

Legislative History for Connecticut Act

HB 5694	(PA 137)	1998
House	925-926, 3589-3601	(15)
Senate	2468, 2520, 2603-2605	(5)
Judiciary	1029-1030, 1032-1033, 1058, 1060, 1454-1475	(28)
		Total - 48 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  
HOUSE

PROCEEDINGS  
1998

VOL. 41

PART 3

678-1059

gmh

House of Representatives

Wednesday, April 8, 1998

referred to the Labor Committee.

SPEAKER RITTER:

So ordered.

Clerk, please call Calendar 249.

CLERK:

On page 15, Calendar 249, Substitute for House  
Bill Number 5535, AN ACT ESTABLISHING MULTI-  
DISCIPLINARY TEAMS TO RESPOND TO REPORTS OF CHILD  
ABUSE. Favorable Report of the Committee on Human  
Services.

SPEAKER RITTER:

Representative Stillman.

REP. STILLMAN: (38TH)

Thank you, Mr. Speaker. I move that that be  
referred to the Education Committee.

SPEAKER RITTER:

So ordered.

Clerk, please call Calendar 251.

CLERK:

On page 15, Calendar 251, Substitute for House  
Bill Number 5694, AN ACT CONCERNING CORPORATIONS AND  
OTHER BUSINESS ORGANIZATIONS. Favorable Report of the  
Committee on Judiciary.

SPEAKER RITTER:

Representative Stillman.

gmh

House of Representatives

Wednesday, April 8, 1998

REP. STILLMAN: (38TH)

Thank you, Mr. Speaker. I move that that be referred to the Finance, Revenue and Bonding Committee.

SPEAKER RITTER:

So ordered.

Clerk, please call Calendar 253.

CLERK:

On page 16, Calendar 253, Substitute for House Bill Number 5468, AN ACT CONCERNING PROBATE COURTS.

Favorable Report of the Committee on Judiciary.

SPEAKER RITTER:

Representative Stillman.

REP. STILLMAN: (38TH)

Thank you, Mr. Speaker. I move that that be referred to the Appropriations Committee.

SPEAKER RITTER:

So ordered.

Clerk, please call Calendar 254.

CLERK:

On page 16, Calendar 254, Substitute for House Bill Number 5512, AN ACT CONCERNING ASSIGNMENT OF

LOTTERY WINNINGS. Favorable Report of the Committee on Judiciary.

SPEAKER RITTER:

Representative Stillman.

H-791

CONNECTICUT  
GEN. ASSEMBLY  
HOUSE

PROCEEDINGS  
1998

VOL. 41  
PART 11  
3573-3970

kmr

House of Representatives

Friday, May 1, 1998

announce the tally.

CLERK:

Senate Bill No. as amended by House amendment  
schedules "A" and "B."

Total Number Voting	148
Necessary for Passage	75
Those voting Yea	148
Those voting Nay	0
Those absent and not voting	3

SPEAKER RITTER:

Bill passes. The Chamber will stand at ease for a  
moment. I'm ready for it.

DEPUTY SPEAKER HYSLOP:

Clerk please call Calendar 251.

CLERK:

On page twenty-nine, Calendar 251, substitute for  
House Bill No. 5694. AN ACT CONCERNING CORPORATIONS  
AND OTHER BUSINESS ORGANIZATIONS. Favorable report of  
the Committee on Finance.

DEPUTY SPEAKER HYSLOP:

Representative Scalettar.

REP. SCALETTAR: (114th)

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

kmr

House of Representatives

Friday, May 1, 1998

DEPUTY SPEAKER HYSLOP:

Questions on acceptance and passage, will you remark?

REP. SCALETTAR: (114th)

Thank you Mr. Speaker. This bill modifies our business corporation act to bring it up to date with the model business corporation act which has undergone some revisions. The two main areas of revision are with respect to electronic transmission and certain shareholder actions.

Mr. Speaker, the Clerk has LCO 5245 will he call and I be permitted to summarize?

DEPUTY SPEAKER HYSLOP:

Clerk please call LCO 5245 designated House "A" and the Representative has asked leave to summarize.

CLERK:

LCO 5245, House "A" offered by Representatives Scalettar and Farr.

DEPUTY SPEAKER HYSLOP:

Representative Scalettar.

REP. SCALETTAR: (114th)

Thank you Mr. Speaker. This amendment makes technical changes to the file copy regarding stock corporations. And also adds non-stock corporations to the bill as amended. It allows non-profit trade

House of Representatives

Friday, May 1, 1998

associations to fine members for ethical violations up to the amount set in their bylaws. And it requires limited liability partnerships that own property to file certificates with town clerks when there is a name change.

It also requires such filing when a general or limited partnership converts to a limited liability partnership. In addition Mr. Speaker, this amendment deletes from the file the provision which would have permitted changes with respect to the requirements for calling special meetings. I move adoption Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Questions on the adoption of House "A" will you remark on House "A"? Will you remark on House "A"? If not we'll try your minds. All those in favor signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER HYSLOP:

Those opposed no. The ayes have it House "A" is adopted. Will you remark further on the bill as amended? Representative Scalettar.

REP. SCALETTAR: (114th)

Thank you Mr. Speaker. The Clerk has LCO 4798 will he call and I be permitted to summarize.

kmr

House of Representatives

Friday, May 1, 1998

DEPUTY SPEAKER HYSLOP:

Clerk please call LCO 4798 designated House "B" and the Representative has asked leave to summarize.

CLERK:

LCO 4798 House "B" offered by Representatives Lawlor and Dargan.

DEPUTY SPEAKER HYSLOP:

Representative Scalettar.

REP. SCALETTAR: (114th)

Thank you Mr. Speaker. Mr. Speaker this amendment clarifies the rules regarding the assignments of annuities to judgement creditors and adds consumer protection such as the information which the assignee must provide to the assignor explaining the terms of the agreement. I move adoption Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Questions on the adoption of House "B" will you remark on House "B"? If not, we'll try your minds. All those in favor signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER HYSLOP:

Those opposed no. The ayes have it House "B" is adopted, will you remark further on the bill as amended? Representative Abrams.

kmr

346

House of Representatives

Friday, May 1, 1998

REP. ABRAMS: (83rd)

Mr. Speaker the Clerk has an amendment LCO 4321 I ask that the Clerk call and I be permitted to summarize.

DEPUTY SPEAKER HYSLOP:

Clerk please call LCO 4321 designated House "C" and the Representative has asked leave to summarize.

CLERK:

LCO 4321 House "C" offered by Representative Abrams.

DEPUTY SPEAKER HYSLOP:

Representative Abrams.

REP. ABRAMS: (83rd)

Thank you Mr. Speaker. Mr. Speaker this amendment sets the statute of limitation for land surveyors at seven years, which is consistent with the current statute of limitations applicable to architects and engineers. Currently there is no statute of limitations in the General Statutes that applies to land surveyors and therefore it's a moving target. Some courts have found that a two year or three year tort statute, others have found a six year contract statute.

Putting the statute at seven years in the statutes would allow surveyors to procure insurance. Currently

kmr

House of Representatives

Filed v, May 1, 1998

75% of land surveyors are uninsured. Many other states have similar statutes, Mr. Speaker I move adoption of the amendment.

DEPUTY SPEAKER HYSLOP:

Questions on the adoption of House "C" will you remark on House "C"? Representative Powers.

REP. POWERS: (151st)

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

DEPUTY SPEAKER HYSLOP:

Proceed.

REP. POWERS: (151st)

On House "B" Representative Abrams do you know of any pending legislation that this could affect in any way? Or litigation?

DEPUTY SPEAKER HYSLOP:

Representative Abrams.

REP. ABRAMS: (83rd)

None Mr. Speaker, through you.

DEPUTY SPEAKER HYSLOP:

Representative Powers.

REP. POWERS: (151st)

Thank you.

DEPUTY SPEAKER HYSLOP:

Will you remark further on House "C"?

kmr

House of Representatives

Friday, May 1, 1998

Representative Belden.

REP. BELDEN: (113th)

Thank you Mr. Speaker. For, just through you Mr. Speaker to the gentleman bringing out the amendment. Would the seven limit start immediately or would it be for any surveying done from now on into the future the way the amendment is drafted?

DEPUTY SPEAKER HYSLOP:

Representative Abrams.

REP. ABRAMS: (83rd)

Thank you Mr. Speaker. Through you, I believe it's from discovery. It's from now on. It would not be retrospective, it would be prospective.

DEPUTY SPEAKER HYSLOP:

Representative Belden.

REP. BELDEN: (113th)

Thank you. So Mr. Speaker, through you again, if a survey was done last year under this amendment there would be from now on seven years for the particular issue to be still valid seven years from now. Through you Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Abrams.

REP. ABRAMS: (83rd)

Through you Mr. Speaker. That is correct.

kmr

House of Representatives

Friday, May 1, 1998

DEPUTY SPEAKER HYSLOP:

Representative Belden.

REP. BELDEN: (113th)

And through you Mr. Speaker, if the survey was done 15 years ago, would the statute of limitations be seven years from the effective date of the bill as amended is passed?

DEPUTY SPEAKER HYSLOP:

Representative Abrams.

REP. ABRAMS: (83rd)

Through you Mr. Speaker. It would depend on how the courts would interpreted it. Some courts interpret it as two years now, some interpret as three years now, some interpret it as six years now, so it depends how the court interpreted the statute. It would not necessarily, this would not necessarily affect something that was pending. Through you Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Belden.

REP. BELDEN: (113th)

I think that's essential where I was going. If currently there--like you say it's kind of a free-form out there right now--and there really is no. Well let me ask you under the general statute of limitations what would that be for other things?

House of Representatives

Friday, May 1, 1998

DEPUTY SPEAKER HYSLOP:

Representative Abrams.

REP. ABRAMS: (83rd)

Through you Mr. Speaker. Well the contract statute is six years. If I had a contract with a land surveyor and the court viewed that as the applicable statute and it was a breach of contract action then it would be a six year statute. However, if they viewed it as a tort, if there was negligence it would be a three year or a two year statute. Through you Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Belden.

REP. BELDEN: (113th)

Thank you Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Roraback.

REP. RORABACK: (64th)

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

DEPUTY SPEAKER HYSLOP:

Proceed.

REP. RORABACK: (64th)

Representative Abrams as I read this amendment it appears to limit the seven year statute of limitations

kmr

351

House of Representatives

Friday, May 1, 1998

land surveying which is done in connection with improvement to your property. Through you Mr. Speaker. What if a land surveyor would just do a survey of land on which no improvements were impended would this statute of limitations apply? Through you Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Abrams.

REP. ABRAMS: (83rd)

Through you Mr. Speaker to Representative Roraback. That was a question that was asked and anticipated. My understanding is that my view of the statute is that any subdivision would constitute an improvement under the statute. Through you Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Roraback.

REP. RORABACK: (64th)

And to follow up, if I may, briefly Mr. Speaker through you. Even if there were no subdivision done, surveyors are often retained to do surveys of property without the intention of there being any division of that property. Through you Mr. Speaker, would this statute of limitation apply in that instance?

DEPUTY SPEAKER HYSLOP:

Representative Abrams.

kmr

House of Representatives

Friday, May 1, 1998

REP. ABRAMS: (83rd)

Through you Mr. Speaker. It is the intention that it would.

DEPUTY SPEAKER HYSLOP:

Representative Roraback.

REP. RORABACK: (64th)

And one last question if I may Mr. Speaker, through you. Representative Abrams in bringing out the amendment suggested that some courts have held two or three years statute of limitation in tort. Other courts have seen six year statutes of limitations in contract. In any event this is going to be worse for land surveyors to the extent that they're going to be exposed now for seven years. Am I reading that correctly? Through you Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Representative Abrams.

REP. ABRAMS: (83rd)

Through you Mr. Speaker. I suppose in theory yes. But it also is something that is in statute and there won't be a court that says there is no statute of limitations.

DEPUTY SPEAKER HYSLOP:

Representative Roraback.

REP. RORABACK: (64th)

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353

House of Representatives

Friday, May 1, 1998

Thank you Mr. Speaker.

DEPUTY SPEAKER HYSLOP:

Will you remark further on House "C"? Will you remark further on House "C"? If not we will try your minds. All those in favor signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER HYSLOP:

Those opposed no. The ayes have it House "C" is adopted. Will you remark further on the bill as amended? If not, staff and guests come to the well of the House, the 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.

DEPUTY SPEAKER HYSLOP:

Have all the members have voted? If you have please check the roll call machine to make sure your vote is properly recorded. If it has been, the machine will be locked. Representative Gelsi.

REP. GELSI: (58th)

In the affirmative.

DEPUTY SPEAKER HYSLOP:

Representative Gelsi in the affirmative. Clerk

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House of Representatives

Friday, May 1, 1998

please take the tally. Clerk please announce the tally.

CLERK:

House Bill No. 5694 as amended by House amendment schedules "A", "B", and "C."

Total Number Voting	149
Necessary for Passage	75
Those voting Yea	149
Those voting Nay	0
Those absent and not voting	2

DEPUTY SPEAKER HYSLOP:

Bill as amended passes.

SPEAKER RITTER:

Okay, let me just get everybody up to date. We had to take a break to see Representative Newton on TV tonight, he did a great job. He told everybody we're going to Disneyland. No, that's not it. We were originally going to try to do three bills tonight which was the appropriations package, the gas tax and the tax bill. The tax bill as you know is in the Senate and Senator Coleman came down here to tell us that they were a little tired upstairs and they decided to leave. So we look forward to them coming in tomorrow and doing that bill.

But as I said before the appropriations package

S-425

CONNECTICUT  
GEN. ASSEMBLY  
SENATE

PROCEEDINGS  
1998

VOL. 41  
PART 8  
2236-2606

kmg

Senate

Monday, May 4, 1998

Calendar 466, if I didn't already, I would move suspension of the rules to take up this item.

THE CHAIR:

Motion is for suspension of the rules. Without objection, so ordered.

SEN. JEPSEN:

At this time I would move that bill, Substitute for HB5694 to the Consent Calendar.

THE CHAIR:

Motion is to refer this item to the Consent Calendar. Without objection, so ordered.

SEN. JEPSEN:

And on Page 21, Calendar No. 193, Substitute for SB435, I would move to the Consent Calendar. Page 21.

THE CHAIR:

Motion is to refer this item to the Consent Calendar. Without objection, so ordered. Senator Jepsen.

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SEN. JEPSEN:

Correct me if I -- we just put Calendar 193 from Page 21 on the Consent Calendar, okay. I made an error. I placed Calendar 466 on Page 11 on the Consent Calendar. I would ask it be withdrawn at this time, and marked PT.

And instead, the bill right in front of it, above

kmg

158

Senate

Monday, May 4, 1998

move for suspension. So, at this time, I move for suspension of the rules to take up this item at this time.

THE CHAIR:

Question is on suspension of the rules. Without objection, so ordered. Senator Jepsen.

SEN. JEPSEN:

Mark Calendar 457, Go.

Page 11, at the bottom of the page, Calendar 466, Substitute for HB5694, I move to the Consent Calendar.

THE CHAIR:

Motion is to refer this item to the Consent Calendar. Without objection, so ordered.

SEN. JEPSEN:

On Page 13, at the bottom of the page, Calendar 478. I move suspension of the rules to take up this item at this time.

THE CHAIR:

Motion is for suspension of the rules. Without objection, so ordered.

SEN. JEPSEN:

Mark this item, Go. Page 14, bottom of the page. Calendar 160, Substitute for SB258. I move a recommitment.

THE CHAIR:

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241

Senate

Monday, May 4, 1998

THE CLERK:

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

Madam President, second Consent Calendar begins on Calendar Page 3. Calendar No. 323, Substitute for SB230.

Calendar Page 7. Calendar No. 435, Substitute for HB5712.

Calendar Page 9. Calendar No. 443, Substitute for HB5728.

Calendar Page 10. Calendar No. 456, Substitute for HB5335.

Calendar Page 11. Calendar No. 463, Substitute for HB5495.

Calendar No. 456, Substitute for HB5694.

Calendar Page 15. Calendar No. 165, Substitute for SB503.

Calendar Page 16. Calendar No. 256, SB523.

Calendar Page 17. Calendar No. 293, Substitute for SB448.

Calendar No. 317, Substitute for SB449.

Calendar Page 18. Calendar No. 329, Substitute

kmg

002604  
242

Senate

Monday, May 4, 1998

for SB525.

Calendar Page 19. Calendar No. 374, HB5225.

Calendar Page 21. Calendar No. 193, Substitute

for SB435.

Calendar No. 244, Substitute for SB355.

Calendar Page 23. Calendar No. 272, Substitute

for SB490.

Madam President, I believe that that completes the second Consent Calendar.

THE CHAIR:

Thank you, sir. Would you once again announce a roll call vote on the Consent Calendar. The machine will be open.

THE CLERK:

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

THE CHAIR:

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

THE CLERK:

Motion is on adoption of Consent Calendar No. 2.

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002605  
243

Senate

Monday, May 4, 1998

Total Number Voting	35
Those voting Yea	35
Those voting Nay	0
Those absent and not voting	1

THE CHAIR:

The Consent Calendar is adopted. Again, the Chair will ask if there are any points of personal privilege or announcements? Senator Williams.

SEN. WILLIAMS:

Thank you, Madam President. There will be a meeting of the Judiciary Committee tomorrow at 11:30 outside the House Chamber.

THE CHAIR:

Other announcements? Senator Fleming.

SEN. FLEMING:

Yes, Madam President. Tomorrow at noon, there will be a Senate Republican caucus. And also for the record, Senator Lovegrove missed votes due to illness.

THE CHAIR:

The Journal will so note, sir. Are there other announcements or points of personal privilege? Senator Jepsen.

SEN. JEPSEN:

Thank you, Madam President. It's our intention to come back in tomorrow at 2:00 o'clock. The Senate

JOINT  
STANDING  
COMMITTEE  
HEARINGS

JUDICIARY  
PART 4  
992-1321

1998

your being here. Unless you want to testify? No. Okay.

We only have a few minutes left in the public portion and we have two of our constitutional officers here. I want to make sure we get them in before we move to the public.

First is Secretary of State Miles Rapoport and he'll be followed by the Attorney General, Richard Blumenthal.

SEC. OF STATE MILES RAPOPORT: Mr. Chairman, thank you very much for allowing me the opportunity to address the committee this morning.

It happens that on your agenda there are a number of items that are of interest to me and let me just testify on behalf of three of them.

The first is HB5694 which is, AN ACT CONCERNING CORPORATIONS AND OTHER BUSINESS ORGANIZATIONS. This is a piece of legislation, principally a technical piece of legislation that has been worked on both by the Secretary of the State's Office and the Connecticut Bar Association. This bill consolidates changes to the Model Business Act that had been requested by our office on the one hand, and the Bar Association on the other hand to both further the process of modernizing Connecticut's corporate law and also to correct a few drafting errors that were made in previous legislation.

I will allow the Bar Association principally to take responsibility although in my written testimony it mentions some of the sections that are of concern to them.

In terms of the corrections that the Secretary of the State's Office would like -- one is to require corporations to file an interim notice where there is a change of office of directors. The current statute that was adopted actually prohibits, in effect, prohibits corporations from updating their boards of directors. So what we would like to do -- there's been a tremendous amount of concern from people who use the Secretary of State's Office that

the information that we have on file ought to be the most accurate and up-to-date information. So I think the way to do that is to have all corporations file those changes when they make them.

We would create a modest \$10 fee and I don't think it would be a huge burden, but it would make us consistent. If we simply allowed corporations to do it, by the way, you would have a situation in which some corporations were up-to-date and some were not up-to-date. I think it's the integrity of our records require that we have all of them.

Secondly, a small, but interesting change in that is the -- in the Statutory Trust law that was passed last year, the abbreviation "ST" for statutory trust is used in a lot of filings. "ST" is also the abbreviation for the word "saint". There are many religious organizations and non-profit organizations that have that in their name. So it's created some confusion. So we just want to do a different abbreviation for "ST", for the statutory trust.

And lastly, just a small technical change in terms of the fining of corporations, of out-of-state corporations, foreign corporations by our law. We enacted -- we changed last year the penalty process from a yearly 2000 to a monthly fee. This just clarifies that the 90 day grace period which corporations allow begins when they start doing business in the State. The language as it was ultimately drafted last year there's a potential loop hole of 90 days not running consecutively where a corporation wouldn't file. I don't think that's what any of us intended.

So those are the small, but significant changes to our office in HB5694.

Let me also just say something about HB5695 which is an area that I have some interest and some history. I served in the Legislature with many of you in 1988 when the original legislation was passed that was an attempt to protect Connecticut corporations from hostile takeovers or protect --

they have just been installed.

So, I think that HB5695 is a good extension of the protective policies that we establish toward Connecticut corporations and towards employees and communities and the tax base of Connecticut and I think that it makes sense.

We are clearly in an economy where lots of -- there are lots of mergers, lots of acquisitions, the pace may have died down a little bit from the dizzying and sometimes terrifying pace of the late 80's, but I still think that there is some real issues here that we ought to, as a Legislature, concern ourselves with.

Lastly, I want to comment on HB5674, AN ACT CONCERNING DISCRIMINATORY PRACTICES. This is a bill that I think is extremely important for our state that it will put Connecticut in the forefront of the movement to assure equal pay for equal work and equal pay in similar categories. So I think if we can do that, the Permanent Commission on the Status of Women and others have made it clear that there are real issues here about how people are paid and how categories are paid separately and we ought to take those into account.

So, I would strongly support HB5674, HB5695, and would ask your assistance in the clarifying changes made in our original bill.

Thank you.

REP. LAWLOR: Thank you, Mr. Secretary. Representative Farr.

REP. FARR: Just one thing caught my eye. HB5694 where you are now going to require corporations to notify you of any changes in the -- I guess your successor because by the time this will go into effect, you won't be -- you'll be -- you certainly won't be in this office, although --- requires you to be notified of a change in the officers. What is the consequences of not giving that notice?

SEC. OF STATE MILES RAPOPORT: There are no specific

penalties in this bill to do that. We're not looking for additional enforcement. We think that the --

- REP. FARR: But the corporation won't be deemed to be acting illegally if it doesn't do this?
- SEC. OF STATE MILES RAPOPORT: Not under this legislation, no.
- REP. FARR: Okay. I just wanted to clarify that. Thank you.
- REP. LAWLOR: Representative Martinez.
- REP. MARTINEZ: Good afternoon, Miles. How are you? Miles, regarding corporate law, HB5695, you see it as a natural extension to some of the work that's been done before in this Legislature. Given your experience working with CBIA and other corporations in Connecticut, do you think that they would have a major problem with this further enhancement of what we've done in the past?
- SEC. OF STATE MILES RAPOPORT: I think I would generally let them -- let any group speak for itself on legislation rather than presuming to speak for them. I do feel that this is a reasonable extension of those policies. Some mergers and acquisitions have perfectly fine results for citizens and employees in Connecticut and others have had major negative consequences. So I think this is a reasonable protection.
- REP. MARTINEZ: Thank you. Thank you, Mike.
- REP. LAWLOR: Further questions? If not, thank you very much.
- SEC. OF STATE MILES RAPOPORT: Thank you.
- REP. LAWLOR: Attorney General Blumenthal.
- ATTY. GENL. RICHARD BLUMENTHAL: Chairman Williams, Chairman Lawlor, I appreciate this opportunity to be with you today to testify on the legislation that I've submitted regarding the sex offender

your job evaluations here.

These are large consulting companies that do job evaluations for state and private.

So that there is a way that you evaluate jobs on their skills, effort, responsibilities, and working conditions.

REP. RORABACK: Thank you, Mr. Chairman.

SEN. WILLIAMS: Other questions? Thank you very much. Next we have Peter Costes to be followed by Deb Tedford and Terry Tuthill. And at that point we'll start re-alternating back and forth with the legislator and department head list and the public list.

PETER COSTES: Senator Williams, members of the Judiciary Committee, I'm Peter Costes, President of the Connecticut Bar Association which is more than 11,000 lawyers in this state, plaintiffs' lawyers, defendants' lawyers, corporate lawyers, trust of the estate lawyers, every kind of lawyer you can think of and we're committed to one thing, seeing a justice system that works in the state as I know you are.

I'm here to speak on behalf of the Association in favor of SB54 which is AN ACT INCREASING THE NUMBER OF JUDGES. SB566, AN ACT CONCERNING JUDGES, MAGISTRATES, AND REFEREES, and HB5694, AN ACT CONCERNING CORPORATIONS AND OTHER BUSINESS ORGANIZATIONS. I also have with me here Tom Clark, the Chairman of the Mediation Committee of the Alternative Dispute Resolution Section of the Connecticut Bar who would speak on SB580, AN ACT CONCERNING MEDIATION and Deborah Tedford, Chair of the Estates and Probate Section who will speak on SB520, AN ACT CONCERNING INTER-VIVOS TRUSTS. They have been separately signed up, Senator Williams.

With respect to SB54, I do not have to tell you. You've seen the statistics. The caseload is increasing each year. The backlog is increasing in terms of our civil backlog. And we have long

to handle the arraignment proceedings and also the picking of juries. Now, this is sort of a compromise on this individual voir dire that we've heard about for so long. It's a way to defuse that one to some degree. More importantly, if we use these referees and we're talking about judges, they're not the trial -- attorney trial referees. These are judges who have gone senior. They will be able to alleviate some of the workload in the criminal court which is again, increasing. So we strongly urge your support with respect to that item.

Turning now to HB5694 which is concerning corporations and other business organizations. This is basically a technical bill and the changes before it have been well thought out and in fact, you should be receiving -- well, you have received written remarks from Richard (inaudible), the member of the Tax Section and Ernest Lorimer, a member of the business law section who may also show up to speak in favor of the bill.

What we're trying to do is to allow electronic transmissions to take place. We're also trying to clear up a technical fault in the LLC.

Part of the problem that we have before you today is a bill that is scheduled for four o'clock and I would merely like to make a short comment with respect to that. And that is HB5695 is something which I'm sure you've gathered from the testimony so far today, rather controversial. Our business law section called an emergency meeting last Friday and they've been on the phone for an extensive period of time in an effort to review this bill and to develop some position with respect to it. I am not here to take a position because we have not yet taken a position. The matter will be brought before the House of Delegates of the Connecticut Bar Association next Monday and I would like at that time, after assuming a position is taken, to then convey that position to this committee.

Lastly, before turning this matter over to Tom Clark who is here to speak, I do wish to point out the following. We are addressing some of the SB54

JOINT  
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1322-1686

1998



Office of Secretary of the State  
State of Connecticut  
State Capitol, 210 Capitol Avenue, Hartford, CT 06106-1629

Miles S. Rapoport  
Secretary of the State  
Howard G. Rifkin  
Deputy Secretary of the State

**TESTIMONY OF THE SECRETARY OF THE STATE  
MILES S. RAPOPORT**

Judiciary Committee  
March 9, 1998

I appear before you today to testify on several matters.

**H.B. 5694 (An Act Concerning Corporations and Other Business Organizations)**

I ask that you give favorable consideration to Raised Bill No. 5694.

Raised Bill No. 5694 combines language drafted by the Connecticut Bar Association and by my office. It is my intention, therefore, to provide general comment only on those sections of this bill prepared by the Bar Association and specific testimony on those sections which were prepared by my agency.

The Bar Association prepared Sections 1-10 and Sections 29 through 37 of Raised Bill No. 5694. Sections 1 through 10 of this bill amend the Connecticut Business Corporation Act in order to have it reflect recent changes made to the Uniform Model Business Corporation Act from which it was originally derived. Sections 27 through 28 of this Bill extend to Limited Liability companies the right to be licensed as professional engineers and surveyors commensurate with the existing right of corporations to do the same. Sections 29 and 30 allow foreign and domestic limited liability companies to act as registered agents for business and nonprofit corporations, again consistent with a domestic or foreign corporation's current ability to do the same. (Sections 29 and 30 should be made effective October 1, 1998 in order to give the Secretary of the State's Office time to make necessary changes to our computer system). Sections 31 through 37 make clarifications to the powers section of the Statutory Trust Act and specify that the Trustee of a Connecticut Statutory Trust need not be a resident of Connecticut or have a principal office in this state. I will defer to the specific testimony of the Bar Association's representative for further elaboration on these sections.

My office drafted sections 11 through 26 in order to address concerns voiced by the customers of the Commercial Recording Division and to clarify language contained within P. A. 97-228 regarding the penalties imposed upon foreign entities which transact business in this state without first filing an application for authority in my office.

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Since the repeal of the Stock Corporations Act and the Nonstock Corporations act on January 1, 1997, corporations have lacked the statutory authority to notify my office of their officer and director changes. Neither the Business Corporation Act nor The Revised Nonstock Corporation Act contain provision for this type of notice. As a consequence, corporations which change hands through sale or otherwise need to demonstrate a transfer of authority to new officers/directors are prohibited from doing so. In addition, institutions such as banks and governmental agencies which formerly looked to my office for information regarding officers and directors can no longer consider our information to be current and reliable. Our customers have expressed considerable concern about this problem. The interim notice of change of director or officer which we propose in this bill answers our customers' concerns by reestablishing the statutory authority to update the names of corporate officers and directors on record in my office. We have included language to establish a minimal filing fee for this notice.

In this bill we propose changes to the Statutory Trust Act which would remove from the list of acceptable Trust designations the abbreviation "ST". "ST" is currently a frequently used abbreviation for religious corporations and has historically been regarded as a distinguishing element of a religious corporation's name. With the advent of "ST" the Statutory trust designation, "ST" the abbreviation for Saint in the name of a religious corporation has lost its distinguishing character under our name review standards. By removing "ST" from the set of acceptable Statutory Trust designation, we restore the distinguishing nature of "ST" as a commonly used abbreviation for the word Saint in the names of religious corporations.

Finally, my office has included within Raised Bill No. 5694 minor technical changes to the penalty sections which you considered in the 1997 session and became components of P.A. 97-228. The language included in the P.A. 97-228 was not as originally intended. The original intent had been merely to change the penalty from an annual to a monthly penalty. However, it appears that the changes made last session had the unintended effect of giving corporations a full unconditional 90 day grace period from penalty rather than a grace which was conditional upon statutory compliance within 90 days, from the date in which the foreign corporation first commenced business in this state. Sections 14, 17, 23, 24 and 25 of this bill are designed to clarify the original intent of last session's changes and establish a strong incentive for timely statutory compliance by foreign business entities.

**I also wish to testify in favor of HB 5695 (An Act Concerning Corporate Law)**

In 1988 the General Assembly adopted PA 88-350, An Act Concerning Approval of Certain Business Combinations. That act established two basic principles of Connecticut corporate law:

- the prohibition of certain Connecticut corporations under specified circumstances from engaging in mergers, consolidations, liquidations, or other specified business combinations with any "interested shareholders" for a five year period, and
- that boards of directors of certain corporations shall consider additional factors, such as the interests of communities when considering certain transactions involving the sale of all or substantially all of the corporation's assets.

Before you today in HB 5695 is a logical extension of these principles, designed to ensure that any merger, consolidation, liquidation or other specified business combinations are considered by the board of directors in place at the time an "interested shareholder" first expresses interest, during the five year period established in PA 88-350. The bill would also prevent a special meeting of shareholders to be called for the expressed purpose of replacing a board of directors after an expression of interest by an "interested shareholder".

In my view, if we are going to give serious weight to the interests of communities as well as shareholders, the best arbiter of these judgments are likely to be the directors of the corporation who hold their office independent of the voting power of an interested shareholder. When presented with the possibility of a business takeover, out of state companies simply may not share the same level of commitment as a Connecticut based company to our communities and their people.

It is clear under present Connecticut law that corporations are public assets, and as such, have certain responsibilities to the larger good. It is because they are so important to the lifeblood of our communities that we require a board of directors, where a business combination is proposed (or imposed), to consider in making a decision:

- The interest of shareholders, long terms as well as short term
- The interest of the employees
- The interests of consumers
- The interests of suppliers
- And community and societal considerations

This is important public policy, and is worth preserving. We live in an era when acquisitions, mergers and new business alignments and combinations take place virtually every day -- and sometimes they create stronger companies and more jobs. But too often in the recent past the results have been communities out of luck and people out of jobs.

In the case of Echlin Corporation, which gave rise to this proposal, we also may well be talking about manufacturing jobs. I needn't remind anyone here that in Connecticut over the last decade we have lost over 100,000 good paying jobs in manufacturing. This bill alone will not stem that tide, but it would at least require the decisions about the future of an enterprise to rest in the hands of those who are more likely to fairly consider the public interest that we have already required be considered here in Connecticut.

I urge your adoption of this measure.

**Finally, I would like to comment on HB 5674 (An Act Concerning Discriminatory Practices)**

Just as HB 5695 would establish a fair process and more level playing field for Connecticut corporations which are the subject of unwelcome takeovers, HB 5674 establishes fairness and a

level playing field for employees who are subjected to disparate treatment in wages paid based upon sex, race or national origin.

In the public sector, pay equity has been a long established policy. This bill would add to the list of discriminatory practices for which a CHRO complaint could be filed, disparities between equivalent job classes where the lower paid class is dominated by employees of a particular sex, race or national origin.

The need for this bill arise out of the fact that for too long study after study has shown that disparities continue and are persistent. It is time to act.

The PCSW recently published "Facts About the Status of Women in Connecticut" in which they point out, for example, the significant wage gap by gender among managers. The gap was even greater between white males and women of color. Specifically, in 1995 white women earned 71% of what white men earned; African American women earned 64% and Hispanic women earned 53%.

The idea of pay equity strikes at the fundamental notions of American fairness. It is a concept that all of us should be able to support. But as a policy and as practice, it remains illusory.

When the state was pushed to accept this policy there was a wringing of hands and much foot dragging. But it is working to make more equal wages between comparable classes of jobs, and it has not had cataclysmic results.

It is time to allow fairness and equity to be governing principles for all our citizens. I urge you to adopt this measure.

## Changes in the Model Business Corporation Act—Amendments Pertaining to Shareholder Meetings and Voting

*By the Committee on Corporate Laws\**

Recognizing the importance of the legitimizing function of the shareholder franchise in our system of corporate governance, the Committee on Corporate Laws (Committee) has reexamined those provisions of the Model Business Corporation Act (Model Act or Act) dealing with shareholder meetings (Chapter 7, Subchapter A) and shareholder voting (Chapter 7, Subchapter B). While, as a general matter, the Committee concluded that no change in the fundamental role of shareholders in corporate governance as presently set forth in the Act is required, the Committee has identified a number of discrete areas in which the procedures governing shareholder participation in corporate affairs should be updated, clarified, or improved. Accordingly, a number of changes are being proposed in Subchapters A and B of Chapter 7 (Subchapters A and B). The Committee draws attention, in particular, to revisions that:

- give to corporations greater flexibility in determining the percentage of shareholdings required to demand a special meeting of shareholders and establish procedures for revoking written demands for such a meeting;
- establish procedures for revoking consents for shareholder action without a meeting;
- establish procedures for the conduct of meetings of shareholders;
- authorize the electronic transmission of proxies; and
- require that certain corporations appoint inspectors of election to act at meetings of shareholders and specify the duties of such inspectors.

\*The Committee developed, and from time to time proposes changes in, the Model Business Corporation Act. The Committee has approved on second reading proposed amendments to Subchapters A and B of Chapter 7 of the Act, together with the Official Comment, and invites comments from interested persons. Comments should be addressed to Donald A. Scott, Chair, Committee on Corporate Laws, 2000 One Logan Square, Philadelphia, PA 19103. Comments should be received by May 1, 1996, in order to be considered by the Committee prior to the adoption of the proposed amendments on third reading.

In the case of each proposed change to the Act, appropriate changes have also been made to the Official Comment. In addition, changes have been made to the Official Comment accompanying certain sections of Subchapters A and B to which no statutory changes are proposed in order to reflect changes in other chapters of the Act or to address technological and practice changes which have occurred since Subchapters A and B were last amended. All proposed changes to the statutory text of the Act and Official Comment are set forth at the end of this Report. Set forth below is a brief discussion of the substantive changes in the text of Subchapters A and B and the Official Comment. Further detail may be found by reviewing the various changes to the Official Comment.

**Special Meeting (Section 7.02(a)):** The Act presently permits shareholders having at least 10 percent of all votes entitled to be cast to submit written demands requiring that a special meeting of shareholders be held. The proposed amendment to Section 7.02(a)(2) would permit a corporation in its articles of incorporation to fix a lower percentage or a higher percentage not exceeding 25 percent. The Committee believes this change will give to corporations greater flexibility to prevent the occasional abusive use of the special meeting demand procedure by a relatively small minority of shareholders, while at the same time preserving for shareholders a significant director recall mechanism. In addition, the proposed amendment would add a new provision permitting revocations of written demands for a special meeting, provided that such revocations were received by the corporation prior to the receipt of demands sufficient in number to require the holding of a special meeting.

**Action Without Meeting (Section 7.04(a)-(b)):** The proposed changes to this section add a specific requirement that written consents to take shareholder action by unanimous written consent bear the date of signature of the consent, limit the effectiveness of a written consent to 60 days from the earliest date appearing on a consent delivered to the corporation, and make it clear that a revocation of a written consent is effective only if it is received before the corporation receives unrevoked consents sufficient in number to take corporate action. All of these changes are proposed to bring greater certainty to the written consent process.

**Conduct Of The Meeting (Section 7.08):** This new section defines the role of the chair in presiding at meetings of shareholders, subject to differing provisions in a corporation's bylaws. In addition, it codifies the common law requirement that shareholder meetings be conducted in a manner which is fair to shareholders. Finally, it specifies procedures for closing of the polls and makes it clear that, once the polls have closed, no ballots, proxies or votes may be revoked or changed. All of these changes are proposed to maximize the likelihood that the annual meeting will be conducted in an orderly manner which is fair to all shareholders and that the results of voting at the meeting will not be cast into doubt as a result of votes submitted after the polls have been fairly closed.

Proxies (Section 7.22 and Official Comment Section 7.24): Section 7.22(b) has been changed to specifically authorize the transmission of proxy appointments by electronic or other non-written means, provided that the transmission contains or is accompanied by information from which it can be reliably determined that the transmission was authorized by the shareholder. In conjunction with this proposed amendment, a new definition of "electronic transmission" would be added to Section 1.40. The Official Comment to Section 7.24 has also been changed to make clear that written appointment forms may be transmitted by facsimile, provided that the transmission is a complete reproduction of the entire appointment form. All of these changes bring the Act into conformity with procedures which have become accepted in practice.

Inspectors Of Election (Section 7.29): This new section requires that public companies (as defined) appoint one or more inspectors of election to act at meetings of shareholders and specifies the minimum duties of such inspectors. These provisions, the substance of which are widely adhered to by public companies as a matter of practice, are proposed by the Committee to assure a minimum degree of uniformity to enhance investor confidence in the process by which proxies and votes are tabulated in corporations subject to the Act and whose stock is widely traded in public securities markets.

### § 7.02. SPECIAL MEETING

(a) A corporation shall hold a special meeting of shareholders:

(1) on call of its board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws; or

(2) if shareholders having at least 10 percent of all the votes entitled to be cast on an issue proposed to be considered at the proposed special meeting sign, date, and deliver to the corporation's ~~secretary~~ one or more written demands for the meeting describing the purpose or purposes for which it is to be held, provided that the articles of incorporation may fix a lower percentage or a higher percentage not exceeding 25 percent of all the votes entitled to be cast on any issue proposed to be considered. Unless otherwise provided in the articles of incorporation, a written demand for a special meeting may be revoked by a writing to that effect received by the corporation prior to the receipt by the corporation of demands sufficient in number to require the holding of a special meeting.

[No changes to (b)-(d)]

### OFFICIAL COMMENT

[No changes to introductory paragraph]

### 1. WHO MAY CALL A SPECIAL MEETING

A special meeting may be called under section 7.02(a) by the board of directors or the person or persons authorized to do so by the articles of incorporation or bylaws. Typically, the person or persons holding certain designated offices within the corporation, e.g., the president, chairman of the board of directors, or chief executive officer, are given authority to call special meetings of the shareholders. In addition, the holders of at least 10 percent of the votes entitled to be cast on a proposed issue at the special meeting may require the corporation to hold a special meeting by signing, dating, and delivering one or more writings that demand a special meeting and set forth the purpose or purposes of the desired meeting. That percentage may be decreased or increased (but to not more than 25 percent) by a provision in the articles of incorporation fixing a different percentage. Shareholders demanding a special meeting do not have to sign a single piece of paper, but the writings signed must all describe essentially the same purpose or purposes. Revocations of written demands will be effective if delivered to the corporation in the manner contemplated by section 1.41(d) and received before the corporation receives the requisite number of demands requiring that a special meeting be called. However, revocations received after that time will be a nullity and shall be given no effect. Upon receipt of writings evidencing a demand by holders of ~~10 percent of the~~ with the requisite number of votes, the corporation (through an appropriate officer) must call the special meeting at a reasonable time and place. The shareholders' demand may suggest a time and place but the final decision on such matters is the corporation's. If no meeting is held within the time periods specified in section 7.03, the shareholders may obtain a summary court order under that section requiring that the meeting be held.

[No changes to second paragraph of section 1 or to sections 2-3]

### § 7.04. ACTION WITHOUT MEETING

(a) Action required or permitted by this Act to be taken at a shareholders' meeting may be taken without a meeting if the action is taken by all the shareholders entitled to vote on the action. The action must be evidenced by one or more written consents bearing the date of signature and describing the action taken, signed by all the shareholders entitled to vote on the action, and delivered to the corporation for inclusion in the minutes or filing with the corporate records.

(b) If not otherwise fixed under section 7.03 or 7.07, the record date for determining shareholders entitled to take action without a meeting is the date the first shareholder signs the consent under subsection (a). No written consent shall be effective to take the corporate action referred to therein unless, within 60 days of the earliest date appearing on a consent delivered to the corporation in the manner required by this section, written consents

signed by all shareholders entitled to vote on the action are received by the corporation. A written consent may be revoked by a writing to that effect received by the corporation prior to the receipt by the corporation of unrevoked written consents sufficient in number to take corporate action.

[No changes to (c)-(d)]

### **OFFICIAL COMMENT**

[No changes to introductory paragraphs]

#### **1. FORM OF WRITTEN CONSENT**

To be effective, consents must be in writing, dated, signed by all the shareholders entitled to vote, and delivered to the ~~secretary of the corporation~~ in the manner contemplated by section 1.41(d). The phrase "one or more written consents" is included in section 7.04(a) to make it clear that all shareholders do not need to sign the same piece of paper. The record date for determining who is entitled to vote, if not otherwise fixed by or in accordance with the bylaws, is the date the first shareholder signs the consent. To minimize the possibility that action by unanimous written consent will be authorized by action of persons who may no longer be shareholders at the time the action is taken, section 7.04(b) requires that all consents be signed within 60 days of the earliest signature date appearing on the consents delivered to the corporation.

#### **2. REVOCATION OF CONSENT**

Action by unanimous written consent is effective only when the last shareholder has signed the appropriate written consent and all consents have been delivered to the ~~secretary of the corporation~~ in the manner contemplated by section 1.41(d). Before that time, any shareholder may withdraw his consent simply by advising the ~~secretary of the corporation~~ in writing of that fact. Cf. *Calumet Industries, Inc. v. McClure*, 464 F. Supp. 19 (N.D. Ill. 1978). The withdrawal of a single consent, of course, destroys the unanimous written consent required by this section. If a shareholder seeks to withdraw his consent after all shareholders have signed written consents and filed them with the ~~secretary of the corporation~~, the corporation may treat the attempted withdrawal as too late or give it effect, thereby requiring the matter to be presented at a shareholders' meeting such withdrawal will be a nullity and shall be given no effect.

[No changes to section 3]

#### **§ 7.05. NOTICE OF MEETING**

[No changes to statutory text]

**OFFICIAL COMMENT**

[No changes to introductory paragraph or section 1]

**2. STATEMENT OF MATTERS TO BE CONSIDERED AT AN ANNUAL MEETING**

Notice of all special meetings must include a description of the purpose or purposes for which the meeting is called and the matters acted upon at the meeting are limited to those within the notice of meeting. By contrast, ~~the notice of an annual meeting usually need not~~ Model Act does not require that the notice of an annual meeting refer to any specific purpose or purposes, and any matter appropriate for shareholder action may be considered. As recognized in subsection (b), however, other provisions of the revised Model Act provide that certain types of fundamental corporate changes may be considered at an annual meeting only if specific reference to the proposed action appears in the notice of meeting. See sections 10.03, 11.03, 12.02, and 14.02. In addition, as a condition to relying upon shareholder action to establish the safe harbor protection of section 8.61(b), section 8.63 requires notice to shareholders providing information regarding any director's conflicting interest in a transaction. If the board of directors chooses, a notice of an annual meeting may also contain references to purposes or proposals not required by statute. In the event that management intends to present non-routine proposals for a shareholder vote and shareholders have not otherwise been informed of such proposals, good corporate practice suggests that references to such proposals be made in the notice. In either any event, if a notice of an annual meeting refers specifically to one or more purposes, the meeting is not limited to those purposes.

[No changes to sections 3-4]

**§ 7.08. CONDUCT OF THE MEETING [NEW]**

- (a) At each meeting of shareholders, a chair shall preside. The chair shall be appointed as provided in the bylaws or, in the absence of such provision, by the board.
- (b) The chair, unless the bylaws provide otherwise, shall determine the order of business and shall establish rules for the conduct of the meeting.
- (c) The rules adopted for, and the conduct of, the meeting shall be fair to shareholders.
- (d) The chair of the meeting shall announce at the meeting when the polls close for each matter voted upon. If no announcement is made, the polls shall be deemed to have closed upon the final adjournment of the meeting. After the polls close, no ballots, proxies or votes nor any revocations or changes thereto may be accepted.

**OFFICIAL COMMENT**

Section 7.08 provides that, at any meeting of the shareholders, there shall be a chair who shall preside over the meeting. The chair is appointed in accordance with the bylaws. Generally, the chair of the board of directors presides over the meeting. However, the bylaws could provide that the chief executive officer, if different than the chair of the board, preside over the meeting and they should provide a means of designating an alternate if that individual is for any reason unable to preside.

Section 7.08(b) gives the chair, unless the bylaws provide otherwise, the authority to determine in what order items of business should be discussed and decided. Inherent in the chair's power to establish rules for the conduct of the meeting is the authority to require that the order of business be observed and that any discussion or comments from shareholders or their proxies be confined to the business item under discussion. However, it is also expected that the chair will not misuse the power to determine the order of business and to establish rules for the conduct of the meeting so as to unfairly foreclose the right of shareholders—subject to the Act, the articles of incorporation and the bylaws—to raise items which are properly a subject for shareholder discussion or action at some point in the meeting prior to adjournment.

The Act provides that only business within the purpose or purposes described in the meeting notice may be conducted at a special shareholders' meeting. See sections 7.02(d) and 7.05(c). In addition, a corporation's articles of incorporation or, more typically, its bylaws, may contain advance notice provisions requiring that shareholder nominations for election to the board of directors or resolutions intended to be voted on at the annual meeting must be made in writing and received by the corporation a prescribed number of days in advance of the meeting. Such advance notice bylaws are permitted provided (1) there is reasonable opportunity for shareholders to comply with them in a timely fashion, and (2) the requirements of the bylaws are reasonable in relationship to corporate needs.

Among the considerations to be taken into account in determining reasonableness are (a) how and with what frequency shareholders are advised of the specific bylaw provisions, and (b) whether the time frame within which director nominations or shareholder resolutions must be submitted is consistent with the corporation's need, if any, (i) to prepare and publish a proxy statement, (ii) to verify that the director nominee meets any established qualifications for director and is willing to serve, (iii) to determine that a proposed resolution is a proper subject for shareholder action under the Act or other state law, or (iv) to give interested parties adequate opportunity to communicate a recommendation or response with respect to such matters, or to solicit proxies.

Section 7.08(b) also provides that the chair shall establish rules for the conduct of the meeting. Complicated parliamentary rules (such as Robert's

Rules of Order) ordinarily are not appropriate for shareholder meetings. The rules may cover such subjects as the proper means for obtaining the floor, who shall have the right to address the meeting, the manner in which shareholders will be recognized to speak, time limits per speaker, the number of times a shareholder may address the meeting, and the person to whom questions should be addressed. The substance of the rules should be communicated to shareholders prior to or at the beginning of the meeting. The chair is entitled to wide latitude in conducting the meeting and, unless inconsistent with a previously prescribed rule, may set requirements, observe practices, and follow customs that facilitate a fair and orderly meeting. Since, absent a modifying bylaw provision, the chair has exclusive authority with respect to the rules for and the conduct of the meeting, rulings by the chair may not be overruled by shareholders. On the other hand, any rule for or conduct of the meeting which does not satisfy the fairness mandate of section 7.08(c) would be subject to a judicial remedy.

Section 7.08(d) requires that an announcement be made at the meeting of shareholders specifying when the polls will close for each matter voted upon. It also provides that, once the polls close, no ballots, proxies, or votes and no changes thereto may be accepted. This statutory provision eliminates an area of uncertainty which had developed in the relatively sparse case law dealing with the effect of closing the polls, some of which suggested that, notwithstanding the closing of the polls, votes could be changed up until the time that the inspectors of election announced the results. *Young v. Jebbett*, 211 N.Y.S. 61 (N.Y. App. Div. 1925); *State ex rel. David v. Dailey*, 168 P.2d 330 (Wash. 1945). Any abusive use of the poll-closing power would be subject to judicial review under subsection (c) as well as under that line of cases requiring that meetings of shareholders be conducted fairly and proscribing inequitable manipulations of the shareholder voting machinery. See, e.g., *Duffy v. Loft, Inc.*, 151 A. 223 (Del. Ch. 1930); *Schnell v. Chris-Craft Ind., Inc.*, 285 A.2d 437 (Del. 1971).

### § 7.22. PROXIES

- (b) A shareholder or his agent or attorney-in-fact may appoint a proxy to vote or otherwise act for him the shareholder by signing an appointment form, either personally or by his attorney-in-fact or by an electronic transmission. An electronic transmission must contain or be accompanied by information from which one can determine that the shareholder, the shareholder's agent, or the shareholder's attorney-in-fact authorized the electronic transmission.
- (c) An appointment of a proxy is effective when a signed appointment form or an electronic transmission of the appointment is received by the secretary or other officer or agent inspector of election or the officer or agent of the corporation authorized to tabulate votes. An appointment is valid for 11 months unless a longer period is expressly provided in the appointment form.

(d) An appointment of a proxy is revocable ~~by the shareholder~~ unless the appointment form or electronic transmission ~~conspicuously~~ states that it is irrevocable and the appointment is coupled with an interest. Appointments coupled with an interest include the appointment of: . . .

\* \* \*

(h) Subject to section 7.24 and to any express limitation on the proxy's authority ~~appearing on the face of~~ stated in the appointment form or electronic transmission, a corporation is entitled to accept the proxy's vote or other action as that of the shareholder making the appointment.

[No changes to (a) or (e)-(g)]

### OFFICIAL COMMENT

[No changes to introductory paragraph]

#### 1. NOMENCLATURE

The word "proxy" is often used ambiguously, sometimes referring to the grant of authority to vote, sometimes to the document granting the authority, and sometimes to the person to whom the authority is granted. In the revised Model Act the word "proxy" is used only in the last sense; the terms "appointment form" and "electronic transmission" are used to describe the document or communication appointing the proxy; and the word "appointment" is used to describe the grant of authority to vote.

#### 2. APPOINTMENT OF PROXY

A shareholder may appoint a proxy to vote ~~for him~~ by signing an appointment form, either personally or by his agent or attorney-in-fact. An electronic transmission which appoints a proxy is deemed the equivalent of a signed appointment form if it contains or is accompanied by information from which it can be reasonably verified that the transmission was authorized by the shareholder or by the shareholder's agent or attorney-in-fact. "Electronic transmission" as used in this section means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient. See section 1.40(7A). The appointment is effective when ~~it is received by the secretary or other officer or agent~~ an appointment form or an electronic transmission (or documentary evidence thereof, including verification information) is received by the inspector of election or the officer or agent of the corporation authorized to receive and tabulate votes. The proxy has the same power to vote as that possessed by the shareholder, unless the appointment form or electronic transmission contains an express limitation on the power to vote or direction as to how to vote the shares

on a particular matter, in which event the corporation must tabulate the votes in a manner consistent with that limitation or direction. See section 7.22(h).

[No changes to sections 3 or 4]

### § 7.24. CORPORATION'S ACCEPTANCE OF VOTES

\* \* \* \*

- (d) The corporation and its officer or agent who accepts or rejects a vote, consent, waiver, or proxy appointment in good faith and in accordance with the standards of this section or section 7.22(b) are not liable in damages to the shareholder for the consequences of the acceptance or rejection.
- (e) Corporate action based on the acceptance or rejection of a vote, consent, waiver, or proxy appointment under this section or section 7.22(b) is valid unless a court of competent jurisdiction determines otherwise.

### OFFICIAL COMMENT

[No changes to first two paragraphs]

The purpose of section 7.24 is to protect the corporation and its officers or agents from liability for damages to the shareholder if action is taken in accordance with the section. Thus section 7.24(d) provides that there is no liability to the shareholder if the corporation's officer or agent, acting in good faith, accepts an instrument that meets the requirements of section 7.24(a) or (b), or accepts an electronic transmission authorized by section 7.22(b), even if it turns out that the execution was invalid or unauthorized; similarly, no liability exists if the officer or agent, again acting in good faith, rejects an instrument because of a "reasonable basis for doubt," even though it turns out that the instrument was properly executed by the shareholder. But section 7.24 does not address the question whether an action was properly or improperly taken or approved, and section 7.24(e) makes clear that the validity or invalidity of corporate action is ultimately a matter for judicial resolution through review of the results of an election in a suit to enjoin or compel corporate action. It is contemplated that any such suit will be brought promptly, typically before the corporate action is consummated or the corporation's position otherwise changes in reliance on the vote, and that any suit that is not brought promptly under the circumstances would normally be barred because of laches.

[No changes to fourth and fifth paragraphs]

### 1. EXAMPLES OF EXECUTIONS "CORRESPONDING WITH" THE NAME OF THE SHAREHOLDER

- a. Assuming that shares are registered in the name of an individual, an instrument may be accepted as ~~corresponding to the name of the shareholder signed:~~
- (1) a. Whether executed in ink, pencil, ballpoint, crayon, etc.
  - (2) b. Regardless of where the signature appears on the instrument (whether or not in the space provided), if there is no reason to doubt the intent to execute.
  - (3) c. Whether the name is handwritten, handprinted, or rubber-stamped in facsimile-signature or printed form.
  - (4) d. Whether there are deviations between the registered name and the signature, provided that the deviations are not inconsistent with the registered name. For example, if the shares are registered in the name of "John F. Smith," the following are acceptable: "J. Foster Smith," "J. Smith," "J.F.S.," "J.S.," "John F.," and even simply "Smith." Similarly, if "John Smith" is the name of the shareholder, "John F. Smith" and "J. Foster Smith" are also acceptable.
  - (5) e. If marked by an "X" and witnessed by one other person.
  - (6) f. ~~If not executed at all, a signed letter or telegram from the shareholder states that he has signed the instrument or approves of the action taken by the instrument.~~
  - (7) f. If the signature is illegible, unless it cannot reasonably be considered to be the signature of the shareholder. For example, if shares are registered in the name of "John F. Smith," the signature is not acceptable if the first letter of the signature is clearly an "M" or the first word is "Mark."
  - g. If it is a photocopy, facsimile transmission or other reliable reproduction of a signed appointment form, provided that such copy, facsimile transmission or reproduction is a complete reproduction of the entire appointment form.
  - b. h. If the shares are registered in the maiden name of a woman, e.g., Mary Smith, and the instrument is executed:
    - (1) In her married name, clearly indicated as such, e.g., "Mary Smith Jones (formerly Mary Smith)" or "Mary Smith (now Mrs. Mary Smith Jones)."
    - (2) In her married name or in a form that implies her married status, e.g., "Mary Smith Anderson," "Mrs. Mary S. Anderson," "Mrs. Mary Smith Anderson," or "Mrs. Mary Anderson."
  - (9) i. If the shares are registered in the name "Peter Smith, Sr." but the designation "Sr." is omitted, e.g., "Peter Smith." The execution "Peter Smith, Jr.," however, does not correspond with the shareholder.

[No changes to sections 2, 3 or 4]

**§ 7.29. INSPECTORS OF ELECTION [NEW]**

- (a) A corporation having any shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association shall, and any other corporation may, appoint one or more inspectors to act at a meeting of shareholders and make a written report of the inspectors' determinations. Each inspector shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of the inspector's ability.
- (b) The inspectors shall
  - (1) ascertain the number of shares outstanding and the voting power of each;
  - (2) determine the shares represented at a meeting;
  - (3) determine the validity of proxies and ballots;
  - (4) count all votes; and
  - (5) determine the result.
- (c) An inspector may be an officer or employee of the corporation.

**OFFICIAL COMMENT**

Section 7.29(a) requires that, if a corporation has shares which are listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association, one or more inspectors of election must be appointed to act at each meeting of shareholders and make a written report of the determinations made pursuant to section 7.29(b). It is contemplated that the selection of inspectors would be made by responsible officers or by the directors, as authorized either generally or specifically in the corporation's bylaws. Alternate inspectors could also be designated to replace any inspector who fails to act. The requirement of a written report is to facilitate judicial review of determinations made by inspectors.

Section 7.29(b) specifies the duties of inspectors of election. If no challenge of a determination by the inspectors within the authority given them under this section is timely made, such determination shall be conclusive. In the event of a challenge of any determination by the inspectors in a court of competent jurisdiction, the court should give such weight to determinations of fact by the inspectors as it shall deem appropriate, taking into account the relationship of the inspectors, if any, to the management of the company and other persons interested in the outcome of the vote, the evidence available to the inspectors, whether their determinations appear to be reasonable, and such other circumstances as the court shall regard as relevant. The court should review *de novo* all determinations of law made implicitly or explicitly by the inspectors.

Normally, in making the determinations contemplated by section

7.29(b), the only facts before the inspectors should be appointment forms and electronic transmissions (or written evidence thereof), envelopes submitted with appointment forms, ballots and the regular books and records of the corporation, including lists of holders obtained from depositories. However, inspectors may consider other reliable information for the limited purpose of reconciling appointment forms, electronic transmissions, and similar persons which represent more votes than the holder of a proxy is authorized by the record owner to cast or more votes than the shareholder holds of record. If the inspectors do consider such other information, it should be specifically referred to in their written report, including the person or persons from whom they obtained the information, when the information was obtained, the means by which the information was obtained, and the basis for the inspectors' belief that such information is accurate and reliable.

Section 7.29(c) provides that an inspector may be an officer or employee of the corporation. However, in the case of publicly-held corporations, good corporate practice suggests that such inspectors should be independent persons who are neither employees nor officers if there is a contested matter or a shareholder proposal to be considered. Not only will the issue of independent inspectors enhance investor perception as to the fairness of the voting process, but also the report of independent inspectors can be expected to be given greater evidentiary weight by any court reviewing a contested vote.

#### **§ 1.40. ACT DEFINITIONS**

[Add the following new definition]

- (7A) "Electronic transmission" or "transmitted electronically" means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient.

## Changes in the Model Business Corporation Act—Amendments Pertaining to Shareholder Meetings and Voting

*By the Committee on Corporate Laws\**

In the November 1995 issue of *The Business Lawyer*, notice was given of proposed amendments to subchapters A and B of chapter 7 of the Model Business Corporation Act pertaining to shareholder meetings and voting.<sup>1</sup> The Committee on Corporate Laws invited letters of comment, which have been received and considered by the Committee.

At a meeting on June 16, 1996, the proposed amendments were adopted by the Committee upon third and final reading in the form published in November 1995, except for the following changes:

1. Section 7.08(b) was amended to read as follows (new material italicized):  
The chair, unless the *articles of incorporation* or bylaws provide otherwise, shall determine the order of business and shall *have the authority to* establish rules for the conduct of the meeting.
2. Section 7.08(c) was amended to read as follows:  
*Any* rules adopted for, and the conduct of, the meeting shall be fair to shareholders.
3. Section 7.08, Official Comment, second paragraph was amended to read as follows:

Section 7.08(b) gives the chair, unless the *articles of incorporation* or bylaws provide otherwise, the authority to determine in what order items of business should be discussed and decided. Inherent in the chair's power to establish rules for the conduct of the meeting is the authority to require that the order of business be observed and that any discussion or comments from shareholders or their proxies be confined to the business item under discussion. However, it is also expected that the chair will not misuse the power to determine the order of business and to establish rules for the conduct of the meeting so as to unfairly foreclose the right of shareholders—sub-

\*Donald A. Scott, Chair.

1. Committee on Corporate Laws, *Changes in the Model Business Corporation Act—Amendments Pertaining to Shareholder Meetings and Voting*, 51 BUS. LAW. 209 (1995).

ject to the Act, the articles of incorporation and the bylaws—to raise items which are properly a subject for shareholder discussion or action at some point in the meeting prior to adjournment.

4. Section 7.08, Official Comment, fourth paragraph was amended to read as follows:

Among the considerations to be taken into account in determining reasonableness are (a) how and with what frequency shareholders are advised of the specific bylaw provisions, and (b) whether the time frame within which director nominations or shareholder resolutions must be submitted is consistent with the corporation's need, if any, (i) to prepare and publish a proxy statement, (ii) to verify that the director nominee meets any established qualifications for director and is willing to serve, (iii) to determine that a proposed resolution is a proper subject for shareholder action under the Act or other state law, or (iv) to give interested parties adequate opportunity to communicate a recommendation or response with respect to such matters, or to solicit proxies. *Whether or not an advance notice provision has been adopted, if a public company receives advance notice of a matter to be raised for a vote at an annual meeting, management may exercise its discretionary proxy authority only in compliance with SEC Rule 14a-4(c)(1) adopted under the Securities Exchange Act of 1934.*

5. Section 7.08, Official Comment, fifth paragraph was amended to read as follows:

Section 7.08(b) also provides that the chair shall *have the authority* to establish rules for the conduct of the meeting. Complicated parliamentary rules (such as Robert's Rules of Order) ordinarily are not appropriate for shareholder meetings. The rules may cover such subjects as the proper means for obtaining the floor, who shall have the right to address the meeting, the manner in which shareholders will be recognized to speak, time limits per speaker, the number of times a shareholder may address the meeting, and the person to whom questions should be addressed. The substance of the rules should be communicated to shareholders prior to or at the beginning of the meeting. The chair is entitled to wide latitude in conducting the meeting and, unless inconsistent with a previously prescribed rule, may set requirements, observe practices, and follow customs that facilitate a fair and orderly meeting. Since, absent a modifying bylaw provision, the chair has exclusive authority with respect to the rules for and the conduct of the meeting, rulings by the chair may not be overruled by shareholders. On the other hand, any rule for or conduct of the meeting which does not satisfy the fairness mandate of Section 7.08(c) would be subject to a judicial remedy.

6. Section 7.22, Official Comment, paragraph 2, Appointment of Proxy, was amended to read as follows:

A shareholder may appoint a proxy to vote by signing an appointment form, either personally or by his agent or attorney-in-fact. An electronic transmission which appoints a proxy is deemed the equivalent of a signed appointment form if it contains or is accompanied by information from which it can be reasonably verified that the transmission was authorized by the shareholder or by the shareholder's agent or attorney-in-fact. "Electronic transmission" as used in this section means any process of communication not directly involving the physical transfer of paper that is suitable for the retention, retrieval, and reproduction of information by the recipient. See section 1.40(7A). *Section 7.22(b) is intended to sanction the practice whereby shareholders who have been provided in proxy materials with a personal identification number may call in their vote and identifying number to a person who, acting as the shareholder's agent, causes that information to be transmitted, directly or indirectly, to the inspector of election.*

The appointment is effective when an appointment form or an electronic transmission (or documentary evidence thereof, including verification information) is received by the inspector of election or the officer or agent of the corporation authorized to receive and tabulate votes. The proxy has the same power to vote as that possessed by the shareholder, unless the appointment form or electronic transmission contains an express limitation on the power to vote or direction as to how to vote the shares on a particular matter, in which event the corporation must tabulate the votes in a manner consistent with that limitation or direction. See section 7.22(h).



Connecticut Bar Association

Remarks of

**Ernest M. Lorimer**  
**Corporation Subcommittee**  
**Business Law Section**  
**Connecticut Bar Association**

**In Support of Raised Bill No. 5694**

I am chair of the Corporation Subcommittee of the Business Law Section of the Connecticut Bar Association and I write on behalf of the Business Law Section in support of Raised Bill No. 5694, "An Act Concerning Corporations and Other Business Organizations". A good portion of this bill is the result of a joint effort by the Business Law Section and the Secretary of the State's office.

The Connecticut Business Corporation Act is based on the Model Business Corporation Act of the Committee on Corporate Laws of the American Bar Association, which has been adopted by 35 states. The Model Act continues to be refined by the ABA's committee, and we have worked with the Legislative Commissioners' Office and the Secretary of the State's office to bring forward amendments to the Connecticut Business Corporation Act, and conforming amendments to the Revised Non-Stock Corporation Act, to carry into effect changes made in the Model Act since the original adoption of the Connecticut Business Corporation Act in 1994. These changes are in two principal areas. The first is in the area of electronic transmission. These changes principally relate to communications with shareholders by electronic means, including internet and email delivery of documents. It is an emerging area which would have the effect of saving Connecticut corporations with public shareholders significant amounts of money, provided shareholders agree to the receipt of information in that form. I attach the commentary to these changes published by the Committee on Corporate Laws in the Business Lawyer, which explains these changes further. The second area in which changes are being made is in the conduct of shareholder meetings and reflects a number of refinements and minor changes. I attach a copy of the published commentary relating to these changes published by the Committee on Corporate Laws in the Business Lawyer.

A second significant topic of the Bill consists of changes being proposed by the Secretary of the State's office. The Secretary of the State's office has done an excellent job accomplishing the transition from the old Stock Corporation Act to the new Business Corporation Act, and the Business Law Section is grateful for their careful efforts in this regard. For that reason we are generally in support of the changes that the Secretary of the State's office has found appropriate to bring forward. The one area of concern is the new obligation to file interim reports. We understand the purposes behind the Secretary of the State's efforts in this regard, but there is a concern that these provisions, which are unusual if not unique in the nation and require continuous attention, may prove significantly burdensome for large companies with many officers and also for small companies. We look forward to working with the Secretary of the State's office to see if the underlying objectives can be achieved with less burden.

Another area that the Business Law Section was interested in proposing, but which is not part of the current Bill, is an elimination of the statutory provision to include residence addresses in the annual report filed by corporations. The Business Law Section has been interested for some time in eliminating this requirement, and in light of recent events the concerns over the personal safety of persons associated with corporations cannot be said to be theoretical. Present law allows a corporation to omit such addresses upon a showing of personal risk, but our belief is that such information is often supplied on behalf of a corporation in the belief it is required and without apprising those whose information is being handed out that it is being made public. Any purpose served by this requirement could be achieved by other means, we believe, and we would encourage such a change.

The Business Law Section commends the legislature for the efforts it has made in the last several years to modernize the legal framework for business entities in the State and the continuing attention in this regard to see that Connecticut statutes are and remain as well thought out and carefully considered as any in the nation.