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Testimony of Mark G. Sklarz  
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**In SUPPORT of**

**S.B. 967, “An Act Concerning Revisions to the Connecticut Business Corporation Act, the Uniform Limited Partnership Act and the Connecticut Limited Liability Company Act”**

Judiciary Committee  
February 25, 2015

Senator Coleman, Representative Tong and all Honorable Members of the Joint Judiciary Committee: Thank you for the opportunity to appear before the Judiciary Committee today.

My name is Mark G. Sklarz. I have been a private practitioner in Connecticut since 1970 and am a partner in the New Haven office of the law firm of Day Pitney LLP. The focus of my practice is on business and corporate law and I am testifying today as the Chair of the Business Law Section of the Connecticut Bar Association. The Business Law Section includes over 600 Connecticut attorneys who are interested and involved in business and corporate law issues.

The Business Law Section supports Senate Bill 967, An Act Concerning Revisions To The Connecticut Business Corporation Act, The Uniform Limited Partnership Act And The Connecticut Limited Liability Act (the “Bill”) which includes several recent changes to the American Bar Association Model Business Corporation Act (the “Model Act”) regarding irrevocable proxies, indemnification of officers, advances of expenses to directors, employees and agents, the duration of voting trusts and shareholder agreements, and the qualifications of directors. All of the changes except those noted below were passed by Consent in Substitute Senate Bill Number 411 of the 2014 Session of the General Assembly but did not reach the House floor. It is the sincere hope of the Business Law Section that this will not recur since we believe it is imperative to maintain the consistency of the Connecticut corporate laws with those of the Model Act. In addition, the Bill includes amendments to the Uniform Limited Partnership Act and the Limited Liability Company Act to conform the reinstatement provisions after an administrative dissolution to the comparable provisions of the Connecticut Business Corporation Act (the “CBCA”) and the Connecticut Revised Nonstock Corporation Act (the “CRNCA”).

On behalf of the Business Law Section, we wish to thank the Committee for raising this important bill to keep Connecticut corporation law abreast of developments at the national level.

The following sections of the Connecticut statutes which would be amended by the Bill:

- Conn. Gen. Stat. Section 33-706 to clarify when the terms of an irrevocable proxy are binding on a transferee. The amendment provides that an irrevocable proxy does not terminate upon transfer of the underlying shares unless otherwise provided in the appointment of the proxy. The amendment will not change the rules relating to irrevocable proxies. It only attempts to eliminate an ambiguity in the existing statute.
- Conn. Gen. Stat. Section 33-776 to modify the indemnification provisions applicable to officers, employees and agents of a corporation to conform to the Model Act by establishing specific limits on indemnification of officers and deleting any statutory indemnification rights for employees and agents. Indemnification arrangements for employees and agents will be addressed by general common law principles of agency and by contract because they do not present conflicts raised by officer indemnification.
- Conn. Gen. Stat. Sections 715 and 717 to allow voting trusts and shareholder agreements to have a term of more than ten years. Existing voting trusts and shareholder agreements will be continue to be subject to the existing ten year limit with certain exceptions.
- Conn. Gen. Stat. Section 33-736 to clarify the rules governing qualifications for directors and nominees for directors.
- Conn. Gen. Stat Section 33-773 to provide that a corporation may advance expenses to an individual in connection with a proceeding arising from the individual's capacity of director providing the director delivers to the corporation a written undertaking to repay the advance if it is ultimately determined that the director is not entitled to indemnification. The revision is intended to clarify and simplify the existing rule and conform to the amended provision of the Model Act. The Bill would further amend the statute to clarify the language regarding the composition of a committee of the board which may authorize the advance. The revision of the language will not change the rule but rather clarify an ambiguity.
- Conn. Gen Stat. Section 33-374 to clarify an ambiguity in the statute relating to Court-ordered indemnification and advance for expenses. Again, this will not change the rule and will conform the amended to the Model Act.

Additionally, the Bill would amend Conn. Gen. Stat. Sections 34-32c and 34-216 to make the Uniform Limited Partnership Act and the Limited Liability Company Act provisions governing reinstatement following an administrative dissolution retroactive to the date of dissolution, conforming to the rule applicable to a corporation administratively dissolved under the CBCA or the CRNCA. Under the current law, if a limited partnership or limited liability company is dissolved and reinstated, there is uncertainty whether the reinstatement relates back to the date of the dissolution, unlike corporations in which the statutory provisions are definitive on this issue. We believe that all of our entity statutes should be clear that reinstatement after an administrative dissolution relates back to the date of dissolution. Having uniform provisions govern the relation back of a reinstatement among all corporations, limited partnerships and limited liability companies will create consistency in the reinstatement process and provide additional certainty to Connecticut entities.

Finally, we want to express our thanks to the Committee and the staff of the Legislative Commissioners' Office for following as closely as possible the language of the Model Act amendments. It is a real practical benefit to Connecticut lawyers for a Connecticut statute to follow the structure and language of a model act to enable us to look to decisions and scholarly articles of other states if there are no relevant Connecticut cases to help interpret the statute. In addition, the Official Comments which accompany the Model Act are helpful in interpreting provisions of the Connecticut statute. Those benefits are lost if the structure or language of our statute varies from the Model Act. Additionally, if the language of the Connecticut statute differs from the Model Act, it raises issues as to why different language was used and the intention of the General Assembly in changing the language. These issues are minimized if the Connecticut statutes follow the structure and language of the Model Act.