

**Testimony of John M. Horak**  
**OPPOSING**  
**H.B. No. 5490 An Act Concerning the Establishment of Benefit Corporations**

My name is John M. Horak and I am a partner at the Hartford law firm of Reid and Riege, where I have practiced for 32 years. My background and training are as a business, tax and corporate lawyer, but for the last 12 years I have focused my time and practice on the tax exempt or nonprofit sector. Accordingly, I have one foot in the for-profit sector in another foot in the not-for-profit sector.

In my practice I have encountered and studied the "Social Entrepreneurship" movement, which is not easy to define, but has as its underlying general principle the notion that it is "possible to make money and to do good" at the same time. In many ways the movement calls for the merger or combination under one roof of the best of the for profit and the nonprofit world – a hybridization of distinctly different economic and legal sectors.

An important goal of the Social Entrepreneurship movement is to create a new type of legal entity suited to accommodate these goals. In this regard there is legislation before the General Assembly which would permit the creation of an entity of this type, to be known as a "Connecticut Benefit Corporation." The Bill is H.B. No. 5490 AN ACT CONCERNING THE ESTABLISHMENT OF BENEFIT CORPORATIONS. This Bill would amend the stock corporation act to authorize the creation of, or the conversion of an existing corporation to, a "Connecticut Benefit Corporation."

1. The bill as submitted is based on similar legislation adopted in New Jersey. There is a similar Bill pending before the General Assembly (Raised Bill No. 5466 – based on statutes enacted in New York and California) which the Connecticut Bar Association has voted to oppose. That Bill has several new provisions added-on by its sponsors which are technically defective and which require revisions and further study. The CBA will be having ongoing discussion with the sponsors of this other bill.

2. Also, I believe that the very concept of "social benefit" as used in both Bills needs to be debated and redrafted to add a degree of precision that will give the statute a degree of practical utility which it does not have at present. This is vitally important because under this legislation boards of directors will have a mandatory obligation to run their for-profit businesses to provide a social benefit, yet in my experience, a social benefit, like beauty, depends on the eye of the beholder, and I can foresee schisms and fights among directors and shareholders about this nuanced and subtle concept. I was involved in litigation in New Haven several years ago in which two factions of a charitable board fought in court for three expensive years over differing views of the best way to promote the organization's mission of preserving world peace! Candidly, it is unfair to drop issues of this type in the laps of judges. Without improved drafting the proposed legislation would create a climate ripe for imposing this impossibly difficult duty of interpretation on the judiciary.

The qualification to my opposition to the statute is that there is a legitimate and understandable demand in the marketplace for a hybrid approach to commercial activity (as evidenced by the New Jersey, California and New York legislation). I believe the Bar Association can work within its committee structure and with the proponents of this legislation to study the concept and to draft workable statutory language.