



30 Bank Street
PO Box 350
New Britain
CT 06050-0350
06051 for 30 Bank Street
P: (860) 223-4400
F: (860) 223-4488

Testimony of
Hillel Goldman
Business Law Section

In SUPPORT

Governor's Bill No. 23
AN ACT CONCERNING BENEFIT CORPORATIONS AND
ENCOURAGING SOCIAL ENTERPRISE

Commerce Committee
February 27, 2013

Senator Lebeau, Representative Perone and members of the Commerce Committee, thank you for the opportunity to appear before the Committee to comment on Governor's Bill 23, An Act Concerning Benefit Corporations and Encouraging Social Enterprise.

My name is Hillel Goldman and I am a member of the Executive Committee 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 supports Governor's Bill 23.

During the 2013 legislative session we supported HB 6356. Until recently, these social benefit matters were the exclusive domain of charitable and religious organizations, but now businesses like Ben & Jerry's, Patagonia and Newman's Own have begun to promote social and environmental goals as well as business objectives. In 2012, The Connecticut Bar Association supported the overall concepts underlying filed bills referencing social enterprise but we opposed the specific bills on the grounds that they contained a number of impractical provisions that would limit their usefulness and they created liability risks that would discourage individuals from serving on the governing boards of such organizations. Moreover, the bills, as drafted, did not adequately protect the rights of minority owners in the event of a conversion to a benefit corporation or a social enterprise business after its inception. Representatives of the Business Law Section testified in opposition to these bills and met with legislators to explain our opposition.

Since the end of the 2012 session and through the 2013 session, the Section has worked with the proponents of this legislation, principally B Lab and ReSET, to draft a Benefit Corporation bill to be introduced which addresses the technical defects and other shortcomings of prior bills. Our work is reflected in the present Governor's bill.

The major characteristics of a benefit corporation are: (1) a requirement that a benefit corporation must have a corporate purpose to create a material positive impact on society and the environment in addition to making a profit; (2) an expansion of the duties of directors to require consideration of nonfinancial stakeholders as well as the financial interests of shareholders; and (3) an obligation to report on its overall social and environmental performance using an independent third-party standard. The provisions of the Governor's Bill embody these concepts and would provide meaningful framework for social benefit corporations that would be available to any business corporation which was either formed as a benefit corporation or to become a benefit corporation by a vote of two-thirds of the voting power of the corporation.

A benefit corporation would generally be governed by the Connecticut Business Corporation Act ("CBCA") but would be subject to the specific requirements of the Benefit Corporation Act unless the corporation terminated its benefit corporation election by a vote of two-thirds of the voting power of the corporation. Similar statutes have been adopted in nineteen states plus the District of Columbia, including Delaware, California, Massachusetts and New York.

We believe that it is important to foster the concept of social entrepreneurship in Connecticut and eliminate any barriers, legal or otherwise, for a business corporation to pursue general or specific social benefits.

The members of the Business Law Section believe that it is also important that benefit corporation legislation in Connecticut follow the general approach of the Model Act developed by a group of distinguished corporate lawyers (the "Model Act"), in both structure and language, so that Connecticut lawyers who are advising their clients as to choice of entity and drafting the organizational documents have the advantage of judicial decisions and scholarship in other states which have adopted the Model Act in order to provide proper to their clients. The more certainty and predictability there is around a new concept like a benefit corporation the more comfortable lawyers will feel in recommending this vehicle to their clients, and thus the more wide spread its use will be. Accordingly, we hope that this bill as it moves through the legislative process our remaining concerns about the language of the bill will be addressed so that it generally follows the approach of the Model Act. We will gladly work with the Committee and the Governor's staff to assist you in making sure that it meshes well with the Connecticut Business Corporation Act and the language of the Model Act. We will submit a list of the remaining language issues that we have to the Committee and the Governor's staff if you would like.

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.