

Legislative History for Connecticut Act

HB 5712 (PA 186) 1994

House: 6435-6447 13 p.

Sen: 2738, 2943-2945 4 p.

Jud: 1743-1745, 1801-1808, 2040-2053

(see over)

25 p.

42 ~~3~~ pages

Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate  
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GEN. ASSEMBLY  
HOUSE

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1994

VOL. 37  
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6301-6707

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House of Representatives

Monday, May 2, 1994

this Chamber.

And I think we as a group basically move on a bipartisan basis and make good choices for the people of this state. Having said that, will the Clerk please call Calendar 404.

CLERK:

Calendar 404, Page 18, Substitute for House Bill 5712, AN ACT ADOPTING THE CONNECTICUT BUSINESS CORPORATION ACT AND PROVIDING LIMITED AMNESTY FOR FOREIGN CORPORATIONS, LIMITED PARTNERSHIPS AND LIMITED LIABILITY COMPANIES. Favorable Report of the Committee on Finance.

DEPUTY SPEAKER LYONS:

The Representative from the 29th, Representative Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, a pleasure to see you here today and give you your first test of fire, under fire.

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

ACTING SPEAKER REP. COURTNEY: (56th)

The question is on acceptance and passage. Will you remark?

REP. TULISANO: (29th)

Yes, Mr. Speaker. Mr. Speaker, the bill before us

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is a restructuring of the entire corporation act of the State of Connecticut, paralleling the uniform corporation act. It also provides some amnesty for foreign corporations, limited partnerships and LLCs for not filing in an appropriate time which was requested by the Secretary of State's office.

Mr. Speaker, the Clerk has amendment LCO4171.

ACTING SPEAKER REP. COURTNEY: (56th)

Will the Clerk please call LCO4171.

CLERK:

LCO4171, House "A" offered by Representative Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, House "A" has a number of provisions putting into the statute provisions currently in Connecticut law which we thought were going to be in the file copy, paralleling how a corporation may be dissolved, some powers of the Secretary of State in terms of getting information.

It also extends the effective date of this act until 1997. Mr. Speaker, I move for its adoption.

ACTING SPEAKER REP. COURTNEY: (56th)

The question is on adoption.

REP. TULISANO: (29th)

Yes, Mr. Speaker.

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ACTING SPEAKER REP. COURTNEY: (56th)

Representative Tulisano.

REP. TULISANO: (29th)

Mr. Speaker, one of the reasons we're asking for 1997 rather than what the file COPY says is an affective date is, that in fact many of the areas brought together by this bill and its amendment, obviously, are such major changes in the last that we think it's time to take the opportunity to get people to learn what it is before it goes into effect.

Further, it comes to us through a large study group of individuals involved in corporate law who studied to put this together and again, as I said, it is based on a working draft, a national working draft which would put Connecticut equal to other states dealing with corporate entity, much like we did the LLC last year.

However, Mr. Speaker, I did find out as we were going through this bill, that certain other interests, such as shareholders interests, as well as possibly labor were not involved in the drafting of it. There may be some shifts in here to corporate individuals, who are corporately controlling, if you will, the officers and directors who have, the shift goes from the shareholder to them in terms of where the power lies and it may be an issue we want to look at.

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Mr. Speaker, I move for adoption of the amendment.

ACTING SPEAKER REP. COURTNEY: (56th)

Thank you. Will you remark further on the amendment? Representative Ward.

REP. WARD: (86th)

Mr. Speaker, just through you, just one or perhaps more questions to Representative Tulisano. Through you, Representative Tulisano, section 169 is rewritten here, which has to do with a dissolved corporation and I see we took what was a very short section and made it into a very long section. I haven't quite figured out exactly what we're doing.

If, through you, Mr. Speaker, if you could explain the differences.

REP. TULISANO: (29th)

Through you, Mr. Speaker, section 169 which is rewritten, is the current statute in Connecticut. I think the short section in the file copy was one which does not fit the Connecticut practice and did not allow us to dissolve and reinstate in the manner in which we currently do.

ACTING SPEAKER REP. COURTNEY: (56th)

Representative Ward.

REP. WARD: (86th)

Thank you, Mr. Speaker.

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ACTING SPEAKER REP. COURTNEY: (56th)

Any other questions or comments on House "A".  
Representative Simmons.

REP. SIMMONS: (43rd)

Thank you, Mr. Speaker. Through you a question to  
the proponent of the bill.

ACTING SPEAKER REP. COURTNEY: (56th)

Representative Tulisano, prepare yourself.

REP. SIMMONS: (43rd)

Thank you, Mr. Speaker. With regard to section  
169, it's my understanding that the Secretary of the  
State may affect an administrative dissolution of a  
corporation in the State of Connecticut if the  
corporation is more than 3 months in default of filing  
its annual report.

It seems to me that this is a fairly draconian  
punishment for what in my view at least, is somewhat of  
an administrative failing. Perhaps the proponent could  
explain why a corporation should be dissolved by the  
Secretary of the State because they haven't filed their  
annual report. Through you, Mr. Speaker.

DEPUTY SPEAKER LYONS:

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker, as I indicated to

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Representative Ward, that is in fact the current procedure. And then there is a notice period after they make the dissolution by which the people may get themselves reinstated.

It really takes more than 3 months to become an effective tool. The reason it is in here and put this way is because that was a public policy matter adopted by this General Assembly. And to rather than change that, and rather than the way the uniform act did, it's always been the intention in the uniform act to parallel with our drastic changes that are current Connecticut practice

As I indicated, giving it the 2 years, if there are people, and I expect there will be amendments next year, next year to this bill as it's reviewed and we find out where the kinks are, that someone might want to address that on its face as a major change in public policy, then we would do it.

ACTING SPEAKER REP. COURTNEY: (56th)

Representative Simmons.

REP. SIMMONS: (43rd)

One more question, Mr. Speaker. Am I to understand then that we are moving from a regulatory approach to the question to a statutory approach. In other words, we're taking a current practice and regulation and

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making it a law, or is that the current practice in law? Through you, Mr. Speaker.

REP. TULISANO: (29th)

Through you, Mr. Speaker, this is the current practice in statute in Connecticut.

REP. SIMMONS: (43rd)

Thank you, Mr. Speaker.

ACTING SPEAKER REP. COURTNEY: (56th)

Any other questions or comments on House "A". Any other questions? Comments? I will try your minds. All those in favor of House Amendment "A" signify by saying aye.

REPRESENTATIVES:

Aye.

ACTING SPEAKER REP. COURTNEY: (56th)

Opposed? The ayes have it. House "A" is adopted. Anyone else on this legislation as amended?

REP. RADCLIFFE: (123rd)

Mr. Speaker.

ACTING SPEAKER REP. COURTNEY: (56th)

Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Thank you, Mr. Speaker. A question on section 109, through you, to the proponent of the bill.

The changes in mandatory indemnification, if a

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corporation provided in its bylaws that it would not indemnify its directors or officers for ultra vires acts. Would this mandatory indemnification still be in effect notwithstanding the provisions of its bylaws? Through you, Mr. Speaker.

ACTING SPEAKER REP. COURTNEY: (56th)

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker, as I understand it, the bylaws would prevail. There's another section in here that makes it clear that you might amend the bylaws, as I recall.

REP. RADCLIFFE: (123rd)

Through you, Mr. Speaker, I'm referring to section 109 in the change of the law. The current law allows the corporation or gives the corporation, as I understand it, the ability to indemnify officers, directors, shareholders, but does not require that.

So, through you, Mr. Speaker, I would assume that if the bylaws or articles of incorporation were silent, they would now have that duty. What I'm asking is, can a corporation through its bylaws or through its articles of organization, eliminate the duty to indemnify, notwithstanding what would be section 109 of this act. Through you, Mr. Speaker.

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REP. TULISANO: (29th)

Through you, Mr. Speaker, if it's included in the articles of incorporation, section 109 makes reference to the articles of incorporation, as I recall, so that you may reverse the statutory obligation if you put it in your certificate of incorporation.

ACTING SPEAKER REP. COURTNEY: (56th)

Representative Radcliffe.

REP. TULISANO: (29th)

Thank you. So I understand this, for purposes of legislative intent, the mandatory provision applies only if the bylaws and the articles of incorporation are silent. Through you, Mr. Speaker.

REP. TULISANO: (29th)

Through you, Mr. Speaker, that's correct, but I think this points out why we gave it even a longer effective date, because those kinds of shifts are occurring throughout this legislation which we want to make sure everybody is aware of and comfortable before they go into effect.

ACTING SPEAKER REP. COURTNEY: (56th)

Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Thank you, and through you, Mr. Speaker, one final question regarding the rights of shareholders and

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directors that I was a little bit uncomfortable with.

A derivative action, are we making it easier for shareholders to institute a derivative action against a corporation than under current law? Through you, Mr. Speaker.

ACTING SPEAKER REP. COURTNEY: (56th)

Representative Tulisano.

REP. TULISANO: (29th)

Through you, Mr. Speaker, honestly, I'm not sure.

REP. RADCLIFFE: (123rd)

Okay, that's a very honest answer. It seems here in this section that we're giving shareholders some additional rights that they didn't have under current law in order to initiate these actions and perhaps before the effective date of this act in 1997, this is another one of the areas that people are going to take a look at.

I would rise in support of the bill to the extent that this bill could be examined thoroughly. I think it has. I assume that after passage it will be examined and reexamined by those who operate in this area, and if there are changes that ought to be made or omissions, that are in the current bill, that we would have ample opportunity to correct those.

I'm glad to see the amendment clarify the effective

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date. I think that was important for this particular bill.

ACTING SPEAKER REP. COURTNEY: (56th)

Anyone else? Representative Farr.

REP. FARR: (19th)

Yes, thank you, Mr. Speaker. Just to comment on the effective date. I was a little bit concerned about putting the effective date off so far. It's sort of unprecedented to have a bill become effective in 97.

I understand the reason it was done and as I thought about it, I realized that one of the things that we could do next session is, if everybody's had a chance, the effective parties, to review the bill, I really think it's a good bill, the Judiciary Committee could pass a bill next year that says this public act shall be effective in 1996 and therefore bring it back earlier. And I would hope they would do that if we're comfortable with this legislation.

ACTING SPEAKER REP. COURTNEY: (56th)

Thank you, Representative Farr. Representative Tulisano.

REP. TULISANO: (29th)

Yes, Mr. Speaker. I expect by the next session of the Legislature there will be some technical, at least if nothing else, amendments that people will find as we

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always do when something this complex occurs before us.

I also wanted to put on the record that there are in fact commentaries that have been established which help one interpret this act, both at the Connecticut commentary and there is commentary to the model act that people should look to for reference and understanding of the intent of the drafters of the legislation.

I also ought to be very honest that I have not read all of those, nor do I necessarily agree with all of those commentaries and for whatever that means for legislative purposes, certainly the proponents of the bill would like that to be looked at. It is probably the normal way of interpreting the legislation. In the future, it's the way the UCC was done and it's probably the way it should be done here.

But, and also, when we come back next year I'm sure we'll have more of an opportunity to look at that commentary, to look at that from both the state and the national level and if we have some discrepancies put that on the record for future enactment. Thank you, Mr. Speaker.

ACTING SPEAKER REP. COURTNEY: (56th)

Thank you, Representative Tulisano. Any further questions or comments on the bill as amended? Anyone

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else? Anyone else on this bill as amended?

Staff and guests to the well of the House. Members take their seats. The machine will be opened.

CLERK:

The House of Representatives is voting by roll.  
Members please report to the Chamber. The House is taking a roll call vote.

ACTING SPEAKER REP. COURTNEY: (56th)

Have all the members voted? Have all the members voted? Members please check the tally to make sure they voted correctly. If all the members have voted, the machine will be locked and the Clerk will take a tally. Will the Clerk please announce the tally.

CLERK:

House Bill 5712 as amended by House "A".	
Total number voting	147
Necessary for passage	74
Those voting yea	147
Those voting nay	0
Those absent and not voting	4

ACTING SPEAKER REP. COURTNEY: (56th)

The bill as amended passed. Are there any announcements or points of personal privilege?  
Representative Esposito.

REP. ESPOSITO: (116th)

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2565-2954

WEDNESDAY  
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SENATOR DIBELLA:

On Page 10, Calendar Item No. 459 is a Go.  
Calendar Item No. 460, Substitute for House Bill No.  
5856, I'd move this to the Consent Calendar.

THE CHAIR:

Is there any objection to placing Senate Calendar  
460, Substitute for House Bill 5856, on the Consent  
Calendar? Is there any objection? Hearing none, so  
ordered.

SENATOR DIBELLA:

Calendar Item No. 461 is a Go. Calendar Item No.  
462, Substitute for House Bill No. 5712, I'd move this  
to the Consent Calendar.

THE CHAIR:

Is there any objection to placing Senate Calendar  
462, Substitute for House Bill 5712, on the Consent  
Calendar? Is there any objection? Hearing none, so  
ordered.

SENATOR DIBELLA:

Calendar Item No. 463, Substitute for House Bill  
No. 5563, I'd move this to the Consent Calendar.

THE CHAIR:

Is there any objection to placing Senate Calendar  
463, Substitute for House Bill 5563, on the Consent  
Calendar? No objection, so ordered.

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would ask that the item just voted on, Calendar 129, Substitute for Senate Bill 230, File No. 87, would move that it be immediately transmitted since it is being done separately from the Consent Calendar.

THE CHAIR:

Without objection, so ordered. The Clerk please call the items on the Consent Calendar.

THE CLERK:

Mr. President the first Consent Calendar begins on Calendar Page 1, Calendar No. 204, Substitute for House Bill 5528.

Calendar Page 3, Calendar No. 331, Substitute for House Bill 5468.

Calendar Page 4, Calendar No. 341, Substitute for House Bill 5657. Calendar 379, Substitute for House Bill 5531. Calendar 393, Substitute for House Bill 5828.

Calendar Page 6, Calendar No. 421, Substitute for House Bill 5423.

Calendar Page 7, Calendar No. 441, Substitute for House Bill 5097.

Calendar Page 9, Calendar No. 455, Substitute for House Bill 5631. Calendar 456, House Bill 5174.

Calendar Page 10, Calendar No. 460, Substitute for House Bill 5856. Calendar 462, Substitute for House

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Bill 5712. Calendar 463, Substitute for House Bill  
5563.

Calendar Page 11, Calendar 465, Substitute for  
House Bill 5123. Calendar 466, Substitute for House  
Bill 5500. Calendar 468, Substitute for House Bill  
5680.

Calendar Page 13, Calendar 474, Substitute for  
House Bill 5755. Calendar 475, Substitute for House  
Bill 5625. Calendar 478, Substitute for House Bill  
5830.

Calendar Page 14, Calendar 481, Substitute for  
House Bill 5410.

Calendar Page 16, Calendar 198, Substitute for  
Senate Bill 275.

Calendar Page 17, Calendar 295, Substitute for  
House Bill 5614.

Calendar Page 20, Calendar No. 180, Substitute for  
Senate Bill 292. Calendar 216, Substitute for Senate  
Bill 413. Calendar 222, Substitute for House Bill  
5537. Calendar 235, Senate Bill No. 414.

Calendar Page 21, Calendar 254, Substitute for  
Senate Bill 364. Calendar 306, Substitute for House  
Bill 5754. Calendar 309, Substitute for Senate Bill  
277. Calendar 311, Substitute for Senate Bill 362.

Calendar Page 22, Calendar No. 246, Substitute for

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House Bill 5496.

Mr. President, I believe that completes the Consent Calendar.

THE CHAIR:

Are there any corrections? Any deletions or additions? Yes, Senator Fleming.

SENATOR FLEMING:

Mr. President, I just -- did I hear the Clerk correct that Calendar No. 196 was on the Consent Calendar? I thought it had been P-T'd? Senator DiBella. Senator DiBella.

SENATOR DIBELLA:

Mr. President, this was Passed Temporarily that bill. It was not put on the Consent Calendar.

THE CHAIR:

Any other corrections, additions or deletions? The machine is open. Please cast your vote. Has everyone voted? Senator Penn. Has everyone voted. The machine is closed. The Clerk please tally the vote.

The result of the vote:

36 Yea

0 Nay

0 Absent

The Consent Calendar is adopted.

The Clerk please call the next item.

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PART 5  
1442-1800

1994

DR. RICHARD MELCHRIGHT: Mr. Chairman, members of the Judiciary Committee, good afternoon. My name is Dr. Richard Melchright, and I am testifying for the Department of Public Health and Addiction Services on Raised HB5865, AN ACT CONCERNING DISCLOSURE OF HIV RELATED INFORMATION.

The Department of Public Health and Addiction Services oppose Raised HB5865 because we do not feel that it achieves its intended purposes immunizing health care workers any better than the language currently in the HIV confidentiality law.

Maybe this issue arose before the statute was amended last year during the 1993 session with Public Act 93-291 changed one clause that put two conditions into Section 19a-583. It said that in order to divulge information without consent, it was necessary that HIV related information be needed to provide care and that the information was already recorded in the chart.

After that change was made last year, those clauses were connected by an "or", therefore the if the information was needed for medical care, it could be disclosed even if the information was not already recorded in a medical chart in that institution.

Therefore, we feel the existing statute as changed last year protects the health care providers of facilities in making appropriate disclosures for medical care. Therefore, the reopening of this statute is not necessary at this time. You might say your surgery was successful last year and our second opinion is that you not reoperate.

REP. TULISANO: Thank you. Pauline Kezer, are you here? You don't look like Pauline.

MARIA GREENSLADE: No, I'm not. I'm from her staff. Mr. Chairman, and members of the Committee, I'm Maria Marina Greenslade with the Office of the Secretary of the State, and I'm here to speak on behalf of SB360 and HB5712.

First on HB5712, we're here to speak in favor of this bill with changes that we have submitted earlier during the day.

REP. TULISANO: During the day?

MARIA GREENSLADE: Earlier this afternoon. Just a couple of major highlights for those changes, the conformed copies we'd like that eliminated from the bill. We'd like to replace the annual report section with the language that was just passed last year, and we'd like to replace the reinstatement section with today's language, and those are only a couple of the highlights of what we.

REP. TULISANO: I want to know. Have you read this bill well?

MARIA GREENSLADE: Yes, I did, sir. Front to back.

REP. TULISANO: Are there any substantive, aside from the structural changes, you maybe have one incorporated versus two, that kind of thing - are there any changes made by this proposal to substantive law that was singularly addressed by the General Assembly? Example - do we have a law on green mail I think or something many years ago. We have a law on corporate takeovers which is particular to Connecticut. Have we modified that?

MARIA GREENSLADE: I haven't reviewed the bill in order to look at the substantive loss section of it. We reviewed it for the administrative sections. I did put in a second letter with the testimony indicating some points that you may want to look at that may have been of interest to you.

REP. TULISANO: Which means that they made some substantive changes.

MARIA GREENSLADE: Again it wasn't based on the takeover.

REP. TULISANO: I know, but I get the hint.

MARIA GREENSLADE: Okay, but again we're in favor of the bill. We think it's a good piece of legislation.

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## JUDICIARY

March 22, 1994

REP. TULISANO: Even if there's substantive changes?

MARIA GREENSLADE: Well, the substantive changes, I'm not here to testify on.

REP. TULISANO: So you're only in favor of the bill if the bill's technical.

MARIA GREENSLADE: Uh-huh. Okay. And then SB360, I'm also going to testify on SB360. On that bill, we're not going to testify in favor or against. We'd like to make a recommendation. We'd like to recommend that a drafting committee be put together in order to review the bill itself, review limited liability partnerships, review laws in other states and perhaps this drafting committee can comprise of the accounting society, the Connecticut Bar Association, tax personnel, Secretary of State staff, and maybe we can iron out differences or some philosophical problems with this bill prior to coming before the General Assembly with a piece of legislation.

REP. TULISANO: Do you think this is flawed?

MARIA GREENSLADE: Well, it's nine pages long and I took a quick look at it this morning, and there's only one article of incorporation, a registration that can be filed with the Secretary of State's Office. There's no means of amendment. There's no means of making any other changes to anything.

REP. TULISANO: It doesn't follow our current (inaudible) liability act.

MARIA GREENSLADE: It does not follow the business entities that we have in Connecticut the general statutes today, and we'd like to recommend some kind of a drafting committee to be put together like it was with the limited liability company act, and then again.

REP. TULISANO: Thank you, Pauline. Nick Carbone and Liz.

NICK CARBONE: Good afternoon, Mr. Chairman, and members of the Judiciary Committee. The Connecticut Institute board of directors in 1993 approved by resolution two concepts which are

HB 5870

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DON WATSON: Thank you.

REP. TULISANO: I'm going to steal some of those quotes later, okay, for floor debate. You get me those quotes later, I'm going to use them in the floor debates. And so is Wollenberg. I mean it, I'll see you during the week. Thank you. Jim Lotstein and Bill Finn. Before you start can you tell me how many folks are still here on HB5871? Mr. Morris is still here too? Okay. Go ahead.

JAMES LOTSTEIN: Senator Jepsen, Representative Tulisano, members of the Judiciary Committee. My name is James Lotstein and I'm the cochairman of the Model Act Business Task Force of the Connecticut Bar Association. I'm here to support HB5712, which is entitled the Connecticut Business Corporation Act.

This act would revise the Connecticut Stock Corporation Act along the lines of the American Bar Association revised Model Business Corporation Act. We've been asked a number of times, why this is a necessary endeavor. The fact of the matter is that when the Connecticut Stock Corporation Act was adopted 34 years ago, in 1959, it was an excellent piece of legislation. It was based on the 1950 version of the ABA Business Corporation Act.

However, over the intervening 34 years the state of corporate law has changed immensely. The Model Act has been changed a number of times with the most recent significant revision in 1984. Connecticut Statute however, has not been changed and it's now gotten significantly out of date. We are one of only a handful of states that are based upon the 1950 version of the model act.

And we really aren't in touch with the corporate law as it currently exists. If we were to go back along the lines of the model act, we would get into conformity of the other states and there are approximately 35 states at the present time that are based in full or in part of the Model Act.

The Model Act, which is widely available, some of you might have seen that its available in soft back, it's available in hard back, it's available in annotated version has as one of its virtues it

has a commentary to each of the sections. This means that the people who have need for the act have a place to get some sense of what the provisions of the act are all about.

Another virtue of the uniformity is that cases develop all over the country in those states that have the Model Act. And those cases then are the basis for further interpretations of the law. One of the difficulties in living in a little state like Connecticut is that there are relatively few cases litigated with regard to the corporate law each year, and so there isn't a lot of guidance.

That coupled with the fact that there are only these few states that are based upon the current version of the Model Act, means that we've gotten to be unique in a way that we really don't want to be unique. And questions come up with regard to large corporations and small corporations all the time that lawyers simply aren't able to answer or to answer well.

Another advantage of the Model Act is that it is constantly being updated by the ABA corporate laws committee. And that means again in a state like Connecticut you don't have to do this all by yourself every year. You have the advantages that there is a body and an official reporter that takes care of this job for you.

The background of this effort is that the Connecticut Bar Association sections on corporations and other business organizations has been looking at this for over 3 years. And over time it has gained a fair amount of support. The secretary of the state's office was here earlier today testifying in support of this.

Major Connecticut corporations like Southern New England Telephone, Travelers, Aetna,

REP. TULISANO: Who?

JAMES LOTSTEIN: Travelers was involved in drafting the legislation.

REP. TULISANO: Before or after Prime America?

JAMES LOTSTEIN: Before, but all the way through it. There are a number of benefits that the law would bring. We have tried very hard to carry forward the substantive provisions of the current Stock Corporation Act. So that for example, major legislation that's been enacted by this body during the past few years have been carried forward.

Among them are the business combination act, which is commonly referred to as our anti-takeover statute. Provision with regard to constituencies requiring consideration of various constituencies. (break in testimony - turn tape to side B) That these provision shall be considered.

35% requirement for calling special meetings of publicly held companies. The limitation on director of liability language and we have also tried very carefully to grandfather those provisions that might be important to existing people who have relationships to corporations. For example, pre-emptive rights are grandfathered for existing corporations, unless you opt out.

The two-thirds vote with regard to mergers, sales of assets, dissolution, and the like are also grandfathered, unless you opt out. So, in conclusion, what we believe that we have is a statutory frame work which you will find is well written. It's consistent with modern business practice and it would bring clarity to Connecticut's corporate statutes. We urge you to support this bill.

HAROLD FINN: Representative Tulisano to Senator Jepsen HB 5712 my name is Harold Finn, I'm the chairman of the section of corporations and other business organizations of the Connecticut Bar Association. I too am here to urge support, or passage rather of this bill, I just did want to add a couple of comments to what Mr. Lotstein has said.

And that's to describe the process that we've gone through in putting this legislation together. As he said it's been a three tier process and that has involved thousand, literally thousands, of hours of volunteer time on the part of the members of the corporation section as well as attorneys from corporations in the state in preparing the new law

and the commentary there too, which is included in this booklet which we would like to submit to be included in the

REP. TULISANO: That's beginning to bother me.

HAROLD FINN: Sorry sir.

REP. TULISANO: That's what's beginning to bother me. That you anticipated we pass this law by implication that we are accepting the commentary?

HAROLD FINN: No, I don't. The legislation does not include the commentary, but

REP. TULISANO: I understand that.

HAROLD FINN: It is offered for the guidance of the members of the Committee if they choose to look at it sir.

REP. TULISANO: I understand that, but should we pass this law and you're seeking some interpretation, some litigation occurs you anticipate that they will look for guidance on how to interpret it as to what those commentaries say.

HAROLD FINN: One of the benefits of the commentary is that it explains what was in the minds of the draftsmen in going from.

REP. TULISANO: I understand that, the problem is we're the draftsmen now, despite the fact we're seeking to be rubber stamps. Okay, so to know what's in the bill also means now I have the obligation of understanding all the commentary. And if I don't like one of those commentaries to change the bill, I, we, us.

HAROLD FINN: Obviously there is no requirement that you accept the commentary, and in deed you need not consider it part of the, it is not part of the legislation, and the fact that it's submitted here, it need not be considered by you.

REP. TULISANO: I want a statement thou shalt not.

HAROLD FINN: I think arrogant of me to tell you not to do anything sir.

REP. TULISANO: But I mean really if we don't know what's in it, we ought to tell the judge you ignore it too, make your own decision. Use that like anything else, it's just another brief.

HAROLD FINN: I presume.

REP. TULISANO: I would like it to have more force and effect than that wouldn't you?

HAROLD FINN: Of course I would sir.

REP. TULISANO: Okay, then I've got to read it, okay.

HAROLD FINN: It's well written.

REP. TULISANO: It'll be fun tomorrow.

HAROLD FINN: I also wanted to say that as part of this process we recognize the Bar Association, the section rather, recognizes that this law is a companion, would necessarily be a companion of another law that would have to be redrafted and presented to you for non-stock corporations and we are ready to make, we have made the commitment that we will draft that and submit it in a manner such as it can be adopted prior to the effective date of this legislation which is proposed to be January 1, 1996, at the request of the Secretary of the State.

Proudly I'd like to point out, there is a momentum of volunteer effort that has gone into this that you can take advantage of not only for this but also for the Non-Stock Corporation Act and I urge you to take advantage of that voluntary effort by passing this legislation.

REP. TULISANO: Can you answer me a question? In some of your testimony you talked about you grandfathered in all relationships with stocks.

JAMES LOTSTEIN: Would you like me to explain why we did that?

REP. TULISANO: Yeah.

JAMES LOTSTEIN: Okay. And why we changed it. The feeling, most, let me answer the second question first. Most of the states, currently have a majority decision as being required as opposed to a two-thirds decision for the kinds of things that we have two-thirds.

REP. TULISANO: Okay, now let's get to my next question is, that's, things we have two-thirds for were they part of the 1950 some odd bill originally?

JAMES LOTSTEIN: That is correct.

REP. TULISANO: Our two-thirds is just a follow through, it's not something this legislature decides it's a matter of public policy with something we want in terms of a separate like our takeover and all that.

JAMES LOTSTEIN: No, I don't, I do not believe that's the case. However, those, the believe was that those provisions may have been relied upon by people over the years in figuring up what their relationships were to each other and that if we were to change and require that everybody switch over from two-thirds to a majority as of January 1, 1996, that could harm people.

And leave them in a vulnerable position. So we decided that the fairest way to deal with this we believe was a transitional issue. Was to say that everybody will stay with the two-thirds unless they opt to change over to the majority. But new companies being incorporated will have a majority unless they choose something else.

REP. TULISANO: What's the commentary say, why did they go from two-thirds to a majority. The current commentary I don't believe talks about the rationale vs the two-thirds although I'd be delighted to check that and get back to you.

REP. TULISANO: It'd be interesting to me. Thank you.

HAROLD FINN: The rationale of going from two-thirds to the majority under general corporate concepts is that this is a compact among share holders and that

the share holder, that majority will in the case of share holders should be governing as it is in most democratic institutions.

REP. TULISANO: Unless you're changing the budget cap in the General Assembly, and a few other things we have here. Thank you.

HAROLD FINN: Thank you. If I can, sir we've left with the Committee some amendments to the bill that we have submitted to the clerk and that are part of the record here.

REP. TULISANO: Amendments?

JAMES LOTSTEIN: Would you like an explanation?

REP. TULISANO: What kind of, quick.

JAMES LOTSTEIN: They're really, they fall into two categories. One is that

REP. TULISANO: That's the same one that the Bar Association gave me?

JAMES LOTSTEIN: Yes, yes, exactly, the same thing. Request by Stanley Works for several things.

REP. TULISANO: What!

JAMES LOTSTEIN: Stanley works asked that it's, it is a special act corporation and there was a particular provision in there that it didn't think was drafted with reference to special act companies as it ought to have been and made a suggestion which it was believed to be correct.

HAROLD FINN: And which was intended, or which does rather, preserve the existing law as it relates to specially chartered organizations. There was another cross reference error. In addition there was an omission that we had pointed out to you, Representative Tulisano, about when we drafted it we inadvertently brought over the director of liability provision and we corrected that. Rather we didn't bring it over and we corrected that.

REP. TULISANO: Okay, thank you. Stanley Works is just, I don't want it to be special legislation.

HAROLD FINN: It is not.

REP. TULISANO: You can be sure we will read it close anyway, don't worry about that. We love, we know you're trying not to hide anything, but we'll read it anyway. It's part of our obligation.

HAROLD FINN: I would hope you would sir, we spent an awful lot of time putting this together.

REP. TULISANO: I mean the Stanley Works piece. Thank you. Madelyn Dematio, is there a Jim Cronin here, is Steve Hogan here? Madelyn? She left, I'm sorry. Is there a John McLean here? Is Gary Nalband, here?

GARY NALBAND: Nalband, right here.

REP. TULISANO: You're after this gentleman.

JOHN MCLEAN: Mr. Chairman, my name is John McLean, I'm a CPA and I'm representing the Connecticut Society of Certified Public Accountants. I really appreciate the opportunity to appear this evening to speak in favor of SB360, AN ACT CONCERNING LIMITED LIABILITY PARTNERSHIPS. HB 5858

Selecting a form of organization in which to operate is one of the most significant decisions an individual starting a business or continuing an existing one will have to make with respect to his or her business. There are a variety of considerations, both tax and non tax, including the application for all the federal, state and sometimes local law, as well as the objectives and desires of the business owner.

The choice of ownership has broad implications. It affects how the business is conducted as well as the personal fears of the owners. Consequently it is important that states provide business with the broadest array of organizational forms in which they may operate.

The limited liability partnership is a new type of general partnership that is beginning to start to sweep the nation. Five jurisdictions have already adopted it, Texas, North Carolina, Louisiana, Delaware, and the District of Columbia. Two other



SECRETARY OF THE STATE  
30 TRINITY STREET  
HARTFORD, CT 06106

Comments by the Office of the Secretary of the State  
Pertaining to House Bill 5712

The following represents concerns which this office has pertaining to the administrative portions of the Bill:

1. that the submission of exact or conformed copies not be required as a condition for the filing of any documents with the exception of an notice by a statutory agent that he or she has ceased to serve in that capacity and that such agent need only be required to file 1 original and 1 conformed copy, which copy this office shall forward to the corporation at its principal office address;
2. that the schedule of fees established under the bill be updated to reflect the inclusion of filings which do not presently exist under chapter 599 and the elimination of others;
3. that incorporations be made expressly effective upon filing to allow this office to be fully assured of an incorporation prior to its issuance of a certificate of legal existence and that such effective date be referred to in both the section relating to incorporation, section 20, and the section permitting the filing of documents with later effective date, section 7;
4. that any and all references to certificates of good standing be located within the section 6 fee schedule and that the contents of such certificates reflect requirements appearing in 33-304(b) of Chapter 599;
5. that section 12, relating to certificates of good standing and legal existence be eliminated from the bill consistent with the comment number 4;
6. that provisions allowing the attorney general to waive all or a portion of any late fees associated with the filing of a documents under sections 6(d) and 205(d) be considered unnecessary and eliminated because no corporation filings carry a late fee;
7. that the limitation on delayed effective dates for filed documents to no more than ninety days following filing found in section 2(b) be eliminated;
8. that all corrected documents have a filing fee of fifty dollars and that official state comments relate that the filing of a corrected document does not effectuate the removal from the record of the document which it corrects;
9. that section 11 be eliminated because it duplicates general provisions relating to the issuance of certified copies of documents on record by this office under section 6;

10. that the Secretary of the State be expressly permitted within the act to propound interrogatories for matters relating to his or her duty to assess penalties against foreign corporations which have transacted business in this state without a certificate of authority and that requirements relating to the manner and timing of a corporation's response appear in such section with language similar to that presented in section 33-302;
11. that franchise tax be collectable for corrected documents filed in this office which have the effect of increasing the number of a corporation's authorized shares of stock;
12. that the term "address" be defined as in 33-284(a)
13. that the various definition section be consolidated into a single section;
14. that "Societa per Asioni" and its abbreviation S.p.A. be added to the group of corporate designation which may be included in a corporation's name;
15. that language prohibiting the renewal of a reservation of corporation name in section 33 be removed from the bill;
16. that corporations not be permitted to reserve a fictitious trade name under section 33;
17. that the general definition given for the phrase "principal office" in section 17(18) be replaced by the more precise definition of the phrase as it appears in section 33-284(r);
18. that all corporation names filed with the office of the secretary of the state under sections 32 and 33 be distinguishable from the names, reserved and registered, by foreign and domestic nonstock corporations, limited partnerships, and limited liability companies, as well as other stock corporations;
19. that incorporating domestic entities not be allowed to use a name under which a foreign corporation has registered as they may under section 34(e);
20. that the provisions in sections 33-296 and 33-297 of Chapter 599 relating to statutory agents and service of process thereupon be substituted for relatively narrow provisions in sections 35, 36, 37, and 38 of the Act regarding the same;
21. that the conflict between section 21 which allows for the inclusion of information regarding classes of shares in the articles of incorporation as a permissive element and section 39 which makes the presentation of class information in the articles mandatory be resolved and that such sections be consolidated;
22. that section 120, which allows for the change of a corporation's registered address and address of statutory agent by way of an amendment, be eliminated consistent with the existence of a separate filing established solely for that purpose under the provision proposed above in comment 19 which would mimic the language found in section 33-296;
23. that sections 40(d) and 125(3) be removed to reflect recent trends the Connecticut corporations law eliminating the requirement that information regarding the issuance of shares be presented to this office;

24. that section 125 be further altered in such a way as to reflect the less complicated voting disclosure requirements found in section 33-360(b) (4) of Chapter 599;
25. that section 126(f) be removed because it is redundant in light of this office's general authority to issue a certified copy of any of its recorded documents under section 6;
26. that a fee for the new filing governed by section 136, articles of share exchange, be established and included within the fee schedule;
27. that, in the interest of simplicity, section 136 be further amended to require only the presentation of the vote required for adoption and the vote favoring adoption of the plan of merger;
28. that the requirement that a dissolving corporation provide its date of incorporation within its articles of dissolution be eliminated in section 161 in order to remove an unnecessary reason for rejection of such document;
29. that vote reporting requirements of section 163 be simplified by having such section mandate that only the affirmative vote required to adopt the resolution and the actual vote in favor of the resolution be presented;
30. that section 164 be eliminated and in its place be inserted provisions allowing for the reinstatement of all corporations which have dissolved voluntarily or been dissolved through operation of law and that such section mirror reinstatement provisions found within section 33-388 of Chapter 599;
31. that section 33-387 relating to the grounds for and process of dissolution by forfeiture be substituted for sections 169 and 170 of the bill relating to the same;
32. that section 171 be eliminated to accommodate the inclusion of the broader reinstatement law called in comment 30;
33. that section 172 be eliminated as it is redundant in light of general document handling standards established in section 9 for the office of the secretary of the state and the general provision allowing for the recipient of a rejected document to seek a writ of mandamus for the filing of such document in the superior court pursuant to section 10;
34. that the qualifying term "usual" be removed from language in section 186(6) calling for a statement of the business addresses of the corporation's officers and directors;
35. that the resolution by the board of directors authorizing the corporation to use a fictitious trade name in this state under the conditions established in section 189(a) (2) be incorporated into the application for certificate of authority, not submitted as a separate copy;
36. that section 189(d) (3) be eliminated because the statute does not call for the filing of any verifying documentation to show that an acquisition of corporate assets and name has occurred;
37. that the provisions in sections 33-400 and 33-411 of Chapter 599 relating to foreign corporation's statutory attorney and service of process thereupon be substituted for relatively narrow provisions in sections 190, 192 and 193 of the Act regarding the same;

38. that in the absence of the substitution called for in comment 37, the Secretary of the State, upon becoming statutory agent for a withdrawing foreign corporation under section 194 and thence being served process upon as such agent lacks statutory guidelines relating to the timing of the forwarding of process to the corporation and the specific mail method by which such process must be forwarded;
39. that sections 33-409 and 33-410 of Chapter 599, relating to the grounds for and the process of revocation of a foreign corporation's certificate of authority be substituted for the same as they appear in sections 195 and 196;
40. that annual report requirements established for domestic and foreign corporations in P.A. 93-363 sections 2 and 8 respectively be substituted for the slightly more detailed reporting requirements established in sections 204 and 205 with the possible exception of the requirement that corporations report the residence addressed of their officers and directors, but see point for consideration number 4 in the non-administrative comments which follow;
41. that the statutes effective date be no earlier than January 1, 1996, to allow for modifications to the office's automated filing system.

We thank you for your consideration of these matters and will elaborate upon the bases of any one of our concerns upon request. Please see general comments which follow.



SECRETARY OF THE STATE  
30 TRINITY STREET  
HARTFORD, CT 06106

General comments by the Office of the Secretary of the State  
pertaining to House Bill 5712

In addition to the concerns mentioned in the foregoing document, some general non-administrative matters warrant review as points for consideration. They are as follows:

1. that shareholder approval of the surviving corporation under section 134(g) is not required for mergers in which such survivor's certificate remains in force following the merger, minus any changes which directors may make acting alone by way of amendment, regardless of the percentage of ownership which the surviving corporation held in any of the terminating corporations at the time of the merger;
2. that section 136 precludes the filing of a the type of short form merger permitted under section 33-367, wherein various statement and assurances are permitted to be presented in lieu of the plan of merger;
3. that a certified copies are no longer prima facie evidence of its contents;
4. that in circumstances when a a corporation's directors or officers lack business addresses, such corporation will not have to report an alternative location at which such persons can found, such as their residence addresses;
5. that the Department of Revenue Services may have difficulty tracking a foreign corporation which changes its recorded state of incorporation by way of amendment to its certificate of authority under section 187(a)(3);
6. that the Secretary of the State may no longer, under the provisions of this bill, receive process as agent for foreign corporations authorized to transact business here or by operation of law for either domestic corporations whose agents cannot be found or foreign corporation lacking a certificate of authority to transact business in this state.

We thank you for your consideration of these matters and will elaborate upon the bases of any one of our concerns upon request.



**Statement by Southern New England Telecommunications Corporation Regarding  
Raised Bill No. 5712, "An Act Adopting the Connecticut Business Corporation Act"**

**Presented by Madelyn M. DeMatteo, Esq.  
Vice President, General Counsel, and Secretary**

**Before the Judiciary Committee  
March 22, 1994**

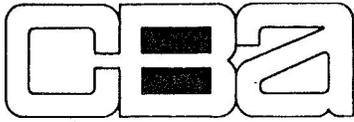
SNET supports Raised Bill No. 5712, An Act Adopting the Connecticut Business Corporation Act, for the following reasons:

- The Bill would modernize the language of the existing Stock Corporation Act to reflect modern corporate practice, especially in areas affecting publicly-held corporations, and would thereby provide greater clarity and precision in a number of areas.
- The case law and commentary based on the proposed Act would add more predictability to Connecticut corporate law, especially in light of Connecticut's sparse existing case law, thereby greatly benefiting Connecticut corporations in planning.
- Adoption of the proposed Act should result in minimal disruption to existing Connecticut corporations since key provisions of the existing Stock Corporation Act have been retained in the proposed Act.

As a publicly-held corporation, SNET is subject not only to Connecticut's corporate statutes but also to regulation by the Securities and Exchange Commission and the New York Stock Exchange as well as GAAP. Connecticut's present Stock Corporation Act, having remained largely unchanged since its adoption in 1959, does not reflect current practice by these regulatory bodies in particular and modern corporate practice in general.

In addition to increasing the comprehensibility of Connecticut's corporate statutes, adoption of the proposed Act would enable Connecticut corporations to apply case law from other states for planning purposes. This would significantly reduce uncertainty and should thereby reduce business costs.

In conclusion, SNET supports House Bill No. 5712.



**Connecticut Bar Association**

**TESTIMONY OF  
THE CONNECTICUT BAR ASSOCIATION  
IN SUPPORT OF H. B. 5712  
AN ACT ADOPTING THE CONNECTICUT BUSINESS CORPORATION ACT**

Presented by Harold B. Finn III, Chair  
Corporations and Other Business Organizations Section  
and  
James I. Lotstein, Co-Chair  
Model Business Corporation Act Task Force

March 22, 1994

The Connecticut Bar Association supports H. B. 5712, an Act Adopting the Connecticut Business Corporation Act. For the past few years, the Connecticut Bar Association Section on Corporations and Other Business Organizations (the "Section") has been studying whether the Connecticut Stock Corporation Act (the "Connecticut Act") should be revised along the lines of the Revised Model Business Corporation Act (the "Model Act"). The Connecticut Act was adopted in 1959 and has not been substantially revised since then. The Connecticut Act was based on the original version of the Model Business Corporation Act, promulgated in 1950.

In the intervening thirty-four years, corporation law has evolved and the Model Act, which is published by the American Bar Association Corporate Laws Committee, as a guide for state corporate laws, has been substantially revised. The corporate laws of thirty-five states are based on the Model Act at this point, but only Connecticut and a few other states continue to be based on the original Model Act.

Until recently, it was believed that the Connecticut Act could be kept up to date by technical amendments from time to time. Unfortunately, it has now become clear that the

Connecticut Act is badly out of step with modern corporate statutes and that the this approach will no longer work.

The current state of the Connecticut Act creates difficulties for both Connecticut businesses and business people and members of the Connecticut Bar. The Connecticut Act deters incorporation in Connecticut by most significant businesses due to its outmoded provisions and lack of clarity. This results in a significant loss of revenue to the state in that Connecticut based corporations are incorporating in other states, like Delaware, where they then perform their corporate filings and pay their fees. The corporate conduct of these "foreign corporations", which have their headquarters in Connecticut, is governed by the laws of the other state and not by Connecticut's laws.

There are several important advantages to adopting the Model Act in Connecticut. The first is that the Model Act would bring uniformity with other states. There are very few other states that like Connecticut are based on the 1950 Model Act.

The second is that the Model Act has official comments, similar to the Uniform Commercial Code. These comments are a source of information to lawyers about the meaning and interpretation of the law.

The third advantage is that with wide-spread uniformity of language among the states that have adopted the Model Act, there is case law available to assist in the interpretation of the statute. This is particularly important in a small state like Connecticut where there is relatively little corporate case law.

The fourth advantage is that the Model Act is widely available and is constantly being reviewed and updated by the Corporate Laws Committee of the American Bar Association,

taking the burden off the individual states to perform those tasks themselves. Law school graduates are trained in the Model Act and would join the Connecticut Bar having a greater familiarity with our corporate statute.

This proposed adoption of the Connecticut Business Corporation Act has widespread support. The Secretary of the State, Pauline Kezer, supports the Bill on the basis that it would modernize the administration of corporate law by her office. Among other things, it would make direct provision for electronic and facsimile filings which is consistent with both the automation of that office and the manner in which other forward looking states are managed.

The business community supports this Bill. Representatives of Southern New England Telephone Company, Travelers, The Stanley Works and Aetna Life and Casualty Insurance Company have worked on this legislation as members of the Task Force. The Connecticut Business and Industry Association also supports this Bill.

The new Connecticut Business Corporation Act will bring numerous benefits to both large, publicly held corporations and small closely held corporations. For example, small, closely held corporations will no longer have to have a separate board of directors. They can operate the corporation at the shareholder level similar to a partnership, which is more consistent with the way smaller businesses actually operate. The new law would also give flexibility to small corporations in their perpetuation planning through buy-sell agreements by revising the rules on redemptions of shares and dividends. Large, publicly held corporations will benefit by eliminating current ambiguities and bringing clarity to certain important procedures, such as those dealing with sale of shares, voting of shares and fundamental corporate changes.

The Connecticut Act contains outdated corporate accounting concepts of stated capital,

capital surplus and earned surplus. These have little relationship to modern concepts of Generally Accepted Accounting Principles or the accounting procedures used by the Securities and Exchange Commission.. For example under the Connecticut Act, dividends and other distributions are limited to earned surplus. The Model Act provides clarity as to when distributions are permissible.

In drafting the new law, we were very sensitive to the need to minimize the potential for disrupting important expectations that people may have that are based upon the existing Connecticut Act. Accordingly, we retained a number of key provisions of the Connecticut Act verbatim and retained the effect of other provisions for the benefit of existing corporations by the use of "grandfather" clauses. An example of the key provisions retained are the business combination provisions appearing at sections 33-374a to 33-374f of the Connecticut General Statutes. Examples of the provisions that were grandfathered are the provisions relating to preemptive rights and the sections requiring a two-thirds vote in the event of fundamental corporate changes such as a merger, sale of assets, or amendment of certificate of incorporation.

The Bill has a delayed effective date to give an opportunity to educate Connecticut lawyers and business people about the changes being made and to allow time to draft revisions to the Connecticut Nonstock Corporation Act. We suggest an effective date of January 1, 1996.

We have received a number of comments to the Bill and have prepared a proposed amendment to it to make corrections where needed. The proposed amendment is being submitted to you at this time for your consideration. We are available to you at any time to answer any questions that you may have.

In conclusion, the Model Act provides a statutory framework which is well organized,

consistent with modern business practice and well written. Many of the ambiguities and out-of-date provisions of the Connecticut Act are dealt with in a clear and thoughtful manner. The Connecticut Business Corporation Act would bring these advantages to Connecticut.

## FINN DIXON &amp; HERLING

## MEMORANDUM

## AMENDMENTS TO HOUSE BILL 5712

TO: Judiciary Committee

FROM: Harold B. Finn, Chairman, Section on Corporations  
and Other Business Organizations, Connecticut Bar  
Association

DATE: March 20, 1994

RE: Amendments to House Bill 5712 (Proposed Connecticut Business  
Corporation Act)

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The following are suggested technical corrections to the proposed Connecticut Business Corporation Act (Raised House Bill No. 5712):

1. Section 21(b)(4). Change subdivision (4) [Lines 533-541] to read as follows:

(4) a provision limiting the personal liability of a director to the corporation or its shareholders for monetary damages for breach of duty as a director to an amount that is not less than the compensation received by the director for serving the corporation during the year of the violation if such breach did not (A) involve a knowing and culpable violation of law by the director, (B) enable the director or an associate, as defined in section 141 of this act, to receive an improper personal economic gain, (C) show a lack of good faith and a conscious disregard for the duty of the director to the corporation under circumstances in which the director was aware that his conduct or omission created an unjustifiable risk of serious injury to the corporation, (D) constitute a sustained and unexcused pattern of inattention that amounted to an abdication of the director's duty to the corporation, or (E) create liability under section 101 of this act. No such provision shall limit or preclude the liability of a

director for any act or omission occurring prior to the effective date of such provision.

As so revised, subdivision (4) will incorporate Section 33-290(c)(2) in its entirety with only conforming changes.

2. Section 39(a). Change the cross-reference in the last line of the subsection [Line 898] to read "section 40 of this act."

3. Section 53(d). Change the fifth line of the subparagraph [Line 1209] by substituting the date "January 1, 1996" for the date "October 1, 1995." In order to accommodate the concerns of the Secretary of the State, it is proposed that the act become effective on January 1, 1996, instead of October 1, 1995. Like changes will have to be made throughout the Raised Bill to reflect such revised effective date.

4. Section 134(j) [Lines 2998-3026]. Subsection 134(j) should be changed to read as follows:

(j) Notwithstanding any provision of subsection (e) of this section to the contrary, a plan of merger or share exchange of a corporation which was incorporated under the laws of this state, whether under chapter 599 of the general statutes, revised to January 1, 1995, or any other general law or special act, prior to January 1, 1996, to be authorized by such corporation, shall be approved by (1) the affirmative vote of at least two-thirds of the voting power of each voting group entitled to vote thereon unless the articles of incorporation expressly provide otherwise, provided that if such corporation is the surviving corporation of such merger and such plan of merger will not effect any change in or amendment to the articles of incorporation of such corporation and the shares to be issued under the plan of merger could have been issued by the board of directors of such corporation without further authorization of the shareholders of such corporation, then provisions of this subdivision (1) shall not require approval of such plan of merger or share exchange by the corporation's shareholders, and (2) the affirmative vote of at least two-thirds of the voting power of each class of stock of such corporation outstanding prior to January 1, 1996, and not otherwise entitled to vote thereon, unless the articles of incorporation expressly provide otherwise; provided that if such corporation is the surviving corporation of such merger and either (A) such plan of merger or share exchange does not contain any

provisions which, if contained in a proposed amendment to the articles of incorporation of such corporation, would entitle any class or series of shareholders of such surviving corporation to vote as a class or series as provided in subsection (f) of section 122 or section 123 of this act, then the provisions of this subdivision (2) shall not require approval of such plan of merger or share exchange by the holders of such class or series not otherwise entitled to vote thereon.

The revision to this "grandfather clause" is intended to clarify the circumstances in which the vote of the holders of shares, or a class or series thereof, is not required. The revised subparagraph conforms with existing law.

4. Section 205 [Lines 5250-5285]. The references to "biennial" reports should be deleted throughout the section since corporations will be required to submit annual reports under the act.

5. Section 206. Delete the words "or special act" which appear in Line 5286. The applicability of the act to specially chartered corporations is covered in Sections 179-183.