series. It has been authorized by the Uniform Law Commission. Approved by the House of Delegates, January 22, 2018; expires end of 2020 Legislative session.

Child Welfare and Juvenile Law:

Timely Notice in Child Protection. The Child Welfare and Juvenile Law Section **supports** legislation that would provide timely notice of child placement information from DCF to the attorney representing the child in a child protection matter. This is a reoccurring problem for attorneys representing children in child protection matters. These proposed changes are already the DCF policy regarding notice to the child's attorney; however, policy is often not followed and there is no accountability due to not following DCF's policy. Approved by the House of Delegates, March 19, 2018; expires end of 2020 Legislative session.

Commercial Finance Section:

Fraudulent Filings. The Commercial Finance section **supports** AAC Fraudulent Filings, with the recommendation that the proposed Act be amended to require the petitioner to send notice of the petition and proposed hearing date to all parties named in the filing having interests therein. The court should require proof of such notice before taking action on such petition. Approved by the House of Delegates, March 20, 2017; expires end of 2019 Legislative session. (PA17-99)

Commercial Law and Bankruptcy:

Regarding Bankruptcy Filing. The Commercial Law and Bankruptcy section **supports** proposed FEDERAL legislation, S2282, that would remove language currently contained in 28 U.S.C. § 1408 that permits companies to file for bankruptcy where they are incorporated or where smaller affiliates operate. Approved by the House of Delegates, March 19, 2018; expires end of 2020 Legislative session.

Construction Law Section:

State Contracts Enforcement. The Construction Law Section **supports** legislation which would authorize and allow the enforcement of state construction contracts signed by the State's authorized representatives. Approved by the House of Delegates, June 20, 2016; expires end of 2019 Legislative session.

Pass Through Claims. The Construction Law Section supports legislation amending C.G.S. §4-61 to allow general contractors to include subcontractor pass-through claims in a claim against the state arising out of a highway or public works contract without requiring the contractor to first admit liability for the subcontractor's claim. Approved by the House of Delegates, June 20, 2016; expires end of 2019 Legislative session.

Occupational Licensing and Building Trades and Contractor Debarment. The Construction law section opposes legislation which grants to the Labor Commission the authority to debar any person or firm from working on state or municipal projects for a period of up to five (5) years based on a finding by the Commissioner on the basis of "substantial evidence" listed in the legislation. The proposed bill is unnecessary because substantial authority already exists in current statutes to allow the Labor Commissioner to debar a contractor who knowingly and willfully violates said laws. Approved by the Executive Committee, April 23, 2018; expires end of 2019 Legislative session.

False Claims Act. The Construction Law Section opposes the establishment of a state False Claims Act which could potentially be misused. It would impose significant civil and criminal penalties; is an incorrect remedy for problems associated with the state contract bidding process; and would likely reduce business with the state and revenue. The Section is not opposed to legislation that would include penalties resulting from willful or intentional fraudulent conduct. Approved by the House of Delegates, June 20, 2016; expires end of 2019 Legislative session.

Disability Law Section:

Asset Limits. The Disability Law Section supports legislation that eliminates asset limits for individuals to qualify for the Med-Connect program, which provides Medicaid coverage to working individuals with disabilities. Approved by the House of Delegates, June 20, 2016; expires end of 2019 Legislative session.

Elder Law Section:

Protections of Elderly from Abuse. The Elder Law section opposes banking legislation calling on elder abuse protections that are too broad in scope and do not provide any procedural safeguards including notice, recourse, or appeal rights to the bank customer/elderly person. Approved by the House of Delegates, December 11, 2017; expires end of 2020 Legislative session.

Elder Exploitation. The Elder Law section opposes legislation which is intended to prevent elder abuse and exploitation but is so broadly drafted as to create significant adverse unintended consequences for the families of elderly citizens. Elderly being defined as anyone 60+. Approved by the House of Delegates, December 11, 2017; expires end of 2020 Legislative session.

Medicare Savings Program. The Elder Law Section opposes legislation which would decrease benefits provided under the Medicare Savings Program. Approved by the House of Delegates, March 19, 2018; expires end of 2020 Legislative session.

Money Follows the Person. The Elder Law section supports legislation that would increase the availability of home and community based services for the elderly and individuals under age sixty-five, including but not limited to, increasing the number of persons served in various Medicaid waiver programs and/or increasing the availability of services under the Money Follows the Person Program. Approved by the House of Delegates, December 11, 2017; expires end of 2020 Legislative session.

Training requirements for Senior Services. The Elder Law section opposes HB 5395, "An Act Concerning Training and Experience Requirements for Providers of Services to Senior Citizens," unless it is amended in Sections 1 and 2 to specifically exclude attorneys licensed to practice in the State of Connecticut. Approved by the House of Delegates, March 19, 2018; expires end of 2020 Legislative session.

Requiring Community Service. The Elder Law section opposes legislation that would require work or community service of those receiving public assistance. Approved by the House of Delegates, March 19, 2018; expires end of 2020 Legislative session.

To expand the definition of "exploitation" under C.G.S. § 17b-450. The Elder Law section supports legislation that would allow for a means by which to hold nursing home facilities responsible for offering legal advice to admitted patients and/or their families in qualifying for Medicaid, but said advice may not be in the best financial interest of the patient. Approved by the House of Delegates, March 19, 2018; expires end of 2020 Legislative session.

Surviving Spouse a Statutory Share. The Elder Law section opposes legislation that would provide a Probate Court judge with the discretion to award a surviving spouse a statutory share of an estate that exceeds one-third of all property passing under a will based on the equities of the case. Approved by the House of Delegates, December 11, 2017; expires end of 2020 Legislative session.

Inaccessible Assets. The Elder Law section opposes legislation from the Department of Social Services (DSS) to remove the word "inaccessible" as it applies to assets and income in Medicaid and certain other programs. Approved by the House of Delegates, January 23, 2017; expires end of 2019 Legislative session.

Applied Income. The Elder Law Section opposes legislation that would add additional grounds for allowing nursing home facilities to transfer or discharge patients, including but not limited to residents who fail to pay applied income to the facility for more than sixty days. Approved by the House of Delegates, June 20, 2016; expires end of 2019 Legislative session.

Transfer of Assets. The Elder Law Section opposes and seeks changes to proposed regulations effecting patient transfer of assets and nursing home eligibility qualifications issued by the Department of Social Services intending to implement provisions of the 2006 Federal Deficit Reduction Act (DRA). Approved by the House of Delegates, June 20, 2016; expires end of 2019 Legislative session.

Life Use Estates Regulations. The Elder Law Section opposes the CT Department of Social Services (DSS) proposed regulations to amend UPM Section 4030.35, which would change the calculation of interest on life use estates. This proposed regulation would greatly overstate the value of a life use. Approved by the House of Delegates, June 20, 2016; expires end of 2019 Legislative session.

Life Uses. The Elder Law Section opposes an expansion of the state's right of recovery for medical assistance benefits paid to include claims against life uses. Approved by the House of Delegates, June 20, 2016; expires end of 2019 Legislative session.

Elder Law and Human Rights & Responsibilities Sections

Aid in Dying. The Elder Law and the Human Rights and Responsibilities sections oppose legislation concerning "AAC Compassionate Aid in Dying for Terminally Ill Patients" unless additional safe guards are added, which would be that:

1. Care givers and heirs cannot be witness to the request by the patient;
2. Two independent physicians must sign off on the terminal nature of the illness;
3. Nothing in this Act shall limit the jurisdiction or authority of the Office of Protection and Advocacy for People with Disabilities to exercise its statutory powers;
4. The two independent physicians referenced in #2 above must advise the patient of the availability of counseling with a psychologist, psychiatrist or licensed clinical social worker.

As written, this bill would allow a physician to prescribe medication at the request of a mentally competent patient who has a terminal illness that such patient may self-administer to bring about his or her death. Approved by the House of Delegates, December 11, 2017; expires end of 2020 Legislative session.

Elder Law and Estates & Probate Section:

Statutory Share. The Estates and Probate and the Elder law sections oppose legislation to increase the value of a surviving spouse's statutory share. Approved by the House of Delegates, March 20, 2017; expires end of 2019 Legislative session.

Estates and Probate Section:

Estate Tax Exemption. The Estates & Probate supports legislation to adjust the Connecticut estate tax exemption to match the federal estate tax exemption. Approved by the House of Delegates, March 20, 2017; expires end of 2019 Legislative session.

Gift Tax Repeal. The Estates & Probate section supports legislation to eliminate the Connecticut gift tax. Approved by the House of Delegates, March 20, 2017; expires end of 2019 Legislative session.

Environmental Law and Real Property Sections:

Green Bank. The Environmental Law and Real Property Sections support an amendment to legislation regarding the residential Property Assessed Clean Energy (PACE) Financing program which (i) deletes recent legislation to utilize a super lien and replaces it with text that would make the resulting residential PACE lien subject to existing liens of record and (ii) supports the remaining provisions of such proposed legislation. Approved by the House of Delegates, June 19, 2017; expires the end of the 2020 Legislative session.

Family Law Section:

Non- Adversarial Divorce. The Family Law Section opposes Section 3 of HB7196, “AAC Non-Adversarial Divorce” noting that if the court were to allow default judgements, 14 days is too short a time period. We believe that there should be a longer time period in divorce cases. Approved by the House of Delegates, March 20, 2017; expires end of 2019 Legislative session. (PA17-47)

Family Court evaluations. The Family Law section opposes legislation that would (1) allow each parent to select his/her own evaluator in a child custody case, (2) potentially delay necessary medical care for a child, (3) remove the child’s guardian ad litem from the list of persons who may receive a copy of an evaluation report, and (4) permits copies of such a report to be provided directly to the parents. Approved by the Executive Committee, April 23, 2018; expires end of 2019 Legislative session.

Litigation Privilege. The Family Law Section opposes abolishment of common law immunity for attorneys for statements made in a courtroom in the prosecution of a case. Approved by the House of Delegates, December 11, 2017; expires end of 2020 Legislative session.

Alimony Deduction. The Family Law Section opposes in federal legislation (HR 1) the repeal of Sections 215 and 71 of the Internal Revenue Code, which provide for an income tax deduction for individuals who pay qualifying alimony, and require recipients to declare taxable alimony as income. Approved by the House of Delegates, December 11, 2017; expires end of 2020 Legislative session.

DPH and Family Court. The Family Law Section opposes legislation that seeks to establish a task force to study the Department of Public Health’s “involvement” in the family court system. Approved by the House of Delegates, December 11, 2017; expires end of 2020 Legislative session.

Relocation. The Family Law section supports legislation which would amend C.G.S. 46b-56d to add “the court should not inquire or permit inquiry or consider whether the person seeking relocation of a child will relocate without the child if relocation of the child is denied.” Approved by the House of Delegates, December 11, 2017; expires end of 2020 Legislative session.

Alimony reform. The Family Law section supports legislation which would codify the recommendations of the 2014 Alimony Reform Task Force with the exception of the cohabitation provision. Approved by the House of Delegates, January 23, 2017; expires end of 2019 Legislative session.

Immunity. The Family Law section opposes legislation which would eliminate the absolute quasi-judicial immunity conferred upon AMCs and GALs by Carrubba v. Moskowitz, 274 Conn. 533 (2005) or to further restrict their qualifications, timing of their appointment, compensation, scope of duties, or exercise of their discretion. Approved by the House of Delegates, January 23, 2017; expires end of 2019 Legislative session.

Custody. The Family Law section opposes any attempt to reduce or eliminate judicial discretion to enter orders regarding custody or parental access (visitation) or eliminate the “best interests of the child” standard. Approved by the House of Delegates, January 23, 2017; expires end of 2019 Legislative session.

Parental Alienation in Statute. The Family Law section opposes adding “Parental Alienation” to the C.G.S. §46b-56 factors which the court must consider in making a custody determination. Approved by the House of Delegates, January 23, 2017; expires end of 2019 Legislative session.

Immunity for Psychologists & Psychiatrists. The Family Law section supports legislation which would confer quasi-judicial immunity in tort litigation on licensed psychologists appointed by the court to perform forensic evaluations of the parties and/or their child(ren) in custody cases and to further support legislation or practice rules which would require that psychological evaluations entered as exhibits be sealed in the court’s file. Approved by the House of Delegates, January 23, 2017; expires end of 2019 Legislative session.

Supervised Visitation. The Family Law section opposes legislation which would limit the circumstances under which the court might order supervised visits between a parent and child, or limit the period during which supervised visits may be ordered, or limit the qualifications of providers, or otherwise limit the court’s discretion to enter visitation orders designed to protect the best interests of the child. Approved by the House of Delegates, January 23, 2017; expires end of 2019 Legislative session.

Litigation Section:

Court Reporters. The Litigation section supports legislation requiring the state licensing of shorthand reporters. Approved by the House of Delegates, March 19, 2018; expires end of 2020 Legislative session.

Summary Judgement Deadlines. The Litigation Section supports an amendment to Practice Book Section 17-45 that changes the time deadlines for responding to a summary judgement motion to 45 days after filing the motion, with argument to take place 65 days after filing the motion. Approved by the House of Delegates, December 10, 2015; expires December 10, 2018.

Separation of Powers. The Appellate Advocacy section and the Litigation section opposes legislation in SB505 that may violate the separation of powers because it may interfere with a core judicial function, namely, how the Supreme Court and Appellate Court should decide appeals and what issues they may consider to reach those decisions. Also in SB 505 there may have unforeseen consequences on the ability of the Supreme Court and Appellate Court to correct grave constitutional error, plain error, or other instances of manifest injustice. Approved by the Executive Committee, April 16, 2018; expires end of 2019 Legislative session.

Self-incrimination. The Litigation Section opposes a proposed rule revision to Codes of Evidence regarding “Privilege against self-incrimination” that would protect only natural persons and not corporations whereas corporations in Connecticut do not enjoy privilege against self-incrimination. The opposition is within the commentary of the proposed rule. Approved by the House of Delegates, December 11, 2017; expires December 11, 2020.

Black Boxes. The Litigation Section opposes that black boxes be automatically subject to production pursuant to section 13-3 of the Practice Book. Rather than be automatically required, the need for production should be case to case basis, thus not imposing undue burden and expense. Approved by the House of Delegates, December 11, 2017; expires December 11, 2020.

Planning & Zoning Section:

Affordable Housing Applications. The Planning and Zoning Section supports to make amendments in 8-30g of the proposed bill. Approved by the House of Delegates, March 20, 2017; expires end of 2019 Legislative session.

Professional Discipline Section:

Rule 1.11. The Professional Discipline Section opposes a proposed amendment to Rule 1.11 of the Practice book, regarding Special Conflicts of Interest for Former and Current Government Officers and Employees. The proposed amendment seeks to prohibit grievance counsel, disciplinary counsel, bar counsel, and members of the grievance committee and panels from representing clients before the grievance committee and panels for one year after serving in their disciplinary role. Approved by the House of Delegates, December 11, 2017; expires December 11, 2020.

Real Property Section:

Infinite Duration of the Succession, Estate and Probate fee liens. The Real Property section supports legislation to address the fact that a) Probate Court fee liens and estate/successions tax liens are of infinite duration; and b) property is sometimes conveyed or mortgaged without such liens being cleared. Approved by the House of Delegates, December 12, 2016; expires end of 2019 Legislative session.

Quit Claim Deed. The Real Property opposes legislation to require both the grantor and the grantee, or their duly authorized legal representatives, to be present at the time a quitclaim deed is executed. Approved by the House of Delegates, March 20, 2017; expires end of 2019 Legislative session.

Internal Revenue Code 1031. The Real Property Section opposes federal legislative efforts to (a) repeal section 1031 of the Internal Revenue Code, and (b) limit the amount of capital gains which can be deferred in a section 1031 tax deferred exchange. Approved by the House of Delegates, September 21, 2015; expires September 21, 2018.

Good Funds. The Real Property Section supports legislation to require lenders to deliver 'good funds' for real estate closings no later than the day scheduled for such real estate closings, which would be a reinstatement of 36a-758a, which was repealed in 2007 Approved by the House of Delegates, June 20, 2016; expires end of 2019 Legislative session.

Tax Law Section

Carried Interest. The Tax Law Section opposes federal regulations regarding "carried interest" as proposed through the Department of the Treasury. Approved by the House of Delegates, December 10, 2015; expires December 10, 2018.

Veterans and Military Affairs Section:

Mental Health Resources for Veterans. The Veterans and Military Affairs section supports legislation to expand the VA commissioner's obligations requiring the commissioner in consultation with the Mental Health and Addiction Services Commissioner to collect data to better identify mental health needs of members of the armed forces and direct resources to address such needs, hopefully leading to more efficient use of resources to provide aid. Approved by the Executive Committee, April 23, 2018; expires the end of the 2019 Legislative session.

Veterans Training Program for judges. The Veterans and Military Affairs section supports legislation that would require the chief court administrator to establish a training program for judges regarding mental health and PTSD issues affecting veterans who are involved in the criminal justice system. Approved by the Executive Committee, April 23, 2018; expires the end of the 2019 Legislative session.

Workers Compensation Section:

Repeal of the Medical Panel in Occupational Disease Cases. The Workers Compensation section supports legislation to repeal C.G.S. section 31-298a. The medical panel concept, enacted in 1981 to establish a panel of five to ten expert pulmonologists "for use in solving controverted medical issues in claims for workers' compensation due to occupational lung disease," failed decades ago for a number of reasons. Approved by the Board of Governors, September 17, 2018; expires end of 2019 legislative session.

Repeal of the Destruction of Workers' Compensation Agreements Filed in Superior Court.

The Workers Compensation section supports legislation to repeal C.G.S. section 31-304. This provision has been obsolete since the 1980 creation of the Compensation Review Division, now Compensation Review Board which now handles all appeals. Approved by the Board of Governors, September 17, 2018; expires end of 2019 legislative session.

Repeal of the Transfer of Employer Liability to the Second Injury Fund.

The Workers Compensation section supports legislation to repeal of CGS 31-349, subsections (b) through (f). A basic principle of workers' compensation law is that the employer takes the employee as he finds him or her at the time of an injury arising out of and in the course of employment. This principle means that the effects of preexisting conditions, latent tendencies or predispositions are fully compensable, when they increase the pathological effects of a work-related injury or disease. Approved by the Board of Governors, September 17, 2018; expires end of 2019 legislative session.

A CBA committee has an authorized position on the following issues during the 2018-2019 regular legislative session of the Connecticut General Assembly:

Immigration Law and the Diversity & Inclusion Committees

Qualifications for admission to the bar. The Immigration Law and the Diversity & Inclusion Committees support a proposal before the Rules Committee of the Superior Court by the Quinnipiac School of Law Civil Justice Clinic to amend Section 2-8 of the Practice Book regarding qualifications for admission to the bar. Approved by the Executive Committee, January 26, 2018; expires January 26, 2019.

*** Although there are a number of authorized positions that have become public acts either through the Legislature or through the Practice Book rule changes approved at the annual judges meeting (note parenthesized), the positions remain on this Legislative agenda until the authorization expires.*