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TESTIMONY OF HOUSTON PUTNAM LOWRY<sup>1</sup>  
SUPPORTING RCB-598  
AN ACT ADOPTING THE UNIFORM MEDIATION ACT

This testimony is submitted on behalf of the Connecticut Bar Association in support of RCB-598 - An Act Adopting The Uniform Mediation Act.

In the 1980s, mediation was not a well known tool for settling disputes. As mediation became increasingly studied in professional literature, lawyers increasingly used it. It is well suited to resolving complex matters that would clog the courts for years.

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> Connecticut General Statutes §52-235d is slightly different. People who practice mediation regularly insist confidentiality is a central tenant of the process. What is said in the mediation should be confidential – to promote a full and frank discussion of the matter, which is indispensable to settling a matter.

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 (the UNCITRAL Model Law was introduced separately as RCB-597).

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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.

The importance of uniformity<sup>3</sup> in this area should not be overlooked. 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.

Lines 58 and 191 should be change the phrase “Judge Trial Referee” to simply “Trial Referee.” In the alternative, the phrase “Attorney Trial Referee” could be added in both sections. Both types of trial referees should be covered.

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

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<sup>3</sup> The act was adopted in District of Columbia, Illinois, Iowa, Nebraska, New Jersey, Ohio and Washington. It remains pending in Massachusetts, Minnesota, New York, Utah and Vermont.