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TESTIMONY OF HOUSTON PUTNAM LOWRY<sup>1</sup>  
SUPPORTING RCB-597  
AN ACT ADOPTING THE UNCITRAL MODEL LAW ON  
INTERNATIONAL COMMERCIAL CONCILIATION.

This testimony is submitted on behalf of the Connecticut Bar Association in support of RCB-597 - An Act Adopting The UNCITRAL Model Law On International Commercial Conciliation.

In the 1980s, mediation was not a well known tool for settling disputes. As mediation became increasingly studied by anthropologists, it became increasingly used by lawyers. It is well suited to resolving complex matters that would clog the courts for years. Mediation is used in both domestic and international transactions.

Every mediation starts off with the mediator promising the parties confidentiality. The problem is it just isn't true. There is no legal basis which supports that statement. The Connecticut Evidence Code does not provide for confidentiality under such circumstances.<sup>2</sup> The Federal Rules of Evidence are slightly different. Connecticut General Statutes §52-235d is also different. People who practice mediation regularly insist confidentiality is a central tenant of the process. What is said in the mediation is confidential – to promote a full and frank discussion of the matter, which is indispensable to settling a matter.

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<sup>1</sup> A member of Brown & Welsh, P.C.

<sup>2</sup> **§4-8. Offers To Compromise**

(a) General rule. Evidence of an offer to compromise or settle a disputed claim is inadmissible on the issues of liability and the amount of the claim.

(b) Exceptions. This rule does not require the exclusion of:

- (1) Evidence that is offered for another purpose, such as proving bias or prejudice of a witness, refuting a contention of undue delay or proving an effort to obstruct a criminal investigation or prosecution, or
- (2) statements of fact or admissions of liability made by a party.

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The problem was recognized by the National Conference of Commissioners on Uniform Laws (NCCUSL), who drafted the Uniform Mediation Act in 2001. Building on the work of the United Nations Commission on International Trade Law (UNCITRAL), the Uniform mediation act was further modified in 2003. This bill separately enacts the UNCITRAL Model Law<sup>3</sup> and should be codified in Connecticut General Statutes Title 50a.

The importance of uniformity in this area should not be overlooked. Parties to international transactions want a neutral and well respected law to govern their commercial relationship. This is exactly what Connecticut General Statutes Title 50a has done. Where the mediation is held should not affect the confidentiality of the process – yet that is the standard. This is why it is so important to enact a uniform solution rather than to craft a “home grown” answer for Connecticut or to simply enact the Uniform Model Law to apply to international transactions.

The Connecticut Bar Association requests you favorably report this bill after making the requested modification.

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<sup>3</sup> its draft guide to enactment can be referred to for further authoritative legislative history and should be considered incorporated by reference into this testimony.