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Testimony of Kate Haakonsen,
Family Law Section, Executive Committee

HB 5524, "AAC the Recommendations of the Law Revision Commission
With Regard to the Alimony Statutes"

Judiciary Committee
March 31, 2014

My name is Kate W. Haakonsen. I am an attorney who has practiced in the area of divorce and family law for over 35 years. I had the privilege of serving on the Committee of the Law Revision Commission which made the recommendations contained in HB 5524.

I am here today to speak on behalf of the Family Law Section of the Connecticut Bar Association to comment on HB 5524. The Family Law Section of the CBA consists of over 700 members who have a great interest in bills affecting family law procedures and issues concerning dissolution of marriage.

I respectfully request, on behalf of the section, that the Judiciary Committee **favorably report HB 5524 with the exception of Section 4(b)(1)** which the Family Law Section does not support for reasons to be explained by Attorney Edith McClure.

The Family Law Section of the CBA supports most of HB 5524. The bill addresses a number of issues which have been troubling to the public and members of the bar.

Sections 1 and 2 of the bill specifically allows the court to consider not only the net incomes of the parties but also the gross incomes and the tax consequences of its orders when considering alimony and property division. Tax consequences have significant impact on parties to divorce. For example, alimony is usually deductible to the payer and taxable for the recipient. However, our current case law holds that trial court should make orders on the basis on net income only. This makes determination of the effect of the court's orders cumbersome and inaccurate. There are also cases where disposition of certain assets will result in other taxes being imposed such as capital gains taxes which the court should be able to take into consideration. The most experienced judges know what the tax consequences are but must not explicitly reference them under current law or risk reversal. This is a rule which will be rightly changed by this bill to the relief of everyone who is trying to fashion rational results.

Section 3 of the bill seeks to simplify the conversion of legal separation to dissolution of marriage and to clarify what is required to proceed with such a conversion. Legal separation has become quite rare at least partly because the courts have ruled that when considering conversion of the legal separation to a dissolution, the court must first determine that the parties have not resumed the marital relationship and then review the parties current circumstances and determine whether the terms of the judgment of legal separation are still fair and equitable. Under this scenario, parties are exposed to renegotiating or retrying these cases perhaps years after the initial judgment. One party may have spent down all of his or her share of the assets while the other was frugal and then face a second division of property.

Section 3 first provides that a decree of legal separation will be vacated only if the parties file a written certificate that the marital relationship has resumed. Otherwise the decree of dissolution will enter incorporating the terms of the decree of legal separation unless the court finds that it would be unconscionable to do so. This will allow couples who have reason to want a legal separation to rely on the terms of that decree without fear of a radical do over.

The Section of the bill which may bring the greatest relief to the public is Section 4(b)(2). Currently, there is no clear law on modification of alimony in case the payer retires. Although some states have passed laws terminating alimony on retirement, the committee felt this would be unfair in many cases and should be addressed on the basis of the circumstances of each case. Section 4(b)(2) of the bill would add 3 new sections concerning modification of alimony based on the retirement of the payer. Subsection (A) provides that if a payer seeks modification on the basis of retirement at or after age 65, the burden would be on the payee to show why alimony should not be modified. The purpose of this provision is to assure payers that they will not be required to work past retirement age in order to keep paying alimony. At the same time it allows the recipient the opportunity to show that the relative circumstances of the parties would support a reduction rather than a termination of alimony or perhaps no change.

Subsection (B) provides that if the retirement is before age 65, the payer has the burden of proving the alimony should be modified and the court should consider the evidence including the facts concerning the retirement.

Subsection (C) provides that the court shall consider the evidence in each case and the relevant provisions of 46b-82 with regard to motions filed under A and B. This allows the court to take into consideration the circumstances of each party.

Thank you for allowing me the opportunity to comment on HB 5524. The Family Law Section of the Connecticut Bar respectfully requests that the Judiciary Committee issue a joint favorable report on all but Section 4(b)(1).

I would be happy to answer any questions that you may have.