



Office of the Attorney General
State of Connecticut

**TESTIMONY OF
ATTORNEY GENERAL GEORGE JEPSEN
BEFORE THE JUDICIARY COMMITTEE
MARCH 20, 2017**

Good morning Senators Doyle and Kissel, Representatives Tong and Rebimbas, and distinguished members of the Judiciary Committee. I appreciate the opportunity to provide testimony in support of Senate Bill 1021, *An Act Revising the Uniform Fraudulent Transfer Act*. This bill would revise Connecticut's fraudulent transfer law to make clear that payments made by a parent or guardian to a college or university in furtherance of an adult child's college education are not voidable.

This bill has been proposed in response to scores of cases brought by Chapter 7 bankruptcy trustees in Connecticut and throughout the United States. In those cases, Chapter 7 trustees have used state fraudulent transfer laws to require colleges and universities to pay back to bankruptcy estates amounts parents and guardians paid colleges and universities for their children's college education. Some bankruptcy courts have held that such payments may be voided under state fraudulent transfer laws because a parent or guardian has no legal obligation to pay for a child's college education and the parent or guardian, therefore, did not receive "reasonably equivalent value" for the payments.

In these cases, bankruptcy trustees have used Section 544(b) of the Bankruptcy Code, which gives bankruptcy trustees the rights of a hypothetical creditor under applicable state fraudulent transfer laws. State fraudulent transfer laws, including Connecticut's laws, typically have longer statutes of limitations than other applicable provisions of the federal Bankruptcy Code.

Bankruptcy trustees have used these laws with increasing frequency to attempt to claw back parents' and guardians' payments to colleges and universities long before a parent or guardian files for bankruptcy. Dozens of cases are now pending in Connecticut bankruptcy courts and several others, including cases brought against Connecticut state colleges and universities, have resulted in settlements in which the colleges and universities paid to the bankruptcy estate some portion of the amounts at issue.

This has had an adverse financial impact on both public and private colleges and universities. It also has created problems for students, who following a successful challenge or settlement may encounter difficulties obtaining their degrees and transcripts or transferring credits, unless and until they pay back to the colleges and universities the amounts recovered by the bankruptcy trustees.

I believe that, as a matter of policy, the state should exempt from our state fraudulent transfer laws payments made and obligations incurred by a parent or guardian to a college or university in furtherance of a child's undergraduate education. Even though a parent or guardian may not technically have a legal obligation to make such payments, parents and guardians unquestionably receive value for their children's college education. Our state laws should recognize that value – not create legal or financial disincentives for parents or guardians. State law also should not impose additional financial burdens on students whose parents made payments on their behalf.

I am suggesting alternative, substitute language to simplify this proposal. Rather than amending the UFTA's definitions, I propose adding a new subsection to Section 52-552i of the General Statutes, which sets forth current defenses to UFTA causes of action. Specifically, I propose adding a new subsection (g) to Section 52-552i, which would read as follows:

(g) A transfer or obligation is not voidable under subdivision (2) of subsection (a) of section 52-552e or section 52-552f against an institution of higher education, as defined in 20 USC 1001, if the transfer was made or obligation incurred by a parent or guardian on behalf of a minor or adult child in furtherance of the child's undergraduate education.

Thank you for the opportunity to provide testimony in support of this important proposal. Please feel free to contact me if you have any questions or concerns.