

Legislative History for Connecticut Act

HB 6974	PA 267	1993
House 8851-8858		(8)
Senate 4081, 4086-4088		(4)
Judiciary 1452, 1454-1458, 1472-1482, 1538-1539, 1578-1592		(28)
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Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate  
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CONNECTICUT  
GEN. ASSEMBLY  
HOUSE

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8782-9150

gmh

House of Representatives

Thursday, May 27, 1993

611, which you will find on Page 8, Substitute for  
House Bill 6974, AN ACT ADOPTING THE CONNECTICUT  
LIMITED LIABILITY COMPANY ACT. Favorable Report of the  
Committee on Finance.

REP. TULISANO: (29th)

Mr. Speaker.

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, I move for acceptance of the Joint  
Committee's Favorable Report and passage of the bill.

SPEAKER RITTER:

Motion is on acceptance and passage. Please  
proceed, Sir.

REP. TULISANO: (29th)

Yes, Mr. Speaker. Mr. Speaker, the bill before us  
establishes a new form of business relationship which  
reflects the best of a sub-chapter S corporation, an  
individual ownership made possible by a 1988 IRS tax  
ruling. It is around the country a growing, a new form  
of business entity. It provides many tax benefits for  
entrepreneurs and this is based on a uniform act and it  
does need an amendment.

So, Mr. Speaker, I'd like to call, request that LCO  
Number 6251 be called. LCO6251, Mr. Speaker.

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SPEAKER RITTER:

The Clerk has LCO6251 which will be designated House "A". The Clerk please call it.

The Clerk please call LCO6251, I'm sorry, Representative Tulisano.

REP. TULISANO: (29th)

I'm sorry, 7251.

SPEAKER RITTER:

7251 please. Thank you.

REP. TULISANO: (29th)

And permission to summarize, Mr. Speaker. The amendment, Mr. Speaker, picks up some technical changes --

SPEAKER RITTER:

Hold on, hold on, hold on --

CLERK:

LCO7251, House "A" offered by Representative Tulisano.

SPEAKER RITTER:

The amendment is in your possession, Sir. What's your pleasure?

REP. TULISANO: (29th)

Permission to summarize, Mr. Speaker.

SPEAKER RITTER:

Please proceed.

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REP. TULISANO: (29th)

Yes, Mr. Speaker. Mr. Speaker, the amendment picks up some technical flaws that were found as we proofread the bill after it was printed from the Judiciary Committee.

It also inserts a series of fees which were inadvertently left out which reflect similar fees that would be charged for filing the same document for a corporation. In effect, Mr. Speaker, since these entities would, could very well be an option other than corporate fees and they follow exactly in the same line, I move for adoption of the amendment.

SPEAKER RITTER:

The question is on adoption. Will you remark further? Representative Chase.

REP. CHASE: (120th)

Mr. Speaker, I notice in Section 70, that we have some fee increases. I was wondering, through you, can the proponent please tell us what the fiscal note is on this amendment.

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker, I don't happen to have a fiscal note in my possession, Mr. Speaker. Through

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you, Mr. Speaker.

SPEAKER RITTER:

We'll stand at ease for a moment. We have one. We'll be happy to distribute it to the friends on the other side.

Representative Tulisano, does Representative Chase have a copy of the fiscal note? Why don't we hang on and let Representative Chase get a copy also? Could we please make sure that Representative Chase has a copy.

Okay, Representative Chase, we only have the goldenrod. Is that okay if Representative Tulisano summarizes the goldenrod, Sir?

REP. CHASE: (120th)

That's fine, Mr. Speaker.

SPEAKER RITTER:

Thank you. Representative Tulisano, can you please summarize what's on the goldenrod of the fiscal note?

REP. TULISANO: (29th)

Through you, Mr. Speaker, the goldenrod indicates that effectively the fiscal note that is noted in the file copy is confirmed, because I think what happened is, they computed it, but never printed it in the file copy.

The language is, the amendment would conform the bill to the intent of the physical impact that was

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originally identified, and that's in the file copy and now I'm going to look in the file copy and tell you what it says.

In the original file copy it says there is minimal revenue impact for 94-95.

REP. CHASE: (120th)

Thank you, Mr. Speaker, I appreciate the response.

SPEAKER RITTER:

Thank you, Sir. Anyone else comment on House Amendment "A"? If not, Representative Gavin, Sir, you have the floor.

REP. GAVIN: (133rd)

Thank you, Mr. Speaker. I also rise to support this bill, on the amendment. On the amendment. I agree with the amendment, too. I'll wait for the bill, Mr. Speaker.

SPEAKER RITTER:

Thank you, Sir. Why don't we just try our minds. All in favor say aye.

REPRESENTATIVES:

Aye.

SPEAKER RITTER:

Opposed, nay. House "A" is adopted. Anyone else care to comment on the bill as amended? I thought you mind. Representative Gavin, Sir, you have the floor.

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REP. GAVIN: (133rd)

Thank you, Mr. Speaker. I rise to support this bill. I think that it's a couple of things in the history here. The Department of Revenue Service has already agreed to tax entities like this that are formed in other states as a partnership and what this bill does is allow companies to create this form of entity in Connecticut and be taxed the same way.

As Representative Tulisano said, it is a form that's sweeping the nation. Eighteen other states have joined in creating this form and I believe that this is an excellent tool in our arsenal in attracting business to the State, and I urge its adoption. Thank you.

SPEAKER RITTER:

Thank you, Representative Gavin. Staff and guests come to the well of the House. The machine will be opened.

CLERK:

The House of Representatives is voting by roll.

Members report to the Chamber please. The House is taking a roll call vote. Members please report to the Chamber.

SPEAKER RITTER:

If all the members have voted, please check the roll call machine to make sure that your vote is

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properly cast. The machine will be locked and the Clerk will please take the tally.

Representative Ireland. Representative Ireland is in the affirmative.a

Representative Dillon.

REP. DILLON: (92nd)

Mr. Speaker.

SPEAKER RITTER:

Representative Dillon.

REP. DILLON: (92nd)

In the affirmative. Representative Ireland, do we have Representative Ireland in the affirmative? Okay. Representative Joyce.

REP. JOYCE: (25th)

In the affirmative, Sir.

SPEAKER RITTER:

In the affirmative. The distinguished Majority Leader.

REP. LUBY: (82nd)

In the affirmative, Mr. Speaker.

SPEAKER RITTER:

In the affirmative. Anyone else? The Clerk please announce the tally.

CLERK:

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House Bill 6974 as amended by House "A".

Total number voting	142
Necessary for passage	72
Those voting yea	142
Those voting nay	0
Those absent and not voting	9

SPEAKER RITTER:

The bill as amended passes. Please continue with the Call of the Calendar, 579.

CLERK:

Calendar 579, on Page 31.

SPEAKER RITTER:

Honorable Representative Richard Tulisano.

CLERK:

Excuse me. Substitute for Senate Bill 1093, AN ACT PROHIBITING EX PARTE JUDICIAL ORDERS ENJOINING ENFORCEMENT OF ENVIRONMENTAL LAWS. Favorable Report of the Committee on Environment.

SPEAKER RITTER:

Representative Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, I move acceptance of the Joint Committee's Favorable Report and passage of the bill in concurrence with the Senate.

SPEAKER RITTER:

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Temporarily. Calendar Item No. 577 Passed Temporarily.  
Calendar Item No. 581, Substitute for House Bill  
No. 6974, I would move this to the Consent Calendar.

THE CHAIR:

Is there any objection to moving Senate Calendar  
581, Substitute for House Bill 6974, to the Consent  
Calendar? Any objection? Hearing none, so ordered.

SENATOR DIBELLA:

Calendar Item No. 583 is Pass Retained. Calendar  
Item No. 584 is Passed Temporarily.

On Page 8, Calendar Item No. 586, Substitute for  
House Bill No. 6797, I would move this to the Consent  
Calendar.

THE CHAIR:

Is there any objection to placing Senate Calendar  
586; Substitute for House Bill 6797, on the Consent  
Calendar? Any objection? Hearing none, so ordered.

SENATOR DIBELLA:

Calendar Item No. 590 is Passed Temporarily.  
Calendar Item No. 593 through Calendar Item No. 595,  
Pass Retained.

On Page 9, Calendar Item 596 through Calendar 599,  
Pass Retained.

On Page 10, Calendar Item No. 600 through 605, the  
full page, Pass Retained.

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Senate. Will all Senators please return to the Chamber. An immediate roll call has been ordered in the Senate. Will all Senators please return to the Chamber.

THE CHAIR:

Thank you very much, Mr. Clerk. The issue before the Chamber is Consent Calendar No. 1 for today, Friday, June 4, 1993. Mr. Clerk, would you please read the items which have been placed on that Consent Calendar?

THE CLERK:

Calendar Page 5, Calendar No. 519, Substitute for House Bill 5464.

Calendar Page 6, Calendar No. 559, Substitute for House Bill 6701.

Calendar Page 7, Calendar No. 581, Substitute for House Bill 6974.

Calendar Page 8, Calendar No. 586, Substitute for House Bill 6797.

Calendar Page 18, Calendar No. 147, Substitute for Senate Bill 88.

Calendar Page 19, Calendar No. 493, Substitute for House Bill 5484.

Calendar Page 19, Calendar No. 539, Substitute for House Bill 6945.

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Calendar Page 20, Calendar 153, Substitute for  
Senate Bill 847.

Calendar Page 22, Calendar No. 394, Substitute for  
House Bill 7060.

Madam President, that completes the first Consent  
Calendar.

THE CHAIR:

Thank you very much, Mr. Clerk. You've heard the  
items that have been placed on Consent Calendar No. 1  
for today, Friday, June 4, 1993. The machine is on.  
You may record your vote.

SENATOR SCARPETTI:

Madam President.

THE CHAIR:

Senator Scarpetti.

SENATOR SCARPETTI:

A Point of Personal Privilege please. I just got  
some information down from the House on our first  
annual Sneaker Day. I was just told by Representative  
Serra that we raised \$1,600 for the Hartford Food Bank,  
is it? The Hartford Food Share and I think we deserve  
a round of applause. Thank you, Madam President.

APPLAUSE

THE CHAIR:

Thank you very much, Senator Scarpetti. Senator

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DiBella, the vote please. Senate Peters. Senator Jepsen is out of the Chamber. Senator Lovegrove.

Have all Senators voted and are your votes properly recorded? Have all Senators voted and are your votes properly recorded? The machine is closed.

The result of the vote:

35 Yea

0 Nay

1 Absent

Consent Calendar No. 1 is adopted and I think the Senate will stand at ease for a minute.

The Senate please come to order and the Chair will recognize Senator DiBella.

SENATOR DIBELLA:

For the purpose of a change in markings.

THE CHAIR:

Yes, sir.

SENATOR DIBELLA:

On Page 5, Calendar Item No. 520, Substitute for House Bill No. 6368, I would move this to the Consent Calendar.

THE CHAIR:

Is there any objection to placing Senate Calendar 520, Substitute for House Bill 6368, on the Consent Calendar? Is there any objection? Hearing none, so

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Passage of this bill would have the effect of awarding clients who refuse to cooperate or who are disruptive or dangerous during the time in treatment by permitting him to apply his time spent in treatment towards the completion of the sentence. Previous diversion statutes contained a provision like this one presented in the bill. It lead to the misuse of the treatment system by persons wishing to avoid prosecution for their crimes and made it difficult to remove an inappropriate client from the program.

Often the diverted client chose to remain in the program, not for the treatment benefits, but to gain additional credit against --.

(Gap in cassette switching 1a to 1b)

-- situations occurred that were disruptive and dangerous for other treatment clients and staff. CADAC, with the representatives of all criminal justice agencies participated in the Law Review Commission in adopting the current diversion program which was adopted by the legislature in PA89-390.

The new legislation clarified the different roles of the treatment and criminal justices systems and clearly indicated to all parties that treatment is not a form of punishment and should not be treated as such.

The language, as adopted, was the result of a hard-won consensus among the broad range of interest groups working with the Law Revision Commission. CADAC requests that we not relinquish the significant improvements made to the Diversion Program in 1989 and urges you to reject SB974.  
Thank you.

REP. TULISANO: Questions? Thank you very much. Paul Audley.

DEP. SEC. OF STATE PAUL AUDLEY: Good morning, Senator SB 184  
Jepsen, Representative Tulisano and members of the HB 6974  
committee. I'm Paul Audley, Deputy Secretary of  
the State. I have with me the afternoon our  
Managing Attorney, Maria Greenslade and an Attorney

There really is no reason that they have to have a continuing resolution, more or less, from their shareholders because they have continued their life during that period and it simply is a complete diversion from the way we currently do business and from the way the model act and other states in the country do business at this time and we urge your rejection of SB184.

The second bill that I'd like to talk about is HB6974, limited liability companies. We've given you materials on this with many technical changes to the bill that's been recommended to you and brought up by the committee. We were approached by the Bar's Subcommittee on Limited Liability Corporations, which is a cooperative committee between their Corporation Section and their Tax Section, and asked to comment and what we did basically was to go through it and find areas that, as far as we were concerned, from an administrative point of view, needed some alterations.

I'd like to highlight only a few of those for you. One of the ones that have raised --.

REP. TULISANO: Excuse me, have you give those -- where are those? Is that in our packet?

DEP. SEC. OF STATE PAUL AUDLEY: It should be. they were delivered earlier today. It's a letter. The front of it is addressed to Senator Jepsen and Representative Tulisano and then there's technical points that follow.

One of the primary concerns we have is that under the proposed bill, the limited liability company's name is not required to be distinguishable from other names registered by stock corporations or reserved for nonstocks and the problem there obviously is we could have corporations with exactly the same name doing business in the state, one under one section and another under the other.

REP. TULISANO: Do we have that law that now restricts that kind of problem between limited partnerships and corporations?

DEP. SEC. OF STATE PAUL AUDLEY: Yes.

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REP. TULISANO: We did that, didn't we?

DEP. SEC. OF STATE PAUL AUDLEY: The language we use in the state is it has to be distinguishable on the record and that's what we want to continue with.

REP. TULISANO: On the record with regard to corporations and limited partnerships?

DEP. SEC. OF STATE PAUL AUDLEY: Yes.

REP. TULISANO: And right now we have that similar law for limited partnerships and corporations?

DEP. SEC. OF STATE PAUL AUDLEY: Yes, that's correct.

REP. TULISANO: I just want to make sure.

DEP. SEC. OF STATE PAUL AUDLEY: And we want to continue that, obviously, for purposes of not creating confusion between these different methods of being a corporation.

There's a section that causes us an administrative headache that requires duplicate copies to be filed with us which was part of a model act. We've done away with duplicate copies in all the other areas and it does create a paper nightmare for our office, if that was included.

It lacks the ability of a foreign corporation to appoint the Secretary of the State as Agent for Service of Process. Most -- in foreign corporate law they are allowed to do that. We think it's very important that they continue to be allowed to do that and we would recommend that that be added in as well for legal purposes and for the courts.

REP. TULISANO: I think this -- has this been shared with the Bar Association?

DEP. SEC. OF STATE PAUL AUDLEY: Yes, it has.

REP. TULISANO: And the folks?

DEP. SEC. OF STATE PAUL AUDLEY: The letters have been sent and we've been working with them and they have received this. They have not responded at this time, but they do have all of this information.

REP. TULISANO: Okay.

DEP. SEC. OF STATE PAUL AUDLEY: There are not -- because there is no provision for appointing us as a statutory agent, there are also no procedural guidelines for us to follow when we are appointed statutory agent, so those two points are put in together.

Under the current proposal, any fees that are sent in to us have to be returned if the application is rejected. We currently do not do that in other cases. We put them on account. This is the control. They have to go through a refund process to get them and it would mean changing a great deal of procedures.

The automated system that we're putting in addresses this need as well and fees in general have not been included. Just for your information, when fees are discussed, we would recommend that they be closer to a limited partnership fee schedule than corporate. Our review of the bill shows it to be closer to that in form.

Penalties are not addressee and we have a little paragraph about what to do with penalties for foreign corporations as well.

The periodic reports we're going to raise as an issue. They are not at this time required to -- in the bill, required to file periodic reports with our office. This creates a problem for us obviously in the long run when we have no way of knowing if the corporation, the limited liability company continues to exist or goes out of business or leaves the state or does anything else and those would remain in the data base forever and in many cases would then keep that corporate name tied up.

REP. TULISANO: You don't have to go line for line.

DEP. SEC. OF STATE PAUL AUDLEY: This is a lot of them.

REP. TULISANO: But I want to know one thing. You've got suggested fees in this, the amount.

DEP. SEC. OF STATE PAUL AUDLEY: Do we have them?

REP. TULISANO: Yes.

DEP. SEC. OF STATE PAUL AUDLEY: No.

REP. TULISANO: You have suggested penalties in here?

DEP. SEC. OF STATE PAUL AUDLEY: No, we did not include (inaudible).

REP. TULISANO: Okay, all the things you think are missing, have you made suggestions to what they be?

DEP. SEC. OF STATE PAUL AUDLEY: We have suggested to the people who drafted this in the Bar Committee that they parallel the limited partnership.

REP. TULISANO: We would appreciate your telling us what you think those parallels are.

DEP. SEC. OF STATE PAUL AUDLEY: I can certainly give you a copy of that fee schedule.

REP. TULISANO: And we have a minimum tax for corporations every year, \$250?

DEP. SEC. OF STATE PAUL AUDLEY: Yes.

REP. TULISANO: Do you have a minimum tax for limited partnerships yet?

DEP. SEC. OF STATE PAUL AUDLEY: No, we do not.

REP. TULISANO: You might have this year.

DEP. SEC. OF STATE PAUL AUDLEY: You may add that.

REP. TULISANO: Should we have a minimum tax for these organizations?

DEP. SEC. OF STATE PAUL AUDLEY: It is not proposed.

REP. TULISANO: Okay, thank you.

DEP. SEC. OF STATE PAUL AUDLEY: The last thing I'd like to point out is that we would like to include, and it has not been included, a section on interrogatories. They are currently used in corporations and limited partnerships, in particular, when they're foreign businesses, to

The S corporation also requires all profits to be shared pro rata with their stock, the LLC has no such restrictions.

The advantage of the LLC over a limited partnership is that no member need be liable for the entity, unlike a limited partnership, a general partner has to be liable.

Moreover, in a limited partnership, a limited partner may not participate in the management of the entity without losing his limited liability. In an LLC a member may participate without losing limited liability.

These are the major reasons why there is such a rapidly growing interest in LLC legislation. I detailed in my written testimony the specific aspects of the corp -- the regular corporation, the S corporation, and the partnerships, both general and limited for you to compare why the LLC is more advantageous than any of these entities.

We also -- I'm sorry. From a tax standpoint then the LLC will allow businesses greater flexibility in conducting their affairs. From an economic development standpoint, enactment of the statute will send a message to the business community that Connecticut is a state which is attempting to remain competitive as a location for conducting business.

With Rhode Island already having enacted the statute and New York looking at it and Massachusetts studying it, I think Connecticut, to stay competitive, should, would be well served to have similar legislation.

The CBA also supports a proposed amendment to allow interstate entities, which employ professionals who establish themselves as LLC's in Connecticut. This amendment is similar to the Connecticut Professional Corporation Act which allows interstate entities employing professionals to establish themselves as PC's in Connecticut.

I should point out that allowing the professionals to conduct themselves as LLC will in no way limit the professional himself or herself from personal liability for his or her negligence. We're just saying that no other professional would be liable for his colleagues negligence in such case.

I will be glad to entertain any questions.

REP. TULISANO: There is another letter we received from Huston, Putnam, Lawry which you may or may not be aware of who deals in a lot of international law. Are you aware of that letter at all?

RICHARD CONVICER: I spoke with Mr. Lawry yesterday.

REP. TULISANO: Okay. I think he raises issues dealing with international, basically, individual -- has that been taken into consideration yet?

RICHARD CONVICER: I told Mr. Lawry that I would look at his comments and I don't think that from a substitutive point of view that there's going to be any different --

(cass 2) (cassettes 1 and 2 don't connect, small gap)

REP. TULISANO: Okay, so you will report back, I will see you at the office Monday or Tuesday and you will let me know at some point in time?

RICHARD CONVICER: Yes.

REP. TULISANO: Okay. Second part is that the Secretary of State's mini comments. Has that been taken up by the Bar Association?

RICHARD CONVICER: Our lobby -- I'm sorry. Our legislative liaison has -- Mary O'Connor, has made me aware of those comments and we are going to my subcommittee hopefully next week -- is going to immediately implement those changes.

REP. TULISANO: You don't see any problem with those changes?

RICHARD CONVICER: No, I don't. I have a question regarding one but I don't expect it will be a problem.

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REP. TULISANO: Fees? What do you think the fees should be? They raised an issue of fees.

RICHARD CONVICER: I think the fee should be either similar to that which is presently paid by a limited partnership, which I don't know what that fee is offhand, or perhaps an amount equal to \$250 which is the minimum corporate tax.

REP. TULISANO: And how about -- what do you think will happen -- have the Feds caught up with this thing yet?

RICHARD CONVICER: The Feds are the originators of all the interest in this area. None of us heard of LLC's until recently. What happened in 1988, the IRS issued a revenue ruling saying that -- ruling that a limited liability company that had been formed a 1977 Wyoming Act was going to be taxable as a partnership giving them the favorable tax of only one level tax.

And as a result of that ruling, in 1988, this has just taken off.

REP. TULISANO: So effectively, they've identified the distinctions that they made in the Sub Chapter S corporation you outlined which basically states there are certain restrictions to get the tax benefits under Sub Chapter S. They know those distinctions that existed. They have done nothing in the meantime to sort of put -- to try to restrict the way you tax these?

RICHARD CONVICER: That's absolutely correct.

REP. TULISANO: And the did it knowingly because they were involved in the ruling?

RICHARD CONVICER: That's correct.

REP. TULISANO: Okay. Thank you.

RICHARD CONVICER: As a matter of fact, they have since that 1988 ruling they have blessed, I believe, three other states statutes that have enacted LLC's that any organization formed under those state's statutes will be taxable as a partnership.

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- REP. TULISANO: And for purposes of clarification, there's been a proposed amendment from, I think dealing with accounting, that's the amendment you made reference to?
- RICHARD CONVICER: Dealing with all professionals. Architects, physicians, lawyers.
- REP. TULISANO: Thank you. Any other questions?  
Representative Bysiewicz.
- REP. BYSIEWICZ: Yes. I have a question about the number of corporations in these other states that have adopted this corporate form.  
  
Can you give us some numbers on how many entities have actually adopted this form? How many companies is this?
- RICHARD CONVICER: I don't have that number. I could ask an individual whose connected to a national ABA to see if he has any information. But I don't have that readily available.
- REP. BYSIEWICZ: I mean, the reason I'm asking is because if in fact, obviously in Connecticut we would like to bring more corporations into the State to do business and so I'm asking from an economic development point of view.
- RICHARD CONVICER: I see.
- REP. BYSIEWICZ: Thank you.
- REP. TULISANO: Any other questions? Thank you very much. Bill Macklin.
- BILL MACKLIN: Good afternoon. I'm here in support of HB5397. I'm the Director of the South End Community Center in Stamford, Connecticut. I'm Chairman of the Mayor's Commission on Prevention of Adolescent Alcohol and Substance Abuse. I'm the Chairman of the Board of Directors of the Jackie Robinson Little League in Stamford and also work at a residential program for male adolescents age 13 to 16.

MADD, like many others, would hope that treatment would be available in addition to the sanctions, but believes that we cannot delude ourselves into believing that treatment will be a miracle cure for addiction. In reality, many people have been through treatment on numerous occasions and continue in their addiction.

In the interest of public safety, it our hope that this bill will be rejected. Thank you.

SEN. JEPSEN: Are there any questions? Seeing none, thank you very much. Thanks for your patiences. Jack Brooks, to be followed by Mike McKay.

REP. TULISANO: Mike, excuse me. Michael?

JACK BROOKS: Chairman Jepsen and Tulisano, members of the Judiciary Committee, my name is Jack Brooks. I'm the Executive Director of the Connecticut Society of Certified Public Accountants. I'm appearing this evening, I said afternoon in my prepared testimony, on behalf of HB6974, adopting the Connecticut Limited Liability Company Act.

The accounting profession supports this measure because, among its other provisions, it extends to professionals practicing as partnerships the same protection now offered those who practice in the form of professional corporations.

Both the Internal Revenue Service and the Connecticut Department of Revenue Service have ruled that professionals practicing as LLCs may retain their partnership tax status should this bill be passed.

We further support including in this bill of a provision that offers the opportunity for multi-state partnerships to practice in this form in Connecticut, just as multi-state professional corporations are allowed to do with the same liability protection.

To counter any concerns, this bill does not reduce a public accounting firm's responsibilities. This bill does not relieve culpable individuals of legal responsibility for their own actions and those that they supervise. It is a small step toward

protecting the personal assets of partners who are not directly involved in the offense and provides the same level of risk available to owners and managers or other business organizations.

At the present time 20 states have some form of limited liability company statutes, most include professionals. Connecticut's recently amended accounting statutes would allow practice of accountancy in this forum or any other forum allowed by law. I thank you for your attention.

SEN. JEPSEN: Any questions? Seeing none, thank you very much. Is Mike McKay here.

REP. TULISANO: Anybody else who needs to testify who didn't sign up? Seeing nobody --.

SEN. JEPSEN: That concludes the public hearing.

TESTIMONY  
ELIZABETH E. GARA  
STAFF ATTORNEY  
CONNECTICUT BUSINESS AND INDUSTRY ASSOCIATION  
BEFORE THE  
JUDICIARY COMMITTEE  
MARCH 5, 1993

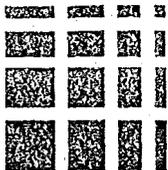
Good afternoon. My name is Elizabeth E. Gara. I am a staff attorney for the Connecticut Business and Industry Association (CBIA). CBIA represents over 7,000 companies that employ over 700,000 persons. These companies range from large industrial corporations to small businesses.

CBIA supports HB-6974 AN ACT CONCERNING THE LIMITED LIABILITY COMPANY ACT.

Clearly, Connecticut needs to take steps to attract new businesses and create jobs. A limited liability company is a new form of business entity that combines the limited liability characteristics of corporations with the tax status of partnerships. CBIA views the flexibility and tax advantages offered by limited liability companies as important to making Connecticut companies competitive in today's marketplace.

In the past few months, I have received several calls from companies that wanted to know whether this legislation was currently in place. Because it wasn't, these companies decided to bring their business to other states.

Inasmuch as the Limited Liability Company Act is being considered or already law in a number of states, CBIA urges Connecticut lawmakers to seriously consider adopting this legislation. It would certainly give Connecticut's small employers and potential new employers a leg up in the marketplace.



Connecticut Society of  
Certified Public Accountants

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Position Statement in Favor of House Bill #6974

The Connecticut Society of Certified Public Accountants

Chairmen Jepsen and Tulisano, Members of the Judiciary Committee, my name is Jack Brooks and I am the executive director of the Connecticut Society of Certified Public Accountants. I am appearing this afternoon on behalf of House Bill 6974, adopting the Connecticut Limited Liability Company Act.

The accounting profession supports this measure because, among its other provisions, it extends to professionals practicing as partnerships the same protection now afforded those who practice in the form of professional corporations. Both the Internal Revenue Service and the Connecticut Department of Revenue Service have ruled that professionals practicing as LLC may retain their partnership tax status. We further support inclusion in this bill of a provision that offers the opportunity for multi-state partnerships to practice in this form in Connecticut, just as multi-state professional corporations are allowed to do, with the same liability protection.

To counter any unwarranted concerns:

This bill does not reduce a public accounting firm's responsibilities.

This bill does not relieve culpable individuals of legal responsibility for their own actions and those that they supervise.

It is a small step toward protecting the personal assets of partners who are not directly involved in the offense and provides the same level of risk available to owners and managers of other business organizations.

At the present time 20 states have Limited Liability Companies statutes, most include professionals. Connecticut's recently amended accounting statutes would allow practice of accountancy in this, or any other form allowed by law.

Thank you for your attention.



001580

SECRETARY OF THE STATE  
30 TRINITY STREET  
HARTFORD, CT 06106

March 4, 1993

Senator George C. Jepsen  
Representative Richard D. Tulisano  
Judiciary Committee  
Legislative Office Building  
Room 2500  
Hartford, CT 06106

RE: House Bill 6974

Dear Senator Jepsen and Representative Tulisano:

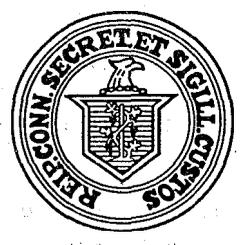
As I stated in my letter of February 25, 1993 I have drafted and attached recommendations for specific changes to House Bill 6974, An Act Concerning Adopting the Connecticut Limited Liability Company Act.

As always, your comments are greatly appreciated.

Sincerely yours,

  
Pauline R. Kezer  
Secretary of the State

cc: Paul A. Audley  
Deputy Secretary of the State  
Maria M. Greenslade, Managing Attorney  
Commercial Recording Division



SECRETARY OF THE STATE  
30 TRINITY STREET  
HARTFORD, CT 06106

RECOMMENDED CHANGES TO HOUSE BILL 6974

1. Section 2 insert: "Address" means a location as described by the full street number, if any, street, city, or town, state, or county and not a mailing address such as a post office box.  
PURPOSE: To provide an essential definition.
2. Delete from section 3(a), lines 87 through 88, the following words "or 'Limited Company'", "'L.C.'", "or 'LC'".  
PURPOSE: To ensure distinction from corporations using the same designations.
3. Replace Section 3(b)(3) beginning on line 97 with the following: (3) any name reserved under section 4 of this act or reserved or registered under sections 33-287, 33-288, 33-424, or 33-425.  
PURPOSE: To maintain consistency with the Corporation and Limited Partnership Acts.
4. Delete the words "either of the following" from line 101.  
PURPOSE: To maintain consistency with the Corporation and Limited Partnership Acts.
5. Delete Section 3(c)(1), commencing on line 101 and running through and including the words "distinguishable from the reserved or registered name; or (2)" in line 104.  
PURPOSE: To maintain consistency with the Corporation and Limited Partnership Acts.
6. Delete from Section 11(c), line 352, the words "and, if it has changed, all of its former names."  
PURPOSE: To eliminate unnecessary rejection of documents. Information sought to be stated will be already on file.
7. Add Section 12(d) following line 374 which shall read: "The execution of any such document shall constitute an affirmation under the penalties of false statement by the person signing the document that the facts stated therein are true."  
PURPOSE: To ensure that documents can be completely effective according to their terms upon filing and maintain consistency with the Corporation and Limited Partnership Acts.

8. Delete from Section 13(a), lines 375-377 the words "together with a duplicate copy that may be either a signed, photocopied or conformed copy".  
PURPOSE: To allow for the implementation of the Commercial Recording Division's Automation Project and to eliminate unnecessary rejection of documents.
9. Delete 13(a)(3).  
PURPOSE: To allow for the implementation of the Commercial Recording Division's Automation Project and to eliminate unnecessary rejection of documents.
10. Delete the following language in Section 14(b), line 397, "Each copy of"  
PURPOSE: To allow for the implementation of the Commercial Recording Division's Automation Project and to eliminate unnecessary rejection of documents.
11. Delete Section 46(2), beginning on line 1040 and ending on line 1041.  
PURPOSE: To eliminate unnecessary rejection of documents.
12. Delete from Section 51, lines 1122 and 1123, the words "together with a duplicate copy that may be either a signed, photocopied or conformed copy."  
PURPOSE: To allow for the implementation of the Commercial Recording Division's Automation Project and to eliminate unnecessary rejection of documents.
13. Delete from Section 52(a), line 1146, the words "and duplicate copy".  
PURPOSE: To allow for the implementation of the Commercial Recording Division's Automation Project and to eliminate unnecessary rejection of documents.
14. Delete Section 52(a)(3).  
PURPOSE: To allow for the implementation of the Commercial Recording Division's Automation Project and to eliminate unnecessary rejection of documents.
15. Replace in Section 51(3), line 1132, the words "section 5 of this act" with the following: "section (NEW) of this act and an acceptance of such appointment signed by the agent appointed if other than the secretary of the state."  
PURPOSE: To clarify who may be appointed as agent for service of process and the procedures which my office must follow in order process such service.
16. Delete subsection (4) of Section 51 beginning on line 1132.  
PURPOSE: To clarify who may be appointed as agent for service of process and the procedures which my office must follow in order process such service.
17. Insert the following NEW sections between Sections 51 and 52 and renumber all of the sections following this addition:

(NEW) (a) Each foreign limited liability company shall, before transacting business in this state, appoint in writing an agent upon whom all process, in any action or proceeding against it may be served, and by such appointment the limited liability company shall agree that process against it which is served on said agent shall be of the same legal force and validity as if served on the foreign limited liability company and that such appointment shall continue in force as long as any liability remains outstanding against the foreign limited liability company in this state.

(b) A foreign limited liability company's agent for service upon whom process may be served shall be (1) the secretary of the state and his successors in office, (2) a natural person who is a resident of this state, (3) a corporation organized under the laws of this state or (4) any corporation not organized under the laws of this state which has procured a certificate of authority to transact business in this state.

(c) A foreign limited liability company's appointment of the secretary of the state and his successors in office as its initial agent upon whom process may be served shall be included in the application for registration as provided in section 51. A subsequent appointment of the secretary of the state and his successors in office as a foreign limited liability company's agent upon whom process may be served shall be filed in the office of the secretary of the state in such form as the secretary shall prescribe.

(d) A foreign limited liability company's appointment of a natural person or corporation as its initial agent upon whom process may be served shall be included in the application for registration as provided in section 51. A foreign limited liability company's subsequent appointment of a natural person or corporation as its agent upon whom process may be served shall be filed with secretary of the state in such form as the secretary shall prescribe setting forth: (1) The name of the limited liability company (2) the name of such agent; (3) a statement of acceptance by the statutory agent therein appointed; and (4) if such agent is a natural person, his business and residence addresses; if such agent is a corporation organized under the laws of this state, the address of the principal office thereof; if such agent is a corporation not organized under the laws of this state, the address of the principal office thereof in this state. In each case the address shall include the street number or other particular designation. All subsequent written appointments filed with the secretary of the state shall be signed by a member of the foreign limited liability company and, if other than the secretary of the state, by the statutory agent therein appointed.

(e) If an agent dies, dissolves, removes from the state or resigns, the foreign limited liability company shall forthwith appoint another agent upon whom process may be served. If such agent changes his or its address within the state from that appearing upon the records in the office of

the secretary of the state, the foreign limited liability company or agent shall forthwith file with secretary of the state a signed statement in duplicate to that effect. The secretary of the state shall forthwith file one copy and mail the other copy of such statement by certified mail, to the foreign limited liability company at the office designated in the application for registration filed pursuant to section 51. Upon the expiration of 120 days after the mailing of such notice, the resignation shall be effective and the authority of the limited liability company to transact business in this state shall be revoked, by certified mail, to the foreign limited liability company at the office designated in the application for registration filed pursuant to section 51. Upon expiration of 120 days after the mailing of such notice, the resignation shall be effective and the authority of the foreign limited liability to transact business in this state shall be revoked unless a new agent has been appointed as provided in this section within such 120 day period. A foreign limited liability company may revoke the appointment of an agent upon whom process may be served by making a new appointment as provided in this section and any new appointment so made revokes all appointments theretofore made.

(f) Whenever a foreign limited liability company fails to comply with this section the authority of such foreign limited liability company shall be deemed to have been revoked.

PURPOSE: To clarify who may be appointed as agent for service of process and the procedures which the Secretary of the State's Office must follow in order process such service.

18. Insert the following section after section (NEW) and prior to section 52:

(NEW) (a) Any process, notice or demand in connection with any action or proceeding required or permitted by law to be served upon a foreign limited liability company authorized to transact business in this state which is subject to the provisions of section (NEW), may be served upon the limited liability company's statutory agent for service by any proper officer or other person lawfully empowered to make service.

(b) A foreign limited liability company's agent upon whom process shall be served as follows: When the secretary of the state and his successors have been appointed such limited liability company's agent for service of process, by leaving two true and attested copies thereof together with the required fee at the office of the secretary of the state or depositing the same in the United States mails, by registered or certified mail, postage prepaid, addressed to such office. The secretary of the state shall file one copy of such process and keep a record of the date and hour of such receipt, and, within two business days after such service, forward by registered or certified mail the other copy of such process to the limited liability company at the address of the office designated in the application for registration

filed pursuant to section 51. Service so made shall be effective as of the date and hour received by the secretary of the state as shown on his records. If it appears from the records of the secretary of the state that such a foreign limited liability company has failed to appoint or maintain a statutory agent for service, or it appears by affidavit attached to the process, notice or demand upon such a foreign limited liability company's statutory agent for service appearing on the records of the secretary of the state that such agent cannot, with reasonable diligence, be found, service of such process, notice or demand on such foreign limited liability company may, when timely made, be made by such officer or other proper person by: (1) Leaving a true and attested copy thereof together with the required fee at the office of the secretary of the state or depositing the same in the United States mails, by registered or certified mail, postage prepaid, addressed to such office, and (2) depositing in the United States mails, by registered or certified mail, postage prepaid, a true and attested copy thereof, together with a statement by such officer that service is being made pursuant to this section, addressed to such foreign limited liability company at the address of the office designated in the articles of organization in the state of formation as shown on the records of such state

(c) The secretary of the state shall file the copy of each process, notice or demand received by him as provided in subsection (b) of this section, and keep a record of the day and hour of such receipt. Service made as provided in this section shall be effective as of such day and hour.

(d) Nothing in this section contained shall limit or affect the right to serve any process, notice or demand required or permitted by law to be served upon a limited liability company in any other manner permitted by law.

PURPOSE: To clarify who may be appointed as agent for service of process and the procedures which my office must follow in order process such service.

- 219 Delete from Section 52(b), line 1155 the words "and accompanying fees".

PURPOSE: To maintain consistency with procedures applicable to the filing of all other documents with the Commercial Recording Division.

20. Delete the text of Section 53 and replace with the following:

The secretary of the state shall not issue a registration to, or file any documents submitted by any foreign limited liability company unless (1) such foreign limited liability company's name complies with the provisions of section 3 or (2) the foreign limited liability company adds to its name in its application for registration to transact business in this state, and agrees in such application to use in this state, exclusive of any other name, a distinctive and distinguishing element, which in the judgment of the secretary of the state will be sufficient to distinguish its name upon the records

of the secretary of the state, in the manner required by Section 3(b); or (3) the foreign limited liability company has obtained permission to use in this state a name that does not otherwise meet the requirements of 3(b) in the form of a written consent, executed and filed as provided in Section 12, from each person, or limited liability company which has reserved, or is properly using in this state a name that is not such as can be distinguished from the name of the foreign limited liability company and agrees in such application to use in this state exclusive of any other name, a distinctive and distinguishing element, which in the judgment of the secretary of the state will be sufficient to distinguish its name, upon the records of the secretary of the state, in the manner required by Section 3(b), or (4) the foreign limited liability company chooses to transact business in this state using a name which is different from the name under which it is organized and such name complies with Section 3 of this chapter.

PURPOSE: To allow a foreign limited liability company to use a name which is distinguishable by way of consent.

21. In section 56(e), line 1242, delete the words "shall be subject to a civil penalty, payable to the state, not to exceed two thousand dollars", and insert "shall be liable to this state, for each year or part thereof during which it transacted business in this state without such application of registration, in an amount equal to : (1) the sum of two thousand dollars, (2) all fees and taxes which would have been imposed by law upon such limited liability company had it duly applied for and received such registration to transact business in this state and (3) all interest and penalties imposed by law for failing to pay such fees and taxes. Such fees and penalties may be levied by said secretary. The penalty imposed by subdivision (1) of this subsection shall not be levied upon a foreign limited liability company which has registered with said secretary within ninety days after it has commenced transacting business in this state.

PURPOSE: To maintain consistency with the Corporation and Limited Partnership Acts.

22. Delete in Section 64, lines 1383 through 1384, the words "(2) the plan of merger or consolidation".

PURPOSE: To eliminate unnecessary rejection of documents.

23. Add the following new section:

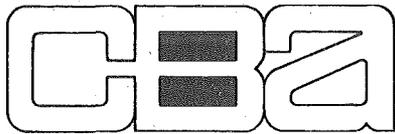
(NEW) (a) The secretary of the state may propound to any limited liability company, domestic or foreign, subject to the provisions of this chapter and to any manager thereof if the management of the limited liability company is vested in a manager or managers, and to any member thereof if the management of the limited liability company is not vested in a manager or managers, such interrogatories as may be reasonable necessary and proper to enable the secretary to ascertain whether such limited liability company has complied with the provisions of this chapter applicable to such limited liability company. Such interrogatories shall be answered within thirty days after the mailing thereof, or within such additional time as shall be fixed by said

secretary, and the answers thereto shall be full and complete and shall be made in writing and under oath. If such interrogatories are directed to a specific person they shall be answered by that person, and, if directed to a limited liability company, they shall be answered by a manager thereof if the management of the limited liability company is vested in a manager or managers, or by any member thereof if the management of the limited liability company is not vested in a manager or managers.

(b) Each limited liability company, domestic or foreign, and each member and manager of a limited liability company, domestic or foreign, failing or refusing within the time prescribed by this section to answer truthfully and fully interrogatories duly propounded to such limited liability company or such member or manager by the secretary of the state, as provided in subsection (a) of this section, shall be fined not more than five hundred dollars.

(c) Interrogatories propounded by the secretary of the state and answers thereto shall not be open to public inspection, nor shall said secretary disclose any facts or information obtained therefrom except insofar as the official duties of said secretary may require the same to be made public, or if such interrogatories or the answers thereto are required for evidence in any criminal proceeding or in any other action by this state.

PURPOSE: To enable the secretary of the state to issue interrogatories to a limited liability company in order to detect whether it is complying with the Act, consistent with similar procedures provided for in the Corporation and Limited Partnership Acts.



**Connecticut Bar Association**

TESTIMONY  
OF  
RICHARD G. CONVICER  
IN SUPPORT OF  
H.B. 6974  
AN ACT ADOPTING THE CONNECTICUT LIMITED LIABILITY COMPANY ACT

March 5, 1993

My name is Richard G. Convicer and I am a partner at the law firm of Sorokin, Sorokin, Gross, Hyde & Williams, P.C. in Hartford, Connecticut. I am presenting testimony today on behalf of the Connecticut Bar Association in my capacity as Chairman of the Subcommittee on Limited Liability Companies which is a Subcommittee of the CBA Tax Section Executive Committee.

The CBA supports HB 6974 which would permit owners to form an entity known as a limited liability company ("LLC"). An LLC would insulate its owners from the liabilities of the company. The advantage of the LLC over a corporation, which generally shields its shareholders from the liabilities of the entity, is that, for federal tax purposes, the IRS has ruled that the LLC may be taxable as a partnership thereby avoiding a tax at the entity level. Thus, the major advantages of the LLC are limited liability coupled with a single level of tax.

There are now 18 states which have enacted statutes providing for organization of limited liability companies, and two other states have introduced legislation recognizing foreign limited liability companies. Rhode Island is one of the states that has adopted the legislation. There are several bills pending now in New York providing for LLCs.

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Why haven't we heard of LLCs until now? Where did this entity come from? While this entity has a long history in certain European countries, the LLC really did not attract any interest in this country until 1988 when the IRS ruled that an organization set up under a Wyoming limited liability company law would be taxable as a partnership despite the fact that all of the members were afforded limited liability. As a result of that ruling, more and more states started enacting LLC legislation.

What are the advantages of the LLC? Simply stated, an LLC offers its members limited liability and favorable tax status. Under present law, a business may conduct itself in the form of a corporation or as a partnership. If the corporate form is chosen, the shareholders will have limited liability but the profits will be forced to bear a tax at the corporate level. After the corporate tax is paid, any remaining profits which are available for distribution to shareholders will be taxed at the individual level. Hence the corporation is subject to a double level of tax. There is an entity known as an S corporation with which many are familiar. In an S corporation, the income is not subject to tax at the corporate level. Rather, the corporate income flows directly to the shareholders and is taxed at the shareholder level. While this entity has the advantage of providing limited liability for its owners and is subject to only one federal tax, there are many restrictions imposed on S corporations which either make the use of the vehicle completely unavailable or unduly complex. For example, there can be no more than 35 shareholders, and corporations, foreign investors, and most trusts are ineligible to be shareholders. Moreover, S

Testimony of Richard G. Convicer

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corporations may not have flexible profit-sharing arrangements among its owners. Each owner must receive a share of profits proportionate to the stock owned. Yet, businesses frequently want to give certain owners priority distributions. For example, there may be an owner putting up substantial cash in exchange for stock, and such owner wants to receive the initial profits before any other shareholder receives a distribution. This is impossible in the case of an S corporation where all owners must receive proportionate distributions. The limited liability company has no limitations on who may be a member of the entity, nor is it subject to a proportionate distribution requirement present in the S corporation.

Under present Connecticut law businesses may conduct themselves as partnerships. The partnership offers the advantage of a single level of tax. There is no tax at the partnership level, but only at the individual level. The major disadvantage of a partnership is that each partner is liable for the debts of the entity. There is available the limited partnership in which the limited partners are not liable for the debts of the entity. However, with a limited partnership, there must be at least one general partner which is liable for the debts of the entity. Often businesses attempt to limit the exposure of a general partner by using a corporate general partner. Even with a corporate general partner, however, the general partner must be sufficiently capitalized to satisfy the IRS that it is truly a general partner. The limited liability company, like every other corporate entity, avoids this altogether since each member may be shielded from the liabilities of the entity. Unlike the limited partnership, no member need be liable for the debts of the entity.

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It should also be noted that in the case of a limited partnership, limited partners' rights to participate in management are limited. If participation of the limited partner is too great, he or she may lose limited liability. No such restriction exists in the case of a limited liability company member. Here the member may participate in management without loss of limited liability.

Succinctly stated then, the advantage of the LLC over the regular corporation is that it avoids the second level of tax at the entity level. The major advantages over the S corporation are the lack of restrictions on who may own interests in the entity as well as the flexibility in sharing profits. The advantage of the LLC over the limited partnership is that no member need be liable for the debts of the entity and a member may participate in management without losing limited liability. These are the major reasons why there has been such a rapidly growing interest in the LLC throughout the country.

From a tax standpoint, the LLC will allow businesses greater flexibility in conducting their affairs as discussed above. From an economic development standpoint, enactment of the LLC statute will send a message to the business community that Connecticut is a state which is attempting to remain competitive as a location for conducting business. With Rhode Island having already enacted such a statute, with New York presently considering such legislation, and with Massachusetts studying the feasibility of enacting similar legislation, Connecticut would be well-served in remaining competitive with its neighbors by adopting the proposed Connecticut Limited Liability Company Act.

Testimony of Richard G. Convicer

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The CBA also supports a proposed amendment which will allow interstate entities employing professionals to establish themselves as an LLC in Connecticut. This amendment is similar to Connecticut's act which allows interstate entities employing professionals to establish themselves as a PC in Connecticut.