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**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.