



General Assembly

January Session, 2001

Raised Bill No. 6890

LCO No. 4276

Referred to Committee on Judiciary

Introduced by:
(JUD)

**AN ACT CONCERNING BUSINESS CORPORATIONS AND
NONSTOCK CORPORATIONS.**

Be it enacted by the Senate and House of Representatives in General Assembly convened:

1 Section 1. Subdivision (6) of section 33-602 of the general statutes is
2 repealed and the following is substituted in lieu thereof:

3 (6) "Deliver" or "delivery" means any method of delivery used in
4 conventional commercial practice including delivery by hand, mail,
5 commercial delivery and electronic transmission.

6 Sec. 2. Subdivision (10) of section 33-602 of the general statutes is
7 repealed and the following is substituted in lieu thereof:

8 (10) "Electronic transmission" or "electronically transmitted" means
9 any process of communication not directly involving the physical
10 transfer of paper that is suitable for the retention, retrieval and
11 reproduction of information by the recipient. [and which does not
12 directly involve the physical transfer of paper.]

13 Sec. 3. Subdivision (27) of section 33-602 of the general statutes is
14 repealed and the following is substituted in lieu thereof:

15 (27) "Sign" or "signature" includes any manual, facsimile, [or]
16 conformed or electronic signature.

17 Sec. 4. Section 33-603 of the general statutes is repealed and the
18 following is substituted in lieu thereof:

19 (a) Notice under sections 33-600 to 33-998, inclusive, as amended by
20 this act, shall be in writing unless oral notice is reasonable under the
21 circumstances. [Written notice includes notice by electronic
22 transmission.] Notice by electronic transmission is written notice.

23 (b) Notice may be communicated in person, by mail or other
24 method of delivery, or by telephone, voice mail or other electronic
25 means. If these forms of personal notice are impracticable, notice may
26 be communicated by a newspaper of general circulation in the area
27 where published or by radio, television or other form of public
28 broadcast communication.

29 (c) Written notice by a domestic or foreign corporation to its
30 shareholder, if in a comprehensible form, is effective (1) upon deposit
31 in the United States mail, [as evidenced by the postmark,] if mailed
32 postage prepaid and correctly addressed to the shareholder's address
33 shown in the corporation's current record of shareholders, or (2) when
34 electronically transmitted to the shareholder in a manner authorized
35 by the shareholder.

36 (d) Written notice to a domestic or foreign corporation authorized to
37 transact business in this state may be addressed to its registered agent
38 at its registered office or to the corporation or its secretary at its
39 principal office shown in its most recent annual report or, in the case of
40 a foreign corporation that has not yet delivered an annual report, in its
41 application for a certificate of authority.

42 (e) Except as provided in subsection (c) of this section, written
43 notice, if in a comprehensible form, is effective at the earliest of the
44 following: (1) When received; (2) five days after its deposit in the

45 United States mail, if mailed postage prepaid and correctly addressed;
46 or (3) on the date shown on the return receipt, if sent by registered or
47 certified mail or a commercial delivery service, return receipt
48 requested, and the receipt is signed by or on behalf of the addressee.

49 (f) Oral notice is effective when communicated if communicated in a
50 comprehensible manner.

51 (g) If sections 33-600 to 33-998, inclusive, as amended by this act,
52 prescribe notice requirements for particular circumstances, those
53 requirements govern. If a certificate of incorporation or bylaw
54 prescribes notice requirements, not inconsistent with this section or
55 other provisions of said sections, those requirements govern.

56 (h) In computing the period of time of any notice required or
57 permitted to be given by sections 33-600 to 33-998, inclusive, as
58 amended by this act, or under the provisions of the certificate of
59 incorporation or bylaws of a corporation or of a resolution of
60 shareholders or directors, the day on which the notice is given shall be
61 excluded, and the day on which the matter noticed is to occur shall be
62 included, in the absence of a contrary provision.

63 Sec. 5. Section 33-608 of the general statutes is repealed and the
64 following is substituted in lieu thereof:

65 (a) A document shall satisfy the requirements of this section, and of
66 any other section that adds to or varies from these requirements, to be
67 entitled to filing by the Secretary of the State.

68 (b) Sections 33-600 to 33-998, inclusive, as amended by this act, shall
69 require or permit filing the document in the office of the Secretary of
70 the State.

71 (c) The document shall contain the information required by sections
72 33-600 to 33-998, inclusive, as amended by this act. It may contain
73 other information as well.

74 (d) The document shall be typewritten or printed or, if [authorized
75 by the Secretary of the State,] electronically transmitted, in a format
76 that can be retrieved or reproduced in typewritten or printed form.

77 (e) The document shall be in the English language. A corporate
78 name need not be in English if written in English letters or Arabic or
79 Roman numerals, and the certificate of existence required of foreign
80 corporations need not be in English if accompanied by a reasonably
81 authenticated English translation.

82 (f) The document shall be executed: (1) By the chairman of the board
83 of directors of a domestic or foreign corporation, by its president or by
84 another of its officers; (2) if directors have not been selected or the
85 corporation has not been formed, by an incorporator; or (3) if the
86 corporation is in the hands of a receiver, trustee or other court-
87 appointed fiduciary, by that fiduciary.

88 (g) The person executing [a] the document shall [, if the document is
89 typewritten or printed,] sign it and state beneath or opposite [his] such
90 person's signature [his] such person's name and the capacity in which
91 [he] such person signs. [or, if the document is electronically
92 transmitted, affirm and authenticate the execution of the document in
93 such manner as the Secretary of the State may prescribe as effective for
94 those purposes.] The document may but need not contain [: (1) The
95 corporate seal, (2) an attestation by the secretary or an assistant
96 secretary, (3) an acknowledgment, verification or proof] a corporate
97 seal, attestation, acknowledgment or verification.

98 (h) If the Secretary of the State has prescribed a mandatory form for
99 the document under section 33-609, the document shall be in or on the
100 prescribed form.

101 (i) The document shall be delivered to the office of the Secretary of
102 the State for filing. Delivery may be made by electronic transmission if
103 and to the extent permitted by the Secretary of the State. If the
104 document is filed in typewritten or printed form and not electronically

105 transmitted, the Secretary of the State may require one exact or
106 conformed copy to be delivered with the document, except as
107 provided in sections 33-662 and 33-928.

108 (j) When the document is delivered to the office of the Secretary of
109 the State for filing, [the document shall be accompanied by] the correct
110 filing fee [,] and any franchise tax, license fee or penalty required to be
111 paid by sections 33-600 to 33-998, inclusive, as amended by this act, or
112 other law [, unless provision has been made for payment in the
113 manner prescribed] must be paid or provision for payment made in a
114 manner permitted by the Secretary of the State.

115 (k) When any document is required or permitted to be filed or
116 recorded as provided in sections 33-600 to 33-998, inclusive, as
117 amended by this act, the Secretary of the State may in [his] said
118 secretary's discretion, for good cause, permit a photostatic or other
119 photographic copy of such document to be filed or recorded in lieu of
120 the original instrument. Such filing or recording shall have the same
121 force and effect as if the original instrument had been so filed or
122 recorded.

123 Sec. 6. Subsection (a) of section 33-610 of the general statutes is
124 repealed and the following is substituted in lieu thereof:

125 (a) Except as provided in subsection (b) of this section and
126 subsection (c) of section 33-611, as amended by this act, a document
127 accepted for filing is effective: (1) At the date and time of filing, [on the
128 date it is filed, as evidenced by the Secretary of the State's date and
129 time endorsement on the original document or, when the document is
130 electronically transmitted, as evidenced by electronic means prescribed
131 by the Secretary of the State] as evidenced by such means as the
132 Secretary of the State may use for the purpose of recording
133 [electronically] the date and time of filing; or (2) at the time specified in
134 the document as its effective time on the date it is filed.

135 Sec. 7. Section 33-611 of the general statutes is repealed and the

136 following is substituted in lieu thereof:

137 (a) A domestic or foreign corporation may correct a document filed
138 by the Secretary of the State if (1) the document [(1)] contains an
139 [incorrect statement or (2)] inaccuracy, (2) the document was
140 defectively executed, attested, sealed, verified or acknowledged, or (3)
141 the electronic transmission was defective.

142 (b) A document is corrected: (1) By preparing a certificate of
143 correction that (A) describes the document, including its filing date, or
144 attaches a copy of it to the certificate, (B) specifies the [incorrect
145 statement and the reason it is incorrect or the manner in which the
146 execution was defective] inaccuracy or defect to be corrected, and (C)
147 corrects the [incorrect statement or defective execution] inaccuracy or
148 defect; and (2) by delivering the certificate to the Secretary of the State
149 for filing.

150 (c) A certificate of correction is effective on the effective date of the
151 document it corrects except as to persons relying on the uncorrected
152 document and adversely affected by the correction. As to those
153 persons, a certificate of correction is effective when filed.

154 Sec. 8. Section 33-740 of the general statutes is repealed and the
155 following is substituted in lieu thereof:

156 [(a)] The certificate of incorporation may provide for staggering the
157 terms of directors by dividing the total number of directors into up to
158 five groups, with each group containing approximately the same
159 percentage of the total, as near as may be. In that event, the terms of
160 directors in the first group expire at the first annual shareholders'
161 meeting after their election, the terms of the second group expire at the
162 second annual shareholders' meeting after their election, the terms of
163 the third group, if any, expire at the third annual shareholders'
164 meeting after their election, the terms of the fourth group, if any,
165 expire at the fourth annual shareholders' meeting after their election
166 and the terms of the fifth group, if any, expire at the fifth annual

167 shareholders' meeting after their election. At each annual shareholders'
168 meeting held thereafter, directors shall be chosen for a term of two
169 years, three years, four years or five years, as the case may be, to
170 succeed those whose terms expire.

171 [(b) If a corporation has cumulative voting pursuant to section 33-
172 712, this section shall apply only if there are at least three directors in
173 each group.]

174 Sec. 9. Section 33-749 of the general statutes is repealed and the
175 following is substituted in lieu thereof:

176 (a) [Unless the certificate of incorporation or a bylaw provides
177 otherwise] Except to the extent that the certificate of incorporation or
178 bylaws specifically require that action by the board of directors be
179 taken only at a meeting, action required or permitted by sections 33-
180 600 to 33-998, inclusive, as amended by this act, to be taken [at a board
181 of directors' meeting] by the board of directors may be taken without a
182 meeting if [the action is taken by all members of the board. The action
183 shall be evidenced by one or more written consents describing the
184 action taken, signed by each director, and included in the minutes or
185 filed with the corporate records reflecting the action taken] each
186 director signs a consent describing the action taken or to be taken and
187 delivers it to the corporation.

188 (b) Action taken under this section is [effective when the last
189 director signs the consent, unless the consent specifies a different
190 effective date] the act of the board of directors when one or more
191 consents signed by all the directors are delivered to the corporation.
192 The consent may specify the time at which the action taken thereunder
193 is to be effective. A director's consent may be withdrawn by a
194 revocation signed by the director and delivered to the corporation
195 prior to delivery to the corporation of unrevoked written consents
196 signed by all the directors.

197 (c) A consent signed under this section has the effect of action taken

198 at a meeting [vote] of the board of directors and may be described as
199 such in any document.

200 Sec. 10. Section 33-753 of the general statutes is repealed and the
201 following is substituted in lieu thereof:

202 (a) Unless sections 33-600 to 33-998, inclusive, as amended by this
203 act, the certificate of incorporation or [a bylaw provides] the bylaws
204 provide otherwise, a board of directors may create one or more
205 committees and appoint one or more members of the board of
206 directors to serve on [them. Each committee shall have two or more
207 members, who serve at the pleasure of the board of directors] any such
208 committee.

209 (b) [The] Unless sections 33-600 to 33-998, inclusive, as amended by
210 this act, provide otherwise, the creation of a committee and
211 appointment of members to it shall be approved by the greater of (1) a
212 majority of all the directors in office when the action is taken, or (2) the
213 number of directors required by the certificate of incorporation or
214 bylaws to take action under section 33-752.

215 (c) (1) In the case of a corporation with at least one hundred
216 shareholders which is not otherwise required to have an audit
217 committee under federal law or regulation or the regulation of a
218 national securities exchange registered under the Securities Exchange
219 Act of 1934, as amended, the board of directors shall, in the manner
220 provided in subsection (b) of this section, whether or not the bylaws
221 provide for such a committee, designate two or more directors to
222 constitute an audit committee, at least one of whom shall be
223 independent, if the board of directors includes an independent
224 director. A director shall be deemed to be "independent" unless (A)
225 such director, or any spouse, parent or child of such director, or any
226 other corporation, firm or organization in which such director or any
227 such spouse, parent or child has a substantial interest, or any
228 combination thereof, has or at any time during the last two fiscal years
229 of the corporation has had one or more of the following relationships:

230 (i) That of officer or employee of the corporation or of any other
231 corporation, firm or organization which owns a ten per cent or more
232 debt or equity interest in the corporation or in which the corporation
233 owns a ten per cent or more debt or equity interest; (ii) that of
234 ownership of ten per cent or more of the debt or equity of the
235 corporation; or (iii) that of a business or professional relationship with
236 the corporation, other than by reason of the directorship itself, where
237 the amount involved in all transactions which result from such
238 relationship during any fiscal year of the corporation exceeds forty
239 thousand dollars, or where the amount derived from transactions
240 directly between the corporation and such director or such spouse,
241 parent or child exceeds five per cent of such director's annual income,
242 or (B) such director serves as an independent director on the boards of
243 directors of more than five corporations. (2) The audit committee shall
244 perform such functions as the bylaws or a resolution of the board of
245 directors of the corporation may provide, except that if any such
246 corporation engages or proposes to engage an independent public
247 accountant to review the preparation of and render reports on the
248 financial statements of the corporation, notwithstanding any
249 provisions of the bylaws or such resolution, the audit committee shall
250 review, evaluate and advise the board of directors with respect to (A)
251 the proposed engagement and any succeeding engagement of the
252 accountant or any successor, and (B) the functions performed by the
253 accountant pursuant to the terms of the accountant's engagement.

254 (d) The provisions of sections 33-748 to 33-752, inclusive, [shall be
255 applicable] as amended by this act, apply both to committees of the
256 board and their members.

257 (e) To the extent specified by the board of directors or in the
258 certificate of incorporation or bylaws, each committee may exercise the
259 [authority] powers of the board of directors under section 33-735.

260 (f) A committee may not, however: (1) Authorize or approve
261 distributions, except according to a formula or method, or within

262 limits, prescribed by the board of directors; (2) approve or propose to
263 shareholders action that sections 33-600 to 33-998, inclusive, as
264 amended by this act, require be approved by shareholders; (3) fill
265 vacancies on the board of directors or, subject to subsection (h) of this
266 section, on any of its committees; [(4) amend the certificate of
267 incorporation pursuant to section 33-796; (5)] or (4) adopt, amend or
268 repeal bylaws. [; (6) approve a plan of merger not requiring
269 shareholder approval; (7) authorize or approve reacquisition of shares,
270 except according to a formula or method prescribed by the board of
271 directors; or (8) authorize or approve the issuance or sale or contract
272 for sale of shares, or determine the designation and relative rights,
273 preferences and limitations of a class or series of shares, except that the
274 board of directors may authorize a committee or a senior executive
275 officer of the corporation to do so within limits specifically prescribed
276 by the board of directors.]

277 (g) The creation of, delegation of authority to, or action by a
278 committee does not alone constitute compliance by a director with the
279 standards of conduct described in section 33-756.

280 (h) The board of directors may appoint one or more directors as
281 alternate members of any committee to replace any absent or
282 disqualified member during the member's absence or disqualification.
283 If authorized by the certificate of incorporation, the bylaws or the
284 resolution creating the committee, in the event of the absence or
285 disqualification of a member of a committee, the member or members
286 present at any meeting and not disqualified from voting, unanimously,
287 may appoint another director to act in place of the absent or
288 disqualified member.

289 Sec. 11. Section 33-763 of the general statutes is repealed and the
290 following is substituted in lieu thereof:

291 (a) A corporation has the [officers] offices described in its bylaws or
292 [appointed] designated by the board of directors in accordance with
293 the bylaws.

294 (b) [A duly appointed] The board of directors may elect individuals
295 to fill one or more offices of the corporation. An officer may appoint
296 one or more officers [or assistant officers] if authorized by the bylaws
297 or the board of directors.

298 (c) The bylaws or the board of directors shall [delegate] assign to
299 one of the officers responsibility for preparing the minutes of the
300 directors' and shareholders' meetings and for maintaining and
301 authenticating the records of the corporation required to be kept under
302 subsections (a) and (e) of section 33-945.

303 (d) The same individual may simultaneously hold more than one
304 office in a corporation.

305 Sec. 12. Section 33-766 of the general statutes is repealed and the
306 following is substituted in lieu thereof:

307 (a) An officer may resign at any time by delivering notice to the
308 corporation. A resignation is effective when the notice is delivered
309 unless the notice specifies a later effective [date] time. If a resignation
310 is made effective at a later [date] time and the [corporation] board of
311 directors or the appointing officer accepts the future effective [date, its
312 board of directors] time, the board or the appointing officer may fill
313 the pending vacancy before the effective [date] time if the board [of
314 directors] or the appointing officer provides that the successor does not
315 take office until the effective [date] time.

316 (b) [A board of directors may remove any officer] An officer may be
317 removed at any time with or without cause by: (1) The board of
318 directors, (2) the officer who appointed such officer, unless the bylaws
319 provide otherwise, or (3) any other officer if authorized by the bylaws
320 or the board of directors.

321 (c) In this section, "appointing officer" means the officer, including
322 any successor to that officer, who appointed the officer resigning or
323 being removed.

324 Sec. 13. Subsection (c) of section 33-775 of the general statutes is
325 repealed and the following is substituted in lieu thereof:

326 (c) Authorization of indemnification shall be made in the same
327 manner as the determination that indemnification is permissible,
328 except that if there are fewer than two disinterested directors or if the
329 determination is made by special legal counsel, authorization of
330 indemnification shall be made by those entitled under subparagraph
331 (B) of subdivision (2) of subsection (b) of this section to select special
332 legal counsel.

333 Sec. 14. Subsection (a) of section 33-778 of the general statutes is
334 repealed and the following is substituted in lieu thereof:

335 (a) A corporation may, by a provision in its certificate of
336 incorporation or bylaws or in a resolution adopted or a contract
337 approved by its board of directors or shareholders, obligate itself in
338 advance of the act or omission giving rise to a proceeding to provide
339 indemnification in accordance with section 33-771 or advance funds to
340 pay for or reimburse expenses in accordance with section 33-773. Any
341 such obligatory provision shall be deemed to satisfy the requirements
342 for authorization referred to in subsection (c) of section 33-773 and
343 subsection (c) of section 33-775, as amended by this act. Any such
344 provision that obligates the corporation to provide indemnification to
345 the fullest extent permitted by law shall be deemed to obligate the
346 corporation to advance funds to pay for or reimburse expenses in
347 accordance with section 33-773 to the fullest extent permitted by law,
348 unless the provision specifically provides otherwise.

349 Sec. 15. Section 33-855 of the general statutes is repealed and the
350 following is substituted in lieu thereof:

351 As used in sections 33-855 to 33-872, inclusive, as amended by this
352 act:

353 (1) "Affiliate" means a person that directly or indirectly through one

354 or more intermediaries controls, is controlled by or is under common
355 control with another person or is a senior executive thereof. For
356 purposes of subdivision (4) of subsection (b) of section 33-856, as
357 amended by this act, a person is deemed to be an affiliate of its senior
358 executives.

359 (2) "Beneficial shareholder" means a person who is the beneficial
360 owner of shares held in a voting trust or by a nominee on the beneficial
361 owner's behalf.

362 [(1)] (3) "Corporation" means the issuer of the shares held by a
363 [dissenter before the corporate action or the surviving or acquiring
364 corporation by merger or share exchange of that issuer] shareholder
365 demanding appraisal and, for matters covered in sections 33-862 to 33-
366 872, as amended by this act, includes the surviving entity in a merger.

367 [(2) "Dissenter" means a shareholder who is entitled to dissent from
368 corporate action under section 33-856 and who exercises that right
369 when and in the manner required by sections 33-860 to 33-868,
370 inclusive.]

371 [(3)] (4) "Fair value" [, with respect to a dissenter's shares,] means
372 the value of the corporation's shares [immediately] determined: (A)
373 Immediately before the effectuation of the corporate action to which
374 the [dissenter objects, excluding any appreciation or depreciation in
375 anticipation of the corporate action] shareholder objects, (B) using
376 customary and current valuation concepts and techniques generally
377 employed for similar businesses in the context of the transaction
378 requiring appraisal, and (C) without discounting for lack of
379 marketability or minority status except, if appropriate, for
380 amendments to the certificate of incorporation pursuant to subdivision
381 (5) of subsection (a) of section 33-856, as amended by this act.

382 [(4)] (5) "Interest" means interest from the effective date of the
383 corporate action until the date of payment, at the [average rate
384 currently paid by the corporation on its principal bank loans or, if

385 none, at a rate that is fair and equitable under all the circumstances]
386 rate of interest on judgments in this state on the effective date of the
387 corporate action.

388 (6) "Preferred shares" means a class or series of shares whose
389 holders have preference over any other class or series with respect to
390 distributions.

391 [(5)] (7) "Record shareholder" means the person in whose name
392 shares are registered in the records of [a] the corporation or the
393 beneficial owner of shares to the extent of the rights granted by a
394 nominee certificate on file with [a] the corporation.

395 [(6) "Beneficial shareholder" means the person who is a beneficial
396 owner of shares held in a voting trust or by a nominee as the record
397 shareholder.]

398 (8) "Senior executive" means the chief executive officer, chief
399 operating officer, chief financial officer and anyone in charge of a
400 principal business unit or function.

401 [(7)] (9) "Shareholder" means [the] both a record shareholder [or the]
402 and a beneficial shareholder.

403 Sec. 16. Section 33-856 of the general statutes is repealed and the
404 following is substituted in lieu thereof:

405 (a) A shareholder is entitled to [dissent from, and] appraisal rights,
406 and to obtain payment of the fair value of [his] that shareholder's
407 shares in the event of, any of the following corporate actions:

408 (1) Consummation of a [plan of] merger to which the corporation is
409 a party (A) if shareholder approval is required for the merger by
410 section 33-817 [or the certificate of incorporation] and the shareholder
411 is entitled to vote on the merger, except that appraisal rights shall not
412 be available to any shareholder of the corporation with respect to
413 shares of any class or series that remain outstanding after

414 consummation of the merger, or (B) if the corporation is a subsidiary
415 [that is merged with its parent under] and the merger is governed by
416 section 33-818;

417 (2) Consummation of a [plan of] share exchange to which the
418 corporation is a party as the corporation whose shares will be
419 acquired, if the shareholder is entitled to vote on the [plan] exchange,
420 except that appraisal rights shall not be available to any shareholder of
421 the corporation with respect to any class or series of shares of the
422 corporation that is not exchanged;

423 (3) Consummation of a [sale or exchange of all, or substantially all,
424 of the property of the corporation other than in the usual and regular
425 course of business, if the shareholder is entitled to vote on the sale or
426 exchange, including a sale in dissolution, but not including a sale
427 pursuant to court order or a sale for cash pursuant to a plan by which
428 all or substantially all of the net proceeds of the sale will be distributed
429 to the shareholders within one year after the date of sale] disposition of
430 assets pursuant to section 33-831 if the shareholder is entitled to vote
431 on the disposition;

432 (4) An amendment of the certificate of incorporation with respect to
433 a class or series of shares that [materially and adversely affects rights
434 in respect of a dissenter's shares because it: (A) Alters or abolishes a
435 preferential right of the shares; (B) creates, alters or abolishes a right in
436 respect of redemption, including a provision respecting a sinking fund
437 for the redemption or repurchase, of the shares; (C) alters or abolishes
438 a preemptive right of the holder of the shares to acquire shares or other
439 securities; (D) excludes or limits the right of the shares to vote on any
440 matter, or to cumulate votes, other than a limitation by dilution
441 through issuance of shares or other securities with similar voting
442 rights; or (E)] reduces the number of shares of a class or series owned
443 by the shareholder to a fraction of a share if the corporation has the
444 obligation or right to repurchase the fractional share so created; [is to
445 be acquired for cash under section 33-668;] or

446 (5) Any [corporate action taken pursuant to a shareholder vote to
447 the extent the certificate of incorporation, bylaws or a resolution of the
448 board of directors provides that voting or nonvoting shareholders are
449 entitled to dissent and obtain payment for their shares] other
450 amendment to the certificate of incorporation, merger, share exchange
451 or disposition of assets to the extent provided by the certificate of
452 incorporation, the bylaws or a resolution of the board of directors.

453 (b) Notwithstanding subsection (a) of this section, the availability of
454 appraisal rights under subdivisions (1), (2), (3) and (4) of subsection (a)
455 of this section shall be limited in accordance with the following
456 provisions:

457 (1) Appraisal rights shall not be available for the holders of shares of
458 any class or series of shares which is: (A) Listed on the New York Stock
459 Exchange or the American Stock Exchange or designated as a National
460 Market System security on an interdealer quotation system by the
461 National Association of Securities Dealers, Inc.; or (B) not so listed or
462 designated but has at least two thousand shareholders and the
463 outstanding shares of such class or series has a market value of at least
464 twenty million dollars, exclusive of the value of such shares held by its
465 subsidiaries, senior executives, directors and beneficial shareholders
466 owning more than ten per cent of such shares.

467 (2) The applicability of subdivision (1) of this subsection shall be
468 determined as of: (A) The record date fixed to determine the
469 shareholders entitled to receive notice of, and to vote at, the meeting of
470 shareholders to act upon the corporate action requiring appraisal
471 rights; or (B) the day before the effective date of such corporate action
472 if there is no meeting of shareholders.

473 (3) Subdivision (1) of this subsection shall not be applicable and
474 appraisal rights shall be available pursuant to subsection (a) of this
475 section for the holders of any class or series of shares who are required
476 by the terms of the corporate action requiring appraisal rights to accept
477 for such shares anything other than cash or shares of any class or any

478 series of shares of any corporation, or any other proprietary interest of
479 any other entity, that satisfies the standards set forth in subdivision (1)
480 of this subsection at the time the corporate action becomes effective.

481 (4) Subdivision (1) of this subsection shall not be applicable and
482 appraisal rights shall be available pursuant to subsection (a) of this
483 section for the holders of any class or series of shares where:

484 (A) Any of the shares or assets of the corporation are being acquired
485 or converted, whether by merger, share exchange or otherwise,
486 pursuant to the corporate action by a person, or by an affiliate of a
487 person, who:

488 (i) Is, or at any time in the one-year period immediately preceding
489 approval by the board of directors of the corporate action requiring
490 appraisal rights was, the beneficial owner of twenty per cent or more
491 of the voting power of the corporation, excluding any shares acquired
492 pursuant to an offer for all shares having voting power if such offer
493 was made within one year prior to the corporate action requiring
494 appraisal rights for consideration of the same kind and of a value
495 equal to or less than that paid in connection with the corporate action;
496 or

497 (ii) Directly or indirectly has, or at any time in the one-year period
498 immediately preceding approval by the board of directors of the
499 corporate action requiring appraisal rights had, the power,
500 contractually or otherwise, to cause the appointment or election of
501 twenty-five per cent or more of the directors to the board of directors
502 of the corporation; or

503 (B) Any of the shares or assets of the corporation are being acquired
504 or converted, whether by merger, share exchange or otherwise,
505 pursuant to such corporate action by a person, or by an affiliate of a
506 person, who is, or at any time in the one-year period immediately
507 preceding approval by the board of directors of the corporate action
508 requiring appraisal rights was, a senior executive or director of the

509 corporation or a senior executive of any affiliate thereof, and that
510 senior executive or director will receive, as a result of the corporate
511 action, a financial benefit not generally available to other shareholders
512 as such, other than:

513 (i) Employment, consulting, retirement or similar benefits
514 established separately and not as part of or in contemplation of the
515 corporate action; or

516 (ii) Employment, consulting, retirement or similar benefits
517 established in contemplation of, or as part of, the corporate action that
518 are not more favorable than those existing before the corporate action
519 or, if more favorable, that have been approved on behalf of the
520 corporation in the same manner as is provided in section 33-783; or

521 (iii) In the case of a director of the corporation who will, in the
522 corporate action, become a director of the acquiring entity in the
523 corporate action or one of its affiliates, rights and benefits as a director
524 that are provided on the same basis as those afforded by the acquiring
525 entity generally to other directors of such entity or such affiliate.

526 (5) For the purposes of subdivision (4) of this subsection, "beneficial
527 owner" means any person who, directly or indirectly, through any
528 contract, arrangement or understanding, other than a revocable proxy,
529 has or shares the power to vote, or to direct the voting of, shares,
530 provided a member of a National Securities Exchange shall not be
531 deemed to be a beneficial owner of securities held directly or indirectly
532 by it on behalf of another person solely because such member is the
533 record holder of such securities if the member is precluded by the rules
534 of such exchange from voting without instruction on contested matters
535 or matters that may affect substantially the rights or privileges of the
536 holders of the securities to be voted. When two or more persons agree
537 to act together for the purpose of voting their shares of the corporation,
538 each member of the group formed thereby shall be deemed to have
539 acquired beneficial ownership, as of the date of such agreement, of all
540 voting shares of the corporation beneficially owned by any member of

541 the group.

542 (c) Notwithstanding any other provision of this section, the
543 certificate of incorporation as originally filed or any amendment
544 thereto may limit or eliminate appraisal rights for any class or series of
545 preferred shares, but any such limitation or elimination contained in
546 an amendment to the certificate of incorporation that limits or
547 eliminates appraisal rights for any of such shares that are outstanding
548 immediately prior to the effective date of such amendment or shall not
549 apply to any corporate action that becomes effective within one year of
550 that date if such action would otherwise afford appraisal rights.

551 [(b)] (d) Where the right to be paid the value of shares is made
552 available to a shareholder by this section, such remedy shall be [his]
553 the exclusive remedy as holder of such shares against the corporate
554 transactions described in this section, whether or not [he] the
555 shareholder proceeds as provided in sections 33-855 to 33-872,
556 inclusive, as amended by this act.

557 Sec. 17. Section 33-857 of the general statutes is repealed and the
558 following is substituted in lieu thereof:

559 (a) A record shareholder may assert [dissenters'] appraisal rights as
560 to fewer than all the shares registered in [his name only if he dissents
561 with respect to all shares beneficially owned by any one person] the
562 record shareholder's name but owned by a beneficial shareholder only
563 if the record shareholder objects with respect to all shares of the class
564 or series owned by the beneficial shareholder and notifies the
565 corporation in writing of the name and address of each [person]
566 beneficial shareholder on whose behalf [he asserts dissenters' rights]
567 appraisal rights are being asserted. The rights of a [partial dissenter]
568 record shareholder who asserts appraisal rights for only part of the
569 shares held of record in the record shareholder's name under this
570 subsection [are] shall be determined as if the shares as to which [he
571 dissents and his] the record shareholder objects and the record
572 shareholder's other shares were registered in the names of different

573 record shareholders.

574 (b) A beneficial shareholder may assert [dissenters'] appraisal rights
575 as to shares of any class or series held on [his] behalf of the shareholder
576 only if such shareholder: (1) [He submits] Submits to the corporation
577 the record shareholder's written consent to the [dissent not later than
578 the time the beneficial shareholder asserts dissenters' rights] assertion
579 of such rights no later than the date referred to in subparagraph (B) of
580 subdivision (2) of subsection (b) of section 33-862, as amended by this
581 act; and (2) [he] does so with respect to all shares of [which he is the
582 beneficial shareholder or over which he has power to direct the vote]
583 the class or series that are beneficially owned by the beneficial
584 shareholder.

585 Sec. 18. Section 33-860 of the general statutes is repealed and the
586 following is substituted in lieu thereof:

587 (a) If proposed corporate action [creating dissenters' rights under
588 section 33-856 is] described in subsection (a) of section 33-856, as
589 amended by this act, is to be submitted to a vote at a shareholders'
590 meeting, the meeting notice shall state that the corporation has
591 concluded that shareholders are, are not or may be entitled to assert
592 [dissenters'] appraisal rights under sections 33-855 to 33-872, inclusive,
593 as amended by this act. [, and be accompanied by a copy of said
594 sections.] If the corporation concludes that appraisal rights are or may
595 be available, a copy of sections 33-855 to 33-872, inclusive, as amended
596 by this act, must accompany the meeting notice sent to those record
597 shareholders entitled to exercise appraisal rights.

598 [(b) If corporate action creating dissenters' rights under section 33-
599 856 is taken without a vote of shareholders, the corporation shall notify
600 in writing all shareholders entitled to assert dissenters' rights that the
601 action was taken and send them the dissenters' notice described in
602 section 33-862.] **(b)** In a merger pursuant to section 33-818, the parent
603 corporation must notify in writing all record shareholders of the
604 subsidiary who are entitled to assert appraisal rights that the corporate

605 action became effective. Such notice must be sent within ten days after
606 the corporate action became effective and include the materials
607 described in section 33-862, as amended by this act.

608 Sec. 19. Section 33-861 of the general statutes is repealed and the
609 following is substituted in lieu thereof:

610 (a) If proposed corporate action [creating dissenters'] requiring
611 appraisal rights under section 33-856, as amended by this act, is
612 submitted to a vote at a shareholders' meeting, a shareholder who
613 wishes to assert [dissenters' rights (1) shall] appraisal rights with
614 respect to any class or series of shares: (1) Must deliver to the
615 corporation before the vote is taken written notice of [his] the
616 shareholder's intent to demand payment [for his shares] if the
617 proposed action is effectuated, and (2) [shall not vote his shares] must
618 not vote, or cause or permit to be voted, any shares of such class or
619 series in favor of the proposed action.

620 (b) A shareholder who does not satisfy the requirements of
621 subsection (a) of this section is not entitled to payment [for his shares]
622 under sections 33-855 to 33-872, inclusive, as amended by this act.

623 Sec. 20. Section 33-862 of the general statutes is repealed and the
624 following is substituted in lieu thereof:

625 (a) If proposed corporate action [creating dissenters' rights under
626 section 33-856 is authorized at a shareholders' meeting, the corporation
627 shall deliver a written dissenters' notice] requiring appraisal rights
628 under subsection (a) of section 33-856, as amended by this act, becomes
629 effective, the corporation must deliver a written appraisal notice and
630 form required by subdivision (1) of subsection (b) of this section to all
631 shareholders who satisfied the requirements of section 33-861, as
632 amended by this act. In the case of a merger under section 33-818, the
633 parent must deliver a written appraisal notice and form to all record
634 shareholders who may be entitled to assert appraisal rights.

635 (b) The [dissenters'] appraisal notice shall be sent no earlier than the
636 date the corporate action became effective and no later than ten days
637 after [the corporate action was taken] such date and shall:

638 [(1) State where the payment demand must be sent and where and
639 when certificates for certificated shares must be deposited;

640 (2) Inform holders of uncertificated shares to what extent transfer of
641 the shares will be restricted after the payment demand is received;

642 (3) Supply a form for demanding payment that includes the date of
643 the first announcement to news media or to shareholders of the terms
644 of the proposed corporate action and requires that the person asserting
645 dissenters' rights certify whether or not he acquired beneficial
646 ownership of the shares before that date;

647 (4) Set a date by which the corporation must receive the payment
648 demand, which date may not be fewer than thirty nor more than sixty
649 days after the date the subsection (a) of this section notice is delivered;
650 and]

651 (1) Supply a form that specifies the date of the first announcement to
652 shareholders of the principal terms of the proposed corporate action
653 and requires the shareholder asserting appraisal rights to certify (A)
654 whether or not those shares for which appraisal rights are asserted
655 were acquired before that date, and (B) that the shareholder did not
656 vote for the transaction;

657 (2) State:

658 (A) Where the form must be sent and where certificates for
659 certificated shares must be deposited and the date by which those
660 certificates must be deposited, which date may not be earlier than the
661 date for receiving the required form under subparagraph (B) of this
662 subdivision;

663 (B) a date by which the corporation must receive the form which

664 date may not be fewer than forty nor more than sixty days after the
665 date the appraisal notice and form under subsection (a) of this section
666 are sent, and state that the shareholder shall have waived the right to
667 demand appraisal with respect to the shares unless the form is
668 received by the corporation by such specified date;

669 (C) the corporation's estimate of the fair value of the shares;

670 (D) that, if requested in writing, the corporation will provide, to the
671 shareholder so requesting, within ten days after the date specified in
672 subparagraph (B) of this subdivision, the number of shareholders who
673 return the forms by the specified date and the total number of shares
674 owned by them; and

675 (E) the date by which the notice to withdraw under section 33-863,
676 as amended by this act, must be received, which date must be within
677 twenty days after the date specified in subparagraph (B) of this
678 subdivision; and

679 ~~[(5)]~~ (3) Be accompanied by a copy of sections 33-855 to 33-872,
680 inclusive, as amended by this act.

681 Sec. 21. Section 33-863 of the general statutes is repealed and the
682 following is substituted in lieu thereof:

683 (a) A shareholder [sent a dissenters' notice described in section 33-
684 862 must demand payment, certify whether he] who receives notice
685 pursuant to section 33-862, as amended by this act, and who wishes to
686 exercise appraisal rights must certify on the form sent by the
687 corporation whether the beneficial owner of such shares acquired
688 beneficial ownership of the shares before the date required to be set
689 forth in the [dissenters'] notice pursuant to subdivision [(3)] (1) of
690 subsection (b) of said section. [and deposit his certificates in
691 accordance with the terms of the notice.] If a shareholder fails to make
692 this certification, the corporation may elect to treat the shareholder's
693 shares as after-acquired shares under section 33-867, as amended by

694 this act. In addition, a shareholder who wishes to exercise appraisal
695 rights must execute and return the form and, in the case of certificated
696 shares, deposit the shareholder's certificates in accordance with the
697 terms of the notice by the date referred to in the notice pursuant to
698 subparagraph (B) of subdivision (2) of subsection (b) of section 33-862,
699 as amended by this act. Once a shareholder deposits that shareholder's
700 certificates or, in the case of uncertificated shares, returns the executed
701 forms, that shareholder loses all rights as a shareholder, unless the
702 shareholder withdraws pursuant to subsection (b) of this section.

703 [(b) The shareholder who demands payment and deposits his share
704 certificates under subsection (a) of this section retains all other rights of
705 a shareholder until these rights are cancelled or modified by the taking
706 of the proposed corporate action.

707 (c) A shareholder who does not demand payment or deposit his
708 share certificates where required, each by the date set in the dissenters'
709 notice, is not entitled to payment for his shares under sections 33-855
710 to 33-872, inclusive.]

711 (b) A shareholder who has complied with subsection (a) of this
712 section may nevertheless decline to exercise appraisal rights and
713 withdraw from the appraisal process by so notifying the corporation in
714 writing by the date set forth in the appraisal notice pursuant to
715 subparagraph (E) of subdivision (2) of subsection (b) of section 33-862,
716 as amended by this act. A shareholder who fails to so withdraw from
717 the appraisal process may not thereafter withdraw without the
718 corporation's written consent.

719 (c) A shareholder who does not execute and return the form and, in
720 the case of certificated shares, deposit that shareholder's share
721 certificate where required, each by the date set forth in the notice
722 described in subsection (b) of section 33-862, as amended by this act,
723 shall not be entitled to payment under sections 33-855 to 33-872,
724 inclusive, as amended by this act.

725 Sec. 22. Section 33-865 of the general statutes is repealed and the
726 following is substituted in lieu thereof:

727 (a) Except as provided in section 33-867, [as soon as the proposed
728 corporate action is taken, or upon receipt of a payment demand,] as
729 amended by this act, within thirty days after the form required by
730 subparagraph (B) of subdivision (2) of subsection (b) of section 33-862,
731 as amended by this act, is due the corporation shall pay [each
732 dissenter] in cash to those shareholders who complied with subsection
733 (a) of section 33-863, as amended by this act, the amount the
734 corporation estimates to be the fair value of [his] their shares, plus
735 [accrued] interest.

736 (b) The payment to each shareholder pursuant to subsection (a) of
737 this section shall be accompanied by:

738 (1) [The corporation's] Financial statements of the corporation that
739 issued the shares to be appraised, consisting of a balance sheet as of
740 the end of a fiscal year ending not more than sixteen months before the
741 date of payment, an income statement for that year, a statement of
742 changes in shareholders' equity for that year and the latest available
743 interim financial statements, if any;

744 [(2) a statement of the corporation's estimate of the fair value of the
745 shares; (3) an explanation of how the interest was calculated; (4) a
746 statement of the dissenter's right to demand payment under section 33-
747 868; and (5) a copy of sections 33-855 to 33-872, inclusive.]

748 (2) A statement of the corporation's estimate of the fair value of the
749 shares which estimate must equal or exceed the corporation's estimate
750 given pursuant to subparagraph (C) of subdivision (2) of subsection (b)
751 of section 33-862, as amended by this act; and

752 (3) A statement that shareholders described in subsection (a) of this
753 section have the right to demand further payment under section 33-
754 868, as amended by this act, and that if any such shareholder does not

755 do so within the time period specified therein, such shareholder shall
756 be deemed to have accepted such payment in full satisfaction of the
757 corporation's obligations under sections 33-855 to 33-872, as amended
758 by this act.

759 Sec. 23. Section 33-867 of the general statutes is repealed and the
760 following is substituted in lieu thereof:

761 (a) A corporation may elect to withhold payment required by
762 section 33-865, as amended by this act, from [a dissenter unless he was
763 the beneficial owner of the shares] any shareholder who did not certify
764 that beneficial ownership of all of the shareholder's shares for which
765 appraisal rights are asserted was acquired before the date set forth in
766 the [dissenters' notice as the date of the first announcement to news
767 media or to shareholders of the terms of the proposed corporate
768 action] appraisal notice sent pursuant to subdivision (1) of subsection
769 (b) of section 33-862, as amended by this act.

770 [(b) To the extent the corporation elects to withhold payment under
771 subsection (a) of this section, after taking the proposed corporate
772 action, it shall estimate the fair value of the shares, plus accrued
773 interest, and shall pay this amount to each dissenter who agrees to
774 accept it in full satisfaction of his demand. The corporation shall send
775 with its offer a statement of its estimate of the fair value of the shares,
776 an explanation of how the interest was calculated and a statement of
777 the dissenter's right to demand payment under section 33-868.]

778 (b) If the corporation elected to withhold payment under subsection
779 (a) of this section, it must, within thirty days after the form required by
780 subparagraph (B) of subdivision (2) of subsection (b) of section 33-862,
781 as amended by this act, is due, notify all shareholders who are
782 described in subsection (a) of this section:

783 (1) Of the information required by subdivision (1) of subsection (b)
784 of section 33-865, as amended by this act;

785 (2) Of the corporation's estimate of fair value pursuant to
786 subdivision (2) of subsection (b) of section 33-865, as amended by this
787 act;

788 (3) That they may accept the corporation's estimate of fair value,
789 plus interest, in full satisfaction of their demands or demand appraisal
790 under section 33-868, as amended by this act;

791 (4) That those shareholders who wish to accept such offer must so
792 notify the corporation of their acceptance of the corporation's offer
793 within thirty days after receiving the offer; and

794 (5) That those shareholders who do not satisfy the requirements for
795 demanding appraisal under section 33-868, as amended by this act,
796 shall be deemed to have accepted the corporation's offer.

797 (c) Within ten days after receiving the shareholder's acceptance
798 pursuant to subsection (b) of this section, the corporation must pay in
799 cash the amount it offered under subdivision (2) of subsection (b) of
800 this section to each shareholder who agreed to accept the corporation's
801 offer in full satisfaction of the shareholder's demand.

802 (d) Within forty days after sending the notice described in
803 subsection (b) of this section, the corporation must pay in cash the
804 amount it offered to pay under subdivision (2) of subsection (b) of this
805 section to each shareholder described in subdivision (5) of subsection
806 (b) of this section.

807 Sec. 24. Section 33-868 of the general statutes is repealed and the
808 following is substituted in lieu thereof:

809 [(a) A dissenter may notify the corporation in writing of his own
810 estimate of the fair value of his shares and amount of interest due, and
811 demand payment of his estimate, less any payment under section 33-
812 865, or reject the corporation's offer under section 33-867 and demand
813 payment of the fair value of his shares and interest due, if:

814 (1) The dissenter believes that the amount paid under section 33-865
815 or offered under section 33-867 is less than the fair value of his shares
816 or that the interest due is incorrectly calculated;

817 (2) The corporation fails to make payment under section 33-865
818 within sixty days after the date set for demanding payment; or

819 (3) The corporation, having failed to take the proposed action, does
820 not return the deposited certificates or release the transfer restrictions
821 imposed on uncertificated shares within sixty days after the date set
822 for demanding payment.

823 (b) A dissenter waives his right to demand payment under this
824 section unless he notifies the corporation of his demand in writing
825 under subsection (a) of this section within thirty days after the
826 corporation made or offered payment for his shares.]

827 (a) A shareholder paid pursuant to section 33-865, as amended by
828 this act, who is dissatisfied with the amount of the payment must
829 notify the corporation in writing of that shareholder's estimate of the
830 fair value of the shares and demand payment of that estimate, plus
831 interest less any payment under section 33-865, as amended by this act.
832 A shareholder offered payment under section 33-867, as amended by
833 this act, who is dissatisfied with that offer must reject the offer and
834 demand payment of the shareholder's stated estimate of the fair value
835 of the shares plus interest.

836 (b) A shareholder who fails to notify the corporation in writing of
837 that shareholder's demand to be paid the shareholder's stated estimate
838 of the fair value of the shares plus interest under subsection (a) of this
839 section within thirty days after receiving the corporation's payment
840 under section 33-865, as amended by this act, or offer of payment
841 under section 33-867, as amended by this act, waives the right to
842 demand payment under this section and shall be entitled only to the
843 payment made under section 33-865, as amended by this act, or the
844 payment offered under section 33-867, as amended by this act.

845 Sec. 25. Section 33-871 of the general statutes is repealed and the
846 following is substituted in lieu thereof:

847 (a) If a shareholder makes demand for payment under section 33-
848 868, as amended by this act, which remains unsettled, the corporation
849 shall commence a proceeding within sixty days after receiving the
850 payment demand and petition the court to determine the fair value of
851 the shares and accrued interest. If the corporation does not commence
852 the proceeding within the sixty-day period, it shall pay [each dissenter
853 whose demand remains unsettled the amount demanded] in cash to
854 each shareholder the amount the shareholder demanded pursuant to
855 section 33-868, as amended by this act, plus interest.

856 (b) The corporation shall commence the proceeding in the superior
857 court for the judicial district where a corporation's principal office or, if
858 none, its registered office in this state [, its registered office] is located.
859 If the corporation is a foreign corporation without a registered office in
860 this state, it shall commence the proceeding in the superior court for
861 the judicial district where the principal office or registered office of the
862 domestic corporation merged with [or whose shares were acquired by]
863 the foreign corporation was located at the time of the transaction.

864 (c) The corporation shall make all [dissenters] shareholders, whether
865 or not residents of this state, whose demands remain unsettled parties
866 to the proceeding as in an action against their shares and all parties
867 must be served with a copy of the petition. Nonresidents may be
868 served by registered or certified mail or by publication as provided by
869 law.

870 (d) The jurisdiction of the court in which the proceeding is
871 commenced under subsection (b) of this section is plenary and
872 exclusive. The court may appoint one or more persons as appraisers to
873 receive evidence and recommend a decision on the question of fair
874 value. The appraisers shall have the powers described in the order
875 appointing them, or in any amendment to it. The [dissenters]
876 shareholders demanding appraisal rights are entitled to the same

877 discovery rights as parties in other civil proceedings. There shall be no
878 right to a jury trial.

879 (e) Each [dissenter] shareholder made a party to the proceeding is
880 entitled to judgment (1) for the amount, if any, by which the court
881 finds the fair value of [his] the shareholder's shares, plus interest,
882 exceeds the amount paid by the corporation to the shareholder for
883 such shares, or (2) for the fair value, plus [accrued] interest, of [his
884 after-acquired] the shareholder's shares for which the corporation
885 elected to withhold payment under section 33-867, as amended by this
886 act.

887 Sec. 26. Section 33-872 of the general statutes is repealed and the
888 following is substituted in lieu thereof:

889 (a) The court in an appraisal proceeding commenced under section
890 33-871, as amended by this act, shall determine all costs of the
891 proceeding, including the reasonable compensation and expenses of
892 appraisers appointed by the court. The court shall assess the costs
893 against the corporation, except that the court may assess costs against
894 all or some of the [dissenters] shareholders demanding appraisal, in
895 amounts the court finds equitable, to the extent the court finds [the
896 dissenters] such shareholders acted arbitrarily, vexatiously or not in
897 good faith [in demanding payment under section 33-868] with respect
898 to the rights provided by sections 33-855 to 33-872, inclusive, as
899 amended by this act.

900 (b) The court in an appraisal proceeding may also assess the fees
901 and expenses of counsel and experts for the respective parties, in
902 amounts the court finds equitable: (1) Against the corporation and in
903 favor of any or all [dissenters] shareholders demanding appraisal if the
904 court finds the corporation did not substantially comply with the
905 requirements of sections 33-860 to 33-868, inclusive, as amended by
906 this act; or (2) against either the corporation or a [dissenter]
907 shareholder demanding appraisal, in favor of any other party, if the
908 court finds that the party against whom the fees and expenses are

909 assessed acted arbitrarily, vexatiously or not in good faith with respect
910 to the rights provided by sections 33-855 to 33-872, inclusive, as
911 amended by this act.

912 (c) If the court in an appraisal proceeding finds that the services of
913 counsel for any [dissenter] shareholder were of substantial benefit to
914 other [dissenters] shareholders similarly situated, and that the fees for
915 those services should not be assessed against the corporation, the court
916 may award to [these] such counsel reasonable fees to be paid out of the
917 amounts awarded the [dissenters] shareholders who were benefited.

918 (d) To the extent the corporation fails to make a required payment
919 pursuant to section 33-865, as amended by this act, 33-867, as amended
920 by this act, or 33-868, as amended by this act, the shareholder may sue
921 directly for the amount owed and, to the extent successful, shall be
922 entitled to recover from the corporation all costs and expenses of the
923 suit, including counsel fees.

924 Sec. 27. Section 33-947 of the general statutes is repealed and the
925 following is substituted in lieu thereof:

926 (a) A shareholder's agent or attorney has the same inspection and
927 copying rights as the shareholder [he represents] represented.

928 (b) The right to copy records under section 33-946 includes, if
929 reasonable, the right to receive copies [made by photographic,] by
930 xerographic or other means, including copies through an electronic
931 transmission if available and so requested by the shareholder.

932 (c) The corporation may comply at its expense with a shareholder's
933 demand to inspect the record of shareholders under subdivision (3) of
934 subsection (b) of section 33-946 by providing the shareholder with a
935 list of shareholders that was compiled no earlier than the date of the
936 shareholder's demand.

937 ~~[(c)]~~ (d) The corporation may impose a reasonable charge, covering
938 the costs of labor and material, for copies of any documents provided

939 to the shareholder. The charge may not exceed the estimated cost of
940 production, [or] reproduction or transmission of the records.

941 [(d) The corporation may comply with a shareholder's demand to
942 inspect the record of shareholders under subdivision (3) of subsection
943 (b) of section 33-946 by providing him with a list of its shareholders
944 that was compiled no earlier than the date of the shareholder's
945 demand.]

946 Sec. 28. (NEW) (a) A director of a corporation is entitled to inspect
947 and copy the books, records and documents of the corporation at any
948 reasonable time to the extent reasonably related to the performance of
949 the director's duties as a director, including duties as a member of a
950 committee, but not for any other purpose or in any manner that would
951 violate any duty to the corporation.

952 (b) The superior court for the judicial district where the
953 corporation's principal office or, if none in this state, its registered
954 office is located may order inspection and copying of the books,
955 records and documents at the corporation's expense, upon application
956 of a director who has been refused such inspection rights, unless the
957 corporation establishes that the director is not entitled to such
958 inspection rights. The court shall dispose of an application under this
959 subsection on an expedited basis.

960 (c) If an order is issued, the court may include provisions protecting
961 the corporation from undue burden or expense, and prohibiting the
962 director from using information obtained upon exercise of the
963 inspection rights in a manner that would violate a duty to the
964 corporation, and may also order the corporation to reimburse the
965 director for the director's costs, including reasonable counsel fees,
966 incurred in connection with the application.

967 Sec. 29. (NEW) (a) Whenever notice is required to be given under
968 any provision of sections 33-600 to 33-998, inclusive, of the general
969 statutes, as amended by this act, to any shareholder, such notice shall

970 not be required to be given if:

971 (1) Notice of two consecutive annual meetings, and all notices of
972 meetings during the period between such two consecutive annual
973 meetings, have been sent to such shareholder at such shareholder's
974 address as shown on the records of the corporation and have been
975 returned undeliverable; or

976 (2) All, but not less than two, payments of dividends on securities
977 during a twelve-month period, or two consecutive payments of
978 dividends on securities during a period of more than twelve months,
979 have been sent to such shareholder at such shareholder's address as
980 shown on the records of the corporation and have been returned
981 undeliverable.

982 (b) If any such shareholder delivers to the corporation a written
983 notice setting forth such shareholder's current address, the
984 requirement that notice be given to such shareholder shall be
985 reinstated.

986 Sec. 30. Subdivision (9) of section 33-1002 of the general statutes is
987 repealed and the following is substituted in lieu thereof:

988 (9) "Deliver" or "delivery" means any method of delivery used in
989 conventional commercial practice including delivery by hand, mail,
990 commercial delivery and electronic transmission.

991 Sec. 31. Subdivision (13) of section 33-1002 of the general statutes is
992 repealed and the following is substituted in lieu thereof:

993 (13) "Electronic transmission" or "electronically transmitted" means
994 any process of communication not directly involving the physical
995 transfer of paper that is suitable for the retention, retrieval and
996 reproduction of information by the recipient. [and which does not
997 directly involve the physical transfer of paper.]

998 Sec. 32. Subdivision (29) of section 33-1002 of the general statutes is

999 repealed and the following is substituted in lieu thereof:

1000 (29) "Sign" or "signature" includes any manual, facsimile, [or]
1001 conformed or electronic signature.

1002 Sec. 33. Section 33-1003 of the general statutes is repealed and the
1003 following is substituted in lieu thereof:

1004 (a) Notice under sections 33-1000 to 33-1290, inclusive, as amended
1005 by this act, shall be in writing unless oral notice is reasonable under the
1006 circumstances. [Written notice includes notice by electronic
1007 transmission.] Notice by electronic transmission is written notice.

1008 (b) Notice may be communicated in person, by mail or other
1009 method of delivery, or by telephone, voice mail or other electronic
1010 means. If these forms of personal notice are impracticable, notice may
1011 be communicated by a newspaper of general circulation in the area
1012 where published, or by radio, television or other form of public
1013 broadcast communication.

1014 (c) Written notice by a domestic or foreign corporation to its
1015 member, if in a comprehensible form, is effective (1) upon deposit in
1016 the United States mail, [as evidenced by the postmark,] if mailed
1017 postage prepaid and correctly addressed to the member's address
1018 shown in the corporation's current record of members, or (2) when
1019 electronically transmitted to the member in a manner authorized by
1020 the member.

1021 (d) Written notice to a domestic or foreign corporation authorized to
1022 conduct affairs in this state may be addressed to its registered agent at
1023 its registered office or to the corporation or its secretary at its principal
1024 office shown in its most recent annual report or, in the case of a foreign
1025 corporation that has not yet delivered an annual report, in its
1026 application for a certificate of authority.

1027 (e) Except as provided in subsection (c), written notice, if in a
1028 comprehensible form, is effective at the earliest of the following: (1)

1029 When received; (2) five days after its deposit in the United States mail,
1030 if mailed postage prepaid and correctly addressed; or (3) on the date
1031 shown on the return receipt, if sent by registered or certified mail or a
1032 commercial delivery service, return receipt requested, and the receipt
1033 is signed by or on behalf of the addressee.

1034 (f) Oral notice is effective when communicated if communicated in a
1035 comprehensible manner.

1036 (g) If sections 33-1000 to 33-1290, inclusive, as amended by this act,
1037 prescribe notice requirements for particular circumstances, those
1038 requirements govern. If a certificate of incorporation or bylaw
1039 prescribes notice requirements, not inconsistent with this section or
1040 other provisions of said sections, those requirements govern.

1041 (h) In computing the period of time of any notice required or
1042 permitted to be given by sections 33-1000 to 33-1290, inclusive, as
1043 amended by this act, or under the provisions of the certificate of
1044 incorporation or bylaws of a corporation or of a resolution of members
1045 or directors, the day on which the notice is given shall be excluded,
1046 and the day on which the matter noticed is to occur shall be included,
1047 in the absence of a contrary provision.

1048 Sec. 34. Section 33-1004 of the general statutes is repealed and the
1049 following is substituted in lieu thereof:

1050 (a) A document shall satisfy the requirements of this section, and of
1051 any other section that adds to or varies from these requirements, to be
1052 entitled to filing by the Secretary of the State.

1053 (b) Sections 33-1000 to 33-1290, inclusive, as amended by this act,
1054 shall require or permit filing the document in the office of the Secretary
1055 of the State.

1056 (c) The document shall contain the information required by sections
1057 33-1000 to 33-1290, inclusive, as amended by this act. It may contain
1058 other information as well.

1059 (d) The document shall be typewritten or printed or, if [authorized
1060 by the Secretary of the State,] electronically transmitted, it must be in a
1061 format that can be retrieved or reproduced in typewritten or printed
1062 form.

1063 (e) The document shall be in the English language. A corporate
1064 name need not be in English if written in English letters or Arabic or
1065 Roman numerals, and the certificate of existence required of foreign
1066 corporations need not be in English if accompanied by a reasonably
1067 authenticated English translation.

1068 (f) The document shall be executed: (1) By the chairman of the board
1069 of directors of a domestic or foreign corporation, by its president or by
1070 another of its officers; (2) if directors have not been selected or the
1071 corporation has not been formed, by an incorporator; or (3) if the
1072 corporation is in the hands of a receiver, trustee or other court-
1073 appointed fiduciary, by that fiduciary.

1074 (g) The person executing [a] the document shall [, if the document is
1075 typewritten or printed,] sign it and state beneath or opposite [his] such
1076 person's signature [his] such person's name and the capacity in which
1077 [he] such person signs. [or, if the document is electronically
1078 transmitted, affirm and authenticate the execution of the document in
1079 such manner as the Secretary of the State may prescribe as effective for
1080 those purposes.] The document may but need not contain [: (1) The
1081 corporate seal, (2) an attestation by the secretary or an assistant
1082 secretary, (3) an acknowledgment, verification or proof] a corporate
1083 seal, attestation, acknowledgment or verification.

1084 (h) If the Secretary of the State has prescribed a mandatory form for
1085 the document under section 33-1005, the document shall be in or on
1086 the prescribed form.

1087 (i) The document shall be delivered to the office of the Secretary of
1088 the State for filing. Delivery may be made by electronic transmission if
1089 and to the extent permitted by the Secretary of the State. If the

1090 document is filed in typewritten or printed form and not electronically
1091 transmitted, the Secretary of the State may require one exact or
1092 conformed copy to be delivered with the document, except as
1093 provided in sections 33-1052 and 33-1218.

1094 (j) When the document is delivered to the office of the Secretary of
1095 the State for filing, [the document shall be accompanied by] the correct
1096 filing fee, and any franchise tax, license fee or penalty required to be
1097 paid therewith by sections 33-1000 to 33-1290, inclusive, as amended
1098 by this act, or other law, [unless provision has been made for payment
1099 in the manner prescribed] must be paid or provision for payment
1100 made in a manner permitted by the Secretary of the State.

1101 (k) When any document is required or permitted to be filed or
1102 recorded as provided in sections 33-1000 to 33-1290, inclusive, as
1103 amended by this act, the Secretary of the State may in [his] said
1104 secretary's discretion, for good cause, permit a photostatic or other
1105 photographic copy of such document to be filed or recorded in lieu of
1106 the original instrument. Such filing or recording shall have the same
1107 force and effect as if the original instrument had been so filed or
1108 recorded.

1109 Sec. 35. Subsection (a) of section 33-1006 of the general statutes is
1110 repealed and the following is substituted in lieu thereof:

1111 (a) Except as provided in subsection (b) of this section and
1112 subsection (c) of section 33-1007, as amended by this act, a document
1113 accepted for filing is effective: (1) At the date and time of filing, [on the
1114 date it is filed, as evidenced by the Secretary of the State's date and
1115 time endorsement on the original document or, when the document is
1116 electronically transmitted, as evidenced by electronic means prescribed
1117 by the Secretary of the State] as evidenced by such means as the
1118 Secretary of the State may use for the purpose of recording
1119 [electronically] the date and time of filing; or (2) at the time specified in
1120 the document as its effective time on the date it is filed.

1121 Sec. 36. Section 33-1007 of the general statutes is repealed and the
1122 following is substituted in lieu thereof:

1123 (a) A domestic or foreign corporation may correct a document filed
1124 by the Secretary of the State if (1) the document [(1)] contains an
1125 [incorrect statement or (2)] inaccuracy, (2) the document was
1126 defectively executed, attested, sealed, verified or acknowledged, or (3)
1127 the electronic transmission was defective.

1128 (b) A document is corrected: (1) By preparing a certificate of
1129 correction that (A) describes the document, including its filing date, or
1130 attaches a copy of it to the certificate, (B) specifies the [incorrect
1131 statement and the reason it is incorrect or the manner in which the
1132 execution was defective] the inaccuracy to be corrected, and (C)
1133 corrects the [incorrect statement or defective execution] inaccuracy or
1134 defect; and (2) by delivering the certificate of correction to the
1135 Secretary of the State for filing.

1136 (c) A certificate of correction is effective on the effective date of the
1137 document it corrects except as to persons relying on the uncorrected
1138 document and adversely affected by the correction. As to those
1139 persons, a certificate of correction is effective when filed.

1140 Sec. 37. Section 33-1086 of the general statutes is repealed and the
1141 following is substituted in lieu thereof:

1142 [(a)] The certificate of incorporation may provide for staggering the
1143 terms of directors, other than ex-officio directors, by dividing the total
1144 number of directors, other than ex-officio directors, into up to five
1145 groups, with each group containing approximately the same
1146 percentage of the total, as near as may be. In that event, the terms of
1147 directors in the first group expire at the first annual meeting of
1148 members or, in the case of a corporation without members entitled to
1149 vote for directors, at the first annual meeting of the board of directors,
1150 after their election, the terms of the second group expire at the second
1151 such annual meeting of members or directors after their election, the

1152 terms of the third group, if any, expire at the third such annual
1153 meeting of members or directors after their election, the terms of the
1154 fourth group, if any, expire at the fourth such annual meeting of
1155 members or directors after their election, and the terms of the fifth
1156 group, if any, expire at the fifth such annual meeting of members or
1157 directors after their election. At each such annual meeting thereafter,
1158 directors shall be chosen for a term of two years, three years, four years
1159 or five years, as the case may be, to succeed those whose terms expire.

1160 [(b) If a corporation has cumulative voting pursuant to section 33-
1161 1077, this section shall apply only if there are at least three directors in
1162 each group.]

1163 Sec. 38. Section 33-1097 of the general statutes is repealed and the
1164 following is substituted in lieu thereof:

1165 (a) [Unless the] Except to the extent that the certificate of
1166 incorporation or bylaws [provide otherwise] specifically require that
1167 action by the board of directors be taken only at a meeting, action
1168 required or permitted by sections 33-1000 to 33-1290, inclusive, as
1169 amended by this act, to be taken [at a board of directors' meeting] by
1170 the board of directors may be taken without a meeting if [the action is
1171 taken by all members of the board. The action shall be evidenced by
1172 one or more written consents describing the action taken, signed by
1173 each director, and included in the minutes or filed with the corporate
1174 records reflecting the action taken] each director signs a consent
1175 describing the action taken or to be taken and delivers it to the
1176 corporation.

1177 (b) Action taken under this section is [effective when the last
1178 director signs the consent, unless the consent specifies a different
1179 effective date] the act of the board of directors when one or more
1180 consents signed by all the directors are delivered to the corporation.
1181 The consent may specify the time at which the action taken thereunder
1182 is to be effective. A director's consent may be withdrawn by a
1183 revocation signed by the director and delivered to the corporation

1184 prior to delivery to the corporation of unrevoked written consents
1185 signed by all the directors.

1186 (c) A consent signed under this section has the effect of action taken
1187 at a meeting [vote] of the board of directors and may be described as
1188 such in any document.

1189 Sec. 39. Section 33-1101 of the general statutes is repealed and the
1190 following is substituted in lieu thereof:

1191 (a) Unless sections 33-1000 to 33-1290, inclusive, as amended by this
1192 act, the certificate of incorporation or the bylaws provide otherwise, a
1193 board of directors may create one or more committees and appoint one
1194 or more members of the board of directors to serve on [them. Each
1195 committee shall have two or more directors, who serve at the pleasure
1196 of the board of directors] any such committee.

1197 (b) [The] Unless sections 33-1000 to 33-1290, inclusive, as amended
1198 by this act, provide otherwise, the creation of a committee and
1199 appointment of directors to it shall be approved by the greater of (1) a
1200 majority of all the directors in office when the action is taken, or (2) the
1201 number of directors required by the certificate of incorporation or
1202 bylaws to take action under section 33-1100.

1203 (c) [Sections] The provisions of sections 33-1095 to 33-1100,
1204 inclusive, [shall be applicable] as amended by this act, apply both to
1205 committees of the board and their directors.

1206 (d) To the extent specified by the board of directors or in the
1207 certificate of incorporation or bylaws, each committee may exercise the
1208 [authority] powers of the board of directors under section 33-1080.

1209 (e) A committee may not, however: (1) Approve or recommend to
1210 members action that sections 33-1000 to 33-1290, inclusive, as amended
1211 by this act, require be approved by members; (2) fill vacancies on the
1212 board of directors or, subject to subsection (g) of this section, on any of
1213 its committees; [(3) amend the certificate of incorporation; (4)] (3)

1214 adopt, amend or repeal bylaws; [(5)] (4) approve a plan of merger; [(6)]
1215 (5) approve a sale, lease, exchange or other disposition of all, or
1216 substantially all, of the property of a corporation, other than (A) in the
1217 usual and regular course of affairs of the corporation, or (B) a
1218 mortgage, pledge or other encumbrance described in subdivision (2) of
1219 subsection (a) of section 33-1165; or [(7)] (6) approve a proposal to
1220 dissolve.

1221 (f) The creation of, delegation of authority to, or action by a
1222 committee does not alone constitute compliance by a director with the
1223 standards of conduct described in section 33-1104.

1224 (g) The board of directors may appoint one or more directors as
1225 alternate directors of any committee to replace any absent or
1226 disqualified director during the director's absence or disqualification.
1227 If authorized by the certificate of incorporation, the bylaws or the
1228 resolution creating the committee, in the event of the absence or
1229 disqualification of a director of a committee, the director or directors
1230 present at any meeting and not disqualified from voting, unanimously,
1231 may appoint another director to act in place of the absent or
1232 disqualified director.

1233 Sec. 40. Section 33-1109 of the general statutes is repealed and the
1234 following is substituted in lieu thereof:

1235 (a) A corporation has the [officers] offices described in its bylaws.
1236 Officers shall be appointed or elected at such time and in such manner
1237 as may be prescribed by the bylaws and, in the absence of applicable
1238 bylaws, shall be [appointed] elected by the directors.

1239 (b) [A duly appointed] An officer may appoint one or more officers
1240 [or assistant officers] if authorized by the bylaws or the board of
1241 directors.

1242 (c) The bylaws or the board of directors shall [delegate] assign to
1243 one of the officers responsibility for preparing the minutes of the

1244 directors' and members' meetings and for maintaining and
1245 authenticating the records of the corporation required to be kept under
1246 subsections (a) and (e) of section 33-1235.

1247 (d) The same individual may simultaneously hold more than one
1248 office in a corporation.

1249 Sec. 41. Section 33-1112 of the general statutes is repealed and the
1250 following is substituted in lieu thereof:

1251 (a) An officer may resign at any time by delivering notice to the
1252 corporation. A resignation is effective when the notice is delivered
1253 unless the notice specifies a later effective [date] time. If a resignation
1254 is made effective at a later [date] time and the [corporation] board of
1255 directors or the appointing officer accepts the future effective [date, its
1256 board of directors] time, the board or the appointing officer may fill
1257 the pending vacancy before the effective [date] time if the board [of
1258 directors] or the appointing officer provides that the successor does not
1259 take office until the effective [date] time.

1260 (b) [A board of directors may remove any officer] An officer may be
1261 removed at any time with or without cause by: (1) The board of
1262 directors; (2) the officer who appointed such officer, unless the bylaws
1263 provide otherwise; or (3) any other officer if authorized by the bylaws
1264 or the board of directors.

1265 (c) In this section, "appointing officer" means the officer, including
1266 any successor to that officer, who appointed the officer resigning or
1267 being removed.

1268 Sec. 42. Subsection (c) of section 33-1121 of the general statutes is
1269 repealed and the following is substituted in lieu thereof:

1270 (c) Authorization of indemnification shall be made in the same
1271 manner as the determination that indemnification is permissible,
1272 except that if there are fewer than two disinterested directors or if the
1273 determination is made by special legal counsel, authorization of

1274 indemnification shall be made by those entitled under subparagraph
1275 (B) of subdivision (2) of subsection (b) of this section to select special
1276 legal counsel.

1277 Sec. 43. Subsection (a) of section 33-1124 of the general statutes is
1278 repealed and the following is substituted in lieu thereof:

1279 (a) [A provision treating a corporation's indemnification of or (a)] A
1280 corporation may, by a provision in its certificate of incorporation or
1281 bylaws or in a resolution adopted or a contract approved by its board
1282 of directors or members, obligate itself in advance of the act or
1283 omission giving rise to a proceeding to provide indemnification in
1284 accordance with section 33-1117 or advance funds to pay for or
1285 reimburse expenses in accordance with section 33-1119. Any such
1286 obligatory provision shall be deemed to satisfy the requirements for
1287 authorization referred to in subsection (c) of section 33-1119 and
1288 subsection (c) of section 33-1121, as amended by this act. Any such
1289 provision that obligates the corporation to provide indemnification to
1290 the fullest extent permitted by law shall be deemed to obligate the
1291 corporation to advance funds to pay for or reimburse expenses in
1292 accordance with section 33-1119 to the fullest extent permitted by law,
1293 unless the provision specifically provides otherwise.

1294 Sec. 44. Section 33-1237 of the general statutes is repealed and the
1295 following is substituted in lieu thereof:

1296 (a) A member's agent or attorney has the same inspection and
1297 copying rights as the member [he represents] represented.

1298 (b) The right to copy records under section 33-1236 includes, if
1299 reasonable, the right to receive copies [made by photographic,] by
1300 xerographic or other means, including copies through an electronic
1301 transmission if available and so requested by the member.

1302 (c) The corporation may comply at its expense with a member's
1303 demand to inspect the membership list under subdivision (3) of

1304 subsection (b) of section 33-1236 by providing the member with a
1305 membership list that was compiled no earlier than the date of the
1306 member's demand.

1307 [(c)] (d) The corporation may impose a reasonable charge, covering
1308 the costs of labor and material, for copies of any documents provided
1309 to the member. The charge may not exceed the estimated cost of
1310 production, [or] reproduction or transmission of the records.

1311 [(d) The corporation may comply with a member's demand to
1312 inspect the record of members under subdivision (3) of subsection (b)
1313 of section 33-1236 by providing him with a list of its members that was
1314 compiled no earlier than the date of the member's demand.]

1315 Sec. 45. (NEW) (a) A director of a corporation is entitled to inspect
1316 and copy the books, records and documents of the corporation at any
1317 reasonable time to the extent reasonably related to the performance of
1318 the director's duties as a director, including duties as a director of a
1319 committee, but not for any other purpose or in any manner that would
1320 violate any duty to the corporation.

1321 (b) The superior court for the judicial district where the
1322 corporation's principal office or, if none in this state, its registered
1323 office is located may order inspection and copying of the books,
1324 records and documents at the corporation's expense, upon application
1325 of a director who has been refused such inspection rights, unless the
1326 corporation establishes that the director is not entitled to such
1327 inspection rights. The court shall dispose of an application under this
1328 subsection on an expedited basis.

1329 (c) If an order is issued, the court may include provisions protecting
1330 the corporation from under burden or expense, and prohibiting the
1331 director from using information obtained upon exercise of the
1332 inspection rights in a manner that would violate a duty to the
1333 corporation, and may also order the corporation to reimburse the
1334 director for the director's costs, including reasonable counsel fees,

1335 incurred in connection with the application.

1336 Sec. 46. (NEW) (a) Whenever notice is required to be given under
1337 any provision of sections 33-1000 to 33-1290, inclusive, of the general
1338 statutes, as amended by this act, to any member, such notice shall not
1339 be required to be given if notice of two consecutive annual meetings,
1340 and all notices of meetings during the period between such two
1341 consecutive annual meetings, have been sent to such member at such
1342 member's address as shown on the records of the corporation and have
1343 been returned undeliverable.

1344 (b) If any such member delivers to the corporation written notice
1345 setting forth such member's current address, the requirement that
1346 notice be given to such member shall be reinstated.

1347 Sec. 47. Sections 33-864, 33-866, 33-952 and 33-1242 of the general
1348 statutes are repealed.

1349 Sec. 48. This act shall take effect from its passage.

Statement of Purpose:

To revise the business corporation act by making certain changes concerning electronic transmissions, notice, filings, meetings and action of the board of directors, committees, officers, indemnification, appraisal rights and inspection rights, and to revise the nonstock corporation act by making certain changes concerning electronic transmissions, notice, filings, meetings and action of the board of directors, committees, officers, indemnification and inspection rights.

[Proposed deletions are enclosed in brackets. Proposed additions are indicated by underline, except that when the entire text of a bill or resolution or a section of a bill or resolution is new, it is not underlined.]