

PA10-035

HB5530

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Judiciary	3762-3766, 3768, 3769, 3839-3840, 3872, 3873	11
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GENERAL ASSEMBLY
HOUSE**

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The Clerk will please announce the tally.

THE CLERK:

House Bill 5286.

Total Number voting 149

Necessary for passage 75

Those voting Yea 143

Those voting Nay 6

Those absent and not voting 2

DEPUTY SPEAKER O'CONNOR:

The bill passes.

Will the Clerk please call Calendar Number 357.

THE CLERK:

On page 16, Calendar 357, House Bill Number 5530,

AN CONCERNING THE CONNECTICUT BUSINESS CORPORATION

ACT, favorable reported the Committee on Judiciary.

DEPUTY SPEAKER O'CONNOR:

) Representative Fox.

REP. FOX (146th):

Thank you, Mr. Speaker.

I move for the acceptance of the Joint
Committee's favorable report and passage of the bill.

DEPUTY SPEAKER O'CONNOR:

The question is acceptance of the Joint
Committee's favorable report and passage of the bill.

Representative Fox, you have the floor.

REP. FOX (146th):

Thank you, Mr. Speaker.

Mr. Speaker, in 1994, Connecticut adopted the Model Business Corporation Act, which was intended to make Connecticut's business laws in conformity with other states. What this bill does is it simply makes amendments to our statutes that will reflect the amendments that have been made to the Model Business Corporation Act and what it does is it will be able to promote uniformity among the states in dealing with business and corporate laws.

It also allows, because of Connecticut being somewhat of a smaller state, to allow our statutes to look at other cases through other states when interpreting those statutes as well as looking at the official commentary that is offered under the Model Business Corporation Act.

Mr. Speaker, among the changes that this bill will provide include written notice to corporations, certain changes there as well as amendment to the shareholder appraisal rights; authorizations for board of directors to submit matters for shareholder approval; as well as providing permissive rather than

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mandatory board consideration of interests other than shareholders when evaluating the business combinations.

Mr. Speaker, the Clerk has an amendment, LCO Number 3590. I ask that it be called and I be permitted to summarize.

DEPUTY SPEAKER O'CONNOR:

Will the Clerk please call LCO Number 3590, which will be designated House Amendment Schedule "A."

THE CLERK:

LCO Number 3590 House "A" offered by Representative Lawlor.

DEPUTY SPEAKER O'CONNOR:

The Representative seeks leave of the chamber to summarize the amendment.

Is there objection to summarization? Is there objection?

Hearing none, Representative Fox, will you please proceed.

REP. FOX (146th):

Thank you, Mr. Speaker.

This amendment makes very few minor technical changes to the underlying bill and I urge adoption of this amendment.

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DEPUTY SPEAKER O'CONNOR:

The question before the Chamber is on adoption of House Amendment Schedule "A."

Will you remark further on the amendment? Will you remark further on the amendment?

Representative O'Neill.

REP. O'NEILL (69th):

Thank you, Mr. Speaker.

Having reviewed the amendment, I have to concur. We are inserting a comma in one line. They don't get much more technical than this. Thank you, Mr. Speaker.

DEPUTY SPEAKER O'CONNOR:

Thank you, Representative.

Will you remark further? Will you remark further on the amendment before us?

If not, I'll try you minds.

All those in favor, please signify by saying aye.

REPRESENTATIVES:

Aye.

DEPUTY SPEAKER O'CONNOR:

All those opposed, nay.

That ayes have it. The amendment is adopted.

Will you remark further on the bill as amended?

Will you remark further on the bill as amended?

If not, will staff -- Representative O'Neill.

REP. O'NEILL (69th):

Thank you, Mr. Speaker.

This is probably one of the bills that in years to come people will look back on and say that it really was important and I think it's worth spending a moment or two just to recognize that we are making our laws conform to the laws of the other states around us and across the country and that will make Connecticut more of a business friendly state. And that probably will help encourage people to maintain their businesses here because there will be consistency in the application of the law here because we'll have the same -- the ability to look at other states that have had more complex pieces of litigation involving corporations and use those precedents in Connecticut without having to litigate every issue on its own and not know for sure how an issue or problem or question is going to be resolved.

So I think actually that, while I think we all tend to regard this type of legislation as rather dry, it actually is the kind of the thing that could be helpful for the long-term economic growth of the state

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of Connecticut. And I think it's certainly a piece of legislation we should adopt. Thank you, Mr. Speaker.

DEPUTY SPEAKER O'CONNOR:

Thank you, Representative.

Will you remark further? Will you remark further on the bill as amended?

If not, will staff and guests please come to the well of the House. Will the members please take your seats. The machine will be open.

THE 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.

DEPUTY SPEAKER O'CONNOR:

Have all the members voted? Have all the members voted? Will the members please check the board to determine if your vote has been properly cast.

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

Will the Clerk please announce the tally.

THE CLERK:

House Bill 5530 as amended by House "A."

Total Number voting 148

Necessary for passage 75

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Those voting Yea	148
Those voting Nay	0
Those absent and not voting	3

DEPUTY SPEAKER O'CONNOR:

The bill as amended is passed.

Will the Clerk please call Calendar Number 362.

THE CLERK:

On page 17, Calendar 362, Substitute for House Bill Number 5539, AN ACT CONCERNING JUDICIAL BRANCH POWERS AND PROCEDURES, favorable reported the Committee on Judiciary.

DEPUTY SPEAKER O'CONNOR:

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 O'CONNOR:

The question is on acceptance of the Joint Committee's favorable report and passage of the bill.

Will you remark?

REP. LAWLOR (99th):

Thank you, Mr. Speaker.

This bill consists of 43 separate sections, which

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citizens of the state Connecticut who avail themselves of their probate courts each and every day to help take care of those in need.

So with that I'm happy to support the bill.

Thank you, Mr. President.

THE CHAIR:

Thank you, Senator.

Do you care to remark further? Do you care to remark further? If not, Senator McDonald.

SENATOR MCDONALD:

Thank you, Mr. President.

Mr. President, if there's no objection, might this item be placed on the consent calendar?

THE CHAIR:

Without objection, so ordered.

Mr. Clerk.

THE CLERK:

Calendar page 17, Calendar Number 464, Files Number 552 and 633, House Bill 5530, AN ACT CONCERNING THE CONNECTICUT BUSINESS CORPORATION ACT, as amended by House Amendment Schedule "A," favorable report of the Committee on Judiciary.

THE CHAIR:

Senator McDonald.

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SENATOR MCDONALD:

Thank you, Mr. President.

Mr. President, I move acceptance of the joint committee's favorable report and passage of the bill in concurrence with the House.

THE CHAIR:

On acceptance and passage in concurrence, will you remark further?

SENATOR MCDONALD:

Yes, Mr. President.

Mr. President, this legislation is yet another very thoughtful product that results from the folks at the Connecticut Bar Association and, in particular, their business law section. In 1994, Connecticut adopted the Model Business Corporation Act. And every few years, the model changes, if you will. And the CBA through its business law section closely tracks and monitors those changes and every few years recommends to us changes to bring our statutes into conformity with the Model Act, in particular, with some of the developing elements of the business corporation practice throughout the country. And there's a official commentary that proves very helpful to

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practitioners in the area of corporate law.

Under this legislation, Mr. President, there would be several changes relating to written notices to corporation -- corporations, shareholder appraiser rights, authorizations for boards of directors to agree or submit matters to shareholders for their approval providing permissive rather than mandatory board consideration of certain interests.

I would be happy to explain that in great detail to anybody who's interested, but -- but they are fairly ordinary changes that are nevertheless significant for those who practice in the area of corporate law.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much, Mr. President.

Just a que -- couple of questions, through you to the proponent of the bill.

THE CHAIR:

Please proceed.

SENATOR KISSEL:

There's a couple of areas that some of my

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constituents had some questions regarding. First one is regarding changes to the corporate law regarding notices sent. I'm just wondering where we are as far as notices and where we're moving as far as the changes in the underlying bill?

THE CHAIR:

Senator McDonald.

SENATOR MCDONALD:

Thank you, Mr. President.

Mr. President, through you to Senator Kissel, the notices generally speaking that are required under this legislation deal with situations where there are mergers that are going to be undertaken or something called "share exchanges," where shares are exchanged for different types of shares or priority shares. Also the notices that would be required to be provided to shareholders for disposition of assets or any type of amendments to the articles of incorporation or the certificate of incorporation for the corporation that would trigger shareholder rights for the appraisal of the assets or obligations of the -- of the corporation. Through you, Mr. President.

THE CHAIR:

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Senator Kissel.

SENATOR KISSEL:

Thank you very much.

And I understand that's the subject matter of the notifications, but the idea of the notification of the individual, is there anything regarding the substance of how an individual is notified. Has that changed at all? Through you, Mr. President.

THE CHAIR:

Senator McDonald.

SENATOR MCDONALD:

Through you, Mr. President, I don't believe that the methodology for providing notices has changed. I'm looking through it quickly, but I don't believe that the methodology of providing the notice has changed. I think the -- the concern was providing notice in a -- in a wider range of areas of information but not the methodology for delivering the notice.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much.

And I -- I think what we're seeing here with this change in this -- this act is similar to what we saw all the way going all the way back to Sarbanes-Oxley when it had to do with bringing light to what's going on within the corporate community, making sure that everybody in the chain of command takes responsibility for their actions and, indeed, that shareholders have adequate information to make decisions regarding the activities of a corporation.

I'm just wondering, though, with the change in corporate culture throughout the United States, one of things that corporations are striving to do is to do their jobs in a green-friendly way. By that what I mean is trying to use less paper, trying to be more cost efficient, trying to be more environmentally sensitive.. And indeed, it is not uncommon now for corporations to send out a notification to their shareholders as to whether they want, for example, annual reports provided via electronic mail or sent through traditional forums, large paper volumes, glossy photographs, charts, statistics, messages from the president, chief executive officer, chief operating officer,

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and the like. And I'm just wondering if there are aspects of this bill that touch upon the movement in the corporate community from paper transactions and paper notifications to electronic transactions and electronic notifications. Through you, Mr. President.

THE CHAIR:

Senator McDonald.

SENATOR MCDONALD:

Thank you, Mr. President.

Through you to Senator Kissel, there's nothing in this legislation that requires that such notices be provided by alternative means. I can tell you, Mr. President, that, in many instances, the Article of Incorporation or -- or more likely the bylaws of the corporation would dictate the manner in which information is communicated.

There was a time when it was all by regular mail, then it moved to -- to facsimiles and now almost uniformly it's done by email. And I know that to be true with the corporations that I deal with, but -- but I don't know that it's -- it's necessarily something that needs to be included in our statutes: Most corporations have tried to

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morph their operations into the electronic world and, in fact, have done a better job of it than the state of Connecticut oftentimes.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you, President -- thank you, Mr. President.

I have to chuckle at that because quite often there are any number of times that I sit back and I wonder why we are putting something in statute when common sense would dictate that people should be doing it on their own. And, indeed, as Senator McDonald said, sometimes folks in the private sector are miles ahead of us when it comes to beneficial pro -- changes, and we just end up following suit, incorporating -- I mean, putting into statute otherwise already good evolutionary changes.

Regarding the corporate changes here, one of the other areas that seems to be touched upon is financial disclosures to shareholders. I'm just wondering what in this bill changes the law regarding financial disclosures to shareholders.

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Through you, Mr. President.

THE CHAIR:

Senator McDonald.

SENATOR MCDONALD:

Through you, Mr. President, and, again, I should note that this only deals with Connecticut corporations. Many of the large corporations that Senator Kissel may have been referring to would be publicly traded corporations that are subject to the provisions of Sarbanes-Oxley law, but this legislation only deals with Connecticut-based corporations. And the notices pertain to, again, as I indicated earlier, situations where they're going to be mergers or share exchanges or disposition of assets. Anything that's going to effect the -- the operations of the corporation and including changes to the articles of incorporation of the -- of the corporation in any issuance of rights or options or warrants for the corporation or other any -- other information relating to equity compensation or disposition of the corporation. Through you, Mr. President.

THE CHAIR:

Senator Kissel.

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SENATOR KISSEL:

Thank you very much. So it would be fair to state that even for solely Connecticut-based corporations that may not fall within the purview of Sarbanes-Oxley, this particular bill does not touch upon quarterly filings or annual filings or financial disclosures regarding boards of directors, chief finan -- chief officers of the corporation or anything else like that.

THE CHAIR:

Senator McDonald.

SENATOR MCDONALD:

Through you, Mr. President, I don't believe that this legislation deals with the manner in which there are filings with the State of Connecticut or with the Secretary of State's Office. This deals more with internal operations. We don't track the ongoing business activity of corporations, such as the SEC does for publicly traded corporations. Through you, Mr. President.

THE CHAIR:

Senator Kissel.

SENATOR KISSEL:

Thank you very much.

And it's just that those folks that I know that are engaged in the active practice of corporate law are constantly making sure that they're staying on the cutting edge of any changes that occur both federally and as a state. And, also, we always want to be mindful that while we are incorporating changes that effect the business community and what they may or may not file both with their shareholders and with the Secretary of State's Office.

One of the things we -- I believe we should always keep in the back of our minds is that we want to make sure to the greatest extent possible that Connecticut is a business-friendly state. And I appreciate the fact members of the bar have had input into this and that practitioners have had input into this. And certainly, I haven't heard that members of the business community have any problem with this legislation, but, occasionally, we pass things that don't look like they affect how difficult is to do business in the state of Connecticut and then I hear from my constituents and they say, Did you know how difficult you made this process or that something

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where we had to file one form now we have to file 12, or, you know, we had to pay our attorney x, y, z to get business done last year and now it's costing us twice that because of these new rules and regulations that you put into effect.

So it doesn't strike me that this legislation has anything to do with those things, but, certainly, I think it's always good to have that as a consideration in the back of our minds whenever we touch upon any legislation that affects the business community here in the state of Connecticut. Thank you, Mr. President.

THE CHAIR:

Thank you, Senator.

Do you care to remark further? Do you care to remark further?

Senator McDonald.

SENATOR MCDONALD:

Thank you, Mr. President.

Nourished by my own bottle of water, I would ask that if there's no objection might this item be placed on the consent calendar?

THE CHAIR:

Without object, so ordered.

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5247, Calendar 457, Substitute for House Bill

5406.

Calendar page 17, Calendar 464, House Bill

5530.

Calendar page 23, Calendar 75, Substitute for
Senate Bill 229.

Calendar page 24, Calendar Number 98,
Substitute for Senate Bill 312.

Mr. President, that completes those items
placed on the first consent calendar.

THE CHAIR:

Thank you, Mr. Clerk.

If you would announce the vote again, the
machine will be opened.

THE CLERK:

The Senate is now voting by roll call on the
consent calendar. Will all Senators please return
to the chamber? The Senate is now voting by roll
on the consent calendar. Will all Senators please
return to the chamber?

THE CHAIR:

Have all the members voted? Have all the
members voted? The machine will be closed.

Mr. Clerk, please call the tally.

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THE CLERK:

Motion's on adoption of Consent Calendar
Number 1.

Total number of voting	35
Those voting Yea	35
Those voting Nay	0
Those absent and not voting	1

THE CHAIR:

The consent calendar passes.

Are there any points of personal privilege or
announcements?

Senator Gomes.

SENATOR GOMES:

I'd just like it -- thank you, Mr. President.

I'd just like it to be noted that I missed a
vote today on Senate Bill 168, and I was out of
the area. And if I'd been here, I would have
voted in the affirmative.

THE CHAIR:

Thank you, sir. The Journal is so noted.

SENATOR GOMES:

Thank you.

THE CHAIR:

Any further points?

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trademarks and licensing agreements so it can be documented they took place here in Connecticut at the Connecticut Agricultural Experiment Station. I know our agricultural industry was saved by work done at the experiment station. Thank you.

REP. LAWLOR: Thank you, sir.

Are there any questions?

Well thanks and a special note of thanks to all of you who are advocating on a cause that doesn't often come before this Committee. And I think we've learned a lot today through your different presentations. So I do appreciate it. Thank you for coming today.

BILL LEAHEY: Thank you.

REP. LAWLOR: Thanks for your patience too.

Henry Beck.

HENRY BECK: Representative Lawlor and members of the Judiciary Committee, thank you for the opportunity to be here before the Committee and express support for Raised Bill 5530, AN ACT CONCERNING THE CONNECTICUT BUSINESS CORPORATION ACT. My name is Henry Beck. I'm a partner at Halloran and Sage in Hartford practicing in the area of business and corporate law. I'm also the Vice Chair and Legislative Liaison of the Business Law section of the Connecticut Bar Association. The Business Law section includes

513 Connecticut attorneys interested in business and corporate law issues.

On behalf of the section we wish to thank the Committee for raising this bill. We believe this bill is important to Connecticut corporations. Connecticut adopted the Model Business Corporation Act in 1994. This bill is part of the ongoing process of updating Connecticut's corporate law statutes and keeping them current with the Model Business Corporation Act. Some of the advantages to Connecticut's adoption of the Model Business Corporation Act in its most current version are as follows. First the Model Act promotes uniformity among the states as Connecticut is a small state with relatively little corporate law and case law, case law from other states can provide valuable insight to assist with interpreting our statutes.

Second, like the uniform commercial code the Model Business Corporation Act has an official commentary. These comments are a useful source of information to lawyers in the courts about the meaning interpretations of our law. The changes to the bill fall into several categories. The bill clarifies that written notice to a corporation should be addressed to the secretary.

It also recognizes that a corporation may not have available the financial statements previously required in connection with disclosures to shareholders who assert appraisal rights. The statute amendment

therefore proposes substitute information to be provided to satisfy these requirements when other information is not available. The amendment also provides for delivery of financial information in connection with disclosures to shareholders who assert appraisal rights at an earlier point in time.

The law also clarifies that the board of directors of a corporation may agree to submit a matter to a shareholder vote even if the board at a later point determines that it no longer wishes to support that particular matter. And finally, the amendment permits a relaxation of the requirements that a director must consider with respect to other constituencies in the context of a business combination. I'd like to speak to two of those specific changes. The rest I think are self explanatory when you look at the bill.

As noted this bill includes a new section generally authorizing directors to agree to submit a matter to the shareholders for approval even if they determine they no longer recommend it. Such a course of events would not relieve the board of directors of its duty to consider carefully the proposed transactions in the interest of shareholders. However these provisions are intended to provide for situation in which the boards may wish to commit an advance of such study to submit a matter to the vote of shareholders at a later time.

In addition, this bill is designed to address an issue arising under the statutes dealing with business combinations. Currently Section 33-7-56 little D requires directors of Connecticut public corporations considering a sale to a third party of certain -- or certain other business combinations to consider the impact on multiple -- multitude of constituencies including employees, customers, creditors, suppliers and the community at large.

It will often be appropriate for directors to consider these other constituencies in the context of a business combination. However Connecticut is the only State that actually requires rather than permits directors to consider each of these constituencies. This imposes a burden on directors of Connecticut corporations that other corporations organized under other states do not face. There are no standards to measure how a director fulfills his or her duty in this section and therefore it has a chilling effect.

It is difficult for the Bar to advise directors of Connecticut corporations on how to fulfill this statutory mandate when it is mandated as such. It would be far better to have it be a voluntary consideration. We believe -- and last summary -- that Raised Bill 5530 is necessary to ensure that Connecticut's corporate statutes remain current and up to date. Thank you for the opportunity to be here before you. We would be pleased to answer any questions.

REP. LAWLOR: Thank you for your testimony.

Are there any questions?

HENRY BECK: Well, thank you.

REP. FOX: Thank you very much.

Next is Matthew Cholewa. I hope I said your name right. Good afternoon.

MATTHEW CHOLEWA: Close enough. I'm not sure who to address anymore. Remaining members of the Judiciary Committee. Thank you for sticking around.

REP. FOX: And thank you for sticking around.

MATTHEW CHOLEWA: My name is Matthew Cholewa. I'm here on behalf of the Connecticut Bar Association in support of Senate Bill 491, AN ACT CONCERNING LIENS ON REAL PROPERTY RELATED TO TAXES, ASSESSMENTS AND CHARGES. And Attorney Anderson was here before from CATIC and did a fine job of summarizing the bill and the bill speaks for itself so in the interest of time I don't see any reason to say what it does. But what this bill really is about is fairness and accountability.

Currently, if a purchaser of property or someone who lending money and property wants to know for obvious reasons what the unpaid taxes, water, sewer or other municipal charges are on the property. If they go ask they can be told

various different persons whether it's a local government or regional water authority or private water authority in that the tax collector would be as appropriate the person who collects charges for that -- that entity. Any questions?

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

MATTHEW CHOLEWA: Thank you.

REP. FOX: Thank you very much for your testimony.

Next, Roger Chapman is he still here? Kevin Hennessy.

KEVIN HENNESSY: Good afternoon, Representative Fox and member of the Committee. My name is Kevin Hennessy. I'm a staff attorney with the Connecticut and Business Industry Association. And I'm here to testify very quickly on two bills. The first is Senate Bill 487 the unauthorized practice of law. We've heard a lot about that already and I just to want to say that I'd like to affiliate my comments with Attorney Klee. We were in consultation yesterday running through a bunch of hypotheticals of how this would apply.

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And as expressed by some of the members of the Committee I do have concerns and my members have concerns about what the impact would be of the proposed bill on commerce here. We have no problem whatsoever with increasing penalties for people that are actually not lawyers and portray themselves out to be and are preying on

underserved people or people that aren't familiar with the judicial system. And we have no problem going against -- you know authorizing harsh penalties that are disbarred or suspended.

But our concern is tying into to corporate lawyers and harming commerce is something that is not in the State's best interest. I haven't had the opportunity to review the substitute language by the Bar Association yet. But I'm willing to work with them and hope that we can come to a resolution that would address the -- just the truly the bad actors out there. And we don't want to bring people under the veil of unauthorized practice of law if it's not necessary.

And then for my friends at the Bar Association I am in support of their other bill, House Bill 5530, AN ACT CONCERNING THE CONNECTICUT BUSINESS CORPORATION ACT. From my perspective it's a good thing for Connecticut to make the technical changes to align ourselves with the Model Business Corporation Act. I think it's good for consistency purposes which we always like to tout whether it's, you know, the tax code or -- or if it's Model Business Code.

It's something good for businesses and it's good for Connecticut's competitiveness. So, we are supportive of that bill. And to that I'd take any questions if they have -- if anyone has any and thank you for your time.



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Testimony of Henry M. Beck, Jr.
Vice Chair of Business Law Section
Connecticut Bar Association

IN SUPPORT OF RAISED BILL 5530
AN ACT CONCERNING THE CONNECTICUT BUSINESS CORPORATION ACT

Judiciary Committee
March 26, 2010

Senator McDonald, Representative Lawlor, members of the Judiciary Committee, thank you for the opportunity to appear before the committee and express our **SUPPORT for Raised Bill 5530, An Act Concerning the Connecticut Business Corporation Act**. My name is Henry M. Beck, Jr. I am a partner with Halloran & Sage LLP in Hartford practicing in the areas of business and corporate law. I am the Vice Chair and legislative liaison of the Business Law Section of the Connecticut Bar Association (CBA). The Business Law Section includes 513 Connecticut attorneys interested in business and corporate law issues. On behalf of the section, we wish to thank the committee for raising this bill. We believe the bill is important to Connecticut corporations.

Raised Bill 5530 would amend the Connecticut Business Corporation Act (CBCA) to adopt recent changes to the Model Business Corporation Act (MBCA) concerning:

1. Written notice to a corporation,
2. Permitted substitutes for financial statements not otherwise available in connection with shareholder appraisal rights,
3. Earlier financial disclosure at time of notice of such appraisal rights,
4. Authorization for a board of directors to agree to submit a matter for shareholder approval even if they no longer recommend it, and
5. Providing permissive rather than mandatory board consideration of interests other than shareholders when evaluating business combinations.

Connecticut adopted the MBCA in 1994. This bill is part of the ongoing process of updating Connecticut's corporation statutes and keeping them current with the MBCA. Some of the advantages to Connecticut's adoption of the MBCA in its most current version are as follows: First, the model act promotes uniformity among the states. As Connecticut is a small state with relatively little corporate case law, case law from other states can provide valuable insight to assist with interpreting the statute. Second, like the Uniform Commercial Code, the MBCA has an official commentary. These comments are a useful source of information to lawyers and the courts about the meaning and interpretation of the law. As the MBCA is updated, the official comments are updated as well.

The changes to the bill fall into several categories and can be summarized fairly succinctly. The bill:

- clarifies that written notices to a corporation should be addressed to the secretary of such corporation;
- recognizes that a corporation may not have available the financial statements previously required in connection with disclosures to shareholders who assert appraisal rights, and therefore permits substitute information to be provided to satisfy these requirements;
- provides for the delivery of financial information in connection with disclosures to shareholders who assert appraisal rights at the earlier time that notice of appraisal rights is given, because it is then that shareholders have to decide whether to preserve their ability to assert such appraisal rights;
- clarifies the authority of the board of directors of a corporation to agree to submit a matter for shareholder approval even if such board later determines that it can no longer recommend that shareholders approve the action because of subsequent events ("force the vote agreements"); and
- permits but no longer requires directors to consider other constituencies in the context of a business combination.

While the first three categories are relatively self-explanatory, a further elaboration on the latter two may be helpful and is thus provided in the next two paragraphs.

As noted, this bill includes a new subsection generally authorizing directors to agree to submit a matter to the shareholders for approval even if they later determine that they no longer recommend it, but such a course of events would not relieve the board of directors of its duty to consider carefully the proposed transaction and the interests of the shareholders. These provisions are intended to provide for situations in which the board of directors might wish to commit in advance to submit an amendment to the certificate of incorporation or approval of a merger or other acquisitive transaction to the shareholders, but later determines it is inadvisable or withdraws the recommendation for some other reason.

In addition, this bill is designed to cure an unusual problem arising under our statutes dealing with business combinations. Section 33-756(d) currently requires directors of Connecticut public corporations considering sale to a third party or certain other business combinations to consider the impact on multiple constituencies, including employees, customers, creditors, suppliers and the community at large. It will often be appropriate for directors to consider these other constituencies in the context of a business combination. However, Connecticut is the only state that *requires* rather than *permits* directors to consider each of these other constituencies. This imposes a burden on directors of Connecticut corporations that directors of corporations organized under other state laws do not face. There are no standards to measure how a director fulfills his or her duties under this section. It is difficult to advise directors of Connecticut corporations on how to fulfill this statutory mandate.

We believe that Raised Bill 5530 is necessary to ensure that Connecticut's corporate statutes remain current and up to date.

Thank you for the opportunity to appear before the committee. We appreciate your listening. We would be pleased to answer any questions you may have.

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CONNECTICUT BUSINESS & INDUSTRY ASSOCIATION

Testimony Of
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Connecticut Business & Industry Association
Judiciary Committee
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My name is Kevin Hennessy. I am a staff attorney for the Connecticut Business and Industry Association (hereinafter "CBIA"). CBIA represents approximately 10,000 member companies in virtually every industry. They range from large, global corporations to small, family owned businesses. Approximately 90 percent of our member companies have fewer than 50 employees.

Thank you for the opportunity to comment on:

SB-487 AAC The Unauthorized Practice of Law; and
HB-5530 AAC The Connecticut Business Corporation Act

Unauthorized Practice of Law

CBIA is opposed to SB-487, AAC The Unauthorized Practice of Law, in its current form because it is too broad and could subject licensed attorneys to unauthorized practice of law claims.

CBIA's understanding is that SB-487 was raised to protect consumers from unscrupulous individuals who presented themselves as lawyers to the public. These individuals impersonated lawyers and preyed on consumers for their personal financial benefit. CBIA strongly believes that this practice should be stopped. Increasing fines and criminal penalties seems to be a proper way to discourage such behavior.

Unfortunately, adopting SB-487 in its current form could also punish licensed attorneys and subject them to unnecessary unauthorized practice of law claims. CBIA suggests adding protections for corporate attorneys, either in-house or retained counsel, to protect them from potential unauthorized practice of law claims and the potential felony charge that follow.

Specifically, CBIA suggests adding to Section 1 (b) – the permitted activities section – additional permitted activities. They are:

Section 1 (b) (13) Meeting with or advising clients within the state on legal matters not involving Connecticut laws; and

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Section 1 (b) (14) Representing clients in business negotiations conducted within Connecticut.

Unless such changes are made, CBIA respectfully requests that the legislature does not move forward with SB-487. The intent behind SB-487 is to protect individuals from predators that incorrectly portray themselves as lawyers; it is not meant to protect individuals from corporate lawyers that do not represent the public.

For the aforementioned reasons, CBIA urges the committee to reject SB-487 in its current form.

Model Business Corporation Act

CBIA supports HB-5530, AAC *The Connecticut Business Corporation Act*. The bill amends the Connecticut Business Corporation Act in an effort to track changes to the Model Business Corporation Act.

HB-5530 will promote uniformity with other states and make Connecticut more attractive for public corporations considering whether to organize under Connecticut law or to change their state of organization to another jurisdiction. CBIA supports tracking, where reasonable, the Model Business Corporation Act and urges adoption of this measure.

Thank you for the opportunity to raise our concerns today. I would be happy to answer any questions or discuss the matter further.