

Legislative History for Connecticut Act

| HB 5452   | PA 254                          | 1996         |
|-----------|---------------------------------|--------------|
| Senate    | 5337, 5339-5340                 | (3)          |
| House     | 4832-4860, 6350-6358, 6420-6425 | (44)         |
| Judiciary | 627, 629, 631-643, 945-946      | (17)         |
|           |                                 | total 64 pgs |

Transcripts from the Joint Standing Committee Public Hearing(s) and/or Senate  
and House of Representatives Proceedings

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CONNECTICUT  
GEN. ASSEMBLY  
SENATE

PROCEEDINGS  
1996

VOL 39  
PART 15  
VETO SESSION  
4994-5373

the State.

5/8 House Passed with House A

5/8 Referred to Senate Pursuant to Joint Rules

End of Senate Agenda #5

THE CHAIR:

Senator Fleming.

SEN. FLEMING:

Yes, thank you Madam President. Madam President, I would like to move two items to Consent that are on two different Agendas. On Senate Agenda #4, I would like to move HB5275. Madam President?

THE CHAIR:

Senator Fleming.

SEN. FLEMING:

On Senate Agenda #3, not Senate Agenda #4, I would like to move an item to the Consent Calendar, HB5452, AN ACT CONCERNING THE LIABILITY OF PARTNERS OF LIMITED LIABILITY PARTNERSHIPS.

THE CHAIR:

Without objection, so ordered.

SEN. FLEMING:

And Madam President?

THE CHAIR:

Senator Fleming.

SEN. FLEMING:

Substitute for HB5284, AN ACT CONCERNING TECHNICAL  
AND MINOR CHANGES TO THE STATUTES OF THE DEPARTMENT OF  
CHILDREN AND FAMILIES. Could we place that item on  
Consent?

THE CHAIR:

Without objection, so ordered.

SEN. FLEMING:

And Madam?

THE CHAIR:

Senator Fleming.

SEN. FLEMING:

Madam President, I'd like to ask the Clerk to call  
the Consent Calendar.

THE CHAIR:

Clerk please call.

THE CLERK:

Agenda #3, HB5452.

Agenda #4, HB5284.

Agenda #5, HB5542.

THE CHAIR:

Clerk please call a roll call vote, the machine  
will be open.

THE CLERK:

An immediate roll call on the Consent Calendar.  
Will all Senators return to the chamber. An immediate  
roll call on the Consent Calendar. Will all Senators  
return to the chamber.

THE CHAIR:

Have all members voted? If all members have  
voted, the machine will be locked. Clerk please take a  
tally.

THE CLERK:

|                       |    |
|-----------------------|----|
| Total Number Voting   | 36 |
| Necessary for Passage | 19 |
| Those Voting Yea      | 36 |
| Those Voting Nay      | 0  |

THE CHAIR:

Consent Calendar is adopted. Senator Fleming.

SEN. FLEMING:

Madam President?

THE CHAIR:

Senator Fleming.

SEN. FLEMING:

Yes, thank you Madam President. At this time I  
would like to, from Senate Amendment #1, ask the Clerk  
to call HJR83.

THE CLERK:

H-755

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|                             |     |
|-----------------------------|-----|
| Necessary for Passage       | 75  |
| Total number Voting         | 149 |
| Those voting Nay            | 0   |
| Those absent and not voting | 1   |

SPEAKER PRO TEMPORE PUDLIN:

Bill passes. Are there any announcements or points of personal privilege? Representative Jarmoc, Representative Gelsi.

REP. GELSI: (58th)

Thank you Mr. Speaker for the purpose of an introduction.

SPEAKER PRO TEMPORE PUDLIN:

Your introduction sir.

REP. GELSI: (58th)

Mr. Speaker, and members of the Chamber, I'm very happy that we have Representative Jarmoc's wife, Karen, and the two additions to the family here in the Chamber, Gracie and Owen. If we would give them a nice warm welcome to the Chamber.

APPLAUSE

SPEAKER PRO TEMPORE PUDLIN:

Clerk please return to the call of the Calendar, Calendar 416.

CLERK:

On page seven, Calendar 416, substitute for

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HB5452. AN ACT CONCERNING LIABILITY OF PARTNERS OF LIMITED LIABILITY PARTNERSHIPS. Favorable report of the Committee on Judiciary.

SPEAKER PRO TEMPORE PUDLIN:

Good afternoon Representative Lawlor.

REP. LAWLOR: (99th)

Good afternoon Mr. Speaker, how are you today?

SPEAKER PRO TEMPORE PUDLIN:

I'm just fine, thank you.

REP. LAWLOR: (99th)

Have I been recognized sir?

SPEAKER PRO TEMPORE PUDLIN:

Yeah, do you rise for any reason in particular sir?

REP. LAWLOR: (99th)

Thank you Mr. Speaker. I move acceptance of the joint committee's favorable report and passage of the bill.

SPEAKER PRO TEMPORE PUDLIN:

On acceptance and passage, please remark.

REP. LAWLOR: (99th)

Thank you Mr. Speaker. The file copy in this bill clarifies legislation recently enacted, and specifically states that partners who are partners in limited liability partnerships are not liable in an

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action based on contract tort. Contract tort or otherwise in the event that, that is committed by another member of the partnership. I would urge passage. Mr. Speaker the Clerk has LCO 6719, I would ask that the Clerk call and that I be permitted to summarize.

SPEAKER PRO TEMPORE PUDLIN:

Clerk please call LCO 6719, House "A."

CLERK:

LCO 6719, House "A" offered by Representative Lawlor.

SPEAKER PRO TEMPORE PUDLIN:

Excuse me, Representative Chase you have a point of order?

REP CHASE: (120th)

Yes, Mr. Speaker, we don't have this amendment on this side of the aisle.

SPEAKER PRO TEMPORE PUDLIN:

Well then we'll hold off for a little bit. Clerk's office please try to distribute the amendment. Representative Chase? Please come to order. The Gentleman has asked leave to summarize, hearing no objection proceed Representative Lawlor.

REP. LAWLOR: (99th)

Thank you Mr. Speaker. Has the amendment been

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called Mr. Speaker?

SPEAKER PRO TEMPORE PUDLIN:

Yes it has.

REP. LAWLOR: (99th)

Mr. Speaker, this amendment should be read in tandem with a bill that is currently pending before the Senate which would require, which has a similar requirement with regard to attorneys who have client funds accounts. This would require persons who take advantage of a limited liability partnership to carry personal malpractice insurance not less than \$1 million. I urge adoption Mr. Speaker.

SPEAKER PRO TEMPORE PUDLIN:

On the adoption of "A," will you remark?  
Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Thank you Mr. Speaker. A question if I may through you to the proponent of the amendment.

SPEAKER PRO TEMPORE PUDLIN:

Your question.

REP. RADCLIFFE: (123rd)

The requirement for \$1 million in partnership liability coverage. Through you Mr. Speaker would that apply to every partnership?

SPEAKER PRO TEMPORE PUDLIN:

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Representative Lawlor.

REP. LAWLOR: (99th)

Thank you Mr. Speaker. It would apply to partnerships formed pursuant to 34-53 of the General Statutes.

REP. RADCLIFFE: (123rd)

And that through you Mr. Speaker, what partnerships then would be excluded from this section of the statutes? Would that include a family partnership, would that include a partnership of two individuals to carry on any lawful activity, through you Mr. Speaker?

REP. LAWLOR: (99th)

Through you Mr. Speaker, could you repeat the question one more time?

SPEAKER PRO TEMPORE PUDLIN:

Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Yes, through you Mr. Speaker and I'm referring to the portion of the amendment that says that each partner shall maintain liability insurance in the amount of not less than \$1 million. And I asked through you Mr. Speaker, if that would apply to every partnership formed for a lawful purpose in the state of Connecticut and if not what partnerships would be

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excluded? Through you Mr. Speaker.

SPEAKER PRO TEMPORE PUDLIN:

Representative Lawlor.

REP. LAWLOR: (99th)

Through you Mr. Speaker it would apply to every partnership formed pursuant this section of the Statute. so therefore, every partnership.

SPEAKER PRO TEMPORE PUDLIN:

Representative Radcliffe.

REP. RADCLIFFE: (123rd)

Thank you. So, through you Mr. Speaker, if I form a partnership with two other people to conduct a part-time antiquing business, am I going to be required to maintain \$1 million in liability coverage? Through you Mr. Speaker.

REP. LAWLOR: (99th)

Thank you Mr. Speaker. Through you if you seek to take advantage of the protection from liability which is afforded in a limited liability partnership, yes you would.

REP. RADCLIFFE: (123rd)

So, through you Mr. Speaker. The limited liability company, as I understand it, is designed to allow individuals to avoid personal responsibility or personal liability in the event of a claim against the

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limited liability company. We're now establishing a threshold which says that if you're going to be a limited liability company you're going to have at least \$1 million in liability coverage, is that correct?

Through you Mr. Speaker.

SPEAKER PRO TEMPORE PUDLIN:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you Mr. Speaker. Through you, yes that's correct.

REP. RADCLIFFE: (123rd)

Thank you Mr. Speaker. In lines 21 and 22 of the amendment I read here that each partner shall maintain coverage of not less than \$1 million. Assuming there are ten partners does that mean that each partner has to have his own policy in order to qualify, through you Mr. Speaker.

SPEAKER PRO TEMPORE PUDLIN:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you Mr. Speaker. Not necessarily if there was one blanket policy for the firm which covers each individual partner that would suffice.

REP. RADCLIFFE: (123rd)

Thank you Mr. Speaker. So, through you, if the

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insurance company covered up to \$1 million per occurrence, any individual partner, would that be sufficient if the partners were jointly and severally liable. Through you Mr. Speaker.

REP. LAWLOR: (99th)

Thank you Mr. Speaker. Through you, yes it would.

REP. RADCLIFFE: (123rd)

And when they're discussing here partners down in line 21, this is only a partner in a limited liability company. This would not be a partner in a general partnership where the rule is that each partner is jointly and severally liable for the acts of the other partners. Is that correct? Through you Mr. Speaker.

REP. LAWLOR: (99th)

Thank you Mr. Speaker. Through you, yes that is correct.

REP. RADCLIFFE: (123rd)

Thank you.

SPEAKER PRO TEMPORE PUDLIN:

Representative Knierim.

REP. KNIERIM: (16th)

Thank you Mr. Speaker. Through you a question to the proponent.

SPEAKER PRO TEMPORE PUDLIN:

Frame your question sir.

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REP. KNIERIM: (16th)

Through you Mr. Speaker and Representative Lawlor I apologize if you already answered this question, but limited liability partnerships, is it the case that they, that a partnership of a form other than a professional partnership can register as a limited liability partnership?

SPEAKER PRO TEMPORE PUDLIN:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you Mr. Speaker. LLP is a relatively new creation in Connecticut. The only reason to take advantage of the protections in an LLP are to avoid liability for the tortious acts of other partners. And so I think the answer to your question is no, although I can't specifically remember your question.

SPEAKER PRO TEMPORE PUDLIN:

Will that satisfy you Representative Knierim.

REP. KNIERIM: (16th)

Well thank you Mr. Speaker, I think I agree with the answer that other forms of partnerships may register and become limited liability partnerships. Given that that's the case I don't think the amendment makes sense. Because what we're saying is that each partner of a limited liability partnership must

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maintain professional liability insurance. But of course professional liability insurance isn't available to nonprofessionals. And if a limited liability partnership can be formed among partners who are not professionals then I can see how we could possibly require them to maintain professional liability insurance.

So I think that's a flaw in the amendment Mr. Speaker and thank you.

SPEAKER PRO TEMPORE PUDLIN:

Thank you sir. Representative Lawlor.

REP. LAWLOR: (99th)

If I can just respond to that, I think it's otherwise known as errors and omissions insurance, do either would suffice, for legislative intent.

SPEAKER PRO TEMPORE PUDLIN:

Representative Varese.

REP. VARESE: (112th)

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

SPEAKER PRO TEMPORE PUDLIN:

Your question sir.

REP. VARESE: (112th)

Thank you Mr. Speaker. Through you Mr. Speaker to Representative Lawlor. Representative Lawlor as I

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understand it, initially as we had corporations here in the state of Connecticut and through the Internal Revenue laws, basically we had the C corporation and we had the sub-chapter S corporation. And both of those corporations were in essence recognized through the federal Internal Revenue laws and in essence the distinction was the C corporation the tax consequences were much different than the sub S corporation.

The sub S corporation, as I understand it, again through federal law, allowed--as long as it qualified--the individuals that were involved in that particular corporation to have a pass through. So that the corporation in essence was not paying the tax but the individuals would claim that as income.

Now, my question is--again as I understood it--when we implemented or when the income tax was implemented, what happened was our revenue service department did not recognize the sub chapter S corporation. And because of the fact that they did not recognize that sub chapter S corporation, what was happening was, those who had the sub S corporation still had to pay taxes--corporate taxes--for that particular reason.

Then what I believe happened was, and I'm asking this, but my recollection was that we went into those

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limited liability companies so that we would be able to then treat the tax consequence the same as a sub S corporation. Through you Mr. Speaker, if I wasn't too long winded.

SPEAKER PRO TEMPORE PUDLIN:

Just enough wind to fill the sails sir.

Representative Lawlor.

REP. LAWLOR: (99th)

Mr. Speaker, I didn't actually pick up a question in there.

REP. VARESE: (112th)

Well, I guess what I'm wondering is, when we go into the limited liability companies, or we go into a limited liability partnership, that liability, the purpose of that initially was to correct a problem that we had internally here within the state as far as tax consequences were concerned. Through you Mr. Speaker.

REP. LAWLOR: (99th)

Through you Mr. Speaker, I'll defer to your recollection on that, I don't specifically recall that, but I think it all, the other purpose it serves to shield partners from the liabilities from the torts of their partners.

REP. VARESE: (112th)

Yes, and then that. Well to the body, that's true

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and that's the way I understood it. But in my mind, the initial reason that this came into effect was because the sub S was not doable in the state of Connecticut because of the way the regs were. So as a result of that we went into a different entity.

And this different entity was the limited liability entity. So I guess the concern that I have is the general purpose of this was to limit liability and it would seem to me that if you have a C corporation and you have a sub S corporation, those corporations can be basically organized and set up with a minimum of \$1000.

There is no liability at all for the corporate offices unless they sign on it individually. So at the same point, if we deal with this limited liability prospect it would seem to me that these individuals too should have the same protection and if for some reason we wanted them not to have that protection then they should sign on individually.

And if they're not going to sign on as guarantors then they should have the same type of protection. And I think if we're talking about a negligent act, then I think if anybody did an action that was negligent whether they were within the corporation or not, if it was an individual action, they would still be culpable

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and they would still be liable. So I guess, I'm just I'm somewhat concerned because I think what we're doing here is I think we're hindering one particular group. And I think the reason that we initially set this up was to protect that group from the standpoint of tax liability and now, now what we're doing is we're saying okay, we're going to protect it from the tax liability but you have to have this million dollar insurance policy.

And I think we should follow the same logical thread that we would have with the C corporation or an S corporation and allow these individuals the same rights and allow the creditors the same remedies. Mr. Speaker.

SPEAKER PRO TEMPORE PUDLIN:

Representative Lawlor is your microphone on?

REP. LAWLOR: (99th)

It's fine Mr. Speaker.

SPEAKER PRO TEMPORE PUDLIN:

There want's a question was there Representative Varese? Will you remark further on "A"? Yes, Representative Cleary.

REP. CLEARY: (80th)

Thank you Mr. Speaker. A question through you to the proponent of the amendment.

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SPEAKER PRO TEMPORE PUDLIN:

Frame your question sir.

REP. CLEARY: (80th)

Through you Mr. Speaker to Representative Lawlor. As I read the amendment this is being inserted in line 36 of the file? Through you Mr. Speaker.

SPEAKER PRO TEMPORE PUDLIN:

Representative Lawlor.

REP. LAWLOR: (99th)

Through you Mr. Speaker, it's being inserted after line 36, so it would be the new section 5 in the file copy. Through you Mr. Speaker.

REP. CLEARY: (80th)

Through you Mr. Speaker, what happened to section 2 and 3 in the file copy?

SPEAKER PRO TEMPORE PUDLIN:

Representative Lawlor.

REP. LAWLOR: (99th)

Through you Mr. Speaker, they're still there, this is just being inserted between sections, between lines 36 and prior to the beginning of section 2.

REP. CLEARY: (80th)

Then through you Mr. Speaker, this is actually adding to section 1 is that correct?

REP. LAWLOR: (99th)

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Thank you Mr. Speaker. Through you. Yes, this would add to section 1 and then the second part of the amendment is being inserted just prior to section 3.

REP. CLEARY: (80th)

Thank you, if I could just ask a question I think that was answered, I didn't quite understand. A partner who is unable to get professional liability coverage, it is your interpretation that this language would require errors and omissions? Through you Mr. Speaker.

SPEAKER PRO TEMPORE PUDLIN:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you Mr. Speaker. Through you, there was a question about that earlier, if you're not exactly a professional necessarily can you get professional liability insurance. Professional liability insurance also known as errors and omissions insurance so for legislative intent that would suffice.

REP. CLEARY: (80th)

Thank you Representative Lawlor. Again, I think this was answered before, but I'm still unclear with the response. Let me give you a scenario. If 20 people got together and formed an LLC to purchase a piece of property for development. As I read the

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language in this amendment it would require each of those 20 people individually to buy professional liability insurance. That's my interpretation of what I read I read in the file. Through you Mr. Speaker, is that the interpretation of the proponent?

REP. LAWLOR: (99th)

Thank you Mr. Speaker, this applies to limited liability partnerships. And if that was their purpose then yes they would have to have that much insurance, yes.

REP. CLEARY: (80th)

If you could please repeat that Mr. Speaker, I can't hear the response.

REP. LAWLOR: (99th)

Thank you Mr. Speaker. This applies to limited liability partnerships not corporations, but if they chose as their purpose to buy property.

REP. CLEARY: (80th)

Mr. Speaker.

SPEAKER PRO TEMPORE PUDLIN:

I'll try. Sergeant of Arms please instruct guests to come to the well of the House. Will lobbyists for state agencies, will staff, will others please step down to the well or leave the room. Will staff please step down. Mr. Shay. Mr. Cleary proceed sir.

REP. CLEARY: (80th)

If Representative Lawlor could repeat his last answer I was unable to hear it.

REP. LAWLOR: (99th)

Thank you Mr. Speaker. I believe the Representative's question dealt with limited liability corporations. This bill pertains to limited liability partnerships and I simply point out the only reason to form a limited liability partnership aside from perhaps the tax consequences that Representative Varese had mentioned is to shield yourself from actions brought against partners in the partnership based on their tortious acts or contract actions, etcetera.

So this in effect would be a protection to make sure that anyone who is doing business with that partnership would be protected if in fact there was any conduct of this type.

REP. CLEARY: (80th)

Through you Mr. Speaker, if there were 20 individual partners each of those 20 people, as I read the amendment, would have to have a liability policy of a million dollars? Through you Mr. Speaker, is that correct as I read the amendment?

REP. LAWLOR: (99th)

Thank you Mr. Speaker. Through you or in the

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alternative and much more likely to be the case, the partnership itself would have a blanket policy which would name each of the partners as someone protected under that policy.

REP. CLEARY: (80th)

So through you Mr. Speaker that would be one policy naming 20 if there were 20 partners as additionally insured? Through you Mr. Speaker.

REP. LAWLOR: (99th)

Yes, Mr. Speaker, through you. Yes, that's the case and in discussing this with the advocates for partnerships of this type they indicate that it is common practice. Such limited liability partnerships would carry a minimum of a million dollar policy under those circumstances.

REP. CLEARY: (80th)

Through you Mr. Speaker, do we currently have liability insurance requirements for stockholders in a corporation in the state of Connecticut? Through you Mr. Speaker.

REP. LAWLOR: (99th)

Through you Mr. Speaker, no, not that I'm aware of.

REP. CLEARY: (80th)

Through you Mr. Speaker, one of the reasons for

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having a corporation is also to limit liability of the owners when there are multiple stockholders? Through you Mr. Speaker.

REP. LAWLOR: (99th)

Thank you Mr. Speaker. Through you, yes, that is the case.

REP. CLEARY: (80th)

Also with the case of limited liability corporations do we have in Connecticut statute a requirement that all of the members required to have this type of insurance policy, through you Mr. Speaker.

REP. LAWLOR: (99th)

Thank you Mr. Speaker. Through you, as I mentioned at the outset, there is a bill in the Senate which at least in terms of attorneys in professional corporations and the like would require them to maintain this type of protection for their clients.

REP. CLEARY: (80th)

Through you Mr. Speaker is there a particular group of advocates for this additional insurance on partners?

REP. LAWLOR: (99th)

Through you Mr. Speaker, I don't believe I understood the question, could you ask it again?

REP. CLEARY: (80th)

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Through you Mr. Speaker, you had mentioned in your answer to a previous question that there were advocates who were looking to have this insurance included within our statutes, is there a particular group of advocates that found a need for this additional insurance?

Through you Mr. Speaker.

REP. LAWLOR: (99th)

Thank you Mr. Speaker. Through you. Obviously there have been some recent cases in Connecticut where investors, for example have been left high and dry based on the fact that partners in a partnership have taken advantage of them, and mis-spent their investments, for example the Colonial Realty situation.

And in those cases, we're hoping to have some protection for persons who are taken advantage of by professionals or persons, or partnerships or corporations which enjoy this protection. So if the person who actually did the misconduct is judgement proof, this would provide a protection.

Because under the LLP the victims in essence would be unable to bring an action the other partners individually. They'd be limited to their recourse against the partnership as a whole or against the individual partner who engaged in whatever the misconduct was. This would provide some protection for

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those victims.

REP. CLEARY: (80th)

Through you Mr. Speaker, why wouldn't we want that same protection for stockholders in a corporation that we're looking for partners in this type of arrangement?

REP. LAWLOR: (99th)

No problem with that, that's not the topic of this bill, but if you'd like to offer an amendment I can't think of a reason why not to do it off the top of my head. It's just, this doesn't deal with corporations it deals with partnerships.

REP. CLEARY: (80th)

Thank you Representative Lawlor. Mr. Speaker, I would speak in opposition to this particular amendment. I think the whole reason for creating some of these different classes of business is to have some liability protection. It is up to the business of what insurance that they need to carry in order to either satisfy their vendors or contractees that there is adequate protection.

I can't see singling out this particular partnership unless we're going to require insurance of every stockholder in every corporation in Connecticut so that partnerships would be on parody with them.

Thank you.

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SPEAKER PRO TEMPORE PUDLIN:

Peripheral vision was an excuse that time,  
Representative Farr.

REP. FARR: (19th)

Thank you Mr. Speaker. I think you were  
distracted by the momentary quiet in the Chamber.

SPEAKER PRO TEMPORE PUDLIN:

I wasn't sure what happened sir.

REP. FARR: (19th)

Through you Mr. Speaker, to Representative Lawlor.

SPEAKER PRO TEMPORE PUDLIN:

Representative Lawlor ready yourself. Proceed  
sir.

REP. FARR: (19th)

Representative Lawlor, do I understand this  
amendment to say that if you have a limited liability  
partnership of 20 members, the partnership doesn't have  
to have any insurance, each one of the members has to  
have a million dollars of coverage and if one member is  
sued along with the partnership, this guarantees the  
consumer gets one million dollars worth of coverage, is  
that essentially what this does? Through you Mr.  
Speaker to Representative Lawlor.

REP. LAWLOR: (99th)

Thank you Mr. Speaker. No, it's the opposite.

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This requires that each partner has to be covered. But it could also happen under the blanket policy for the partnership. So if there's a claim against an individual partner and the partnership has not assets and there's a claim against an individual partner for the kind of misconduct enumerated in the bill, then the victim of that would in essence would be able to take advantage of that insurance coverage.

REP. FARR: (19th)

Through you Mr. Speaker to Representative Lawlor. The essential reason for a limited liability partnership is to protect the partners that weren't part of, who aren't personally liable for the conduct, from any claim as to liability. So you set up a 20 membership. One member of the partnership does something wrong, he is liable personally and the partnership is liable as a group, but the individuals aren't.

Each one of those individuals has an insurance policy that protects him if there's a claim against him. But the other 19 members don't have any claims against them because they're shielded by the professional liability, by the creation of the limited liability partnership. So it doesn't appear to me that this amendment does anything but guarantee a one

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million dollar pool of money for a claim and it would be far cheaper to do that by simply requiring the partnership to have a million dollars of coverage. Through you Mr. Speaker to Representative Lawlor, am I missing something here?

REP. LAWLOR: (99th)

Thank you Mr. Speaker. Through you, yes, that's the intent. That either the partnership can have it as a whole but as long as each partner is named that would suffice.

REP. FARR: (19th)

Well, I would join in opposition to this amendment. I think it's badly flawed for a number of reasons. Number one, it doesn't do what I think somebody intended it to do, which was to guarantee that if you had a large partnership somehow you're going to have a large pool of money. This seems to me to only guarantee, require each individual partner to have a million dollars worth of coverage. And since they themselves are not going to be personally liable unless they did some, had some professional conduct that was actionable.

It would seem to me that this only guarantees a million dollars worth of coverage, so I don't think this meets the intent of what it was intended, this

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bill as drafted does what it was intended to do. But I also think there's other flaws in the fact that it seems to say that a non-professional corporation-- partnership that's set up has to get this coverage, which obviously they cant' do.

And I think we can say a lot through legislative intent. I don't think we can go to the extent of redrafting the clear language of this amendment, I urge rejection.

SPEAKER PRO TEMPORE PUDLIN:

Will you remark? I'll try your minds. All those in favor of House "A" signify by saying aye.

REPRESENTATIVES:

Aye.

SPEAKER PRO TEMPORE PUDLIN:

Opposed nay. House "A" is defeated. Will you remark further on the bill? Representative Farr. Yes, thank you Mr. Speaker. The Clerk has an amendment, may the Clerk please call LCO 4192 and I be allowed to summarize?

SPEAKER PRO TEMPORE PUDLIN:

Mr. Clerk LCO 4192. House "B."

CLERK:

LCO 4192, House "B" offered by Representative Farr.

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SPEAKER PRO TEMPORE PUDLIN:

The gentleman has asked leave of the Chamber to summarize, hearing no objection proceed sir.

REP. FARR: (19th)

Thank you Mr. Speaker. Mr. Speaker, what this amendment does is delete the provisions in this act which would require that the act not apply to contracts arising out of the offer of sale of securities. Let me give the Chamber a brief background as, and I would move adoption of the amendment.

SPEAKER PRO TEMPORE PUDLIN:

On the adoption of House "B" will you remark sir?

REP. FARR: (19th)

Yes, a brief background on the reason for the bill as I understand it. We passed the limited liability partnership act in the previous session that was flawed. Because it was flawed it didn't exclude certain conduct. And as a result it's not being used. We now have a bill before us that attempts to correct that flaw that includes a provision, excludes from the provision of the act, the sale of securities.

It seems to me it's pretty clear that what will happen is that we will simply be in a position that anybody who's selling securities will simply not take advantage of the act. So we haven't gained anything.

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177 004859

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We're just simply going to say that in Connecticut if you want to get the protection of a limited liability partnership don't do that in Connecticut. And it's pretty easy to do. You simply set up your partnership in Massachusetts, or New York or Delaware. And from an economic development point of view that doesn't seem to gain anything for us.

I understand that some of the trial lawyers think that somehow there will be a few large law firms or accounting firms that will misread the bill or not be aware of the provisions and will accidentally set up under Connecticut and then get sued. I think that's pretty far fetched to think that's going to happen with large partnerships and therefore I don't think there's any reason to keep this language in there.

I don't think it achieves what they think it does and I do think it will drive certain partnerships out of Connecticut for purposes of formation and I would urge passage of the amendment.

SPEAKER PRO TEMPORE PUDLIN:

Will you remark further on "B"? Will you remark?  
If not let me try your minds. Those in favor of "B"  
signify by saying aye.

REPRESENTATIVES:

Aye.

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178 004860

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SPEAKER PRO TEMPORE PUDLIN:

Opposed nay. The ayes have it, "B" is adopted.

Will you remark further on the bill as amended? Great,  
good afternoon sir.

REP. GODFREY: (110th)

Good afternoon sir, how are you sir?

SPEAKER PRO TEMPORE PUDLIN:

I'll be better in minute.

REP. GODFREY: (110th)

Yes, sir. Mr. Speaker at this time I would ask  
that this item be passed temporarily.

SPEAKER PRO TEMPORE PUDLIN:

Without objection this bill is too PT'd. Mr.

Clerk please call 548.

CLERK:

On page twelve, Calendar 548, substitute for  
SB207. AN ACT CONCERNING MINOR AND TECHNICAL CHANGES  
TO CERTAIN DEPARTMENT OF CONSUMER PROTECTION STATUTES.  
As amended by Senate amendment schedules "A", "B", "C"  
and "D." Favorable report of the Committee on Finance  
Revenue and Bonding.

SPEAKER PRO TEMPORE PUDLIN:

Representative Esposito.

REP. ESPOSITO: (116th)

Thank you Mr. Speaker. Mr. Speaker I move

H 759

CONNECTICUT  
GEN ASSEMBLY  
HOUSE

PROCEEDINGS  
1996

VOL. 39  
PART 18  
VETO SESSION  
6223 6611

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Wednesday, May 8, 1996

Those absent and not voting 7

DEPUTY SPEAKER HYSLOP:

Bill as amended passes. Clerk please call  
Calendar 416.

CLERK:

On page 7, Calendar 416, substitute for House Bill  
Number 5452. AN ACT CONCERNING THE LIABILITY OF

PARTNERS OF LIMITED LIABILITY PARTNERSHIPS. As amended  
by House amendment schedule "B." Favorable report of  
the committee on Judiciary.

DEPUTY SPEAKER HYSLOP:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you Mr. Speaker. I move acceptance of the  
Joint Committee's favorable report and passage of the  
bill.

DEPUTY SPEAKER HYSLOP:

Question is on acceptance and passage, will you  
remark?

REP. LAWLOR: (99th)

Thank you Mr. Speaker. The Clerk has LCO 4192 I'd  
ask that the Clerk call and I be permitted to  
summarize. Previously designated as House amendment  
"B."

DEPUTY SPEAKER HYSLOP:

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Clerk please call LCO 4192 previously designated  
House amendment "B."

CLERK:

LCO 4192 House "B" offered by Representative Farr.

DEPUTY SPEAKER HYSLOP:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you Mr. Speaker. May I yield to  
Representative Farr.

DEPUTY SPEAKER HYSLOP:

Representative Farr do you accept the yield?

REP. FARR: (19th)

Yes, thank you Mr. Speaker. Last night we were  
doing a little bit of unusual parliamentary procedures  
here. This amendment struck a section of the bill that  
Representative Lawlor has another amendment that he  
wants to put on. What I would like to do now is move  
to reconsider this amendment and then readopt it after  
Representative Lawlor's amendment goes on. So Mr.  
Speaker I would move for reconsideration of this  
amendment.

DEPUTY SPEAKER HYSLOP:

The motion is to reconsider, without objection, so  
ordered.

REP. FARR: (19th)

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Mr. Speaker at this point, the amendment is reconsidered, I don't know that, I think I just yield to Representative Lawlor and he adopts his amendment? Through you. Mr. Speaker I would please if they would call my amendment previously designated House "B" LCO 4192, would they please call?

DEPUTY SPEAKER HYSLOP:

Clerk please call LCO 4192 previously designated House "B."

CLERK:

LCO 4192 House "B" offered by Representative Farr.

DEPUTY SPEAKER HYSLOP:

Representative Farr.

REP. FARR: (19th)

Mr. Speaker, at this point I'd like to withdraw this amendment. Seeing no objections, House "B" is withdrawn. Representative Lawlor.

REP. LAWLOR: (99th)

Thank you Mr. Speaker. The Clerk has LCO 6403, I'd ask that the Clerk call and I be permitted to summarize.

DEPUTY SPEAKER HYSLOP:

Will Clerk please call LCO 6403 designated House "C"? Representative Prelli.

REP. PRELLI: (63rd)

Mr. Speaker, a parliamentary inquiry Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

What is your inquiry?

REP. PRELLI: (63rd)

Mr. Speaker I believe that we called House "B" and I believe that we already passed House "B" so I don't think that it can be withdrawn. My inquiry is if we've already voted on an amendment, don't we, even though we've reconsidered don't we have to vote on it again.

DEPUTY SPEAKER HYSLOP:

House stand at ease. The Chamber will come back to order. Representative Prelli in response to your parliamentary inquiry, House "C" is properly before this. The motion to reconsider House "B" which brought House "B" back before us, the action that was taken, to withdraw with no objection, put us in right sequence to have House "C" before us.

REP. PRELLI: (63rd)

Mr. Speaker Point of order.

DEPUTY SPEAKER HYSLOP:

What is your point of order?

REP. PRELLI: (63rd)

Mr. Speaker, I don't believe we can withdraw a motion that we have voted on. I believe once it's voted into law we would have to re-vote that motion or

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either accept or reject the motion. This body has already acted on it once. I believe the only action we could take at that point was to vote on that motion again, either to reject or accept it.

DEPUTY SPEAKER HYSLOP:

The Chamber will stand at ease. The Chamber will come back to order. In response to your point of order. We did vote, the vote was without objection to reconsider. That put it back before us, then without objection Representative Farr asked to withdraw and I asked were there any objection, without any objections it was withdrawn. Your point is not well taken.

REP. PRELLI: (63rd)

Okay, Mr. Speaker, point of order again then. I really, Mr. Speaker, let me explain I want to make sure that we do this correct so this bill doesn't some how get lost in the maze. My point of order is a motion to withdraw on a motion that was voted and already passed is not a legal motion. So therefore it couldn't be accepted and it you couldn't withdraw it. That's my point of order.

DEPUTY SPEAKER HYSLOP:

The Chamber will stand at ease. The Chamber will come to order. Representative Prelli. Representative Prelli in reference to your point of order. The motion

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to withdraw took us back to beyond the point, before the point of the motion being acted upon, or the amendment being acted on. The action was taken on the vote, and not the amendment. So therefore, the motion to withdraw was in order, you point is not well taken.

REP. PRELLI: (63rd)

Thank you Mr. Speaker. And thank you for that explanation, or that ruling, I'm sorry. Mr. Speaker I hope this gets in the procedures book so that we can follow this in the future.

DEPUTY SPEAKER HYSLOP:

Will you remark on House "C"? Representative Lawlor.

REP. LAWLOR: (99th)

Thank you Mr. Speaker. The Clerk has LCO, he's already called it. This amendment House "C" deals with the concerns raised the last time this was before us. First of all it does clarify that the professional liability insurance requirement deals with the partnership, not the individual partner.

It is a lower amount, in this case \$250,000. I urge adoption.

DEPUTY SPEAKER HYSLOP:

Question is on adoption, will you remark? Will you remark on House "C"? Representative Farr.

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REP. FARR: (19th)

Yes, good amendment ought to pass.

DEPUTY SPEAKER HYSLOP:

Will you remark on House "C"? If not we'll try  
your minds, all those in favor signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER HYSLOP:

Those opposed. The ayes have it House "C" is  
adopted. Representative Farr.

REP. FARR: (19th)

The Clerk has amendment LCO 4192 previously  
identified as House "B" will the Clerk please call and  
I be allowed to summarize?

DEPUTY SPEAKER HYSLOP:

Will the Clerk please call LCO 4192 previously  
identified as House "B" and the Representative has  
asked leave to summarize.

REP. FARR: (19th)

Yes, members of the house.

DEPUTY SPEAKER HYSLOP:

Let him call the amendment please, let him call  
the LCO.

CLERK:

LCO 4192 House "B" offered by Representative Farr.

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DEPUTY SPEAKER HYSLOP:

Representative Farr.

REP. FARR: (19th)

Thank you Mr. Speaker. This is a previous amendment we adopted that struck a provision in the bill that was going to limit the availability of these types of partnerships so that they would not be available if the partnership, security laws, or the protections would not be available if they engaged in security laws.

We previously adopted this, the reason we withdrew it, was because Representative Lawlor's amendment was not going to flow properly unless it was adopted prior to this. Now that we've adopted Representative Lawlor's amendment I would ask that this be adopted again, and I would move adoption.

DEPUTY SPEAKER HYSLOP:

Question is on adoption, will you remark? If not we'll try your minds, all those in favor signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER HYSLOP:

Those opposed, House "B" is adopted. Will you remark further on the bill as amended? If not, staff

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and guests to the well of the House, the machine is open.

CLERK:

The House of Representatives is voting by roll call, members to the Chamber. The House is voting by roll call, members to the Chamber please.

DEPUTY SPEAKER HYSLOP:

Have all the members voted? If all members have voted, put a little pep in your step. If all members have voted please check the roll call machine to make sure your vote is properly recorded. The machine will be locked. Clerk will take a tally. Clerk will announce the tally.

CLERK:

House Bill Number 5452, as amended by House "B" and "C."

|                             |     |
|-----------------------------|-----|
| Total Number Voting         | 143 |
| Necessary for passage       | 72  |
| Those voting Yea            | 141 |
| Those voting Nay            | 2   |
| Those absent and not voting | 7   |

SPEAKER RITTER:

Bill as amended passes. Clerk please call Calendar 605.

CLERK:

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House Bill No. 5799 as amended by House "A".

|                             |     |
|-----------------------------|-----|
| Total Number Voting         | 148 |
| Necessary for Passage       | 75  |
| Those voting Yea            | 148 |
| Those voting Nay            | 0   |
| Those absent and not voting | 2   |

SPEAKER RITTER:

The bill passes. Will the Clerk, for the third time, call Calendar 416, please?

CLERK:

On Page 7, Calendar 416, Substitute for House Bill HB5452  
No. 5454, AN ACT CONCERNING THE LIABILITY OF PARTNERS  
OF LIMITED LIABILITY PARTNERSHIPS. As amended by House  
Amendment Schedule "B". Favorable Report of the  
Committee on Judiciary.

SPEAKER RITTER:

Representative Godfrey.

REP. GODFREY: (110th)

Thank you Mr. Speaker. Mr. Speaker, I would move  
for the suspension of our rules to allow the immediate  
reconsideration of the item just called.

SPEAKER RITTER:

Seeing no objection, it will be considered in. I  
should have actually had the motion to reconsider  
before I announced, so the Clerk has called House Bill

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424

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No. 5452. I call Representative Lawlor.

REP. LAWLOR: (99th)

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

SPEAKER RITTER:

Question is on acceptance and passage.

REP. LAWLOR: (99th)

Mr. Speaker, I believe there's already two Amendments adopted on this bill. The Clerk has LCO-3706. I ask that the Clerk call and I be permitted to summarize.

SPEAKER RITTER:

Clerk has LCO-3706, if he may call, and Representative Lawlor would like to summarize.

CLERK:

LCO-3706, House "D" offered by Representative Lawlor.

SPEAKER RITTER:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you Mr. Speaker. This makes the following professionals eligible for professional corporation, psychologists, marital and family therapists, social workers, nursing and psychiatry.

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It also adds licensed marital and family therapists, and licensed clinical social workers to the definition of professional service, under 34-101 of the General Statutes, and allows those professions to be limited liability companies. Mr. Speaker, I urge adoption.

SPEAKER RITTER:

Question on adoption. Can we stand at ease for a moment. Apparently, once again, everybody does not have Amendments. While we stand at ease until Amendments are given to everybody. We will stand at ease until we receive them, till you receive them.

Is someone on top of this? Can someone bring some Amendments over so we can continue on this bill? On top of this Amendment situation? Do you have the Amendment yet? You don't have any copies? There's something about this bill Representative Lawlor.

REP. LAWLOR: (99th)

Sorry Mr. Speaker, I know a copy has been brought over to the other side. It adds a variety of professions.

SPEAKER RITTER:

We'll come back into session.

REP. LAWLOR: (99th)

Thank you Mr. Speaker.

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SPEAKER RITTER:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you Mr. Speaker. I urge adoption.

SPEAKER RITTER:

Will you remark further? Representative Ward.

REP. WARD: (86th)

Mr. Speaker, I don't wish to belabor it, but it noisy, and a lot of the copies were missing. Perhaps, through you, Representative Lawlor, if you could just explain again briefly what it is, cause a lot of folks don't copies. So it will be handled more expeditiously. Thank you Mr. Speaker.

SPEAKER RITTER:

Representative Lawlor.

REP. LAWLOR: (99th)

Thank you Mr. Speaker. This Amendment adds, first of all, first clarifies that we were talking about licensed marital and family therapist rather than certified, which is an oversight based on the changes which were made last year.

Secondly, this Amendment adds to the definition of professional corporation the following professions: psychology, marital and family therapy, social work, nursing and psychiatry. Also, this adds, for purposes

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of Section 34-101, adds to the definition of professional service, licensed marital and family therapists, and licensed clinical social worker.

And also makes a similar addition to the professions eligible for limited liability companies. In other words, marital and family therapists, social workers, nursing and psychiatry. Providing each member must be licensed, or otherwise authorized to perform one of those professions. I urge adoption Mr. Speaker.

SPEAKER RITTER:

Thank you sir. Will you remark further? If not, I'll try your minds. All in favor signify by saying aye.

REPRESENTATIVES:

Aye

SPEAKER RITTER:

Opposed no. House "D" Amendment is finally passed. Will you please, will staff and guests come to the well of the house. Machine will be open.

CLERK:

The House of Representatives is voting by roll call. Members to the Chamber. The House is voting by roll call. Members to the Chamber please.

SPEAKER RITTER:

Have all members voted? Please check the roll

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428

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call machine to make sure your vote is properly cast.  
If it has, the machine will be locked. Clerk please  
take the tally. Clerk please announce the tally.

CLERK:

House Bill No. 5452 as amended by House Amendment  
Schedules "B", "C", and "D".

|                             |     |
|-----------------------------|-----|
| Total Number Voting         | 143 |
| Necessary for Passage       | 72  |
| Those voting Yea            | 143 |
| Those voting Nay            | 0   |
| Those absent and not voting | 7   |

SPEAKER RITTER:

The bill as amended passes. Representative  
Godfrey.

REP. GODFREY: (110th)

Thank you Mr. Speaker. Mr. Speaker, I would move  
for the immediate transmittal to the Senate of all  
items acted upon today that need further action by that  
body.

SPEAKER RITTER:

Without seeing any objection, so ordered. Clerk  
please call Calendar 509.

CLERK:

On Page 10, Calendar 509, Substitute for Senate  
Bill No. 622, AN ACT EXEMPTING THE VALUE OF CORE PARTS

JOINT  
STANDING  
COMMITTEE  
HEARINGS

JUDICIARY  
PART 3  
342-713

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REP. RADCLIFFE: And with this referencing of the agreement, the May 17th agreement and the May 17th gaming compact between the State and the Mohegan Tribe, that will assure that any action by the State of Connecticut or its agents is with the express consent of both the federal government and the Mohegan Tribe?

KEVIN KANE: That is the way that I understand it, sir.

REP. RADCLIFFE: Alright. Thank you.

JACK BAILEY: Thank you.

REP. LAWLOR: Are there other questions? If not, thank you very much, gentlemen.

KEVIN KANE: Thank you.

REP. LAWLOR: Next is Andy Groher.

ANDY GROHER: Good afternoon, Mr. Chairman and members of the committee. My name is Any Groher and I am an officer in the Connecticut Trial Lawyers Association and I am here today to speak on several bills on behalf of the Association.

I have six bills I intend to speak on very briefly. They are SB302, SB307, HB5442, HB5446, HB5447, GB5448, and HB5452.

Starting with SB302, the trial lawyers are speaking in support of that bill. This is a bill that would restore the state of the law as it applies to lessor liability to what it was, we believe, originally intended by the legislature before the (INAUDIBLE) Villano case and we are in support of that bill. We do think, however, that the -- I am sorry. That is -- I am mis-speaking. That is the House bill. That is not the Senate bill. That would be HB5442, that I am speaking to which involves lessor liability and that is the bill we are in support of.

We do feel the bill goes a little far in terms of the language of fraud or duress, but generally, we are in support of that bill.

us to be appropriate that if a prevailing party is going to request attorney fees that they be given twenty days which is the same -- which is the same period of time as the appeal period rather than restricted to ten days which seems unduly restrictive to us.

Lastly, I wanted to speak on HB5452, which is, AN ACT CONCERNING THE LIABILITIES OF PARTNERS OF LIMITED LIABILITY PARTNERSHIPS. This bill appears to try to extend more limited liability or immunity to partners. It does not currently exist under the Partnership Act and it would apply to -- if it were permitted, if this bill is passed, it would effect things like the claims against Arthur Anderson in the Colonial Realty suits and that type of a case where clearly it is has been the general partners and the partnership as a whole. It has benefited from being involved and here they would be shielded from liability.

So we are in opposition to that bill and feel that it is an unwarranted extension of immunity.

Thank you very much.

REP. LAWLOR: Thank you. Are there any questions?  
Representative Winkler.

REP. WINKLER: Thank you, Mr. Chairman. On HB5446, you mentioned an attorney that represented a municipality full-time, I believe. What, in your opinion, would constitute full-time?

ANDY GROHER: Well somebody who is actually an employee of the municipality like the Corporation Counsel's office in Hartford as opposed to a private practitioner who also has a part-time position as town attorney.

REP. WINKLER: Okay. Thank you.

REP. LAWLOR: Representative Radcliffe.

REP. RADCLIFFE: Thank you, Mr. Chairman. On HB5442. You mention the language regarding fraud or duress. I take it what you are advocate -- this would be a

proof that the individual, for liability purposes, carried a policy of \$20,000 per person and \$40,000 per accident.

ANDY GROHER: That's true.

REP. RADCLIFFE: Alright. So if liability were limited then, we could have a situation where someone was operating a vehicle owned by a rental car company, the operator of that vehicle was negligent, hit somebody, injured them very seriously and if that person's only insurance was a \$20,000 policy, that's all the injured party would have available?

ANDY GROHER: That is very correct and actually flies in the face, I believe of the original intent of the statute and to come back to your other point, in order to rent a car, all you really have to show is a credit card and a drivers license.

REP. RADCLIFFE: Okay. Thank you.

ANDY GROHER: Thank you.

REP. LAWLOR: Are there other questions? If not, thank you very much, Andy.

Irving Schloss. Irving will be followed by Jack Brooks, Besty Gara, Raphael Podolsky and Ken Lenz.

IRVING SCHLOSS: Thank you. Good afternoon. My name is Irving Schloss. I am a partner in the law firm of Tyler, Cooper and Alcorn, a general partnership and I am testifying on behalf of the business law section of the Connecticut Bar Association, the Connecticut Society of CPA's represented here by Jack Brooks and the CBIA, as well.

Let me start off by disposing of a red herring that just got dragged across this hearing. This bill -- I am sorry. I am testifying regarding HB5452 which deals with the liability of partners in a limited liability partnership.

The red herring that got raised a few minutes ago is as this would have an impact on the liability of Arthur Anderson and Company with regard to the

Colonial Realty mess and the litigation that it has spawned.

From the point of view of a general partner, I view that as sort of wishful thinking. The fact is, the bill does not operate retroactively. Those liabilities were incurred by Arthur Anderson when it was a general partnership. It is not an LLP under the laws, I believe, of Delaware and has absolutely no effect on its liabilities that were incurred before it made the change from being a general partnership into a limited liability partnership. It has absolutely no effect whatsoever and this bill would not have any impact on that, as well.

I know that because we have looked what this would mean in terms of my firm's liabilities and we know that anything that is out there pre-existing, while we were a general partnership is going to remain our individual liabilities to all of us as partners.

With that -- by way of preliminaries, let me just talk briefly about the merits of the bill. The change in law took effect on January 1, 1996 and the General Assembly's purpose was to insulate innocent partners in a LLP for malpractice or other wrong doing committed by their partners.

Here we are two months after the effective date asking you to amend the statute. And the reason is this. The statute, unlike that in other states, does not include in the class of liabilities, from which there is protection, contractual claims. And I think that probably in everyone's initial understanding that meant things like real estate leases and equipment leases and other forms of contracts.

But then upon reflection and this occurred in the fall of this year, it dawned on some of us that a garden variety malpractice claim is usually brought under two theories. It is brought as a tort claim, in which the LLP statute as it now stands would provide protection and as a contract claim and that all a plaintiff had to do or someone disgruntled

with a law firm, was to phrase the claim in terms of contract and the legislation that you had adopted would basically turn out to be useless and not provide the shield from liability that you had intended to create.

The result of the deliberations of the organizations I mentioned is before you -- it is basically verbatim the language in statutes recently adopted by Massachusetts and New York and will protect partners in an LLP from all liabilities created by other partners for malpractice or other wrongful acts.

Now, it should be understood that that means partnership property is still reachable. If there is a malpractice insurance policy, it is still available. All this does is eliminate or insulate partner acts from wrong doing from which he was unaware committed by partner Y.

And moreover, this bill carries over the language of the General Assembly has adopted in every bill that it has passed regarding professional organizations and the like. Whether the professional corporation or an LLC, a limited liability company, the liability of the partner who commits the malpractice or the other wrong doing is still personally liable and all of his assets are reachable.

I think the only issue we have with the bill as it now stands is a question of the effective date. Frankly, everyone in the business community had counted on the availability of this form of doing business as of January 1, 1996 and we have been pre-empted by our neighbors to the immediate north and south.

I would urge that you make the bill effective as of January 1, 1996 because what you are doing today is, in effect, a technical correction that will carry out your original intent when you adopted the legislation two years ago. If that is unacceptable, then please consider making the legislation effective from enactment.

This bill is of the utmost importance to businesses and individuals operating in Connecticut and I think it would be a mistake, given the state of our economy, to send the wrong message to businesses in the state or contemplating coming into the State by not making this bill effective as quickly as possible.

It is with some embarrassment that I state I failed to file 50 copies of my testimony. I will do that after the hearing on Monday. It is always embarrassing for a lawyer to have to admit that he tripped over a rule, but I have done it.

I will be available for questions. Mr. Brooks is here to testify next.

JACK BROOKS: If I may, I am Jack Brooks, the Executive Director of the Connecticut Society of Certified Public Accountants.

Connecticut Society of CPA's is asking your support of HB5452, which amends the limited liability partnership legislation which was passed in 1994. The purpose of the amendment, as you heard, is two fold. It clarifies the language to assure innocent partners are not obligated by acts of other partners, a provision that is similar to the Limited Liabilities Companies Act and it assures the protection is afforded in all types of actions against partners, not just tort action, hence the language regarding partnership and the references to actions arising in "contract or otherwise".

The language of these amendments are included in LLP laws adopted by 26 states since 1994. The language was included in the original draft of the Public Act 94-218. It was dropped without explanation during legislative consideration.

In April 1994 Minnesota adopted the first full limited liability law. In July, 1994 New York followed suit. Of the 26 LLP laws enacted since Minnesota, fifteen states provide full limited liability, including recently enacted legislation in Massachusetts and California.

Since Connecticut also passed the law in 1994, but not make it effective until this year, we ask that an additional change be made in the proposed legislation. We would propose, as you heard Mr. Schloss say, that the amendment before you have an effective date of January 1, 1996 retroactively instead of the two step phases recorded in the published amendment. We see no specific benefit to a phase in of two years for legislation that is basically conforming one limited liability statute with another, LLP and LLC, and brings it in line with the two major states adjoining Connecticut.

So we urge you to pass HB5452 with the effective retroactive date January 1, 1996.

Thank you.

REP. SCALETTAR: Thank you. Are there any questions?  
Representative O'Neill.

REP. O'NEILL: I am a little confused or at least I am not clear. Is the Limited Liability Partnership Act in effect today? I mean, people can go out and for me these partnerships today? I have been over to the Secretary of State's Office and they have the forms and I picked up a set and I thought that we had law on the books and it is on the books?

IRVING SCHLOSS: Just let me clarify that, if I may. There are two sections to HB5452. One, section one, deals with the Uniform Partnership Act as currently on the books and as it will be for the balance of this year.

Section 2 deals with the revised Uniform Partnership Act which will become effective on January 1, 1997.

So section 1 ought to be effective January 1, 1996. Section 2 ought to be effective on January 1, 1997 because that is when the rest of the legislation described in Public Act 95-341 will become effective.

But to answer your question, simply yes, the law is in effect. The Uniform Partnership Act, now on the

books, has been amended.

REP. O'NEILL: Okay. And as part of that act, there is potential for liability for the type of contractual -- phrasing a malpractice action in the form of both a contractual and a tortious violation? is that right?

IRVING SCHLOSS: Yes. If the plaintiff makes a claim based on a breach of a contract, between let's say a law firm, an accounting firm, architectural firm, whatever, and the plaintiff, if it is phrased in contract and everyone of them is, then the personal assets of all the other partners are reachable as though you had not passed this amendment in 1994. That's correct.

REP. O'NEILL: Now, as far as you know, are there any currently actions against any of the limited partnerships?

IRVING SCHLOSS: Well the law, of course, has only been in effect for approximately two months. There are twenty-two limited liability partnerships in existence, I ascertained today. I would be surprised if a claim that has been filed that quickly. That would be remarkable. So I don't think -- there probably are not any pending, but I think those twenty-two partnerships are in jeopardy and may not be aware of it.

REP. O'NEILL: Okay. I noticed that there is the use of -- do you have a copy of the bill in front of you?

IRVING SCHLOSS: Yes.

REP. O'NEILL: Line 52 beginning where it says, "or otherwise" and the new language is going to be "any debts, obligations, liabilities" as opposed to debts. In other words, the word "any" is being inserted in there. Is there some reason for that? I would think that if it says, "shall not be responsible for debts, obligations" that that to me means any debts or any obligations. It doesn't say for "some" debts. Is there a reason why "any" is being inserted there?

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IRVING SCHLOSS: Well I think it is frankly clearer in terms of indicating that everything that follows modifies that concept, but that the general presumption of the statute is "any liability" is basically covered by this legislation. I think it makes it clearer that it is intended to be all encompassing. It is the same language, as I say. This was adopted in Massachusetts, New York and other states.

REP. O'NEILL: Let me put it this way. Essentially, what you did was you took the material from New York or Massachusetts and sort of copied it. So as far as you know, there is no particular reason other than it happens to be in those statutes?

IRVING SCHLOSS: Well, I believe it was prepared in the manner you described with an eye toward having uniformity. That has a benefit, frankly, because the extent you do have the same statutory language, if you have a case in Massachusetts or New York or any of the other twenty-odd states that have the same language, then that is helpful to the courts of this state in interpreting the Connecticut version. I do believe it is clearer to say any. I can see your argument that taking it out may not create any problem or ambiguity. I guess my (INAUDIBLE) would be to say, let's be in line with other states for the benefits I just mentioned. And two, let's remove any possible ambiguity to be resolved by future litigation. There is enough litigation as there is. We don't need to add to the pile.

REP. O'NEILL: You are not speaking on behalf of the Trial Lawyers Association at this point, are you? Thank you.

REP. LAWLOR: Representative Radcliffe.

REP. RADCLIFFE: Thank you, Mr. Chairman. Just quickly. You indicated at the outset that this was not designed for the Arthur Anderson situation. Certainly, it would not have retroactive effect. I think that was what you were saying, is that right?

IRVING SCHLOSS: That's correct.

REP. RADCLIFFE: You were simply addressing the fact that this bill is not retroactive and therefore wouldn't encompass those actions that were performed in the past?

IRVING SCHLOSS: Yes, that's right. And also, I want you to understand that if you make a conversion to another form of doing business, but you incur liabilities while you were a general partnership, unless you get the consent of creditors, way back when, which Arthur Anderson obviously isn't going to get, those are going to remain general partnership obligations. Obligations of all the partners of Arthur Anderson and Company.

REP. RADCLIFFE: Right. Recognizing that we can't drag back authority that this has only prospective effect, however. If similar acts were performed in the year 2000 while this law was in effect, as opposed to retrospectively, why couldn't this be used to shield the partners in Arthur Anderson?

IRVING SCHLOSS: I am sorry. I am not sure I understand your question.

REP. RADCLIFFE: If the actual performed in the future -  
- you are talking about past acts. And you are saying, I think, quite rightly, that we can't drag back authority under this law to absolve the partners of Arthur Anderson by dragging back authority. You are absolutely right on that.

For acts performed in the future, after this law takes effect, however, wouldn't it have the effect of shielding the partners in exactly that type of situation?

IRVING SCHLOSS: Well, the answer is a qualified yes.  
Let me --

REP. RADCLIFFE: What's a qualified yes? That is like a half pregnant. The answer is they are going to be shielded, aren't they?

IRVING SCHLOSS: Well, you are going to be dealing with the partners who had personal involvement with the particular account, partners who supervise others

who are working on that account and if I may give an example, from my own personal knowledge.

I have a friend and a client who was in the Bridgeport office of one of the national accounting firms. It got into serious financial difficulty and was going bankrupt because of acts committed in the Los Angeles office and we had to give him the sad news that though he may not have known any of the partners in the LA office, may not have known anything about this matter, that firm being then organized as a general partnership, it would -- his assets would be reachable.

Now as a practical matter, the real shield from liability is the malpractice policy. And that will continue to remain the case. And it has been quite rare that you have had an instance where there has been first the recovery in excess of the malpractice policy and (b) then actual recourse to individual partners.

REP. RADCLIFFE: Well let's talk about the malpractice policy. If you have a law that effectively says that a partner is not liable for any debts, then it isn't necessary to insure with a malpractice policy, is it? You don't insure against something that you are not going to be liable for?

IRVING SCHLOSS: The partnership -- no, that is not quite right.

REP. RADCLIFFE: It's not?

IRVING SCHLOSS: First, because the partnership is chargeable with the malpractice. Two, none of us knows, going forward in the future, we may, individually, or in conjunction with other partners may commit an act of malpractice and consequently, we will want to have that protection.

REP. RADCLIFFE: Okay.

IRVING SCHLOSS: Moreover, there is a market force at work here. Clients want to know that they are going to have recourse to some source of recovery in the event that the law firm makes a critical mistake of

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law and that form of recourse is the malpractice policy, which typically exceeds the value of the individual partner's assets by some multiple.

REP. RADCLIFFE: Let me ask you this. As I am reading this with the new language, let's assume that you do have an entity that is a partnership and the partnership, of course, is simply its individual partners. Common law would be that a partner is liable for the acts of other partners in the furtherance of partnership activities. This is an exception to that general rule.

IRVING SCHLOSS: That is correct.

REP. RADCLIFFE: Okay. The partnership has -- the XYZ partnership has no assets. It has a lease on a building. It leases desks. It leases typewriters. It leases xerox machines. It leases everything in the office and the individual partners are paid. The individual partners have credit cards to the partnership and they run up a bill and suddenly the partnership says we are not paying.

Under this law, the creditor couldn't go after an individual partner even if his assets are substantial and he had received the benefit from the use of that credit card. Is that right?

IRVING SCHLOSS: No, that is not correct.

REP. RADCLIFFE: Why not?

IRVING SCHLOSS: Because subparagraph 3 says that subsection 2 will not effect the liability of a partner for his own negligence, wrongful acts or misconduct or that of any person under his direct supervision and control.

REP. RADCLIFFE: You have just over expended. It wasn't wrongful. He just over expended. He drew too much on the credit card.

IRVING SCHLOSS: Well you posed a situation in which a partnership and his partners have, in effect, tried to make themselves judgment proof and run up a large bill with the expectation that they would not

have to re-pay it. Now, that, in my way of thinking, is what is called fraud.

REP. RADCLIFFE: I would think so. It is difficult to prove, but I would think so.

IRVING SCHLOSS: It is fraud. And by anybody's definition, fraud is wrongful conduct and so therefore, under section 3, those partners, each and every one of them in your hypothetical, would be individually liable to the fullest extent of the individual assets.

REP. RADCLIFFE: Assuming no fraud, just incompetency, however, they wouldn't be liable.

IRVING SCHLOSS: Well, you would have to pose it in a somewhat different set of facts than the one you have. If you are talking about incompetence, then --

REP. RADCLIFFE: That is a tort. That is negligence and they are immune from torts.

IRVING SCHLOSS: They would be individually immune from tort liability, that is true, but I think -- again, to go back to your example, where one is deliberately attempting to make the firm and its partners judgment proof, that is probably within the scope of the uniform Fraudulent Conveyance Act that this General Assembly adopted about two or three years ago and I think, in that situation, not only would there be recourse against the assets of each of the partners, but you could go back four years and undo any transfers that each of those partners made in an effort to defraud creditors.

REP. RADCLIFFE: Okay. And I think you answered some questions that were asked earlier about putting the words "any debts" in there that could encompass additional duties and responsibilities incurred outside of a partnership rather than just simply, "debts, obligations, liabilities" chargeable to the partnership. Any debts chargeable to the partnership seems to broaden that a little bit.

IRVING SCHLOSS: Bearing in mind that those -- that

phrase, "any debts, obligations, and liabilities" refers to those that are chargeable to the partnership. And that's the critical concept. Whether the word "any" is one on which this whole thing ought to sink or swim, I mean, the answer obviously is no.

REP. RADCLIFFE: Okay. Thank you.

REP. SCALETTAR: As I read this language, it doesn't appear to me that there really is any joint and several liability left for partners except for their own conduct. So do you see that there is any joint and several liability in a partnership situation now?

IRVING SCHLOSS: There would be if you had a matter that was so involved, for example, that in effect, all members of the firm were in one way or another involved and work was being done under their supervision. And in that instance, the answer would be yes.

But the classic general partnership liability where, if at this moment, someone in our Stamford office to take a hypothetical, is making a boo-boo, to use a technical terminology, and I am going to be liable for it somewhere down the road, with this bill that wouldn't be the case.

Now, that issue has sort of gotten bypassed and it is sort of behind us because law firms can organize themselves as professional corporations. They can organize themselves as limited liability companies. And the hope was to be able to organize as limited liability partnerships and have the flexibility that a partnership gives, but without having to worry that somewhere, somehow, someone, is jeopardizing my family's financial security and I am going to have to worry about whether my eight year old is going to be able to afford to go to college.

REP. SCALETTAR: Thank you. Are there any other questions? Thank you.

Next is Betsy Gara from CBIA.

BETSY GARA: Good afternoon. My name is Elizabeth Gara, Assistant Counsel with CBIA and I just want to briefly add my comments in support of those of the members of the Connecticut Bar Association Business Law Section and the Connecticut Society of CPA's. We also support HB5452 and we hope that you support it as well.

We also would like to lend our support to HB5082 which increases the number of Superior Court judges in Connecticut and hopefully, this will help alleviate some of the backlog that we face. And we also support SB303, AN ACT CONCERNING INSURANCE FRAUD which simply expands the kinds of insurance fraud that maybe investigated and prosecuted in this state.

Thank you.

REP. SCALETTAR: Thank you. Are there any questions?

IRVING SCHLOSS: May I just say one thing? I hope I answered your question. The concept of limited liability is there now.

REP. SCALETTAR: I understand.

IRVING SCHLOSS: And we are not answering into terror in cognito. There is no new frontier or anything like that. It is really designed to make the bill effective.

REP. SCALETTAR: I understand. Thank you. Next is Raphael Podolsky followed by Ken Lenz.

RAPHAEL PODOLSKY: Thank you. My name is Raphael Podolsky with the Legal Assistance Resource Center of Connecticut.

I want to speak on HB5454. It seems to me that it is worth saying at the beginning that landlord tenant issues have always been very difficult issues. I have been in situations where people have analogized to a family situation and for example, a divorce or an eviction has a similar tone as a divorce to it at times. There can be a lot of emotion invested in it.

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PART 4  
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1996

TESTIMONY  
ELIZABETH E. GARA  
ASSISTANT COUNSEL  
CONNECTICUT BUSINESS & INDUSTRY ASSOCIATION  
BEFORE THE  
JUDICIARY COMMITTEE  
LEGISLATIVE OFFICE BUILDING  
MARCH 1, 1996

Good afternoon. My name is Elizabeth E. Gara, Assistant Counsel for CBIA. CBIA represents over 9,000 companies across Connecticut. Our membership includes firms of all sizes and types, the vast majority of which are small businesses with fewer than 100 employees.

I am here on behalf of CBIA to support HB-5452, An Act Concerning Limited Liability Partnerships.

HB-5452 simply corrects a flaw in the law governing limited liability partnerships, which protects innocent partners from liability resulting from lawsuits alleging negligence, misconduct and malpractice but not from actions based on contract claims such as breach of implied warranty. This bill closes this loophole and gives the partner in an LLP the same protection as members of a Limited Liability Company.

Other states, most notably Delaware, have revisited their legislation to correct this flaw and Connecticut should follow suit. Ensuring that Connecticut is positioned to offer companies a choice of business entities under which to organize is a small but important tool in improving Connecticut's business climate. We appreciate the commitment that the Connecticut Bar Association's Business Law Section has made in leading these efforts.

CBIA also supports HB-5082 which increases the number of judges in the superior court and promises to help alleviate the backlog in our courts that prevents businesses and individuals from obtaining a timely resolution of their cases.

We also support SB-303, An Act Concerning Insurance Fraud which expands the criminal offense of insurance fraud to include fraud in connection with any policy of insurance providing coverage for loss or damage to real or personal property, not just fire insurance.



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HB 5452

**An Act Concerning the Liability of Partners of Limited Liability Partnerships.**

*The Connecticut Society of Certified Public Accountants* is asking your support of House Bill 5452 which amends the Limited Liability Partnership legislation passed in 1994.

**PROTECTS INNOCENT PARTNERS AS IN LLC STATUTES**

The purpose of the amendment before you is two fold. It clarifies the language to assure that *innocent* partners are not obligated by the acts of other partners, a provision that is similar to that in the Limited Liability Companies Act. And it assures that the protection is afforded in all types of actions against the partnership, not just Tort action. Hence the language regarding partnerships and the references to actions arising in "contract"..."or otherwise.

**LANGUAGE SIMILAR TO MASSACHUSETTS AND NEW YORK**

The language of these amendments are included in LLP laws adopted by 26 states since 1994, the year the law was enacted in Connecticut. The language concerning "whether arising in contract, tort and otherwise" was included in the original draft of Public Act 94-218 but was apparently dropped without explanation during legislative consideration. In April 1994, Minnesota adopted the first full limited liability law. In July 1994, New York followed suit. Of the 26 LLP laws enacted since Minnesota, 15 states provide full limited liability, including recently enacted legislation in Massachusetts and California.

**EFFECTIVE DATE SHOULD BE JANUARY 1, 1996**

Since Connecticut also passed the law in 1994 but did not make it effective until January 1, 1996, we ask that an additional change be made in the proposed legislation. We would propose that the amendment before you have an effective date of January 1, 1996, retroactively, instead of the two-step phases recorded in the published amendment. We see no specific benefit to a phase-in of two years for legislation that is basically conforming one limited liability statute with another (LLP and LLC) and brings it in line with the two major states adjoining Connecticut.

**We urge passage of HB 5452 with an effective date retroactive to January 1, 1996.**

(Testimony of Jack Brooks, Executive Director, Connecticut Society of Certified Public Accountants, March 1, 1996 before the members of the Judiciary Committee in Public Hearing.)