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**Testimony of John H. Lawrence, Jr.
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OPPOSITION to

**HB 5466, An Act Concerning Social Enterprise Businesses
and
SB 403, An Act Concerning Low-Profit Limited Liability Companies**

**Commerce Committee
March 15, 2012**

Senator LeBeau, Representative Berger and members of the Commerce Committee, thank you for the opportunity to appear before the Committee this morning.

My name is John H. Lawrence, Jr. I am a partner with Shipman & Goodwin in Hartford. I practice in the areas of business and corporate law, and I am the Vice Chair and legislative liaison of the Business Law Section of the Connecticut Bar Association (CBA). The Business Law Section includes over 600 Connecticut attorneys interested in business and corporate law issues.

The CBA Business Law Section opposes both Raised Bill 5466, An Act Concerning Social Enterprise Businesses, and Raised Bill No. 403, An Act Concerning Low Profit Limited Liability Companies.

HB 5466, An Act Concerning Social Enterprise Businesses. Let me begin with our objections to HB 5466. I want to make it clear that we support the concept that businesses can and should be used to create social benefits and improve society and that directors and managers of business organizations should be authorized in the proper circumstances to consider many factors, other than pure profit, in making business decisions. Newman's Own, Ben & Jerry's and Patagonia have all embraced this goal. Moreover, a number of states, including California and New York, have adopted social enterprise business legislation that is intended to further this goal and is both practical and compatible with the existing business

organization statutes in those states.

Our opposition to HB5466 is based on its many technical shortcomings. For example, if enacted the Bill would require that each social enterprise business adopt a “compensation plan as part of the articles of incorporation [sic] or bylaws to ensure that no unreasonable compensation is paid to certain classes of employees and that it provides a living wage to all of its employees” These may be very fine concepts in theory but they may not be ones that every social enterprise business would be willing to adopt or that could be enforced as a practical matter in a court of law. Also, this Bill would require a social enterprise business to use “local labor when practicable” which is another concept that we believe is not workable as a practical matter. These are not merely hortatory concepts that will lie buried in the corporate documents; they may be enforced against directors and officers by shareholders and others in a “benefit enforcement proceeding” which lacks any of the protections that would be available in a statutory derivative action. We believe that the existence of a benefit enforcement proceeding to enforce these vague concepts would have a significant chilling effect on the use of social enterprise businesses and the willingness of individuals to serve as directors and officers of such organizations. Another area of potential concern with this Bill is that a corporation could be converted from a regular business corporation to a social enterprise business by a vote of two-thirds of the shareholders without any form of protection, such as appraisal rights, for the minority shareholders who opposed such a change.

Our most important objections to the Bill, however, are based on the fact that it adopts a “one-size fits all” approach that does not allow variations from one organization to another. The modern approach to business organization statutes is to provide business founders and owners with a broad framework for organizing a business to suit their individual needs and allow the maximum flexibility in structuring the business. We believe that this flexible approach should be followed for social enterprise businesses as well and that social enterprise legislation in Connecticut should provide broad protection for directors and managers to pursue the social benefits approved by the owners. Moreover, social enterprise businesses should not be limited to corporations but should be available to limited liability companies as well. The current Bill does not authorize limited liability companies to become social enterprises business, and we

believe that this is also a major defect. As most of you know, most businesses today are organized as limited liability companies and to force the use of the corporate form where a limited liability company would be more appropriate and, like the other shortcomings mentioned above, will limit the usefulness and acceptance of social enterprise businesses by the bar and by business founders and owners.

We have offered to work with the sponsors of this legislation to craft a bill for introduction in that is both practical and appropriate and draws on the wisdom of other state legislatures. Unfortunately, we cannot support the HB 5466 as it is currently drafted and we urge you not to report it out of committee.

SB 403, An Act Concerning Low-Profit Limited Liability Companies. We also oppose SB 403 on technical grounds. The concept of a low-profit limited liability company has been around for a number of years without gaining widespread approval, primarily because the necessary federal regulations have never been adopted to foster the use of an L3C as a safe harbor for tax-exempt foundations to make program related investments. This bill accomplishes nothing that cannot be done with Connecticut's existing limited liability company act as it is currently in effect.

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Thank you for the opportunity to appear before the Committee. I appreciate your attention and would be pleased to answer any questions that you may have.

