



# House of Representatives

General Assembly

**File No. 449**

February Session, 2002

Substitute House Bill No. 5676

*House of Representatives, April 11, 2002*

The Committee on Judiciary reported through REP. LAWLOR of the 99th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

**AN ACT CONCERNING PROFESSIONAL SERVICE CORPORATIONS, BUSINESS CORPORATIONS, NONSTOCK CORPORATIONS, LIMITED PARTNERSHIPS, LIMITED LIABILITY COMPANIES AND PARTNERSHIPS.**

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

1 Section 1. Section 33-182i of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2002*):

3 Chapter 601 is applicable to a corporation organized pursuant to  
4 this chapter except to the extent that any of the provisions of this  
5 chapter are interpreted to be in conflict with the provisions of [said]  
6 chapter 601, in which event the provisions of this chapter shall take  
7 precedence with respect to a corporation organized pursuant to the  
8 provisions of this chapter. A professional corporation organized under  
9 this chapter [shall] may consolidate or merge only with another  
10 [domestic] professional corporation organized under this chapter, a  
11 limited liability company organized under chapter 613 or a partnership  
12 or limited liability partnership organized under chapter 614, if such

13 corporation, company or partnership is organized to render the same  
14 specific professional service. [and a] A merger or consolidation of any  
15 professional corporation organized under this chapter with any  
16 foreign corporation, foreign limited liability company, foreign  
17 partnership or foreign limited liability partnership is prohibited.

18 Sec. 2. Section 33-602 of the general statutes is amended by adding  
19 subdivision (32) as follows (*Effective October 1, 2002*):

20 (NEW) (32) "Voting power" means the current power to vote in the  
21 election of directors.

22 Sec. 3. Section 33-611 of the general statutes, as amended by section  
23 7 of public act 01-199, is repealed and the following is substituted in  
24 lieu thereof (*Effective October 1, 2002*):

25 (a) A domestic or foreign corporation may correct a document filed  
26 by the Secretary of the State if (1) the document contains an inaccuracy,  
27 (2) the document was defectively made, executed, attested, sealed,  
28 verified or acknowledged, or (3) the electronic transmission was  
29 defective.

30 (b) A document is corrected: (1) By preparing a certificate of  
31 correction that (A) describes the document, including its filing date, or  
32 attaches a copy of it to the certificate, (B) specifies the inaccuracy or  
33 defect to be corrected, and (C) corrects the inaccuracy or other defect;  
34 and (2) by delivering the certificate to the Secretary of the State for  
35 filing.

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

40 Sec. 4. Section 33-684 of the general statutes is repealed and the  
41 following is substituted in lieu thereof (*Effective October 1, 2002*):

42 (a) A corporation may acquire its own shares and shares so acquired

43 constitute authorized but unissued shares.

44 (b) If the certificate of incorporation prohibits the reissue of acquired  
45 shares, the number of authorized shares is reduced by the number of  
46 shares acquired. [ , effective upon amendment of the certificate of  
47 incorporation.]

48 [(c) The board of directors may adopt a certificate of amendment  
49 under this section without shareholder action and deliver it to the  
50 Secretary of the State for filing. The certificate shall set forth: (1) The  
51 name of the corporation; (2) the reduction in the number of authorized  
52 shares, itemized by class and series; and (3) the total number of  
53 authorized shares, itemized by class and series, remaining after  
54 reduction of the shares.]

55 Sec. 5. Section 33-687 of the general statutes is amended by adding  
56 subsection (h) as follows (*Effective October 1, 2002*):

57 (NEW) (h) This section shall not apply to distributions in the course  
58 of dissolution under sections 33-880 to 33-887, inclusive.

59 Sec. 6. Section 33-743 of the general statutes is repealed and the  
60 following is substituted in lieu thereof (*Effective October 1, 2002*):

61 (a) The superior court for the judicial district where a corporation's  
62 principal office or, if none in this state, its registered office, is located  
63 may remove a director of the corporation from office in a proceeding  
64 commenced either by or in the right of the corporation [or by its  
65 shareholders holding at least ten per cent of the outstanding shares of  
66 any class] if the court finds that (1) the director engaged in fraudulent  
67 [or dishonest conduct or gross abuse of authority or discretion,]  
68 conduct with respect to the corporation [and (2) removal is] or its  
69 shareholders, grossly abused the position of director or intentionally  
70 inflicted harm on the corporation, and (2) considering the director's  
71 course of conduct and the inadequacy of other available remedies,  
72 removal would be in the best interest of the corporation.

73 (b) A shareholder proceeding on behalf of the corporation under

74 subsection (a) of this section shall comply with all of the requirements  
75 of sections 33-720 to 33-727, inclusive, except subdivision (1) of section  
76 33-721.

77 [(b)] (c) The court, [that removes] in addition to removing a director,  
78 may bar the director from reelection for a period prescribed by the  
79 court.

80 [(c) If shareholders commence a proceeding under subsection (a) of  
81 this section, they shall make the corporation a party defendant.]

82 (d) Nothing in this section limits the equitable powers of the court to  
83 order other relief.

84 Sec. 7. Section 33-757 of the general statutes is repealed and the  
85 following is substituted in lieu thereof (*Effective October 1, 2002*):

86 (a) A director who votes for or assents to a distribution made in  
87 violation of section 33-687, as amended by this act, section 31 of this act  
88 or the certificate of incorporation is personally liable to the corporation  
89 for the amount of the distribution that exceeds what could have been  
90 distributed without violating [said] section 33-687, as amended by this  
91 act, section 31 of this act or the certificate of incorporation if it is  
92 established that he did not perform his duties in compliance with  
93 section 33-756 or section 31 of this act. In any proceeding commenced  
94 under this section, a director has all of the defenses ordinarily available  
95 to a director.

96 (b) A director held liable under subsection (a) of this section for an  
97 unlawful distribution is entitled to contribution: (1) From every other  
98 director who could be held liable under subsection (a) of this section  
99 for the unlawful distribution; and (2) from each shareholder for the  
100 amount the shareholder accepted knowing the distribution was made  
101 in violation of section 33-687, as amended by this act, section 31 of this  
102 act or the certificate of incorporation.

103 (c) A proceeding under this section to enforce (1) the liability of a  
104 director under subsection (a) of this section is barred unless it is

105 commenced within two years after the date (A) on which the effect of  
106 the distribution was measured under subsection (e) or (g) of section 33-  
107 687, (B) as of which a violation of subsection (a) of section 33-687  
108 occurred as a consequence of disregarding a restriction in the  
109 certificate of incorporation, or (C) on which the distribution of assets to  
110 shareholders was made under section 31 of this act; or (2) contribution  
111 or recoupment under subsection (b) of this section is barred unless it is  
112 commenced within one year after the liability of the claimant has been  
113 finally adjudicated under subsection (a) of this section.

114 (d) For purposes of this section, a director shall be deemed to have  
115 voted for a distribution if such director was present at the meeting of  
116 the board of directors or committee thereof at the time such  
117 distribution was authorized and did not vote in dissent therefrom, or if  
118 such director consented thereto pursuant to section 33-749.

119 Sec. 8. Subsection (a) of section 33-795 of the general statutes is  
120 repealed and the following is substituted in lieu thereof (*Effective*  
121 *October 1, 2002*):

122 (a) A corporation may amend its certificate of incorporation at any  
123 time to add or change a provision that is required or permitted in the  
124 certificate of incorporation as of the effective date of the amendment or  
125 to delete a provision that is not required to be contained in the  
126 certificate of incorporation. [Whether a provision is required or  
127 permitted in the certificate of incorporation is determined as of the  
128 effective date of the amendment.]

129 Sec. 9. Section 33-796 of the general statutes is repealed and the  
130 following is substituted in lieu thereof (*Effective October 1, 2002*):

131 Unless the certificate of incorporation provides otherwise, a  
132 corporation's board of directors may adopt [one or more] amendments  
133 to the corporation's certificate of incorporation without shareholder  
134 [action] approval: (1) To extend the duration of the corporation if it  
135 was incorporated at a time when limited duration was required by  
136 law; (2) to delete the names and addresses of the initial directors; (3) to

137 delete the name and address of the initial registered agent or registered  
138 office, if a statement of change is on file with the Secretary of the State;  
139 (4) if the corporation has only one class of shares outstanding (A) to  
140 change each issued and unissued authorized share of [an outstanding]  
141 the class into a greater number of whole shares [if the corporation has  
142 only shares of that class outstanding] of such class, or (B) to increase  
143 the number of authorized shares of the class to the extent necessary to  
144 permit the issuance of shares as a share dividend; (5) to change the  
145 corporate name by substituting the word "corporation", "incorporated",  
146 "company", "Societa per Azioni" or "limited", or the abbreviation  
147 "corp.", "inc.", "co.", "S.p.A." or "ltd.", for a similar word or abbreviation  
148 in the name or by adding, deleting or changing a geographical  
149 attribution for the name; [or] (6) to reflect a reduction in authorized  
150 shares, as a result of the operation of subsection (b) of section 33-684,  
151 as amended by this act, when the corporation has acquired its own  
152 shares and the certificate of incorporation prohibits the reissue of the  
153 acquired shares; (7) to delete a class of shares from the certificate of  
154 incorporation, as a result of the operation of subsection (b) of section  
155 33-684, as amended by this act, when there are no remaining shares of  
156 the class because the corporation has acquired all shares of the class  
157 and the certificate of incorporation prohibits the reissue of the acquired  
158 shares; or (8) to make any other change expressly permitted by sections  
159 33-600 to 33-998, inclusive, to be made without shareholder [action]  
160 approval.

161 Sec. 10. Section 33-797 of the general statutes is repealed and the  
162 following is substituted in lieu thereof (*Effective October 1, 2002*):

163 (a) [A corporation's board of directors may propose one or more  
164 amendments to the certificate of incorporation for submission to the  
165 shareholders.] If a corporation has issued shares, an amendment to the  
166 certificate of incorporation shall be adopted as provided in this section.  
167 A proposed amendment must be adopted by the board of directors.

168 (b) [For the amendment to be adopted: (1) The] Except as provided  
169 in sections 33-796, 33-801, and 33-802, as amended by this act, after

170 adopting the proposed amendment, the board of directors must  
171 [recommend] submit the amendment to the shareholders for their  
172 approval. The board of directors must also transmit to the  
173 shareholders a recommendation that the shareholders approve the  
174 amendment, unless the board of directors [determines] makes a  
175 determination that because of [conflict] conflicts of interest or other  
176 special circumstances it should not make [no] such a recommendation,  
177 [and communicates the basis for its determination to the shareholders  
178 with the amendment; and (2) the shareholders entitled to vote on the  
179 amendment must approve the amendment as provided in subsection  
180 (e) of this section] in which case the board of directors must transmit to  
181 the shareholders the basis for such determination.

182 (c) The board of directors may condition its submission of the  
183 [proposed] amendment to the shareholders on any basis.

184 (d) [The] If the amendment is required to be approved by the  
185 shareholders, and the approval is to be given at a meeting, the  
186 corporation [shall] must notify each shareholder, whether or not  
187 entitled to vote, of the [proposed shareholders' meeting in accordance  
188 with section 33-699. The notice of meeting shall also] meeting of  
189 shareholders at which the amendment is to be submitted for approval.  
190 The notice must state that the purpose, or one of the purposes, of the  
191 meeting is to consider the [proposed] amendment and must contain or  
192 be accompanied by a copy [or summary] of the amendment.

193 (e) Unless sections 33-600 to 33-998, inclusive, the certificate of  
194 incorporation or the board of directors acting pursuant to subsection  
195 (c) of this section requires a greater vote or a vote by voting groups,  
196 and except as provided in subsection (f) of this section, the amendment  
197 to be adopted must be approved by: (1) A majority of the votes entitled  
198 to be cast on the amendment by any voting group with respect to  
199 which the amendment would create [dissenters'] appraisal rights; and  
200 (2) the votes required by sections 33-709 and 33-710 by every other  
201 voting group entitled to vote on the amendment.

202 (f) Notwithstanding any provision of subsection (e) of this section to

203 the contrary, an amendment to the certificate of incorporation of a  
204 corporation which was incorporated under the laws of this state,  
205 whether under chapter 599 of the general statutes, revision of 1958,  
206 revised to January 1, 1995, or any other general law or special act, prior  
207 to January 1, 1997, and which at the time of any shareholder vote on  
208 such a proposed amendment has less than one hundred shareholders  
209 of record, shall, unless the certificate of incorporation of such  
210 corporation expressly provides otherwise, be approved by the  
211 affirmative vote of at least two-thirds of the voting power of each  
212 voting group entitled to vote thereon.

213 Sec. 11. Section 33-798 of the general statutes is repealed and the  
214 following is substituted in lieu thereof (*Effective October 1, 2002*):

215 (a) [The] If a corporation has more than one class of shares  
216 outstanding, the holders of the outstanding shares of a class are  
217 entitled to vote as a separate voting group, if shareholder voting is  
218 otherwise required by sections 33-600 to 33-998, inclusive, on a  
219 proposed amendment to the certificate of incorporation if the  
220 amendment would:

221 [(1) Increase or decrease the aggregate number of authorized shares  
222 of the class;]

223 [(2)] (1) Effect an exchange or reclassification of all or part of the  
224 shares of the class into shares of another class;

225 [(3)] (2) Effect an exchange or reclassification, or create the right of  
226 exchange, of all or part of the shares of another class into shares of the  
227 class;

228 [(4)] (3) Change the [designation,] rights, preferences or limitations  
229 of all or part of the shares of the class;

230 [(5)] (4) Change the shares of all or part of the class into a different  
231 number of shares of the same class;

232 [(6)] (5) Create a new class of shares having rights or preferences

233 with respect to distributions or to dissolution that are prior [ ] or  
234 superior [or substantially equal] to the shares of the class;

235 ~~[(7)]~~ (6) Increase the rights, preferences or number of authorized  
236 shares of any class that, after giving effect to the amendment, have  
237 rights or preferences with respect to distributions or to dissolution that  
238 are prior [ ] or superior [or substantially equal] to the shares of the  
239 class;

240 ~~[(8)]~~ (7) Limit or deny an existing preemptive right of all or part of  
241 the shares of the class; or

242 ~~[(9)]~~ (8) Cancel or otherwise affect rights to distributions [or  
243 dividends] that have accumulated but not yet been [declared]  
244 authorized on all or part of the shares of the class.

245 (b) If a proposed amendment would affect a series of a class of  
246 shares in one or more of the ways described in subsection (a) of this  
247 section, the holders of shares of that series are entitled to vote as a  
248 separate voting group on the proposed amendment.

249 (c) If a proposed amendment that entitles the holders of two or more  
250 classes or series of shares to vote as separate voting groups under this  
251 section would affect those two or more classes or series in the same or  
252 a substantially similar way, the holders of shares of all the classes or  
253 series so affected must vote together as a single voting group on the  
254 proposed amendment, unless otherwise provided in the certificate of  
255 incorporation or required by the board of directors.

256 (d) A class or series of shares is entitled to the voting rights granted  
257 by this section although the certificate of incorporation provides that  
258 the shares are nonvoting shares.

259 Sec. 12. Section 33-799 of the general statutes is repealed and the  
260 following is substituted in lieu thereof (*Effective October 1, 2002*):

261 If a corporation has not yet issued shares, its [incorporators or]  
262 board of directors, or the incorporators if it has no board of directors,

263 may adopt one or more amendments to the corporation's certificate of  
264 incorporation.

265 Sec. 13. Section 33-800 of the general statutes is repealed and the  
266 following is substituted in lieu thereof (*Effective October 1, 2002*):

267 [A corporation amending its] After an amendment to the certificate  
268 of incorporation has been adopted and approved in the manner  
269 required by sections 33-600 to 33-998, inclusive, and by the certificate  
270 of incorporation, the corporation shall deliver to the Secretary of the  
271 State for filing a certificate of amendment, [setting] which shall set  
272 forth: (1) The name of the corporation; (2) the text of each amendment  
273 adopted; (3) if an amendment provides for an exchange,  
274 reclassification or cancellation of issued shares, provisions for  
275 implementing the amendment if not contained in the amendment  
276 itself; (4) the date of each amendment's adoption; and (5) if an  
277 amendment (A) was adopted by the incorporators or board of  
278 directors without shareholder [action, a statement to that effect and  
279 that shareholder action was not required; (6) if an amendment was  
280 approved by the shareholders (A) the designation, number of  
281 outstanding shares, number of votes entitled to be cast by each voting  
282 group entitled to vote separately on the amendment and number of  
283 votes of each voting group indisputably represented at the meeting,  
284 (B) either the total number of votes cast for and against the amendment  
285 by each voting group entitled to vote separately on the amendment or  
286 the total number of undisputed votes cast for the amendment by each  
287 voting group and a statement that the number cast for the amendment  
288 by each voting group was sufficient for approval by that voting group]  
289 approval, a statement that the amendment was duly approved by the  
290 incorporators or by the board of directors, as the case may be, and that  
291 shareholder approval was not required, or (B) required approval by  
292 the shareholders, a statement that the amendment was duly approved  
293 by the shareholders in the manner required by sections 33-600 to 33-  
294 998, inclusive, and by the certificate of incorporation.

295 Sec. 14. Section 33-801 of the general statutes is repealed and the

296 following is substituted in lieu thereof (*Effective October 1, 2002*):

297 (a) A corporation's board of directors may restate its certificate of  
298 incorporation at any time, with or without shareholder [action]  
299 approval, to consolidate all amendments to the certificate of  
300 incorporation into a single document.

301 (b) [The restatement may include one or more amendments to the  
302 certificate of incorporation. If the restatement includes an amendment  
303 requiring shareholder approval, it] If the restated certificate of  
304 incorporation includes one or more new amendments that require  
305 shareholder approval, the new amendments must be adopted and  
306 approved as provided in section 33-797, as amended by this act.

307 [(c) If the board of directors submits a restatement for shareholder  
308 action, the corporation shall notify each shareholder, whether or not  
309 entitled to vote, of the proposed shareholders' meeting in accordance  
310 with section 33-699. The notice must also state that the purpose, or one  
311 of the purposes, of the meeting is to consider the proposed restatement  
312 and contain or be accompanied by a copy of the restatement that  
313 identifies any amendment or other change it would make in the  
314 certificate of incorporation.]

315 [(d)] (c) A corporation [restating] that restates its certificate of  
316 incorporation shall deliver to the Secretary of the State for filing a  
317 certificate of restatement setting forth the name of the corporation and  
318 the text of the restated certificate of incorporation together with (1) a  
319 statement [setting forth: (1) Whether the restatement contains an  
320 amendment to the certificate of incorporation requiring shareholder  
321 approval and, if it does not, that the board of directors adopted the  
322 restatement; or (2) if the restatement contains an amendment to the  
323 certificate of incorporation requiring shareholder approval, the  
324 information required by section 33-800] that the restated certificate of  
325 incorporation consolidates all amendments into a single document,  
326 and (2) if a new amendment is included in the restated certificate of  
327 incorporation, the statement required under section 33-800, as  
328 amended by this act.

329 [(e)] (d) A duly adopted restated certificate of incorporation  
330 supersedes the original certificate of incorporation and all  
331 amendments to it.

332 [(f)] (e) The Secretary of the State may certify a restated certificate of  
333 incorporation as the certificate of incorporation currently in effect,  
334 without including the statement information required by subsection  
335 [(d)] (c) of this section.

336 Sec. 15. Section 33-802 of the general statutes is repealed and the  
337 following is substituted in lieu thereof (*Effective October 1, 2002*):

338 (a) A corporation's certificate of incorporation may be amended  
339 without action by the board of directors or shareholders to carry out a  
340 plan of reorganization ordered or decreed by a court of competent  
341 jurisdiction under [federal statute if the certificate of incorporation  
342 after amendment contains only provisions required or permitted by  
343 section 33-636] a law of the United States.

344 (b) The individual or individuals designated by the court shall  
345 deliver to the Secretary of the State for filing a certificate of  
346 amendment setting forth: (1) The name of the corporation; (2) the text  
347 of each amendment approved by the court; (3) the date of the court's  
348 order or decree approving the certificate of amendment; (4) the title of  
349 the reorganization proceeding in which the order or decree was  
350 entered; and (5) a statement that the court had jurisdiction of the  
351 proceeding under federal [law] statute.

352 [(c)] Shareholders of a corporation undergoing reorganization do not  
353 have dissenters' rights except as and to the extent provided in the  
354 reorganization plan.]

355 [(d)] (c) This section does not apply after entry of a final decree in  
356 the reorganization proceeding even though the court retains  
357 jurisdiction of the proceeding for limited purposes unrelated to  
358 consummation of the reorganization plan.

359 Sec. 16. Section 33-806 of the general statutes is repealed and the

360 following is substituted in lieu thereof (*Effective October 1, 2002*):

361 (a) A corporation's shareholders may amend or repeal the  
362 corporation's bylaws.

363 [(a)] (b) A corporation's board of directors may amend or repeal the  
364 corporation's bylaws unless: (1) The certificate of incorporation or  
365 [sections 33-600 to 33-998, inclusive, reserve this] section 33-808  
366 reserves such power exclusively to the shareholders in whole or part;  
367 or (2) the shareholders, in amending, [or] repealing or adopting a  
368 particular bylaw, [provide] expressly provide that the board of  
369 directors may not amend, [or] repeal or reinstate that bylaw.

370 [(b) A corporation's shareholders may amend or repeal the  
371 corporation's bylaws even though the bylaws may also be amended or  
372 repealed by its board of directors.]

373 Sec. 17. (NEW) (*Effective October 1, 2002*) As used in this section,  
374 sections 33-815 to 33-820, inclusive, of the general statutes, as amended  
375 by this act, and section 24 of this act:

376 (1) "Interests" means the proprietary interests in an other entity.

377 (2) "Merger" means a business combination pursuant to section 33-  
378 815 of the general statutes, as amended by this act.

379 (3) "Organizational documents" means the basic document or  
380 documents that create, or determine the internal governance of, an  
381 other entity.

382 (4) "Other entity" means any association or legal entity, other than a  
383 domestic or foreign corporation, organized to conduct business,  
384 including, but not limited to, a partnership, limited partnership,  
385 limited liability partnership, limited liability company, joint venture,  
386 joint stock company, business trust, statutory trust and real estate  
387 investment trust.

388 (5) "Party to a merger" means any domestic or foreign corporation

389 or other entity that will merge under a plan of merger.

390 (6) "Party to a share exchange" means any domestic or foreign  
391 corporation or other entity that will: (A) Acquire shares or interests of  
392 another corporation or an other entity in a share exchange; or (B) have  
393 all of its shares or interests or all of one or more classes or series of its  
394 shares or interests acquired in a share exchange.

395 (7) "Share exchange" means a business combination pursuant to  
396 section 33-816 of the general statutes, as amended by this act.

397 (8) "Survivor" means, in a merger, the corporation or other entity  
398 into which one or more other corporations or other entities are merged.  
399 A survivor of a merger may preexist the merger or be created by the  
400 merger.

401 Sec. 18. Section 33-815 of the general statutes is repealed and the  
402 following is substituted in lieu thereof (*Effective October 1, 2002*):

403 (a) One or more domestic corporations may merge [into another  
404 corporation if the board of directors of each corporation adopts and its  
405 shareholders, if required by section 33-817, approve] with a domestic  
406 or foreign corporation or other entity pursuant to a plan of merger.

407 (b) A foreign corporation, or a domestic or foreign other entity, may  
408 be a party to a merger, or may be created by the terms of a plan of  
409 merger, only if: (1) The merger is permitted by the law of the state or  
410 country under which such corporation or other entity is organized or  
411 by which it is governed; and (2) in effecting the merger, such  
412 corporation or other entity complies with such law and with its  
413 certificate of incorporation or organizational documents.

414 [(b)] (c) The plan of merger [shall set forth] must include: (1) The  
415 name of each corporation [planning to] or other entity that will merge  
416 and the name of the [surviving corporation into which each other  
417 corporation plans to merge] corporation or other entity that will be the  
418 survivor of the merger; (2) the terms and conditions of the merger;  
419 [and] (3) the manner and basis of converting the shares of each

420 [corporation into shares, obligations or other securities of the surviving  
421 or any other corporation or into cash or other property in whole or  
422 part] merging corporation and interests of each merging other entity  
423 into shares or other securities, interests, obligations, rights to acquire  
424 shares or other securities, cash or other property, or any combination  
425 thereof; (4) the certificate of incorporation of any corporation, or the  
426 organizational documents of any other entity, to be created by the  
427 merger or, if a new corporation or other entity is not to be created by  
428 the merger, any amendments to the survivor's certificate of  
429 incorporation or organizational documents; and (5) any other  
430 provisions required by the law of the state or country under which any  
431 party to the merger is organized or by which it is governed, or by the  
432 certificate of incorporation or organizational documents of any such  
433 party.

434 [(c) The plan of merger may set forth: (1) Amendments to the  
435 certificate of incorporation of the surviving corporation; and (2) other  
436 provisions relating to the merger.]

437 (d) The terms of the plan of merger described in subdivisions (2)  
438 and (3) of subsection (c) of this section may be made dependent upon  
439 facts ascertainable outside the plan of merger, provided such facts are  
440 objectively ascertainable. For the purposes of this subsection, "facts"  
441 includes, but is not limited to, the occurrence of any event, including a  
442 determination or action by any person or body, including the  
443 corporation.

444 (e) The plan of merger may also include a provision that the plan  
445 may be amended prior to filing a certificate of merger with the  
446 Secretary of the State, provided, if the shareholders of a domestic  
447 corporation that is a party to the merger are required or permitted to  
448 vote on the plan, the plan must provide that, subsequent to approval  
449 of the plan by such shareholders, the plan may not be amended to: (1)  
450 Change the amount or kind of shares or other securities, interests,  
451 obligations, rights to acquire shares or other securities, cash or other  
452 property to be received by the shareholders of or owners of interests in

453 any party to the merger upon conversion of their shares or interests  
454 under the plan; (2) change the certificate of incorporation of any  
455 corporation, or the organizational documents of any other entity, that  
456 will survive or be created as a result of the merger, except for changes  
457 permitted by section 33-796, as amended by this act, or by comparable  
458 provisions of the law of the state or country under which the foreign  
459 corporation or foreign other entity is organized or by which it is  
460 governed; or (3) change any of the other terms or conditions of the  
461 plan if the change would adversely affect such shareholders in any  
462 material respect.

463 Sec. 19. Section 33-816 of the general statutes is repealed and the  
464 following is substituted in lieu thereof (*Effective October 1, 2002*):

465 (a) [A] Through a share exchange: (1) A domestic corporation may  
466 acquire all of the [outstanding] shares of one or more classes or series  
467 of [another corporation if the board of directors of each corporation  
468 adopts and its shareholders, if required by section 33-817, approve the  
469 exchange] shares of another domestic corporation or of a foreign  
470 corporation, or all of the interests of one or more classes or series of  
471 interests of a domestic or foreign other entity, in exchange for shares or  
472 other securities, interests, obligations, rights to acquire shares or other  
473 securities, cash or other property, or any combination thereof,  
474 pursuant to a plan of share exchange; or (2) all of the shares of one or  
475 more classes or series of shares of a domestic corporation may be  
476 acquired by another domestic corporation or by a foreign corporation  
477 or other entity, in exchange for shares or other securities, interests,  
478 obligations, rights to acquire shares or other securities, cash or other  
479 property, or any combination thereof, pursuant to a plan of share  
480 exchange.

481 [(b) The plan of exchange shall set forth: (1) The name of the  
482 corporation whose shares will be acquired and the name of the  
483 acquiring corporation; (2) the terms and conditions of the exchange; (3)  
484 the manner and basis of exchanging the shares to be acquired for  
485 shares, obligations or other securities of the acquiring or any other

486 corporation or for cash or other property in whole or part.

487 (c) The plan of exchange may set forth other provisions relating to  
488 the exchange.

489 (d) This section does not limit the power of a corporation to acquire  
490 all or part of the shares of one or more classes or series of another  
491 corporation through a voluntary exchange or otherwise.]

492 (b) A foreign corporation, or a domestic or foreign other entity, may  
493 be a party to a share exchange only if: (1) The share exchange is  
494 permitted by the law of the state or country under which such  
495 corporation or other entity is organized or by which it is governed; and  
496 (2) in effecting the share exchange, such corporation or other entity  
497 complies with such law and with its certificate of incorporation or  
498 organizational documents.

499 (c) The plan of share exchange must include: (1) The name of each  
500 corporation or other entity whose shares or interests will be acquired  
501 and the name of the corporation or other entity that will acquire such  
502 shares or interests; (2) the terms and conditions of the share exchange;  
503 (3) the manner and basis of exchanging shares of a corporation or  
504 interests in an other entity whose shares or interests will be acquired  
505 under the share exchange into shares or other securities, interests,  
506 obligations, rights to acquire shares or other securities, cash or other  
507 property, or any combination thereof; and (4) any other provisions  
508 required by the law of the state or country under which any party to  
509 the share exchange is organized or by which it is governed or by the  
510 certificate of incorporation or organizational documents of any such  
511 party.

512 (d) The terms of the plan of share exchange described in  
513 subdivisions (2) and (3) of subsection (c) of this section may be made  
514 dependent on facts ascertainable outside the plan of share exchange,  
515 provided such facts are objectively ascertainable. For the purposes of  
516 this subsection, "facts" includes, but is not limited to, the occurrence of  
517 any event, including a determination or action by any person or body,

518 including the corporation.

519 (e) The plan of share exchange may also include a provision that the  
520 plan may be amended prior to the filing of a certificate of share  
521 exchange with the Secretary of the State, provided, if the shareholders  
522 of a domestic corporation that is a party to the share exchange are  
523 required or permitted to vote on the plan, the plan must provide that,  
524 subsequent to approval of the plan by such shareholders, the plan may  
525 not be amended to: (1) Change the amount or kind of shares or other  
526 securities, interests, obligations, rights to acquire shares or other  
527 securities, cash or other property to be issued by the corporation or to  
528 be received by the shareholders of or owners of interests in any party  
529 to the share exchange in exchange for their shares or interests under  
530 the plan; or (2) change any of the terms or conditions of the plan if the  
531 change would adversely affect such shareholders in any material  
532 respect.

533 (f) This section does not limit the power of a domestic corporation to  
534 acquire shares of another corporation or interests in an other entity in a  
535 transaction other than a share exchange.

536 Sec. 20. Section 33-817 of the general statutes is repealed and the  
537 following is substituted in lieu thereof (*Effective October 1, 2002*):

538 [(a) After adopting a plan of merger or share exchange, the board of  
539 directors of each corporation party to the merger, and the board of  
540 directors of the corporation whose shares will be acquired in the share  
541 exchange, shall submit the plan of merger, except as provided in  
542 subsection (g) of this section, or share exchange for approval by its  
543 shareholders.

544 (b) For a plan of merger or share exchange to be approved: (1) The  
545 board of directors must recommend the plan of merger or share  
546 exchange to the shareholders, unless the board of directors determines  
547 that because of conflict of interest or other special circumstances it  
548 should make no recommendation and communicates the basis for its  
549 determination to the shareholders with the plan; and (2) the

550 shareholders entitled to vote must approve the plan.]

551 In the case of a domestic corporation that is a party to a merger or a  
552 share exchange:

553 (1) The plan of merger or share exchange must be adopted by the  
554 board of directors.

555 (2) Except as provided in subdivision (7) of this section and section  
556 33-818, as amended by this act, after adopting the plan of merger or  
557 share exchange, the board of directors must submit the plan to the  
558 shareholders for their approval. The board of directors must also  
559 transmit to the shareholders a recommendation that the shareholders  
560 approve the plan, unless the board of directors makes a determination  
561 that because of conflicts of interest or other special circumstances it  
562 should not make such a recommendation, in which case the board of  
563 directors must transmit to the shareholders the basis for such  
564 determination.

565 [(c)] (3) The board of directors may condition its submission of the  
566 [proposed] plan of merger or share exchange to the shareholders on  
567 any basis.

568 [(d) The corporation shall] (4) If the plan of merger or share  
569 exchange is required to be approved by the shareholders, and if the  
570 approval is to be given at a meeting, the corporation must notify each  
571 shareholder, whether or not entitled to vote, of the [proposed  
572 shareholders' meeting in accordance with section 33-699] meeting of  
573 shareholders at which the plan is to be submitted for approval. The  
574 notice must also state that the purpose, or one of the purposes, of the  
575 meeting is to consider the plan [of merger or share exchange] and must  
576 contain or be accompanied by a copy or summary of the plan. If the  
577 corporation is to be merged into an existing corporation or other entity,  
578 the notice shall also include or be accompanied by a copy or summary  
579 of the certificate of incorporation or organizational documents of such  
580 existing corporation or other entity. If the corporation is to be merged  
581 into a corporation or other entity that is to be created pursuant to the

582 merger, the notice shall include or be accompanied by a copy or a  
583 summary of the certificate of incorporation or organizational  
584 documents of the new corporation or other entity.

585 [(e)] (5) Unless sections 33-600 to 33-998, inclusive, the certificate of  
586 incorporation or the board of directors acting pursuant to [subsection  
587 (c)] subdivision (3) of this section requires a greater vote or a vote by  
588 voting groups, and except as provided in [subsection (j)] subdivision  
589 (9) of this section, the plan of merger or share exchange to be  
590 authorized must be approved by each voting group entitled to vote  
591 separately on the plan by a majority of all the votes entitled to be cast  
592 on the plan by that voting group.

593 [(f)] (6) Separate voting by voting groups is required: [(1)] (A) On a  
594 plan of merger, [if the plan contains a provision] by each class or series  
595 of shares that (i) are to be converted, pursuant to the provisions of the  
596 plan of merger, into shares or other securities, interests, obligations,  
597 rights to acquire shares or other securities, cash or other property, or  
598 any combination thereof, or (ii) would have a right to vote as a  
599 separate group on a provision in the plan that, if contained in a  
600 proposed amendment to the certificate of incorporation, would require  
601 action by [one or more] separate voting groups [on the proposed  
602 amendment] under section 33-798, as amended by this act; [(2)] (B) on  
603 a plan of share exchange, by each class or series of shares included in  
604 the exchange, with each class or series constituting a separate voting  
605 group; and (C) on a plan of merger or share exchange, if the voting  
606 group is entitled under the certificate of incorporation to vote as a  
607 voting group to approve a plan of merger or share exchange.

608 [(g) Action by the shareholders of the surviving corporation on a  
609 plan of merger] (7) Unless the certificate of incorporation otherwise  
610 provides, approval by the corporation's shareholders of a plan of  
611 merger or share exchange is not required if: [(1) The certificate of  
612 incorporation of the surviving corporation will not differ,] (A) The  
613 corporation will be the survivor in the merger or is the acquiring  
614 corporation in the share exchange; (B) except for amendments

615 [enumerated in] permitted by section 33-796, as amended by this act,  
616 [from] its certificate of incorporation [before the merger; (2)] will not be  
617 changed; and (C) each shareholder of the [surviving] corporation  
618 whose shares were outstanding immediately before the effective date  
619 of the merger or the share exchange will hold the same number of  
620 shares, with identical [designations,] preferences, limitations and  
621 relative rights, immediately after [; (3) the number of voting shares  
622 outstanding immediately after the merger, plus the number of voting  
623 shares issuable as a result of the merger, either by the conversion of  
624 securities issued pursuant to the merger or the exercise of rights and  
625 warrants issued pursuant to the merger, will not exceed by more than  
626 twenty per cent the total number of voting shares of the surviving  
627 corporation outstanding immediately before the merger; and (4) the  
628 number of participating shares outstanding immediately after the  
629 merger, plus the number of participating shares issuable as a result of  
630 the merger, either by the conversion of securities issued pursuant to  
631 the merger or the exercise of rights and warrants issued pursuant to  
632 the merger, will not exceed by more than twenty per cent the total  
633 number of participating shares outstanding immediately before the  
634 merger] the effective date of the merger or the share exchange.

635 [(h) As used in subsection (g) of this section: (1) "Participating  
636 shares" means shares that entitle their holders to participate without  
637 limitation in distributions; and (2) "voting shares" means shares that  
638 entitle their holders to vote unconditionally in elections of directors.

639 (i) After a merger or share exchange is authorized, and at any time  
640 before the certificate of merger or share exchange is filed, the planned  
641 merger or share exchange may be abandoned, subject to any  
642 contractual rights, without further shareholder action, in accordance  
643 with the procedure set forth in the plan of merger or share exchange  
644 or, if none is set forth, in the manner determined by the board of  
645 directors.]

646 (8) If, as a result of a merger or a share exchange, one or more  
647 shareholders of a domestic corporation would become subject to

648 personal liability for the obligations or liabilities of any other person or  
649 entity, approval of the plan of merger or share exchange shall require  
650 the execution, by each such shareholder, of a separate written consent  
651 to become subject to such personal liability.

652 [(j)] (9) Notwithstanding any provision of [subsection (e)]  
653 subdivision (5) of this section to the contrary, a plan of merger or share  
654 exchange of a corporation which was incorporated under the laws of  
655 this state, whether under chapter 599 of the general statutes, revision  
656 of 1958, revised to January 1, 1995, or any other general law or special  
657 act, prior to January 1, 1997, to be authorized by such corporation, shall  
658 be approved by [(1)] (A) the affirmative vote of at least two-thirds of  
659 the voting power of each voting group entitled to vote thereon unless  
660 the certificate of incorporation expressly provides otherwise, provided  
661 if such corporation is the surviving corporation of such merger and  
662 such plan of merger will not effect any change in or amendment to the  
663 certificate of incorporation of such corporation and the shares to be  
664 issued under the plan of merger could have been issued by the board  
665 of directors of such corporation without further authorization of the  
666 shareholders of such corporation, then the provisions of this  
667 subdivision shall not require approval of such plan of merger or share  
668 exchange by the corporation's shareholders, and [(2)] (B) the  
669 affirmative vote of at least two-thirds of the voting power of each class  
670 of stock of such corporation outstanding prior to January 1, 1997, and  
671 not otherwise entitled to vote thereon, unless the certificate of  
672 incorporation expressly provides otherwise; provided if such  
673 corporation is the surviving corporation of such merger and such plan  
674 of merger or share exchange does not contain any provisions which, if  
675 contained in a proposed amendment to the certificate of incorporation  
676 of such corporation, would entitle any class or series of shareholders of  
677 such surviving corporation to vote as a class or series as provided in  
678 subsection (f) of section 33-797 or section 33-798, as amended by this  
679 act, then the provisions of this subdivision shall not require approval  
680 of such plan of merger or share exchange by the holders of such class  
681 or series not otherwise entitled to vote thereon.

682 Sec. 21. Section 33-818 of the general statutes is repealed and the  
683 following is substituted in lieu thereof (*Effective October 1, 2002*):

684 (a) A domestic parent corporation [owning] that owns shares of a  
685 domestic or foreign subsidiary corporation that carry at least ninety  
686 per cent of the voting power of each class and series of the outstanding  
687 shares of [each class of a subsidiary corporation may merge the  
688 subsidiary into itself without approval of the shareholders of the  
689 parent or subsidiary] the subsidiary that have voting power may  
690 merge the subsidiary into itself or into another such subsidiary, or  
691 merge itself into the subsidiary, unless (1) the certificate of  
692 incorporation of any of the corporations otherwise provides, and (2) in  
693 the case of a foreign subsidiary, approval by the foreign subsidiary's  
694 board of directors or shareholders is required by the law under which  
695 the subsidiary is organized or by which it is governed.

696 [(b) The board of directors of the parent shall adopt a plan of merger  
697 that sets forth: (1) The names of the parent and subsidiary; and (2) the  
698 manner and basis of converting the shares of the subsidiary into  
699 shares, obligations or other securities of the parent or any other  
700 corporation or into cash or other property in whole or part.

701 (c) The parent shall mail a copy or summary of the plan of merger to  
702 each shareholder of the subsidiary who does not waive the mailing  
703 requirement in writing.

704 (d) The parent may not deliver a certificate of merger to the  
705 Secretary of the State for filing until at least thirty days after the date it  
706 mailed a copy of the plan of merger to each shareholder of the  
707 subsidiary who did not waive the mailing requirement.

708 (e) A certificate of merger under this section may not contain  
709 amendments to the certificate of incorporation of the parent  
710 corporation, except for amendments enumerated in section 33-796.]

711 (b) If approval of a merger by the subsidiary's shareholders is not  
712 required under subsection (a) of this section, the parent corporation

713 shall, within ten days after the effective date of the merger, notify each  
714 of the subsidiary's shareholders that the merger has become effective.

715 (c) Except as provided in subsections (a) and (b) of this section, a  
716 merger between a parent and a subsidiary shall be governed by the  
717 provisions of sections 33-815 to 33-829, inclusive, applicable to mergers  
718 generally.

719 Sec. 22. Section 33-819 of the general statutes is repealed and the  
720 following is substituted in lieu thereof (*Effective October 1, 2002*):

721 (a) After a plan of merger or share exchange [is approved by the  
722 shareholders, or adopted by the board of directors if shareholder  
723 approval is not required, the surviving or acquiring corporation shall  
724 deliver to the Secretary of the State for filing a certificate of merger or  
725 share exchange setting forth: (1) The plan of merger or share exchange;  
726 (2) if shareholder approval was not required, a statement to that effect;  
727 (3) if approval of the shareholders of one or more corporations party to  
728 the merger or share exchange was required: (A) The designation,  
729 number of outstanding shares and number of votes entitled to be cast  
730 by each voting group entitled to vote separately on the plan as to each  
731 corporation; and (B) either the total number of votes cast for and  
732 against the plan by each voting group entitled to vote separately on the  
733 plan or the total number of undisputed votes cast for the plan  
734 separately by each voting group and a statement that the number cast  
735 for the plan by each voting group was sufficient for approval by that  
736 voting group] has been adopted and approved as required by sections  
737 33-600 to 33-998, inclusive, a certificate of merger or share exchange  
738 shall be executed on behalf of each party to the merger or the share  
739 exchange by any officer or other duly authorized representative of  
740 such party. The certificate of merger or share exchange shall set forth:  
741 (1) The names of the parties to the merger or the share exchange; (2)  
742 the name of the corporation or other entity that will be the survivor of  
743 the merger or that will acquire the shares or interests of the other party  
744 to the share exchange; (3) the date on which the merger or the share  
745 exchange is to be effective; (4) if the certificate of incorporation of the

746 survivor of a merger is amended, or if a new corporation is created as a  
747 result of a merger, the amendments to the survivor's certificate of  
748 incorporation or the certificate of incorporation of the new corporation;  
749 (5) if the plan of merger or share exchange required approval by the  
750 shareholders of a domestic corporation that was a party to the merger  
751 or the share exchange, a statement that the plan was duly approved by  
752 the shareholders and, if voting by any separate voting group was  
753 required, by each such separate voting group, in the manner required  
754 by sections 33-600 to 33-998, inclusive, and the certificate of  
755 incorporation; (6) if the plan of merger or share exchange did not  
756 require approval by the shareholders of a domestic corporation that  
757 was a party to the merger or the share exchange, a statement to that  
758 effect; and (7) as to each foreign corporation and each other entity that  
759 was a party to the merger or the share exchange, a statement that the  
760 plan and the performance of its terms were duly authorized by all  
761 action required by the law of the state or country under which the  
762 corporation or other entity is organized or by which it is governed, and  
763 by its certificate of incorporation or organizational documents.

764 (b) A [merger or share exchange takes effect upon the effective date  
765 of the] certificate of merger or share exchange shall be delivered to the  
766 Secretary of the State for filing by the survivor of the merger or the  
767 acquiring corporation in a share exchange and shall take effect on the  
768 effective date of the merger or the share exchange.

769 Sec. 23. Section 33-820 of the general statutes is repealed and the  
770 following is substituted in lieu thereof (*Effective October 1, 2002*):

771 (a) When a merger [takes effect] becomes effective:

772 [(1) Every other corporation party to the merger merges into the  
773 surviving corporation and the separate existence of every corporation  
774 except the surviving corporation ceases;

775 (2) The title to all real estate and other property owned by each  
776 corporation party to the merger is vested in the surviving corporation  
777 without reversion or impairment;

778 (3) The surviving corporation has all liabilities of each corporation  
779 party to the merger;

780 (4) A proceeding pending against any corporation party to the  
781 merger may be continued as if the merger did not occur or the  
782 surviving corporation may be substituted in the proceeding for the  
783 corporation whose existence ceased;

784 (5) The certificate of incorporation of the surviving corporation is  
785 amended to the extent provided in the plan of merger; and

786 (6) The shares of each corporation party to the merger that are to be  
787 converted into shares, obligations or other securities of the surviving  
788 or any other corporation or into cash or other property are converted,  
789 and the former holders of the shares are entitled only to the rights  
790 provided in the certificate of merger or to their rights under sections  
791 33-855 to 33-872, inclusive.]

792 (1) The corporation or other entity that is designated in the  
793 certificate of merger as the survivor continues or comes into existence,  
794 as the case may be;

795 (2) The separate existence of every corporation or other entity that is  
796 merged into the survivor ceases;

797 (3) All liabilities of each corporation or other entity that is merged  
798 into the survivor are vested in the survivor;

799 (4) All property owned by, and every contract right possessed by,  
800 each corporation or other entity that merges into the survivor is vested  
801 in the survivor without reversion or impairment;

802 (5) The name of the survivor may, but need not be, substituted in  
803 any pending proceeding for the name of any party to the merger  
804 whose separate existence ceased in the merger;

805 (6) The certificate of incorporation or organizational documents of  
806 the survivor are amended to the extent provided in the certificate of

807 merger;

808 (7) The certificate of incorporation or organizational documents of a  
809 survivor that is created by the merger become effective; and

810 (8) The shares of each corporation that is a party to the merger, and  
811 the interests in an other entity that is a party to a merger, that are to be  
812 converted under the plan of merger into shares or other securities,  
813 interests, obligations, rights to acquire shares or other securities, cash  
814 or other property, or any combination thereof, are converted, and the  
815 former holders of such shares or interests are entitled only to the rights  
816 provided to them in the plan of merger or to any rights they may have  
817 under sections 33-855 to 33-879, inclusive.

818 (b) When a share exchange [takes effect, the shares of each acquired  
819 corporation are exchanged as provided in the plan, and the former  
820 holders of the shares] becomes effective, the former holders of shares  
821 of each domestic corporation that are to be exchanged for shares or  
822 other securities, interests, obligations, rights to acquire shares or other  
823 securities, cash or other property, or any combination thereof, are  
824 entitled only to the [exchange] rights provided to them in the  
825 [certificate] plan of share exchange or to [their] any rights they may  
826 have under sections 33-855 to [33-872] 33-879, inclusive.

827 (c) Any shareholder of a domestic corporation that is a party to a  
828 merger or a share exchange and, prior to the merger or the share  
829 exchange, was liable for the liabilities or obligations of such  
830 corporation, shall not be released from such liabilities or obligations by  
831 reason of the merger or the share exchange.

832 (d) Upon a merger becoming effective, a foreign corporation, or a  
833 foreign other entity, that is the survivor of the merger is deemed to: (1)  
834 Appoint the Secretary of the State as its agent for service of process in a  
835 proceeding to enforce the rights of shareholders of each domestic  
836 corporation that is a party to the merger who exercise appraisal rights;  
837 and (2) agree that it will promptly pay the amount, if any, to which  
838 such shareholders are entitled under sections 33-855 to 33-879,

839 inclusive.

840 Sec. 24. (NEW) (*Effective October 1, 2002*) (a) Unless otherwise  
841 provided in a plan of merger or share exchange or in the law of the  
842 state or country under which a foreign corporation or a domestic or  
843 foreign other entity that is a party to a merger or a share exchange is  
844 organized or by which it is governed, after the plan has been adopted  
845 and approved as required by sections 33-815 to 33-820, inclusive, of the  
846 general statutes, as amended by this act, and at any time before the  
847 merger or the share exchange has become effective, the merger or the  
848 share exchange may be abandoned by any party thereto without action  
849 by the party's shareholders or owners of interests, in accordance with  
850 any procedures set forth in the plan of merger or share exchange or, if  
851 no such procedures are set forth in the plan, in the manner determined  
852 by the board of directors of a corporation, or the managers of an other  
853 entity, subject to any contractual rights of other parties to the merger  
854 or the share exchange.

855 (b) If a merger or a share exchange is abandoned under subsection  
856 (a) of this section after a certificate of merger or share exchange has  
857 been filed with the Secretary of the State but before the merger or the  
858 share exchange has become effective, a statement that the merger or  
859 the share exchange has been abandoned in accordance with this  
860 section, executed on behalf of a party to the merger or the share  
861 exchange by an officer or other duly authorized representative of such  
862 party, shall be delivered to the Secretary of the State for filing prior to  
863 the effective date of the merger or the share exchange. Upon filing, the  
864 statement shall take effect and the merger or the share exchange shall  
865 be deemed abandoned and shall not become effective.

866 Sec. 25. Section 33-830 of the general statutes is repealed and the  
867 following is substituted in lieu thereof (*Effective October 1, 2002*):

868 [(a) A corporation may, on the terms and conditions and for the  
869 consideration determined by the board of directors: (1) Sell,] No  
870 approval of the shareholders of a corporation is required, unless the  
871 certificate of incorporation otherwise provides: (1) To sell, lease,

872 exchange or otherwise dispose of [all, or substantially all, of its  
873 property] any or all of the corporation's assets in the usual and regular  
874 course of business; (2) to mortgage, pledge, dedicate to the repayment  
875 of indebtedness, whether with or without recourse, or otherwise  
876 encumber any or all of [its property] the corporation's assets, whether  
877 or not in the usual and regular course of business; [or] (3) to transfer  
878 any or all of [its property to a corporation all the shares] the  
879 corporation's assets to one or more corporations or other entities, all of  
880 the shares or interests of which are owned by the corporation; or (4) to  
881 distribute assets pro rata to the holders of one or more classes or series  
882 of the corporation's shares.

883 [(b) Unless the certificate of incorporation requires it, approval by  
884 the shareholders of a transaction described in subsection (a) of this  
885 section is not required.]

886 Sec. 26. Section 33-831 of the general statutes is repealed and the  
887 following is substituted in lieu thereof (*Effective October 1, 2002*):

888 (a) A [corporation may sell, lease, exchange or otherwise dispose of  
889 all, or substantially all, of its property, with or without the good will,  
890 otherwise than in the usual and regular course of business, on the  
891 terms and conditions and for the consideration determined by the  
892 corporation's board of directors, if the board of directors proposes and  
893 its shareholders approve the proposed transaction] sale, lease,  
894 exchange or other disposition of assets, other than a disposition  
895 described in section 33-830, as amended by this act, requires approval  
896 of the corporation's shareholders if any such disposition would leave  
897 the corporation without a significant continuing business activity. If a  
898 corporation retains a business activity that represented at least twenty-  
899 five per cent of total assets at the end of the most recently completed  
900 fiscal year, and twenty-five per cent of either income from continuing  
901 operations before taxes or revenues from continuing operations for  
902 such fiscal year, for the corporation and each of its subsidiaries on a  
903 consolidated basis, the corporation will conclusively be deemed to  
904 have retained a significant continuing business activity.

905 (b) [For a transaction to be authorized: (1) The board of directors  
906 must recommend the proposed transaction to the shareholders unless  
907 the board of directors determines that because of conflict of interest or  
908 other special circumstances it should make no recommendation and  
909 communicates the basis for its determination to the shareholders with  
910 the submission of the proposed transaction; and (2) the shareholders  
911 entitled to vote must approve the transaction.] A disposition that  
912 requires approval of the shareholders under subsection (a) of this  
913 section shall be initiated by a resolution of the board of directors  
914 authorizing the disposition. After adoption of such a resolution, the  
915 board of directors shall submit the proposed disposition to the  
916 shareholders for their approval. The board of directors shall also  
917 transmit to the shareholders a recommendation that the shareholders  
918 approve the proposed disposition, unless the board of directors makes  
919 a determination that because of conflicts of interest or other special  
920 circumstances it should not make such a recommendation, in which  
921 case the board of directors shall transmit to the shareholders the basis  
922 for such determination.

923 (c) The board of directors may condition its submission of [the  
924 proposed transaction on any basis] a disposition to the shareholders  
925 under subsection (b) of this section on any basis.

926 (d) [The] If a disposition is required to be approved by the  
927 shareholders under subsection (a) of this section, and if the approval is  
928 to be given at a meeting, the corporation shall notify each shareholder,  
929 whether or not entitled to vote, of the [proposed shareholders' meeting  
930 in accordance with section 33-699] meeting of shareholders at which  
931 the disposition is to be submitted for approval. The notice shall also  
932 state that the purpose, or one of the purposes, of the meeting is to  
933 consider the [sale, lease, exchange or other disposition of all, or  
934 substantially all, of the property of the corporation and contain or be  
935 accompanied by a description of the transaction] disposition and shall  
936 contain a description of the disposition, including the terms and  
937 conditions thereof and the consideration to be received by the  
938 corporation therefor.

939 (e) Unless the certificate of incorporation or the board of directors,  
940 acting pursuant to subsection (c) of this section, requires a greater vote  
941 or a vote by voting groups, and except as provided in subsection [(h)]  
942 (i) of this section, the [transaction] disposition to be authorized must be  
943 approved by a majority of all the votes entitled to be cast on the  
944 [transaction] disposition.

945 (f) After a [sale, lease, exchange or other disposition of property is  
946 authorized, the transaction may be abandoned] disposition has been  
947 approved by the shareholders under subsection (b) of this section, and  
948 at any time before the disposition has been consummated, the  
949 disposition may be abandoned by the corporation without action by  
950 the shareholders, subject to any contractual rights [, without further  
951 shareholder action] of other parties to the disposition.

952 (g) A [transaction that constitutes a distribution is governed by  
953 section 33-687 and not by this section] disposition of assets in the  
954 course of dissolution under sections 33-880 to 33-903, inclusive, is not  
955 governed by this section.

956 (h) The assets of a direct or indirect consolidated subsidiary shall be  
957 deemed the assets of the parent corporation for the purposes of this  
958 section.

959 [(h)] (i) Notwithstanding any provision of subsection (e) of this  
960 section to the contrary, a transaction of the type described in  
961 subsection (a) of this section of a corporation which was incorporated  
962 under the laws of this state, whether under chapter 599 of the general  
963 statutes, revision of 1958, revised to January 1, 1995, or any other  
964 general law or special act, prior to January 1, 1997, to be authorized by  
965 such corporation shall, unless the certificate of incorporation expressly  
966 provides otherwise, be approved by the affirmative vote of at least  
967 two-thirds of (1) the voting power of each voting group of such  
968 corporation entitled to vote thereon, and (2) the voting power of each  
969 class of stock of such corporation outstanding prior to January 1, 1997,  
970 whether or not otherwise entitled to vote thereon.

971 Sec. 27. Section 33-882 of the general statutes is repealed and the  
972 following is substituted in lieu thereof (*Effective October 1, 2002*):

973 (a) At any time after dissolution is authorized, the corporation may  
974 dissolve by delivering to the Secretary of the State for filing a certificate  
975 of dissolution setting forth: (1) The name of the corporation; (2) the  
976 date dissolution was authorized; and (3) if dissolution was approved  
977 by the shareholders, [ (A) The number of votes entitled to be cast on  
978 the proposal to dissolve; and (B) either the total number of votes cast  
979 for and against dissolution or the total number of undisputed votes  
980 cast for dissolution and a statement that the number cast for  
981 dissolution was sufficient for approval] a statement that the proposal  
982 to dissolve was duly approved by the shareholders in the manner  
983 required by sections 33-600 to 33-998, inclusive, and by the certificate  
984 of incorporation.

985 [(b) If voting by voting groups was required, the information  
986 required by subdivision (3) of subsection (a) of this section must be  
987 separately provided for each voting group entitled to vote separately  
988 on the proposal for dissolution.]

989 [(c)] (b) A corporation is dissolved upon the effective date of its  
990 certificate of dissolution.

991 (c) For the purposes of sections 33-880 to 33-903, inclusive,  
992 "dissolved corporation" means a corporation whose certificate of  
993 dissolution has become effective and includes a successor entity to  
994 which the remaining assets of the corporation are transferred subject to  
995 the corporation's liabilities for purposes of liquidation.

996 Sec. 28. Subsection (c) of section 33-883 of the general statutes is  
997 repealed and the following is substituted in lieu thereof (*Effective*  
998 *October 1, 2002*):

999 (c) After the revocation of dissolution is authorized, the corporation  
1000 may revoke the dissolution by delivering to the Secretary of the State  
1001 for filing a certificate of revocation of dissolution that sets forth: (1) The

1002 name of the corporation; (2) the effective date of the dissolution that  
1003 was revoked; (3) the date that the revocation of dissolution was  
1004 authorized; (4) if the corporation's board of directors, or incorporators,  
1005 revoked the dissolution, a statement to that effect; (5) if the  
1006 corporation's board of directors revoked a dissolution authorized by  
1007 the shareholders, a statement that revocation was permitted by action  
1008 by the board of directors alone pursuant to that authorization; (6) if  
1009 shareholder action was required to revoke the dissolution, the  
1010 information required by subdivision (3) of subsection (a) [or subsection  
1011 (b)] of section 33-882, as amended by this act; and (7) if the name of the  
1012 corporation whose dissolution is to be revoked is no longer available,  
1013 be accompanied by an amendment of the certificate of incorporation  
1014 which changes the name of the corporation to an available name.

1015 Sec. 29. Section 33-886 of the general statutes is repealed and the  
1016 following is substituted in lieu thereof (*Effective October 1, 2002*):

1017 (a) A dissolved corporation may dispose of the known claims  
1018 against it by [following the procedure described in this section]  
1019 notifying its known claimants in writing of the dissolution at any time  
1020 after the effective date of the dissolution.

1021 (b) [The dissolved corporation shall notify its known claimants in  
1022 writing of the dissolution at any time after its effective date.] The  
1023 written notice shall: (1) Describe information that must be included in  
1024 a claim; (2) provide a mailing address where a claim may be sent; (3)  
1025 state the deadline, which may not be fewer than one hundred twenty  
1026 days from the effective date of the written notice, by which the  
1027 dissolved corporation must receive the claim; and (4) state that the  
1028 claim will be barred if not received by the deadline.

1029 (c) A claim against the dissolved corporation is barred: (1) If a  
1030 claimant who was given written notice under subsection (b) of this  
1031 section does not deliver the claim to the dissolved corporation by the  
1032 deadline; or (2) if a claimant whose claim was rejected by the dissolved  
1033 corporation does not commence a proceeding to enforce the claim  
1034 within ninety days from the effective date of the rejection notice.

1035 (d) For purposes of this section, "claim" does not include a  
1036 contingent liability or a claim based on an event occurring after the  
1037 effective date of the dissolution.

1038 [(e) Nothing in this section shall extend any applicable period of  
1039 limitation.]

1040 Sec. 30. Section 33-887 of the general statutes is repealed and the  
1041 following is substituted in lieu thereof (*Effective October 1, 2002*):

1042 (a) A dissolved corporation may also publish notice of its  
1043 dissolution and request that persons with claims against the dissolved  
1044 corporation present them in accordance with the notice.

1045 (b) The notice shall: (1) Be published one time in a newspaper of  
1046 general circulation in the county where the dissolved corporation's  
1047 principal office or, if none in this state, its registered office, is or was  
1048 last located; (2) describe the information that must be included in a  
1049 claim and provide a mailing address where the claim may be sent; and  
1050 (3) state that a claim against the dissolved corporation will be barred  
1051 unless a proceeding to enforce the claim is commenced within three  
1052 years after the publication of the notice.

1053 (c) If the dissolved corporation publishes a newspaper notice in  
1054 accordance with subsection (b) of this section, the claim of each of the  
1055 following claimants is barred unless the claimant commences a  
1056 proceeding to enforce the claim against the dissolved corporation  
1057 within three years after the publication date of the newspaper notice:  
1058 (1) A claimant who [did not receive] was not given written notice  
1059 under section 33-886, as amended by this act; (2) a claimant whose  
1060 claim was timely sent to the dissolved corporation but not acted on;  
1061 and (3) a claimant whose claim is contingent or based on an event  
1062 occurring after the effective date of dissolution.

1063 (d) A claim that is not barred by subsection (c) of section 33-886, as  
1064 amended by this act, or subsection (c) of this section may be enforced  
1065 under this section: (1) Against the dissolved corporation, to the extent

1066 of its undistributed assets; or (2) except as provided in subsection (d)  
1067 of section 31 of this act, if the assets have been distributed in  
1068 liquidation, against a shareholder of the dissolved corporation to the  
1069 extent of [his] the shareholder's pro rata share of the claim or the  
1070 corporate assets distributed to [him] the shareholder in liquidation,  
1071 whichever is less, but a shareholder's total liability for all claims under  
1072 this section may not exceed the total amount of assets distributed to  
1073 [him] the shareholder.

1074 (e) Nothing in this section shall extend any applicable period of  
1075 limitation.

1076 Sec. 31. (NEW) (*Effective October 1, 2002*) (a) A dissolved corporation  
1077 that has published a notice under section 33-887 of the general statutes,  
1078 as amended by this act, may file an application with the superior court  
1079 for the judicial district where the dissolved corporation's principal  
1080 office or, if none in this state, its registered office, is located for a  
1081 determination of the amount and form of security to be provided for  
1082 payment of claims that are contingent or have not been made known  
1083 to the dissolved corporation or that are based on an event occurring  
1084 after the effective date of dissolution but that, based on the facts  
1085 known to the dissolved corporation, are reasonably estimated to arise  
1086 after the effective date of dissolution. Provision need not be made for  
1087 any claim that is or is reasonably anticipated to be barred under  
1088 subsection (c) of section 33-887 of the general statutes, as amended by  
1089 this act.

1090 (b) Within ten days after the filing of an application under  
1091 subsection (a) of this section, notice of the proceeding shall be given by  
1092 the dissolved corporation to each claimant holding a contingent claim  
1093 whose contingent claim is shown on the records of the dissolved  
1094 corporation.

1095 (c) The court may appoint a guardian ad litem to represent all  
1096 claimants whose identities are unknown in any proceeding brought  
1097 under this section. The reasonable fees and expenses of such guardian,  
1098 including all reasonable expert witness fees, shall be paid by the

1099 dissolved corporation.

1100 (d) Provision by the dissolved corporation for security in the  
1101 amount and the form ordered by the court under subsection (a) of this  
1102 section shall satisfy the dissolved corporation's obligations with  
1103 respect to claims that are contingent, have not been made known to the  
1104 dissolved corporation or are based on an event occurring after the  
1105 effective date of dissolution, and such claims may not be enforced  
1106 against a shareholder who received assets in liquidation.

1107 Sec. 32. (NEW) (*Effective October 1, 2002*) (a) Directors of a dissolved  
1108 corporation shall cause the dissolved corporation to discharge or make  
1109 reasonable provision for the payment of claims and make distributions  
1110 of assets to shareholders after payment of or provision for claims.

1111 (b) Directors of a dissolved corporation which has disposed of  
1112 claims under section 33-886 or 33-887 of the general statutes, as  
1113 amended by this act, or section 31 of this act shall not be liable for  
1114 breach of subsection (a) of this section with respect to claims against  
1115 the dissolved corporation that are barred or satisfied under section 33-  
1116 886 or 33-887 of the general statutes, as amended by this act, or section  
1117 31 of this act.

1118 Sec. 33. Section 33-1007 of the general statutes, as amended by  
1119 section 36 of public act 01-199, is repealed and the following is  
1120 substituted in lieu thereof (*Effective October 1, 2002*):

1121 (a) A domestic or foreign corporation may correct a document filed  
1122 by the Secretary of the State if (1) the document contains an inaccuracy,  
1123 (2) the document was defectively made, executed, attested, sealed,  
1124 verified or acknowledged, or (3) the electronic transmission was  
1125 defective.

1126 (b) A document is corrected: (1) By preparing a certificate of  
1127 correction that (A) describes the document, including its filing date, or  
1128 attaches a copy of it to the certificate, (B) specifies the inaccuracy or  
1129 defect to be corrected, and (C) corrects the inaccuracy or other defect;

1130 and (2) by delivering the certificate of correction to the Secretary of the  
1131 State for filing.

1132 (c) A certificate of correction is effective on the effective date of the  
1133 document it corrects except as to persons relying on the uncorrected  
1134 document and adversely affected by the correction. As to those  
1135 persons, a certificate of correction is effective when filed.

1136 Sec. 34. Subsection (b) of section 33-1083 of the general statutes is  
1137 repealed and the following is substituted in lieu thereof (*Effective*  
1138 *October 1, 2002*):

1139 (b) (1) The certificate of incorporation or, subject to the provisions of  
1140 subdivision (2) of this subsection, the bylaws, may provide that  
1141 persons occupying certain positions within or without the corporation  
1142 shall be ex-officio directors, but, unless otherwise provided in the  
1143 certificate of incorporation or bylaws, such ex-officio directors shall not  
1144 be counted in determining a quorum nor shall they be entitled to a  
1145 vote. An ex-officio director shall continue to be a director so long as he  
1146 continues to hold the office from which his ex-officio status derives,  
1147 and shall cease to be an ex-officio director immediately and  
1148 automatically upon ceasing to hold such office, without the need for  
1149 any action by the corporation, its directors or its members. The  
1150 provisions of sections 33-1085, 33-1087, 33-1088 and 33-1091 shall not  
1151 apply to ex-officio directors.

1152 (2) If the corporation has members entitled to vote on the adoption,  
1153 amendment or repeal of its bylaws, any bylaw providing for ex-officio  
1154 directors shall require the approval of such members, either before, on  
1155 or after the effective date of this section, by the same vote of such  
1156 members as would be necessary to amend such bylaws.

1157 Sec. 35. Section 33-1086 of the general statutes, as amended by  
1158 section 37 of public act 01-199, is repealed and the following is  
1159 substituted in lieu thereof (*Effective October 1, 2002*):

1160 (a) The certificate of incorporation or, subject to the provisions of

1161 subsection (b) of this section, the bylaws, may provide for staggering  
1162 the terms of directors, other than ex-officio directors, by dividing the  
1163 total number of directors, other than ex-officio directors, into up to five  
1164 groups, with each group containing approximately the same  
1165 percentage of the total, as near as may be. In that event, the terms of  
1166 directors in the first group expire at the first annual meeting of  
1167 members or, in the case of a corporation without members entitled to  
1168 vote for directors, at the first annual meeting of the board of directors,  
1169 after their election, the terms of the second group expire at the second  
1170 such annual meeting of members or directors after their election, the  
1171 terms of the third group, if any, expire at the third such annual  
1172 meeting of members or directors after their election, the terms of the  
1173 fourth group, if any, expire at the fourth such annual meeting of  
1174 members or directors after their election, and the terms of the fifth  
1175 group, if any, expire at the fifth such annual meeting of members or  
1176 directors after their election. At each such annual meeting thereafter,  
1177 directors shall be chosen for a term of two years, three years, four years  
1178 or five years, as the case may be, to succeed those whose terms expire.

1179 (b) If the corporation has members entitled to vote on the adoption,  
1180 amendment or repeal of its bylaws, any bylaw providing for  
1181 staggering the terms of directors shall require the approval of such  
1182 members, either before, on or after the effective date of this section, by  
1183 the same vote of such members as would be necessary to amend such  
1184 bylaws.

1185 Sec. 36. (NEW) (*Effective October 1, 2002*) If the board of directors of a  
1186 corporation ceases to exist and there are no members having the right  
1187 to vote for directors, and no members without the right to vote for  
1188 directors who under such circumstances would be entitled under  
1189 subsection (d) of section 33-1091 of the general statutes, to elect a new  
1190 board of directors, any officer of the corporation and, if there are no  
1191 officers of the corporation, the Attorney General, any officer of any  
1192 organization holding funds or other assets of the corporation or any  
1193 other person having dealings with the corporation may petition the  
1194 superior court for the judicial district where the corporation's principal

1195 office or, if none in this state, its registered office, is located for an  
1196 order appointing a new board of directors. The petition shall set forth  
1197 the relevant circumstances, shall propose the names of three or more  
1198 persons willing to serve as directors under the circumstances and shall  
1199 contain the addresses and a brief statement of the backgrounds of such  
1200 persons. A copy of such petition submitted by any person other than  
1201 the Attorney General shall be provided by such person to the Attorney  
1202 General. The court may require the submission of such additional  
1203 information concerning the corporation and the persons proposed as  
1204 directors and may order a hearing and notice to such persons, if any,  
1205 as the court deems appropriate under the circumstances. The notice  
1206 shall be given in such manner as the court deems appropriate, which  
1207 may include any form of notice authorized under subsection (b) of  
1208 section 33-1003 of the general statutes, as amended. The court may  
1209 thereafter, in an order issued pursuant to this section, appoint and set  
1210 the terms of office of a new board of directors, which may include  
1211 some or all of the persons proposed in the petition or may be  
1212 composed entirely of other persons deemed appropriate by the court.  
1213 Upon the issuance of such order, the persons appointed by the order as  
1214 directors shall be the directors of the corporation for the terms of office  
1215 set forth in the order with the same force, effect, power, authority,  
1216 duties and responsibilities, and subject to the same standards of  
1217 conduct, as if they had been otherwise validly elected and serving  
1218 under the provisions of the certificate of incorporation, the bylaws and  
1219 sections 33-1000 to 33-1290, inclusive, of the general statutes.

1220 Sec. 37. Subsection (e) of section 33-1101 of the general statutes, as  
1221 amended by section 39 of public act 01-199, is repealed and the  
1222 following is substituted in lieu thereof (*Effective October 1, 2002*):

1223 (e) A committee may not, however: (1) Approve or recommend to  
1224 members action that sections 33-1000 to 33-1290, inclusive, as amended  
1225 by [this act] public act 01-199, require to be approved by members; (2)  
1226 fill vacancies on the board of directors or, subject to subsection (g) of  
1227 this section, on any of its committees; (3) adopt, amend or repeal  
1228 bylaws; (4) approve a plan of merger; (5) approve a sale, lease,

1229 exchange or other disposition of all, or substantially all, of the property  
1230 of a corporation, other than (A) in the usual and regular course of  
1231 affairs of the corporation, or (B) a mortgage, pledge or other  
1232 encumbrance described in subdivision (2) of [subsection (a) of] section  
1233 33-1165, as amended by this act; or (6) approve a proposal to dissolve.

1234 Sec. 38. Section 33-1105 of the general statutes is repealed and the  
1235 following is substituted in lieu thereof (*Effective October 1, 2002*):

1236 (a) A director who votes for or assents to a distribution made in  
1237 violation of sections 33-1000 to 33-1290, inclusive, or the certificate of  
1238 incorporation is personally liable to the corporation for the amount of  
1239 the distribution that exceeds what could have been distributed without  
1240 violating said sections or the certificate of incorporation if it is  
1241 established that he did not perform his duties in compliance with  
1242 section 33-1104 or section 52 of this act. In any proceeding commenced  
1243 under this section, a director has all of the defenses ordinarily available  
1244 to a director.

1245 (b) A director held liable under subsection (a) of this section for an  
1246 unlawful distribution is entitled to contribution: (1) From every other  
1247 director who could be held liable under subsection (a) of this section  
1248 for the unlawful distribution; and (2) from each recipient for the  
1249 amount the recipient accepted knowing the distribution was made in  
1250 violation of sections 33-1000 to 33-1290, inclusive, or the certificate of  
1251 incorporation.

1252 (c) A proceeding under this section to enforce: (1) The liability of a  
1253 director under subsection (a) of this section is barred unless it is  
1254 commenced within [three] two years after the date (A) on which the  
1255 distribution was made, (B) as of which the violation of sections 33-1000  
1256 to 33-1290, inclusive, occurred as a consequence of disregarding a  
1257 restriction in the certificate of incorporation, or (C) on which the  
1258 distribution of assets to members under section 52 of this act was  
1259 made; or (2) contribution or recoupment under subsection (b) of this  
1260 section is barred unless it is commenced within one year after the  
1261 liability of the claimant has been finally adjudicated under subsection

1262 (a) of this section.

1263 (d) For purposes of this section, a director shall be deemed to have  
1264 voted for a distribution if such director was present at the meeting of  
1265 the board of directors or committee thereof at the time such  
1266 distribution was authorized and did not vote in dissent therefrom, or if  
1267 such director consented thereto pursuant to section 33-1097, as  
1268 amended.

1269 Sec. 39. Section 33-1142 of the general statutes is repealed and the  
1270 following is substituted in lieu thereof (*Effective October 1, 2002*):

1271 (a) [A corporation's board of directors may propose one or more  
1272 amendments to the certificate of incorporation for submission to those  
1273 members who are entitled to vote thereon, if any.] If a corporation has  
1274 members, an amendment to the certificate of incorporation shall be  
1275 adopted as provided in this section. A proposed amendment must be  
1276 adopted by the board of directors.

1277 (b) [For the amendment to be adopted: (1) The board of directors  
1278 must approve the amendment; (2)] (1) Except as provided in sections  
1279 33-1141, 33-1145 and 33-1146, as amended by this act, after adopting  
1280 the proposed amendment, the board of directors must [recommend]  
1281 submit the amendment to the members entitled to vote on the  
1282 amendment, if any, [unless the board of directors determines that  
1283 because of conflict of interest or other special circumstances it should  
1284 make no recommendation and communicates the basis for its  
1285 determination to the members entitled to vote on the amendment with  
1286 the submission of the amendment; and (3) the members entitled to  
1287 vote on the amendment must approve the amendment, either before or  
1288 after the actions required in subdivisions (1) and (2) of this subsection,  
1289 as provided in subsection (e) of this section] for their approval. The  
1290 board of directors must also transmit to the members entitled to vote  
1291 on the amendment, if any, a recommendation that such members  
1292 approve the amendment, unless the board of directors makes a  
1293 determination that because of conflicts of interest or other special  
1294 circumstances it should not make such a recommendation, in which

1295 case the board of directors must transmit to such members the basis for  
1296 such determination.

1297 (2) The board of directors may condition its submission of the  
1298 amendment to the members on any basis.

1299 (c) The [board of directors may condition its submission of the  
1300 proposed amendment on any basis] members entitled to vote on the  
1301 amendment, if any, must approve the amendment, either before or  
1302 after the actions required in subsections (a) and (b) of this section, as  
1303 provided in subsection (e) of this section.

1304 (d) [The corporation shall] If the amendment is required to be  
1305 approved by the members, and the approval is to be given at a  
1306 meeting, the corporation must notify each member entitled to vote on  
1307 the amendment, if any, of the [proposed meeting of members in  
1308 accordance with section 33-1065. The notice of meeting shall also]  
1309 meeting of members at which the amendment is to be submitted for  
1310 approval. The notice must state that the purpose, or one of the  
1311 purposes, of the meeting is to consider the [proposed] amendment and  
1312 must contain or be accompanied by a copy [or summary] of the  
1313 amendment.

1314 (e) Unless sections 33-1000 to 33-1290, inclusive, the certificate of  
1315 incorporation or the board of directors acting pursuant to subdivision  
1316 (2) of subsection [(c)] (b) of this section requires a greater vote or a vote  
1317 by class of members, the amendment to be adopted must be approved  
1318 by: (1) If no class of members is entitled to vote separately on the  
1319 amendment as a class, at least two-thirds of the votes cast by the  
1320 members entitled to vote thereon; [,] and (2) if any class of members is  
1321 entitled to vote on the amendment separately as a class, at least two-  
1322 thirds of the votes cast by the members of each such class.

1323 (f) If the corporation has no members, or no members entitled to  
1324 vote, the proposed amendment shall be adopted by vote of at least  
1325 two-thirds of the directors present at a meeting of the board of  
1326 directors at which a quorum is present.

1327 Sec. 40. Section 33-1144 of the general statutes is repealed and the  
1328 following is substituted in lieu thereof (*Effective October 1, 2002*):

1329 [A corporation amending its certificate of incorporation] After an  
1330 amendment to the certificate of incorporation has been adopted and  
1331 approved in the manner required by sections 33-1140 to 33-1147,  
1332 inclusive, and by the certificate of incorporation, the corporation shall  
1333 deliver to the Secretary of the State for filing a certificate of  
1334 amendment [setting] which shall set forth: (1) The name of the  
1335 corporation; (2) the text of each amendment adopted; (3) the date of  
1336 each amendment's adoption; and (4) if the amendment (A) was  
1337 adopted by the incorporators or the board of directors without  
1338 member approval, a statement that the amendment was duly  
1339 approved by the incorporators or by the board of directors, [as  
1340 required under section 33-1142 or, if approval of members was not  
1341 required, a statement to that effect and a statement that the  
1342 amendment was approved by a sufficient vote of either (A) the  
1343 incorporators, if the vote was before the corporation had directors, or  
1344 (B) the board of directors, in either case in accordance with section 33-  
1345 1143; (5) if approval by members was required: (A) The designation of  
1346 each class of members entitled to vote separately on the amendment,  
1347 and (B) the total number of votes cast for and against the amendment  
1348 by each class of members entitled to vote separately on the amendment  
1349 and a statement that the number cast for the amendment by each class  
1350 was sufficient for approval by that class] as the case may be, and that  
1351 member approval was not required, or (B) required approval by the  
1352 members, a statement that the amendment was duly approved by the  
1353 members in the manner required by sections 33-1140 to 33-1147,  
1354 inclusive, and by the certificate of incorporation.

1355 Sec. 41. Section 33-1145 of the general statutes is repealed and the  
1356 following is substituted in lieu thereof (*Effective October 1, 2002*):

1357 (a) A corporation's board of directors may restate its certificate of  
1358 incorporation at any time, with or without member [action] approval,  
1359 to consolidate all amendments into a single document.

1360 (b) [The restatement may include one or more amendments to the  
1361 certificate. If the restatement includes an amendment requiring  
1362 member approval, it must be adopted] If the restated certificate  
1363 includes one or more new amendments that require member approval,  
1364 the new amendments must be adopted and approved as provided in  
1365 section 33-1142, as amended by this act. If the restatement includes [an]  
1366 a new amendment which does not require member approval, [it] the  
1367 new amendment must be adopted as provided in section 33-1141 or  
1368 33-1143, as the case may be.

1369 (c) [If the board of directors submits a restatement for member  
1370 action, the corporation shall notify each member entitled to vote on the  
1371 proposed amendment of the proposed members' meeting in  
1372 accordance with section 33-1065. The notice of meeting must also state  
1373 that the purpose, or one of the purposes, of the meeting is to consider  
1374 the proposed restatement and contain or be accompanied by a copy of  
1375 the restatement that identifies any amendment or other change it  
1376 would make in the certificate] A corporation that restates its certificate  
1377 of incorporation shall deliver to the Secretary of the State for filing a  
1378 certificate of restatement setting forth the name of the corporation and  
1379 the text of the restated certificate of incorporation together with a  
1380 statement which states that the restated certificate consolidates all  
1381 amendments into a single document and, if a new amendment is  
1382 included in the restated certificate, which also includes the statement  
1383 required under section 33-1144, as amended by this act.

1384 [(d) A corporation restating its certificate of incorporation shall  
1385 deliver to the Secretary of the State for filing a certificate of restatement  
1386 setting forth the name of the corporation and the text of the restated  
1387 certificate of incorporation together with a statement setting forth: (1)  
1388 Whether the restatement contains an amendment to the certificate of  
1389 incorporation requiring member approval and, if it does not, that the  
1390 board of directors, or the incorporators before the corporation has  
1391 directors, adopted the restatement; or (2) if the restatement contains an  
1392 amendment to the certificate of incorporation requiring member  
1393 approval, the information required by section 33-1144.]

1394        ~~[(e)]~~ (d) A duly adopted restated certificate of incorporation  
1395 supersedes the original certificate of incorporation and all  
1396 amendments to it.

1397        ~~[(f)]~~ (e) The Secretary of the State may certify a restated certificate of  
1398 incorporation, as the certificate of incorporation currently in effect,  
1399 without including the statement information required by subsection  
1400 ~~[(d)]~~ (c) of this section.

1401        Sec. 42. Section 33-1155 of the general statutes is repealed and the  
1402 following is substituted in lieu thereof (*Effective October 1, 2002*):

1403        (a) One or more corporations may merge ~~[into]~~ with another  
1404 corporation ~~[if the board of directors of each corporation adopts and its~~  
1405 ~~members, if required by section 33-1156, approve a plan of merger]~~  
1406 pursuant to a plan of merger. For the purposes of this section, sections  
1407 33-1156 to 33-1158, inclusive, as amended by this act, and section 46 of  
1408 this act, "survivor" means, in a merger, the corporation into which one  
1409 or more other corporations are merged. A survivor of a merger may  
1410 preexist the merger or be created by the merger.

1411        (b) The plan of merger ~~[shall set forth]~~ must include: (1) The name of  
1412 each corporation ~~[planning to]~~ that will merge and the name of the  
1413 ~~[surviving corporation into which each other corporation plans to~~  
1414 ~~merge]~~ corporation that will be the survivor of the merger; (2) the  
1415 terms and conditions of the merger; ~~[and]~~ (3) if the memberships, if  
1416 any, of any corporation are to be converted into memberships of the  
1417 ~~[surviving corporation]~~ survivor, the manner and basis of doing so; ~~(4)~~  
1418 the certificate of incorporation of any corporation to be created by the  
1419 merger or, if a new corporation is not to be created by the merger, any  
1420 amendments to the survivor's certificate of incorporation; and (5) any  
1421 other provisions required by the certificate of incorporation of any  
1422 party to the merger.

1423        (c) The plan of merger may ~~[set forth: (1) Amendments to the~~  
1424 ~~certificate of incorporation of the surviving corporation; and (2)]~~  
1425 include any other provisions relating to the merger that are not

1426 inconsistent with sections 33-1000 to 33-1290, inclusive.

1427 (d) The terms of the plan of merger described in subdivisions (2)  
1428 and (3) of subsection (b) of this section may be made dependent on  
1429 facts ascertainable outside the plan of merger, provided such facts are  
1430 objectively ascertainable. For the purposes of this subsection, "facts"  
1431 includes, but is not limited to, the occurrence of any event, including a  
1432 determination or action by any person or body, including the  
1433 corporation.

1434 (e) The plan of merger may also include a provision that the plan  
1435 may be amended prior to filing a certificate of merger with the  
1436 Secretary of the State, provided, if the members of a corporation that is  
1437 a party to the merger are required or permitted to vote on the plan, the  
1438 plan must provide that, subsequent to approval of the plan by such  
1439 members, the plan may not be amended to: (1) Change the amount or  
1440 kind of memberships to be received by the members of the corporation  
1441 upon conversion of their memberships under the plan; (2) change the  
1442 certificate of incorporation of any corporation that will survive or be  
1443 created as a result of the merger, except for changes permitted by  
1444 section 33-1141; or (3) change any of the other terms or conditions of  
1445 the plan if the change would adversely affect such members in any  
1446 material respect.

1447 Sec. 43. Section 33-1156 of the general statutes is repealed and the  
1448 following is substituted in lieu thereof (*Effective October 1, 2002*):

1449 [(a)] In the case of a domestic corporation that is a party to a merger:

1450 (1) The plan of merger must be adopted by the board of directors.  
1451 After adopting a plan of merger, the board of directors of each  
1452 corporation party to the merger shall submit the plan of merger, except  
1453 as provided in [subsection (h)] subdivision (8) of this section, for  
1454 approval by those members who are entitled to vote on such plan, if  
1455 any.

1456 [(b) For a plan of merger to be approved: (1) The board of directors

1457 must approve the plan of merger; (2) the board of directors must  
1458 recommend the plan of merger to the members entitled to vote on the  
1459 plan of merger, if any, unless the board of directors determines that  
1460 because of conflict of interest or other special circumstances it should  
1461 make no recommendation and communicates the basis for its  
1462 determination to the members entitled to vote on the plan of merger  
1463 with the submission of the plan; and (3) the members entitled to vote  
1464 on the plan must approve the plan, either before or after the actions  
1465 required in subdivisions (1) and (2) of this subsection, as provided in  
1466 subsection (e) of this section] (2) The board of directors must also  
1467 transmit to the members entitled to vote, if any, a recommendation  
1468 that such members approve the plan, unless the board of directors  
1469 makes a determination that because of conflicts of interest or other  
1470 special circumstances it should not make such a recommendation, in  
1471 which case the board of directors must transmit to the members  
1472 entitled to vote, if any, the basis for such determination.

1473 [(c)] (3) The board of directors may condition its submission of the  
1474 [proposed] plan of merger to the members on any basis.

1475 [(d) The corporation shall] (4) If the plan of merger is required to be  
1476 approved by the members, and if the approval is to be given at a  
1477 meeting, the corporation must notify each member [,] entitled to vote  
1478 on the plan, if any, of the [proposed members' meeting in accordance  
1479 with section 33-1065. The notice shall also] meeting of the members at  
1480 which the plan is to be submitted for approval. The notice must state  
1481 that the purpose, or one of the purposes, of the meeting is to consider  
1482 the plan [of merger] and must contain or be accompanied by a copy or  
1483 summary of the plan. If the corporation is to be merged into an  
1484 existing corporation, the notice shall also include or be accompanied  
1485 by a copy or summary of the certificate of incorporation of such  
1486 existing corporation. If the corporation is to be merged into a  
1487 corporation that is to be created pursuant to the merger, the notice  
1488 shall include or be accompanied by a copy or a summary of the  
1489 certificate of incorporation of the new corporation.

1490 [(e)] (5) Unless sections 33-1000 to 33-1290, inclusive, the certificate  
1491 of incorporation or the board of directors acting pursuant to  
1492 [subsection (c)] subdivision (3) of this section requires a greater vote or  
1493 a vote by class of members, the plan of merger to be adopted must be  
1494 approved by: [(1)] (A) If no class of members is entitled to vote  
1495 separately on the plan as a class, at least two-thirds of the votes cast by  
1496 the members entitled to vote thereon; and [(2)] (B) if any class of  
1497 members is entitled to vote on the plan separately as a class, at least  
1498 two-thirds of the votes cast by the members of each such class.  
1499 Approval of the plan of merger by members may precede or follow  
1500 adoption of the plan of merger by the board of directors and the taking  
1501 of any necessary actions under subdivision (2) of this section.

1502 [(f)] (6) Separate voting by a class of members of a corporation is  
1503 required on a plan of merger if: [the] (A) The plan contains a provision  
1504 that, if contained in a proposed amendment to [a] the certificate of  
1505 incorporation of such corporation, would require action [by one or  
1506 more separate classes of members] by such class, as a separate class, on  
1507 the proposed amendment under the certificate of incorporation of the  
1508 corporation; (B) such class is entitled under the certificate of  
1509 incorporation of the corporation to vote as a separate class to approve  
1510 a plan of merger; or (C) the memberships of such class are to be  
1511 converted, pursuant to the provisions of the plan of merger, into  
1512 memberships of a different class of members of such corporation or  
1513 into memberships of any class of members of any other corporation.

1514 [(g) If (1)] (7) If (A) in the case of the surviving corporation, a plan of  
1515 merger contains any provision which, if contained in a proposed  
1516 amendment to its certificate of incorporation would require a greater  
1517 vote than, or additional vote to, that otherwise required to approve the  
1518 plan of merger, or [if (2)] (B) in the case of any terminating corporation,  
1519 a sale of all or substantially all assets, or dissolution, would under the  
1520 circumstances require a greater vote than, or additional vote to, that  
1521 otherwise required to approve the plan of merger, approval of the plan  
1522 of merger by such corporation shall require such greater or additional  
1523 vote.

1524 [(h) Action by the members of the surviving corporation on] (8)  
1525 Unless the certificate of incorporation otherwise provides, approval by  
1526 the corporation's members of a plan of merger is not required if: [(1)  
1527 The certificate of incorporation of the surviving corporation will not  
1528 differ,] (A) The corporation will be the survivor of the merger; (B)  
1529 except for amendments [enumerated in] permitted by section 33-1141,  
1530 [from its] the corporation's certificate of incorporation [before the  
1531 merger; and (2)] will not be changed; and (C) each member of the  
1532 [surviving] corporation immediately before the effective date of the  
1533 merger will be a member of the survivor with identical designations,  
1534 qualifications, privileges and rights immediately after the effective  
1535 date of the merger.

1536 [(i) After a merger is authorized, and at any time before the  
1537 certificate of merger is filed, the planned merger may be abandoned,  
1538 subject to any contractual rights, without further member action, in  
1539 accordance with the procedure set forth in the plan of merger or, if  
1540 none is set forth, in the manner determined by the board of directors.]

1541 [(j)] (9) If any merging corporation has no members, or no members  
1542 entitled to vote thereon, a plan of merger shall be adopted by the board  
1543 of directors.

1544 Sec. 44. Section 33-1157 of the general statutes is repealed and the  
1545 following is substituted in lieu thereof (*Effective October 1, 2002*):

1546 (a) After a plan of merger [is approved as required by section 33-  
1547 1156, the surviving corporation shall deliver to the Secretary of the  
1548 State for filing a certificate of merger setting forth: (1) The plan of  
1549 merger; (2) a statement to the effect that the plan of merger was  
1550 adopted by the board of directors of each corporation party to the  
1551 merger; (3) if member approval was not required, a statement to that  
1552 effect; (4) if approval of members of one or more corporations party to  
1553 the merger was required: (A) The designation of each class of members  
1554 entitled to vote separately on the plan as to each corporation; and (B)  
1555 the total number of votes cast for and against the plan by each class of  
1556 members entitled to vote separately on the plan as to each corporation

1557 and a statement that the number cast for the plan by each class of  
1558 members was sufficient for approval by that class] has been adopted  
1559 and approved as required by sections 33-1000 to 33-1290, inclusive, a  
1560 certificate of merger shall be executed on behalf of each party to the  
1561 merger by any officer or other duly authorized representative of such  
1562 party. The certificate of merger shall set forth: (1) The names of the  
1563 parties to the merger; (2) the name of the corporation that will be the  
1564 survivor of the merger; (3) the date on which the merger is to be  
1565 effective; (4) if the certificate of incorporation of the survivor of the  
1566 merger is amended, or if a new corporation is created as a result of the  
1567 merger, the amendments to the survivor's certificate of incorporation  
1568 or the certificate of incorporation of the new corporation; (5) if the plan  
1569 of merger required approval by the members of the corporation, a  
1570 statement that the plan was duly approved by the members and, if  
1571 voting by any separate class of members was required, by each such  
1572 separate class of members, in the manner required by sections 33-1000  
1573 to 33-1290, inclusive, and the certificate of incorporation; and (6) if the  
1574 plan of merger did not require approval by the members of the  
1575 corporation, a statement to that effect.

1576 (b) [A merger takes effect upon the effective date of the certificate of  
1577 merger] The certificate of merger shall be delivered to the Secretary of  
1578 the State for filing by the survivor of the merger and shall take effect  
1579 on the effective date of the merger.

1580 Sec. 45. Section 33-1158 of the general statutes is repealed and the  
1581 following is substituted in lieu thereof (*Effective October 1, 2002*):

1582 When a merger [takes effect] becomes effective:

1583 (1) [Every other corporation party to the merger merges into the  
1584 surviving corporation and the separate existence of every corporation  
1585 except the surviving corporation ceases] The corporation that is  
1586 designated in the certificate of merger as the survivor continues or  
1587 comes into existence, as the case may be;

1588 (2) [The title to all real estate and other property owned by each

1589 corporation party to the merger is vested in the surviving corporation  
1590 without reversion or impairment] The separate existence of every  
1591 corporation that is merged into the survivor ceases;

1592 (3) [The surviving corporation has all liabilities of each corporation  
1593 party to the merger] All liabilities of each corporation that is merged  
1594 into the survivor are vested in the survivor;

1595 (4) [A proceeding pending against any corporation party to the  
1596 merger may be continued as if the merger did not occur or the  
1597 surviving corporation may be substituted in the proceeding for the  
1598 corporation whose existence ceased] All property owned by, and every  
1599 contract right possessed by, each corporation that merges into the  
1600 survivor is vested in the survivor without reversion or impairment;

1601 (5) The name of the survivor may, but need not be, substituted in  
1602 any pending proceeding for the name of any party to the merger  
1603 whose separate existence ceased in the merger;

1604 [(5)] (6) The certificate of incorporation of the [surviving  
1605 corporation] survivor is amended to the extent provided in the plan of  
1606 merger;

1607 (7) The certificate of incorporation of a survivor that is created by  
1608 the merger becomes effective;

1609 [(6)] (8) The memberships, if any, of each corporation which is a  
1610 party to the merger that are to be converted into memberships of the  
1611 [surviving corporation] survivor are converted, and the former  
1612 members in such membership classes are entitled only to the  
1613 designation, qualifications, privileges and rights of the class of  
1614 members to which they are converted, as provided in the certificate of  
1615 incorporation of the [surviving corporation] survivor as the same may  
1616 be amended by the plan of merger; and

1617 [(7)] (9) Any devise, bequest, gift or grant, contained in any will or  
1618 in any other instrument, made before or after the merger, to or for the  
1619 benefit of any of the merging corporations shall inure to the benefit of

1620 the [surviving corporation] survivor, and so far as is necessary for that  
1621 purpose, the existence of each merging corporation shall be deemed to  
1622 continue in and through the [surviving or new corporation] survivor.

1623 Sec. 46. (NEW) (*Effective October 1, 2002*) (a) Unless otherwise  
1624 provided in a plan of merger, after the plan has been adopted and  
1625 approved as required by sections 33-1155 to 33-1158, inclusive, as  
1626 amended by this act, and at any time before the merger has become  
1627 effective, the merger may be abandoned by any party thereto without  
1628 action by the party's members in accordance with any procedures set  
1629 forth in the plan of merger or, if no such procedures are set forth in the  
1630 plan, in the manner determined by the board of directors of the  
1631 corporation, subject to any contractual rights of other parties to the  
1632 merger.

1633 (b) If a merger is abandoned under subsection (a) of this section  
1634 after a certificate of merger has been filed with the Secretary of the  
1635 State but before the merger has become effective, a statement that the  
1636 merger has been abandoned in accordance with this section, executed  
1637 on behalf of a party to the merger by an officer or other duly  
1638 authorized representative of such party, shall be delivered to the  
1639 Secretary of the State for filing prior to the effective date of the merger.  
1640 Upon filing, the statement shall take effect and the merger shall be  
1641 deemed abandoned and shall not become effective.

1642 Sec. 47. Section 33-1165 of the general statutes is repealed and the  
1643 following is substituted in lieu thereof (*Effective October 1, 2002*):

1644 [(a) A corporation may, on the terms and conditions and for the  
1645 consideration determined by the board of directors: (1) Sell] No  
1646 approval of the members of a corporation is required, unless the  
1647 certificate of incorporation otherwise provides: (1) To sell, lease,  
1648 exchange or otherwise dispose of [all, or substantially all, of its  
1649 property] any or all of the corporation's assets in the usual and regular  
1650 course of affairs of the corporation; (2) to mortgage, pledge, dedicate to  
1651 the repayment of indebtedness, whether with or without recourse, or  
1652 otherwise encumber any or all of [its property] the corporation's assets,

1653 whether or not in the usual and regular course of affairs of the  
1654 corporation; or (3) to transfer any or all of [its property to a corporation  
1655 all the shares] the corporation's assets to one or more corporations or  
1656 other entities, all of the shares or interests of which are owned by the  
1657 corporation or of which the corporation is the sole member, or to a  
1658 corporation which is the sole member of the corporation.

1659 [(b) Unless the certificate of incorporation requires it, approval by  
1660 the members of a transaction described in subsection (a) is not  
1661 required.]

1662 Sec. 48. Section 33-1166 of the general statutes is repealed and the  
1663 following is substituted in lieu thereof (*Effective October 1, 2002*):

1664 (a) [A corporation may sell, lease, exchange, or otherwise dispose of  
1665 all, or substantially all, of its property, with or without the good will,  
1666 otherwise than in the usual and regular course of affairs of the  
1667 corporation on the terms and conditions and for the consideration  
1668 determined by the corporation's board of directors, and if the  
1669 corporation has members entitled to vote on the transaction, if the  
1670 board of directors proposes and such members approve the proposed  
1671 transaction] Unless the certificate of incorporation provides otherwise,  
1672 a sale, lease, exchange or other disposition of assets, other than a  
1673 disposition described in section 33-1165, as amended by this act,  
1674 requires approval of the corporation's members who are otherwise  
1675 entitled to vote on the disposition, if any, only if the disposition would  
1676 leave the corporation without a significant continuing activity. If a  
1677 corporation retains an activity that represented at least twenty-five per  
1678 cent of total assets at the end of the most recently completed fiscal  
1679 year, and twenty-five per cent of either income from continuing  
1680 operations before taxes or revenues from continuing operations for  
1681 such fiscal year, for the corporation and each of its subsidiaries on a  
1682 consolidated basis, the corporation will conclusively be deemed to  
1683 have retained a significant continuing activity.

1684 (b) [For the proposed transaction to be approved: (1) The board of  
1685 directors must approve the transaction; (2) the board of directors must

1686 recommend the proposed transaction to the members entitled to vote  
1687 on the transaction, if any, unless the board of directors determines that  
1688 because of conflict of interest or other special circumstances it should  
1689 make no recommendation and communicates the basis for its  
1690 determination to the members entitled to vote on the transaction with  
1691 the submission of the proposed transaction; and (3) the members  
1692 entitled to vote must approve the transaction, either before or after the  
1693 actions required in subdivisions (1) and (2) of this subsection, as  
1694 provided in subsection (e) of this section] A disposition that requires  
1695 approval of the members under subsection (a) of this section shall be  
1696 initiated by a resolution of the board of directors authorizing the  
1697 disposition. After adoption of such a resolution, the board of directors  
1698 shall submit the proposed disposition to the members for their  
1699 approval. The board of directors shall also transmit to the members a  
1700 recommendation that the members approve the proposed disposition,  
1701 unless the board of directors makes a determination that because of  
1702 conflicts of interest or other special circumstances it should not make  
1703 such a recommendation, in which case the board of directors shall  
1704 transmit to the members the basis for that determination.

1705 (c) The board of directors may condition its submission of [the  
1706 proposed transaction] a disposition to the members under subsection  
1707 (b) of this section on any basis.

1708 (d) [The] If a disposition is to be approved by the members under  
1709 subsection (a) of this section, and if the approval is to be given at a  
1710 meeting, the corporation shall notify each member entitled to vote on  
1711 the [proposed transaction] disposition, if any, of the [proposed  
1712 members' meeting in accordance with section 33-1065] meeting of  
1713 members at which the disposition is to be submitted for approval. The  
1714 notice shall [also] state that the purpose, or one of the purposes, of the  
1715 meeting is to consider the [sale, lease, exchange or other disposition of  
1716 all, or substantially all, of the property of the corporation and]  
1717 disposition and shall contain or be accompanied by a description of the  
1718 [transaction] disposition, including the terms and conditions thereof  
1719 and the consideration to be received by the corporation therefor.

1720 (e) Unless sections 33-1000 to 33-1290, inclusive, the certificate of  
1721 incorporation or the board of directors, acting pursuant to subsection  
1722 (c) of this section, requires a greater vote or a vote by classes of  
1723 members, the [transaction] disposition to be authorized must be  
1724 approved by: (1) If no class of members is entitled to vote separately on  
1725 the [transaction] disposition as a class, at least two-thirds of the votes  
1726 cast by the members entitled to vote thereon, and (2) if any class of  
1727 members is entitled to vote on the [transaction] disposition separately  
1728 as a class, at least two-thirds of the votes cast by the members of each  
1729 such class. Approval of the disposition by members may precede or  
1730 follow authorization of the disposition by the board of directors and  
1731 the taking of any necessary actions under subsection (b) of this section.

1732 (f) After a [sale, lease, exchange or other disposition of property is  
1733 authorized, the transaction nevertheless may be abandoned, subject to  
1734 any contractual rights, without further member action] disposition has  
1735 been approved by the members under subsection (b) of this section,  
1736 and at any time before the disposition has been consummated, the  
1737 disposition may be abandoned by the corporation without action by  
1738 the members, subject to any contractual rights of other parties to the  
1739 disposition.

1740 (g) A disposition of assets in the course of dissolution under sections  
1741 33-1170 to 33-1193, inclusive, is not governed by this section.

1742 (h) The assets of a direct or indirect consolidated subsidiary shall be  
1743 deemed the assets of the parent corporation for the purposes of this  
1744 section.

1745 [(g)] (i) If the corporation has no members, or no members entitled  
1746 to vote thereon, a [transaction] disposition described in this section  
1747 shall be approved by the board of directors.

1748 Sec. 49. Section 33-1172 of the general statutes is repealed and the  
1749 following is substituted in lieu thereof (*Effective October 1, 2002*):

1750 (a) At any time after dissolution is authorized, the corporation may

1751 dissolve by delivering to the Secretary of the State for filing a certificate  
1752 of dissolution setting forth: (1) The name of the corporation; (2) the  
1753 date dissolution was authorized; and (3) if dissolution was approved  
1754 by members, [ (A) The number of votes entitled to be cast on the  
1755 proposal to dissolve; and (B) either the total number of votes cast for  
1756 and against dissolution or the total number of undisputed votes cast  
1757 for dissolution and a statement that the number cast for dissolution  
1758 was sufficient for approval; (4) if dissolution was authorized by the  
1759 board of directors, a statement setting forth (A) that the corporation  
1760 has no members, or no members entitled to vote on the dissolution, (B)  
1761 that the dissolution was approved by resolution adopted by the vote of  
1762 the board of directors and (C) the number of directors required to take  
1763 such action and the number of votes cast for the resolution] a  
1764 statement that the proposal to dissolve was duly approved by the  
1765 members in the manner required by sections 33-1000 to 33-1290,  
1766 inclusive, and by the certificate of incorporation.

1767 [(b) If voting by classes of members was required, the information  
1768 required by subdivision (3) of subsection (a) of this section must be  
1769 separately provided for each class of members entitled to vote  
1770 separately on the proposal for dissolution.]

1771 [(c)] (b) A corporation is dissolved upon the effective date of its  
1772 certificate of dissolution.

1773 (c) For the purposes of sections 33-1170 to 33-1193, inclusive, and  
1774 sections 52 and 53 of this act, "dissolved corporation" means a  
1775 corporation whose certificate of dissolution has become effective and  
1776 includes a successor entity to which the remaining assets of the  
1777 corporation are transferred subject to the corporation's liabilities for  
1778 purposes of liquidation.

1779 Sec. 50. Subsection (c) of section 33-1173 of the general statutes is  
1780 repealed and the following is substituted in lieu thereof (*Effective*  
1781 *October 1, 2002*):

1782 (c) After the revocation of dissolution is authorized, the corporation

1783 may revoke the dissolution by delivering to the Secretary of the State  
1784 for filing a certificate of revocation of dissolution that sets forth: (1) The  
1785 name of the corporation; (2) the effective date of the dissolution that  
1786 was revoked; (3) the date that the revocation of dissolution was  
1787 authorized; (4) if the corporation's board of directors, or incorporators,  
1788 revoked the dissolution, a statement to that effect; (5) if the  
1789 corporation's board of directors revoked a dissolution authorized by  
1790 members, a statement that revocation was permitted by action of the  
1791 board of directors alone pursuant to that authorization; (6) if member  
1792 action was required to revoke the dissolution, the information required  
1793 by subdivision (3) of subsection (a) [or subsection (b)] of section 33-  
1794 1172, as amended by this act; and (7) if the name of the corporation  
1795 whose dissolution is to be revoked is no longer available, be  
1796 accompanied by an amendment of the certificate of incorporation  
1797 which changes the name of the corporation to an available name.

1798 Sec. 51. Section 33-1178 of the general statutes is repealed and the  
1799 following is substituted in lieu thereof (*Effective October 1, 2002*):

1800 (a) A dissolved corporation may also publish notice of its  
1801 dissolution and request that persons with claims against the dissolved  
1802 corporation present them in accordance with the notice.

1803 (b) The notice shall: (1) Be published one time in a newspaper of  
1804 general circulation in the county where the dissolved corporation's  
1805 principal office or, if none in this state, its registered office, is or was  
1806 last located; (2) describe the information that must be included in a  
1807 claim and provide a mailing address where the claim may be sent; and  
1808 (3) state that a claim against the dissolved corporation will be barred  
1809 unless a proceeding to enforce the claim is commenced within three  
1810 years after the publication of the notice.

1811 (c) If the dissolved corporation publishes a newspaper notice in  
1812 accordance with subsection (b) of this section, the claim of each of the  
1813 following claimants is barred unless the claimant commences a  
1814 proceeding to enforce the claim against the dissolved corporation  
1815 within three years after the publication date of the newspaper notice:

1816 (1) A claimant who [did not receive] was not given written notice  
1817 under section 33-1177; (2) a claimant whose claim was timely sent to  
1818 the dissolved corporation but not acted on; (3) a claimant whose claim  
1819 is contingent or based on an event occurring after the effective date of  
1820 dissolution.

1821 (d) A claim that is not barred by subsection (c) of section 33-1177 or  
1822 subsection (c) of this section may be enforced: [under this section:] (1)  
1823 Against the dissolved corporation, to the extent of its undistributed  
1824 assets; or (2) except as provided in subsection (d) of section 52 of this  
1825 act, if the assets have been distributed in liquidation to the members of  
1826 the corporation, against a member of the dissolved corporation to the  
1827 extent of [his] the member's pro rata share of the claim or the corporate  
1828 assets distributed to [him] the member in liquidation, whichever is  
1829 less, but a member's total liability for all claims under this section may  
1830 not exceed the total amount of assets distributed to [him] the member.

1831 (e) Nothing in this section shall extend any applicable period of  
1832 limitation.

1833 Sec. 52. (NEW) (*Effective October 1, 2002*) (a) A dissolved corporation  
1834 that has published a notice under section 33-1178 of the general  
1835 statutes, as amended by this act, may file an application with the  
1836 superior court for the judicial district where the dissolved  
1837 corporation's principal office or, if none in this state, its registered  
1838 office, is located for a determination of the amount and form of  
1839 security to be provided for payment of claims that are contingent or  
1840 have not been made known to the dissolved corporation or that are  
1841 based on an event occurring after the effective date of dissolution but  
1842 that, based on the facts known to the dissolved corporation, are  
1843 reasonably estimated to arise after the effective date of dissolution.  
1844 Provision need not be made for any claim that is or is reasonably  
1845 anticipated to be barred under subsection (c) of section 33-1178 of the  
1846 general statutes, as amended by this act.

1847 (b) Within ten days after the filing of an application under  
1848 subsection (a) of this section, notice of the proceeding shall be given by

1849 the dissolved corporation to each claimant holding a contingent claim  
1850 whose contingent claim is shown on the records of the dissolved  
1851 corporation.

1852 (c) The court may appoint a guardian ad litem to represent all  
1853 claimants whose identities are unknown in any proceeding brought  
1854 under this section. The reasonable fees and expenses of such guardian,  
1855 including all reasonable expert witness fees, shall be paid by the  
1856 dissolved corporation.

1857 (d) Provision by the dissolved corporation for security in the  
1858 amount and the form ordered by the court under subsection (a) of this  
1859 section shall satisfy the dissolved corporation's obligations with  
1860 respect to claims that are contingent, have not been made known to the  
1861 dissolved corporation or are based on an event occurring after the  
1862 effective date of dissolution, and such claims may not be enforced  
1863 against a member who received assets in liquidation.

1864 Sec. 53. (NEW) (*Effective October 1, 2002*) (a) Directors of a dissolved  
1865 corporation shall cause the dissolved corporation to discharge or make  
1866 reasonable provision for the payment of claims and make distributions  
1867 of assets to members after payment of or provision for claims.

1868 (b) Directors of a dissolved corporation which has disposed of  
1869 claims under section 33-1177 or 33-1178 of the general statutes, as  
1870 amended by this act, or section 52 of this act shall not be liable for  
1871 breach of subsection (a) of this section with respect to claims against  
1872 the dissolved corporation that are barred or satisfied under sections 33-  
1873 1177 or 33-1178 of the general statutes, as amended by this act, or  
1874 section 52 of this act.

1875 Sec. 54. Section 34-9 of the general statutes is repealed and the  
1876 following is substituted in lieu thereof (*Effective October 1, 2002*):

1877 As used in this chapter, unless the context otherwise requires:

1878 (1) "Address" means location as described by the full street number,  
1879 if any, street, city or town, state or country and not a mailing address

1880 such as a post office box.

1881 (2) "Certificate of limited partnership" means the certificate referred  
1882 to in section 34-10 and the certificate as amended or restated.

1883 (3) "Consolidation" means a business combination pursuant to  
1884 section 34-33b, as amended by this act.

1885 [(3)] (4) "Contribution" means any cash, property, services rendered,  
1886 or a promissory note or other binding obligation to contribute cash or  
1887 property or to perform services, which a partner contributes to a  
1888 limited partnership in his capacity as a partner.

1889 [(4)] (5) "Event of withdrawal of a general partner" means an event  
1890 that causes a person to cease to be a general partner as provided in  
1891 section 34-28.

1892 [(5)] (6) "Foreign limited partnership" means a partnership formed  
1893 under the laws of any state other than this state and having as partners  
1894 one or more general partners and one or more limited partners.

1895 [(6)] (7) "General partner" means a person who has been admitted to  
1896 a limited partnership as a general partner in accordance with the  
1897 partnership agreement and named in the certificate of limited  
1898 partnership as a general partner.

1899 (8) "Interests" means the proprietary interests in an other entity.

1900 [(7)] (9) "Limited partner" means a person who has been admitted to  
1901 a limited partnership as a limited partner in accordance with the  
1902 partnership agreement.

1903 [(8)] (10) "Limited partnership" and "domestic limited partnership"  
1904 means a partnership formed by two or more persons under the  
1905 provisions of this chapter and having one or more general partners  
1906 and one or more limited partners.

1907 (11) "Merger" means a business combination pursuant to section 34-  
1908 33a, as amended by this act.

1909 (12) "Organizational documents" means the basic document or  
1910 documents that create, or determine the internal governance of, an  
1911 other entity.

1912 (13) "Other entity" means any association or legal entity, other than  
1913 a domestic or foreign limited partnership, organized to conduct  
1914 business, including, but not limited to, a corporation, general  
1915 partnership, limited liability partnership, limited liability company,  
1916 joint venture, joint stock company, business trust, statutory trust and  
1917 real estate investment trust.

1918 [(9)] (14) "Partner" means a limited or general partner.

1919 [(10)] (15) "Partnership agreement" means any valid agreement,  
1920 written or oral, of the partners as to the affairs of a limited partnership  
1921 and the conduct of its business.

1922 [(11)] (16) "Partnership interest" means a partner's share of the  
1923 profits and losses of a limited partnership and the right to receive  
1924 distributions of partnership assets.

1925 (17) "Party to a consolidation" means any domestic or foreign  
1926 limited partnership or other entity that will consolidate under a plan of  
1927 consolidation.

1928 (18) "Party to a merger" means any domestic or foreign limited  
1929 partnership or other entity that will merge under a plan of merger.

1930 [(12)] (19) "Person" means a natural person, partnership, limited  
1931 partnership, foreign limited partnership, trust, estate, association,  
1932 limited liability company or corporation.

1933 (20) "Plan of merger" means a plan entered into pursuant to section  
1934 34-33a, as amended by this act.

1935 (21) "Plan of consolidation" means a plan entered into pursuant to  
1936 section 34-33b, as amended by this act.

1937 [(13)] (22) "State" means a state, territory, or possession of the United

1938 States, the District of Columbia or the Commonwealth of Puerto Rico.

1939 (23) "Survivor" means, in a merger or consolidation, the limited  
1940 partnership or other entity into which one or more other limited  
1941 partnerships or other entities are merged or consolidated. A survivor  
1942 of a merger may preexist the merger or be created by the merger.

1943 Sec. 55. Section 34-33a of the general statutes is repealed and the  
1944 following is substituted in lieu thereof (*Effective October 1, 2002*):

1945 (a) Pursuant to a plan of merger, approved in the manner provided  
1946 by section 34-33c, [a] one or more domestic limited [partnership]  
1947 partnerships may merge with or into any one or more limited  
1948 partnerships or any one or more other entities formed or organized  
1949 under the laws of this state or any other state or any foreign country or  
1950 other foreign jurisdiction, or any combination thereof, and the plan  
1951 shall name the [surviving or resulting limited partnership] survivor.

1952 (b) The plan of merger, which may be embodied in an agreement,  
1953 shall set forth: (1) The name and jurisdiction of organization of each [of  
1954 the merging limited partnerships and a designation of which] party to  
1955 the merger and the name of the limited partnership or other entity  
1956 which is to be the [surviving limited partnership] survivor; (2) the  
1957 terms and conditions of the merger, including the manner and basis of  
1958 converting the shares or interests of each party to the merger into  
1959 shares or other securities, interests, obligations, rights to acquire shares  
1960 or other securities, cash or other property, or any combination thereof,  
1961 and which may include provision for the distribution by any merging  
1962 limited partnership or [by any other limited partnership] other entity  
1963 of cash, securities of any limited partnership or other entity or other  
1964 property in lieu of, in addition to, in exchange for or upon conversion  
1965 of all or part of the interests in a limited partnership or other entity  
1966 which is not the [surviving or resulting limited partnership] survivor  
1967 in the merger; (3) any changes in the certificate of limited partnership  
1968 [of the surviving limited partnership] or the organizational documents  
1969 of the survivor; (4) the effective date or time, which shall be a date or  
1970 time certain, of the merger if it is not to be effective upon the filing of

1971 the certificate of merger; and (5) such other provisions with respect to  
1972 the merger as are deemed necessary or desirable. If the merger  
1973 involves one or more other entities, a written plan of merger which  
1974 meets the requirements for merger of the statutes under which such  
1975 other entity is organized or by which it is governed shall be deemed to  
1976 meet the requirements of this section.

1977 Sec. 56. Section 34-33b of the general statutes is repealed and the  
1978 following is substituted in lieu thereof (*Effective October 1, 2002*):

1979 (a) Pursuant to a plan of consolidation, approved in the manner  
1980 provided by section 34-33c, any domestic limited partnerships may  
1981 consolidate with any one or more limited partnerships or any one or  
1982 more other entities formed or organized under the laws of this state or  
1983 any other state or any foreign country or other foreign jurisdiction, or  
1984 any combination thereof, into a new limited partnership or other  
1985 entity.

1986 (b) The plan of consolidation, which may be embodied in an  
1987 agreement, shall set forth: (1) The name and jurisdiction of  
1988 organization of each of the consolidating limited partnerships or other  
1989 entities and the name and jurisdiction of organization of the new  
1990 limited partnership or other entity, which name may be that of any of  
1991 the consolidating limited partnerships or other entities or any other  
1992 available name pursuant to this chapter; (2) the terms and conditions  
1993 of the consolidation, including the manner and basis of converting the  
1994 shares or interests of each party to the consolidation into shares or  
1995 other securities, interests, obligations, rights to acquire shares or other  
1996 securities, cash or other property, or any combination thereof, and  
1997 which may include provision for the distribution by any consolidating  
1998 limited partnership of cash, securities of any limited partnership, or  
1999 other property in lieu of, in addition to, in exchange for or upon  
2000 conversion of all or part of the interests in any consolidating limited  
2001 partnership or other entity or of the new limited partnership or other  
2002 entity; (3) [with respect to the new] if the survivor is a limited  
2003 partnership, a certificate of limited partnership complying with section

2004 34-10; (4) the effective date or time, which shall be a date or time  
2005 certain, of a consolidation if it is not to be effective upon the filing of  
2006 the certificate of consolidation; and (5) such other provisions with  
2007 respect to the consolidation as are deemed necessary or desirable. If  
2008 the consolidation involves one or more other entities, a written plan of  
2009 consolidation which meets the requirements for consolidation of the  
2010 statutes under which such other entity is organized or by which it is  
2011 governed shall be deemed to meet the requirements of this section.

2012 Sec. 57. Section 34-33d of the general statutes is repealed and the  
2013 following is substituted in lieu thereof (*Effective October 1, 2002*):

2014 (a) [Any domestic limited partnership merging or consolidating  
2015 under this section] After a plan of merger or consolidation is approved  
2016 pursuant to section 34-33c, the survivor shall file a certificate of merger  
2017 or consolidation, as the case may be, in the following manner: (1) A  
2018 certificate of merger [, executed by each] by any merging limited  
2019 partnership that is a party thereto, executed as provided in section 34-  
2020 10a, shall be filed as provided in section 34-10b with respect to the  
2021 [surviving limited partnership] survivor; [.] (2) [A] a certificate of  
2022 consolidation by [each] any consolidating limited partnership that is a  
2023 party thereto, executed as provided in section 34-10a, shall be filed as  
2024 provided in section 34-10b in respect of the new limited partnership or  
2025 other entity together with an appointment of statutory agent for  
2026 service as provided in section 34-13b or other applicable law; [.] and (3)  
2027 [General] general partners executing a certificate of merger or  
2028 consolidation need not sign or swear as to facts set forth therein not  
2029 pertaining to the limited partnership of which they are general  
2030 partners.

2031 (b) The certificate of merger or consolidation, in addition to the  
2032 requirements for a certificate of merger or consolidation of the statutes  
2033 under which any other entity that is a party to the merger or  
2034 consolidation is organized or by which it is governed, shall set forth:  
2035 (1) The plan of merger or consolidation; and (2) as to each merging or  
2036 consolidating limited partnership, a statement of the vote of limited

2037 partners required to adopt the plan of merger or consolidation and the  
2038 vote for the plan; and (3) if the [surviving or new limited partnership]  
2039 survivor is a foreign limited partnership, and is to transact business in  
2040 this state, a statement that such [surviving or new limited partnership,  
2041 if any,] survivor shall comply with the provisions of this chapter  
2042 respecting such limited partnerships, and in every case a statement  
2043 irrevocably appointing the Secretary of the State as its attorney to  
2044 accept service of process in any action, suit or proceeding for the  
2045 enforcement of any obligations of any domestic merging or  
2046 consolidating limited partnership for which it is liable pursuant to  
2047 subsection (c) of section 34-33f, as amended by this act, to the plan of  
2048 merger or consolidation, or to the laws governing such foreign limited  
2049 partnership. If such appointment is not made, legal process in any  
2050 such action, suit or proceeding may be served upon the Secretary of  
2051 the State as provided in subsection (b) of section 34-38q as attorney for  
2052 such [surviving or new limited partnership] survivor.

2053 (c) The copy of the certificate of merger or consolidation, certified by  
2054 the Secretary of the State, may also be filed for record in the records of  
2055 deeds in the office of the town clerk in any town in this state. For such  
2056 recording, the town clerk shall charge and collect the same fee as in the  
2057 case of deeds.

2058 (d) A certificate of merger or consolidation shall act as a certificate  
2059 of cancellation for a domestic limited partnership which is not the  
2060 [surviving or new limited partnership] survivor in the merger or  
2061 consolidation. A certificate of merger shall act as a certificate of  
2062 amendment for a domestic limited partnership which survives such  
2063 merger, to the extent provided by the plan of merger. In the case of a  
2064 consolidation, if the new entity is a limited partnership, the certificate  
2065 of limited partnership set forth in the certificate of consolidation shall  
2066 be the certificate of limited partnership of the new limited partnership.

2067 Sec. 58. Section 34-33f of the general statutes is repealed and the  
2068 following is substituted in lieu thereof (*Effective October 1, 2002*):

2069 (a) The [merging limited partnerships or consolidating limited

2070 partnerships party to the plan of merger or consolidation] survivor  
2071 shall be a single limited partnership or other entity, which, in the case  
2072 of a merger shall be that limited partnership or other entity designated  
2073 in the plan of merger as the [surviving limited partnership] survivor  
2074 and, in the case of a consolidation shall be the new limited partnership  
2075 or other entity provided for in the plan of consolidation.

2076 (b) The separate existence of [all merging or consolidating limited  
2077 partnerships] each party to the [plan of] merger or the consolidation,  
2078 except the [surviving or new limited partnership] survivor, shall cease.

2079 (c) For the purposes of the laws of this state, the [surviving or new  
2080 limited partnership] survivor shall thereupon and thereafter, to the  
2081 extent consistent with its certificate of limited partnership or other  
2082 organizational documents as in effect upon effecting the merger or  
2083 consolidation, possess all of the rights, privileges and powers of each  
2084 of the limited partnerships and other entities that have merged or  
2085 consolidated, and all property, real, personal and mixed, and all debts  
2086 due to any of such limited partnerships and other entities as well as all  
2087 other things and choses in action belonging to each of such limited  
2088 partnerships and other entities, and all and every other interests, of or  
2089 belonging to or due to each of the limited partnerships and other  
2090 entities so merged or consolidated, shall be [taken and transferred to  
2091 and] vested in such single limited partnership or other entity without  
2092 further act or deed; and the title to any real estate, or any interest  
2093 therein, vested in any of such limited partnerships and other entities  
2094 shall not revert or be in any way impaired by reason of such merger or  
2095 consolidation.

2096 (d) Any devise, bequest, gift or grant, contained in any will or in  
2097 any other instrument, made before or after the merger or  
2098 consolidation, to or for the benefit of any [of the merging or  
2099 consolidating limited partnerships] party to the merger or the  
2100 consolidation shall inure to the benefit of the [surviving or new limited  
2101 partnership] survivor. So far as is necessary for that purpose, the  
2102 existence of each [merging or consolidating limited partnership] party

2103 to the merger or the consolidation shall be deemed to continue in and  
2104 through the [surviving or new limited partnership] survivor.

2105 (e) The [surviving or new limited partnership] survivor shall be  
2106 liable for all the liabilities, obligations and penalties of each [of the  
2107 merging or consolidating limited partnerships] party to the merger or  
2108 the consolidation; and any claim existing or action or proceeding, civil  
2109 or criminal, pending by or against any such limited partnership or  
2110 other entity may be prosecuted as if such merger or consolidation had  
2111 not taken place, or such [surviving or new limited partnership]  
2112 survivor may be substituted in its place; and any judgment rendered  
2113 against any [of the merging or consolidating limited partnerships]  
2114 party to the merger or the consolidation may be enforced against the  
2115 [surviving or new limited partnership] survivor. Neither the rights of  
2116 creditors nor any liens upon the property of any merging or  
2117 consolidating limited partnership shall be impaired by the merger or  
2118 consolidation.

2119 (f) Any general partner of a limited partnership or holder of an  
2120 interest in any other entity that is a party to a merger or a  
2121 consolidation who, prior to the merger or the consolidation, was  
2122 obligated for any of the liabilities or obligations of the limited  
2123 partnership or other entity shall not be released by reason of the  
2124 merger or the consolidation from any such liabilities or obligations  
2125 arising prior to the effective time of the merger or the consolidation.

2126 Sec. 59. Subsection (6) of section 34-82 of the general statutes is  
2127 repealed and the following is substituted in lieu thereof (*Effective*  
2128 *October 1, 2002*):

2129 (6) An association formed under this section may become a  
2130 professional service corporation, in accordance with section 33-182b,  
2131 by complying with the provisions of chapter 594a and with this  
2132 subsection. Upon the filing of a certificate of incorporation in  
2133 compliance with section 33-182c, the association shall file with the  
2134 Secretary of the State, in such form as the Secretary of the State shall  
2135 prescribe, a certificate of cancellation of its articles of association and a

2136 consent of each member to the association becoming a professional  
2137 service corporation, together with a filing fee of ten dollars. Upon the  
2138 filing of such a certificate and consents and the incorporation of the  
2139 professional service corporation, the association shall become a  
2140 professional service corporation and the interests therein shall be  
2141 converted to such number of shares of capital stock of the professional  
2142 service corporation as the members shall approve. The provisions of  
2143 subdivisions [(2),] (3), (4), [and (6)] (5) and (8) of subsection (a) of  
2144 section 33-820, as amended by this act, shall apply as though the  
2145 professional service corporation was the surviving corporation in a  
2146 merger and the association the merging corporation.

2147 Sec. 60. Section 34-101 of the general statutes, as amended by section  
2148 1 of public act 01-188, is repealed and the following is substituted in  
2149 lieu thereof (*Effective October 1, 2002*):

2150 As used in sections 34-100 to 34-242, inclusive, as amended by [this  
2151 act] public act 01-188, unless the context otherwise requires:

2152 (1) "Address" means a location as described by the full street  
2153 number, if any, street, city or town, state or county and not a mailing  
2154 address such as a post office box.

2155 (2) "Articles of organization" means articles filed under section 34-  
2156 121, and those articles as amended or restated.

2157 (3) "Corporation" means a corporation formed under the laws of this  
2158 state or a foreign corporation.

2159 (4) "Court" includes every court having jurisdiction in the case.

2160 (5) "Electronic transmission" or "electronically transmitted" means  
2161 any process of communication that is suitable for the retention,  
2162 retrieval and reproduction of information by the recipient and which  
2163 does not directly involve the physical transfer of paper.

2164 (6) "Event of dissociation" means an event that causes a person to  
2165 cease to be a member, as provided in section 34-180.

2166 (7) "Foreign corporation" means a corporation formed under the  
2167 laws of any state other than this state or under the laws of any foreign  
2168 country.

2169 (8) "Foreign limited liability company" means an entity that is: (A)  
2170 Organized under the laws of a state other than the laws of this state or  
2171 under the laws of any foreign country; (B) organized under a statute  
2172 pursuant to which an entity denominated as a limited liability  
2173 company may be formed that affords to each of its members limited  
2174 liability with respect to the liabilities of the entity; and (C) is not  
2175 required to be registered or organized under any statute of this state  
2176 other than sections 34-100 to 34-242, inclusive, as amended by [this act]  
2177 public act 01-188.

2178 (9) "Foreign limited partnership" means a limited partnership  
2179 formed under the laws of any state other than this state or under the  
2180 laws of any foreign country.

2181 (10) "Limited liability company" or "domestic limited liability  
2182 company" means an organization having one or more members that is  
2183 formed under sections 34-100 to 34-242, inclusive, as amended by [this  
2184 act] public act 01-188.

2185 (11) "Limited liability company membership interest" or "interest" or  
2186 "interest in the limited liability company" means a member's share of  
2187 the profits and losses of the limited liability company and a member's  
2188 right to receive distributions of the limited liability company's assets,  
2189 unless otherwise provided in the operating agreement.

2190 (12) "Limited partnership" means a limited partnership formed  
2191 under the laws of this state or a foreign limited partnership.

2192 (13) "Manager" or "managers" means, with respect to a limited  
2193 liability company that has set forth in its articles of organization that it  
2194 is to be managed by managers, the person or persons designated in  
2195 accordance with section 34-140.

2196 (14) "Member" or "members" means a person or persons who have

2197 been admitted to membership in a limited liability company as  
2198 provided in section 34-179 and who has not disassociated from the  
2199 limited liability company as provided in section 34-180.

2200 (15) "Operating agreement" means any agreement, written or oral,  
2201 as to the conduct of the business and affairs of a limited liability  
2202 company, which is binding upon all of the members.

2203 (16) "Organizational documents" means the basic document or  
2204 documents that create, or determine the internal governance of, an  
2205 other entity.

2206 (17) "Organizer" or "organizers" means any member or members or  
2207 any other person or persons who files or file the articles of  
2208 organization as provided in section 34-120.

2209 (18) "Other entity" means any association or legal entity, other than  
2210 a domestic or foreign limited liability company, organized to conduct  
2211 business, including, but not limited to, a corporation, general  
2212 partnership, limited liability partnership, limited partnership, joint  
2213 venture, joint stock company, business trust, statutory trust and real  
2214 estate investment trust.

2215 (19) "Party to a consolidation" means any domestic or foreign  
2216 limited liability company or other entity that will consolidate under a  
2217 plan of consolidation.

2218 (20) "Party to a merger" means any domestic or foreign limited  
2219 liability company or other entity that will merge under a plan of  
2220 merger.

2221 [(16)] (21) "Person" means an individual, a general partnership, a  
2222 limited partnership, a domestic or foreign limited liability company, a  
2223 trust, an estate, an association, a corporation or any other legal or  
2224 commercial entity.

2225 [(17)] "Organizer" or "organizers" means any member or members or  
2226 any other person or persons who files or file the articles of

2227 organization as provided in section 34-120.]

2228 (22) "Plan of merger" or "plan of consolidation" means a plan  
2229 entered into pursuant to section 34-195, as amended by this act.

2230 [(18)] (23) "Professional service" means any type of service to the  
2231 public that requires that members of a profession rendering such  
2232 service obtain a license or other legal authorization as a condition  
2233 precedent to the rendition thereof, limited to the professional services  
2234 rendered by dentists, natureopaths, chiropractors, physicians and  
2235 surgeons, doctors of dentistry, physical therapists, occupational  
2236 therapists, podiatrists, optometrists, nurses, nurse-midwives,  
2237 veterinarians, pharmacists, architects, professional engineers, or jointly  
2238 by architects and professional engineers, landscape architects, real  
2239 estate brokers, insurance producers, certified public accountants and  
2240 public accountants, land surveyors, psychologists, attorneys-at-law,  
2241 licensed marital and family therapists, licensed professional counselors  
2242 and licensed clinical social workers.

2243 [(19)] (24) "Sign" or "signature" includes any manual, facsimile or  
2244 conformed signature.

2245 [(20)] (25) "State" means a state, territory or possession of the United  
2246 States, the District of Columbia or the Commonwealth of Puerto Rico.

2247 (26) "Survivor" means, in a merger or consolidation, the limited  
2248 liability company or other entity into which one or more other limited  
2249 liability companies or other entities are merged or consolidated. A  
2250 survivor of a merger may preexist the merger or be created by the  
2251 merger.

2252 Sec. 61. Section 34-193 of the general statutes is repealed and the  
2253 following is substituted in lieu thereof (*Effective October 1, 2002*):

2254 (a) Except as provided in subsection (b) of this section, any one or  
2255 more limited liability companies may merge or consolidate with or  
2256 into any one or more limited liability companies or one or more other  
2257 entities formed or organized under the laws of this state or any other

2258 state or any foreign country or other foreign jurisdiction, or any  
2259 combination thereof, in a manner provided in sections 34-194 and 34-  
2260 195, as amended by this act.

2261 (b) A limited liability company [formed] organized under sections  
2262 34-100 to 34-242, inclusive, to render professional services [shall] may  
2263 merge or consolidate only with another domestic limited liability  
2264 company [formed] organized under said sections, a professional  
2265 service corporation organized under chapter 594a or a partnership or  
2266 limited liability partnership organized under chapter 614, if such  
2267 company, corporation or partnership is organized to render the same  
2268 professional service. [, and a] A merger or consolidation of a limited  
2269 liability company organized under sections 34-100 to 34-242, inclusive,  
2270 to render professional services with any foreign limited liability  
2271 company or foreign other entity is prohibited.

2272 Sec. 62. Subsection (a) of section 34-194 of the general statutes is  
2273 repealed and the following is substituted in lieu thereof (*Effective*  
2274 *October 1, 2002*):

2275 (a) Unless otherwise provided in the articles of organization or the  
2276 operating agreement, a proposed plan of merger or consolidation  
2277 complying with the requirements of section 34-195, as amended by this  
2278 act, shall be authorized and approved by each limited liability  
2279 company that is a party to a proposed merger or consolidation by the  
2280 affirmative vote of at least two-thirds in interest of the members.

2281 Sec. 63. Section 34-195 of the general statutes is repealed and the  
2282 following is substituted in lieu thereof (*Effective October 1, 2002*):

2283 (a) Each limited liability company or other entity that is a party to a  
2284 proposed merger or consolidation shall enter into a written plan of  
2285 merger or consolidation, which shall be approved in accordance with  
2286 section 34-194, as amended by this act.

2287 (b) The plan of merger or consolidation shall set forth: (1) The name  
2288 of each limited liability company [in] and other entity that is a party to

2289 the merger or consolidation and the name of the [surviving limited  
2290 liability company] survivor in a merger or the new limited liability  
2291 company in a consolidation; (2) the terms and conditions of the  
2292 proposed merger or consolidation; (3) the manner and basis of  
2293 converting the interests in each limited liability company or other  
2294 entity in the merger or consolidation into interests of the surviving or  
2295 new limited liability company or other entity or, in whole or in part,  
2296 into cash or other property; (4) in the case of a merger, such  
2297 amendments to the [articles of organization of the surviving limited  
2298 liability company] organizational documents of the survivor as are  
2299 desired to be effected by the merger, or that no such changes are  
2300 desired; (5) in the case of a consolidation, all of the statements required  
2301 to be set forth in the [articles of organization of any new limited  
2302 liability company] organizational documents of the survivor; and (6)  
2303 such other provisions relating to the proposed merger or consolidation  
2304 as are deemed necessary or desirable. If the merger or consolidation  
2305 involves an other entity, a written plan of merger or consolidation that  
2306 meets the requirements for merger or consolidation of the statutes  
2307 under which such other entity is organized or by which it is governed  
2308 shall be deemed to meet the requirements for a plan of merger or  
2309 consolidation under this section.

2310 Sec. 64. Section 34-196 of the general statutes is repealed and the  
2311 following is substituted in lieu thereof (*Effective October 1, 2002*):

2312 (a) After a plan of merger or consolidation is approved as provided  
2313 in section 34-194, [the surviving or new limited liability company] as  
2314 amended by this act, the survivor shall deliver to the Secretary of the  
2315 State for filing articles of merger or consolidation duly executed by  
2316 each limited liability company and other entity that is a party thereto  
2317 setting forth: (1) The name and jurisdiction of formation or  
2318 organization of each limited liability company and other entity; (2) the  
2319 effective date of the merger or consolidation if later than the date of  
2320 filing of the articles of merger or consolidation; (3) the name of the  
2321 [surviving limited liability company or new limited liability company]  
2322 survivor; (4) a statement that the plan of merger or consolidation was

2323 duly authorized and approved by each limited liability company in  
2324 accordance with the provisions of section 34-194, as amended by this  
2325 act, and by each other entity in accordance with the applicable  
2326 organizational documents of each other entity; (5) that the plan of  
2327 merger or consolidation is on file at a place of business of the  
2328 [surviving or new limited liability company] survivor and the address  
2329 thereof; and (6) that a copy of the plan of merger or consolidation will  
2330 be furnished by the [surviving or new limited liability company]  
2331 survivor, on request and without cost, to any person holding an  
2332 interest in any limited liability company or other entity that is a party  
2333 to the merger or consolidation.

2334 (b) A merger or consolidation takes effect upon the later of the  
2335 effective date of the filing of the articles of merger or consolidation or  
2336 the date set forth in the plan of merger or consolidation.

2337 (c) The articles of merger or consolidation shall be executed by [a]  
2338 each limited liability company or other entity that is a party to the  
2339 merger or consolidation. [in the manner provided for in section 34-109,  
2340 and shall be filed] The survivor shall file the articles of merger or  
2341 consolidation with the Secretary of the State in the manner provided  
2342 for in section 34-110 as a condition of the effectiveness of the merger or  
2343 consolidation.

2344 (d) Articles of merger or consolidation shall act as articles of  
2345 dissolution for a limited liability company which is not the [surviving  
2346 or new limited liability company] survivor in the merger or  
2347 consolidation.

2348 (e) A plan of merger or consolidation authorized and approved in  
2349 accordance with section 34-194, as amended by this act, may effect any  
2350 amendment to the operating agreement or effect the adoption of a new  
2351 operating agreement for a limited liability company if it is the  
2352 [surviving or new limited liability company] survivor in the merger or  
2353 consolidation. Such a plan of merger or consolidation may also  
2354 provide that the operating agreement of any limited liability company  
2355 that is a party to the merger or consolidation, including a limited

2356 liability company formed for the purpose of consummating a merger  
2357 or consolidation, shall be the operating agreement of the [surviving or  
2358 new limited liability company] survivor. Any amendment to an  
2359 operating agreement or adoption of a new operating agreement made  
2360 pursuant to this subsection shall be effective at the effective time or  
2361 date of the merger or consolidation. The provisions of this subsection  
2362 shall not be construed to limit the accomplishment of a merger or  
2363 consolidation or of any of the matters referred to [herein] in this  
2364 subsection by any other means provided for in an operating agreement  
2365 or other agreement or as otherwise permitted by law.

2366 Sec. 65. Section 34-197 of the general statutes is repealed and the  
2367 following is substituted in lieu thereof (*Effective October 1, 2002*):

2368 Upon the effectiveness of a merger or consolidation:

2369 (1) The [limited liability companies party to the plan of merger or  
2370 consolidation] survivor shall be a single limited liability company or  
2371 other entity which, in the case of a merger, shall be the limited liability  
2372 company or other entity designated in the plan of merger as the  
2373 [surviving limited liability company] survivor and, in the case of a  
2374 consolidation, shall be the new limited liability company or other  
2375 entity provided for in the plan of consolidation.

2376 (2) The separate existence of each limited liability company or other  
2377 entity that is a party to the plan of merger or consolidation, except the  
2378 [surviving or new limited liability company] survivor, shall cease.

2379 (3) The [surviving or new limited liability company] survivor shall  
2380 thereupon and thereafter possess all the rights, privileges, immunities  
2381 and powers of each of the merging or consolidating limited liability  
2382 companies or other entities and [is] shall be subject to all the  
2383 restrictions, disabilities and duties of each of the merging or  
2384 consolidating limited liability companies or other entities.

2385 (4) [All] Any property, real, personal and mixed, and all debts due  
2386 on whatever account, including promises to make capital

2387 contributions, and all other choses in action, and all and every other  
2388 interest of or belonging to or due to each [of the limited liability  
2389 companies] party to the merger or the consolidation shall be vested in  
2390 the [surviving or new limited liability company] survivor without  
2391 further act or deed.

2392 (5) The title to all real estate, and any interest therein, vested in any  
2393 [such limited liability company] party to the merger or the  
2394 consolidation shall not revert or be in any way impaired by reason of  
2395 such merger or consolidation.

2396 (6) The [surviving or new limited liability company] survivor shall  
2397 be responsible and liable for all liabilities and obligations of each of the  
2398 limited liability companies or other entities that were merged or  
2399 consolidated, and any claim existing or action or proceeding pending  
2400 by or against any limited liability company or other entity that was a  
2401 party to the merger or consolidation may be prosecuted as if such  
2402 merger or consolidation had not taken place, or the [surviving or new  
2403 limited liability company] survivor may be substituted in the action.

2404 (7) Neither the rights of creditors nor any liens on the property of  
2405 any limited liability company or other entity that is a party to the  
2406 merger or consolidation shall be impaired by the merger or  
2407 consolidation.

2408 (8) The membership or other interests in a limited liability company  
2409 or other entity that are to be converted or exchanged into interests,  
2410 cash, obligations or other property under the terms of the plan of  
2411 merger or consolidation are so converted, and the former holders  
2412 thereof are entitled only to the rights provided in the plan of merger or  
2413 consolidation or the rights otherwise provided by law.

2414 Sec. 66. Section 34-198 of the general statutes is repealed and the  
2415 following is substituted in lieu thereof (*Effective October 1, 2002*):

2416 [(a) Any one or more limited liability companies formed under  
2417 sections 34-100 to 34-242, inclusive, may merge or consolidate with or

2418 into one or more foreign limited liability companies, or any one or  
2419 more foreign limited liability companies may merge or consolidate  
2420 with or into any one or more limited liability companies formed under  
2421 said sections if: (1) The merger or consolidation is permitted by the law  
2422 of the state or jurisdiction under whose laws each foreign limited  
2423 liability company is organized or formed and each foreign limited  
2424 liability company complies with that law in effecting the merger or  
2425 consolidation; (2) the foreign limited liability company complies with  
2426 section 34-196 if it is the surviving or new limited liability company;  
2427 and (3) each domestic limited liability company complies with the  
2428 applicable provisions of sections 34-193 to 34-195, inclusive, and, if it is  
2429 the surviving or new limited liability company, with section 34-196.]

2430 [(b)] (a) Upon a merger involving one or more domestic limited  
2431 liability companies taking effect, if the [surviving or new limited  
2432 liability company] survivor is to be governed by the laws of any state  
2433 other than this state or by the laws of the District of Columbia or of any  
2434 foreign country, then the [surviving or new limited liability company]  
2435 survivor shall agree: (1) That it may be served with process in this state  
2436 in any proceeding for enforcement of any obligation of any limited  
2437 liability company or other entity party to the merger or consolidation  
2438 that was formed under the laws of this state, as well as for enforcement  
2439 of any obligation of the [surviving or new limited liability company  
2440 arising from] survivor of the merger or consolidation; and (2) to  
2441 irrevocably appoint the Secretary of the State as its agent for service of  
2442 process in any such proceeding and the [surviving or new limited  
2443 liability company] survivor shall specify the address to which a copy  
2444 of the process shall be mailed to it by the Secretary of the State.

2445 [(c)] (b) The effect of such merger or consolidation shall be as  
2446 provided in section 34-197, as amended by this act, if the [surviving or  
2447 new limited liability company] survivor is to be governed by the laws  
2448 of this state. If the [surviving or new limited liability company]  
2449 survivor is to be governed by the laws of any jurisdiction other than  
2450 this state, the effect of such merger or consolidation shall be the same  
2451 as provided in section 34-197, as amended by this act, except as the

2452 laws of such other jurisdiction provide otherwise.

2453 Sec. 67. Section 34-301 of the general statutes is repealed and the  
2454 following is substituted in lieu thereof (*Effective October 1, 2002*):

2455 [In] As used in sections 34-300 to 34-399, inclusive:

2456 (1) "Business" includes every trade, occupation and profession.

2457 (2) "Debtor in bankruptcy" means a person who is the subject of: (A)  
2458 An order for relief under Title 11 of the United States Code or a  
2459 comparable order under a successor statute of general application; or  
2460 (B) a comparable order under federal, state or foreign law governing  
2461 insolvency.

2462 (3) "Distribution" means a transfer of money or other property from  
2463 a partnership to a partner in the partner's capacity as a partner or to  
2464 the partner's transferee.

2465 (4) "Foreign registered limited liability partnership" includes a  
2466 partnership formed pursuant to an agreement governed by the laws of  
2467 any state other than this state and registered or denominated as a  
2468 registered limited liability partnership or limited liability partnership  
2469 under the laws of such other state.

2470 (5) "Interests" means the proprietary interests in an other entity.

2471 (6) "Merger" means a business combination pursuant to section 34-  
2472 388, as amended by this act.

2473 (7) "Organizational documents" means the basic document or  
2474 documents that create, or determine the internal governance of, an  
2475 other entity.

2476 (8) "Other entity" means any association or legal entity, other than a  
2477 domestic or foreign partnership, organized to conduct business,  
2478 including, but not limited to, a corporation, limited partnership,  
2479 limited liability partnership, limited liability company, joint venture,  
2480 joint stock company, business trust, statutory trust and real estate

2481 investment trust.

2482 [(5)] (9) "Partnership" means an association of two or more persons  
2483 to carry on as co-owners a business for profit formed under section 34-  
2484 314, predecessor law or comparable law of another jurisdiction, and  
2485 includes for all purposes of the laws of this state a registered limited  
2486 liability partnership.

2487 [(6)] (10) "Partnership agreement" means the agreement, whether  
2488 written, oral or implied, among the partners concerning the  
2489 partnership, including amendments to the partnership agreement.

2490 [(7)] (11) "Partnership at will" means a partnership in which the  
2491 partners have not agreed to remain partners until the expiration of a  
2492 definite term or the completion of a particular undertaking.

2493 [(8)] (12) "Partnership interest" or "partner's interest in the  
2494 partnership" means all of a partner's interests in the partnership,  
2495 including the partner's transferable interest and all management and  
2496 other rights.

2497 (13) "Party to a merger" means any domestic or foreign partnership  
2498 or other entity that will merge under a plan of merger.

2499 [(9)] (14) "Person" means an individual, corporation, limited liability  
2500 company, business trust, estate, trust, partnership, association, joint  
2501 venture, government, governmental subdivision, agency or  
2502 instrumentality, or any other legal or commercial entity.

2503 (15) "Plan of merger" means a plan entered into pursuant to section  
2504 34-388, as amended by this act.

2505 [(10)] (16) "Property" means all property, real, personal or mixed,  
2506 tangible or intangible, or any interest therein.

2507 [(11)] (17) "Registered limited liability partnership" includes a  
2508 partnership formed pursuant to an agreement governed by the laws of  
2509 this state, registered under section 34-419, and complying with sections

2510 34-406 and 34-420.

2511 [(12)] (18) "State" means a state of the United States, the District of  
2512 Columbia, the Commonwealth of Puerto Rico or any territory or  
2513 insular possession subject to the jurisdiction of the United States.

2514 [(13)] (19) "Statement" means a statement of partnership authority  
2515 under section 34-324, a statement of denial under section 34-325, a  
2516 statement of dissociation under section 34-365, a statement of  
2517 dissolution under section 34-376, a statement of merger under section  
2518 34-390, as amended by this act, or an amendment or cancellation of any  
2519 of the foregoing.

2520 (20) "Survivor" in a merger means the partnership or other entity  
2521 into which one or more other partnerships or other entities are merged  
2522 or consolidated. A survivor of a merger may preexist the merger or be  
2523 created by the merger.

2524 [(14)] (21) "Transfer" includes an assignment, conveyance, lease,  
2525 mortgage, deed and encumbrance.

2526 Sec. 68. Section 34-388 of the general statutes is repealed and the  
2527 following is substituted in lieu thereof (*Effective October 1, 2002*):

2528 (a) Pursuant to a plan of merger approved as provided in subsection  
2529 (c) of this section, [a partnership may be merged with one or more  
2530 partnerships or limited partnerships] one or more partnerships may  
2531 merge with or into any one or more partnerships or any one or more  
2532 other entities formed or organized under the laws of this state or any  
2533 other state or any foreign country or other foreign jurisdiction, or any  
2534 combination thereof.

2535 (b) The plan of merger shall set forth:

2536 (1) The name of each partnership or [limited partnership] other  
2537 entity that is a party to the merger;

2538 (2) The name of the [surviving entity] survivor into which the other

2539 partnerships or [limited partnerships] other entities will merge;

2540 (3) Whether the [surviving entity] survivor is a partnership or an  
2541 other entity and, if the survivor is a partnership or a limited  
2542 partnership, [and] the status of each partner;

2543 (4) The terms and conditions of the merger;

2544 (5) The manner and basis of converting the shares or interests of  
2545 each party to the merger into shares, interests or obligations of the  
2546 [surviving entity] survivor or into money or other property in whole or  
2547 part; [and]

2548 (6) The street address of the [surviving entity's] survivor's chief  
2549 executive office;

2550 (7) The effective date or time, which shall be a date or time certain,  
2551 of the merger if it is not to be effective upon the filing of the certificate  
2552 of merger; and

2553 (8) Such other provisions with respect to the merger as are deemed  
2554 necessary or desirable.

2555 (c) The plan of merger shall be approved:

2556 (1) In the case of a partnership that is a party to the merger, by all of  
2557 the partners or a number or percentage specified for merger in the  
2558 partnership agreement; and

2559 (2) In the case of [a limited partnership] an other entity that is a  
2560 party to the merger, by the vote required for approval of a merger by  
2561 the law of the state or foreign jurisdiction in which the [limited  
2562 partnership] other entity is organized or by which it is governed and,  
2563 in the absence of such a specifically applicable law, as to a limited  
2564 partnership, by all of the partners, notwithstanding a provision to the  
2565 contrary in the partnership agreement.

2566 (d) After a plan of merger is approved and before the merger takes  
2567 effect, the plan may be amended or abandoned as provided in the

2568 plan.

2569 (e) The merger takes effect on the later of:

2570 (1) The approval of the plan of merger by all parties to the merger,  
2571 as provided in subsection (c) of this section;

2572 (2) The filing of all documents required by law to be filed as a  
2573 condition to the effectiveness of the merger; or

2574 (3) Any effective date specified in the plan of merger.

2575 (f) If the merger involves one or more other entities, a written plan  
2576 of merger which meets the requirements for merger of the statutes  
2577 under which such other entity is organized or by which it is governed  
2578 shall be deemed to meet the requirements of a plan of merger under  
2579 this section.

2580 Sec. 69. Section 34-389 of the general statutes is repealed and the  
2581 following is substituted in lieu thereof (*Effective October 1, 2002*):

2582 (a) When a merger takes effect:

2583 (1) The separate existence of every partnership or [limited  
2584 partnership] other entity that is a party to the merger, other than the  
2585 [surviving entity] survivor, ceases;

2586 (2) All property owned by each of the merged partnerships or  
2587 [limited partnerships] other entities vests in the [surviving entity]  
2588 survivor;

2589 (3) All obligations of every partnership or [limited partnership]  
2590 other entity that is a party to the merger become the obligations of the  
2591 [surviving entity] survivor; and

2592 (4) An action or proceeding pending against a partnership or  
2593 [limited partnership] other entity that is a party to the merger may be  
2594 continued as if the merger had not occurred, or the [surviving entity]  
2595 survivor may be substituted as a party to the action or proceeding.

2596 (b) The Secretary of the State is the agent for service of process in an  
2597 action or proceeding against a surviving foreign partnership or  
2598 [limited partnership] other entity to enforce an obligation of a domestic  
2599 partnership or [limited partnership] other entity that is a party to a  
2600 merger. Upon receipt of process, the Secretary of the State shall mail a  
2601 copy of the process to the surviving foreign partnership or [limited  
2602 partnership] other entity.

2603 (c) A partner of [the] a surviving partnership or limited partnership  
2604 is liable for:

2605 (1) All obligations of a party to the merger for which the partner  
2606 was personally liable before the merger;

2607 (2) All other obligations of the [surviving entity] survivor incurred  
2608 before the merger by a party to the merger, but those obligations may  
2609 be satisfied only out of property of the [entity] survivor; and

2610 (3) All obligations of the [surviving entity] survivor incurred after  
2611 the merger takes effect, but those obligations may be satisfied only out  
2612 of property of the [entity] survivor if the partner is a limited partner.

2613 (d) If the obligations incurred before the merger by a party to the  
2614 merger that is a partnership or limited partnership are not satisfied out  
2615 of the property of the [surviving partnership or limited partnership]  
2616 survivor, the general partners of that party immediately before the  
2617 effective date of the merger shall contribute the amount necessary to  
2618 satisfy that party's obligations to the [surviving entity] survivor, in the  
2619 manner provided in section 34-378 or in sections 34-9 to 34-38r,  
2620 inclusive, of the jurisdiction in which the party was [formed]  
2621 organized, as the case may be, as if the merged party were dissolved.

2622 (e) A partner of a party to a merger between or among partnerships  
2623 or limited partnerships, or both, who does not become a partner of the  
2624 [surviving partnership or limited partnership] survivor is dissociated  
2625 from the entity, of which that partner was a partner, as of the date the  
2626 merger takes effect. The [surviving entity] survivor shall cause the

2627 partner's interest in the entity to be purchased under section 34-362 or  
2628 another statute specifically applicable to that partner's interest with  
2629 respect to a merger. The [surviving entity] survivor is bound under  
2630 section 34-363 by an act of a general partner dissociated under this  
2631 subsection, and the partner is liable under section 34-364 for  
2632 transactions entered into by the [surviving entity] survivor after the  
2633 merger takes effect.

2634 (f) Any partner of a partnership or holder of an interest in an other  
2635 entity that is a party to a merger who, prior to the merger, was  
2636 obligated for any of the liabilities or obligations of the partnership or  
2637 other entity shall not be released by reason of the merger from any  
2638 such liabilities or obligations arising prior to the effective time of the  
2639 merger.

2640 Sec. 70. Section 34-390 of the general statutes is repealed and the  
2641 following is substituted in lieu thereof (*Effective October 1, 2002*):

2642 (a) After a merger, [the surviving partnership or limited  
2643 partnership] if the survivor is a partnership, the partnership may file a  
2644 statement that one or more partnerships or [limited partnerships] other  
2645 entities have merged into the surviving [entity] partnership.

2646 (b) A statement of merger shall contain, in addition to the  
2647 requirements of statute for a certificate of merger or consolidation  
2648 applicable to an other entity that is a party to the merger:

2649 (1) The name of each partnership or [limited partnership] other  
2650 entity that is a party to the merger;

2651 (2) The name of the [surviving entity] survivor into which the other  
2652 partnerships or [limited partnership] other entities were merged;

2653 (3) The street address of the [surviving entity's] survivor's chief  
2654 executive office and of an office in this state, if any; and

2655 (4) [Whether the surviving entity is a partnership or a limited  
2656 partnership] The type of entity of the survivor.

2657 (c) Except as otherwise provided in subsection (d) of this section, for  
2658 the purposes of section 34-323, property of the surviving partnership  
2659 or [limited partnership] other entity which before the merger was held  
2660 in the name of another party to the merger is property held in the  
2661 name of the [surviving entity] survivor upon filing a statement of  
2662 merger.

2663 (d) For the purposes of section 34-323, real property of the surviving  
2664 partnership or [limited partnership] other entity which before the  
2665 merger was held in the name of another party to the merger is  
2666 property held in the name of the [surviving entity] survivor upon  
2667 recording a certified copy of the statement of merger in the office for  
2668 recording transfers of that real property.

2669 (e) A filed and, if appropriate, recorded statement of merger,  
2670 executed and declared to be accurate pursuant to subsection (c) of  
2671 section 34-305, stating the name of a partnership or [limited  
2672 partnership] other entity that is a party to the merger in whose name  
2673 property was held before the merger and the name of the [surviving  
2674 entity] survivor, but not containing all of the other information  
2675 required by subsection (b) of this section, operates with respect to the  
2676 partnerships or [limited partnerships] other entities named to the  
2677 extent provided in subsections (c) and (d) of this section.

2678 (f) If the survivor is a limited liability partnership, a certificate  
2679 meeting the requirements of section 34-33d, as amended by this act,  
2680 shall be filed with the Secretary of the State.

2681 Sec. 71. (*Effective from passage*) Any certificate of amendment filed  
2682 pursuant to section 33-800 of the general statutes or certificate of  
2683 merger or share exchange filed pursuant to section 33-819 of the  
2684 general statutes between January 1, 1997, and the effective date of this  
2685 section, otherwise valid except that it contains an incorrect or  
2686 incomplete statement of the information required by said sections with  
2687 respect to the approval of the shareholders, is validated.

2688 Sec. 72. (*Effective October 1, 2002*) Sections 33-821 and 33-1159 of the

2689 general statutes are repealed.

This act shall take effect as follows:	
Section 1	<i>October 1, 2002</i>
Sec. 2	<i>October 1, 2002</i>
Sec. 3	<i>October 1, 2002</i>
Sec. 4	<i>October 1, 2002</i>
Sec. 5	<i>October 1, 2002</i>
Sec. 6	<i>October 1, 2002</i>
Sec. 7	<i>October 1, 2002</i>
Sec. 8	<i>October 1, 2002</i>
Sec. 9	<i>October 1, 2002</i>
Sec. 10	<i>October 1, 2002</i>
Sec. 11	<i>October 1, 2002</i>
Sec. 12	<i>October 1, 2002</i>
Sec. 13	<i>October 1, 2002</i>
Sec. 14	<i>October 1, 2002</i>
Sec. 15	<i>October 1, 2002</i>
Sec. 16	<i>October 1, 2002</i>
Sec. 17	<i>October 1, 2002</i>
Sec. 18	<i>October 1, 2002</i>
Sec. 19	<i>October 1, 2002</i>
Sec. 20	<i>October 1, 2002</i>
Sec. 21	<i>October 1, 2002</i>
Sec. 22	<i>October 1, 2002</i>
Sec. 23	<i>October 1, 2002</i>
Sec. 24	<i>October 1, 2002</i>
Sec. 25	<i>October 1, 2002</i>
Sec. 26	<i>October 1, 2002</i>
Sec. 27	<i>October 1, 2002</i>
Sec. 28	<i>October 1, 2002</i>
Sec. 29	<i>October 1, 2002</i>
Sec. 30	<i>October 1, 2002</i>
Sec. 31	<i>October 1, 2002</i>
Sec. 32	<i>October 1, 2002</i>
Sec. 33	<i>October 1, 2002</i>
Sec. 34	<i>October 1, 2002</i>
Sec. 35	<i>October 1, 2002</i>
Sec. 36	<i>October 1, 2002</i>
Sec. 37	<i>October 1, 2002</i>

Sec. 38	<i>October 1, 2002</i>
Sec. 39	<i>October 1, 2002</i>
Sec. 40	<i>October 1, 2002</i>
Sec. 41	<i>October 1, 2002</i>
Sec. 42	<i>October 1, 2002</i>
Sec. 43	<i>October 1, 2002</i>
Sec. 44	<i>October 1, 2002</i>
Sec. 45	<i>October 1, 2002</i>
Sec. 46	<i>October 1, 2002</i>
Sec. 47	<i>October 1, 2002</i>
Sec. 48	<i>October 1, 2002</i>
Sec. 49	<i>October 1, 2002</i>
Sec. 50	<i>October 1, 2002</i>
Sec. 51	<i>October 1, 2002</i>
Sec. 52	<i>October 1, 2002</i>
Sec. 53	<i>October 1, 2002</i>
Sec. 54	<i>October 1, 2002</i>
Sec. 55	<i>October 1, 2002</i>
Sec. 56	<i>October 1, 2002</i>
Sec. 57	<i>October 1, 2002</i>
Sec. 58	<i>October 1, 2002</i>
Sec. 59	<i>October 1, 2002</i>
Sec. 60	<i>October 1, 2002</i>
Sec. 61	<i>October 1, 2002</i>
Sec. 62	<i>October 1, 2002</i>
Sec. 63	<i>October 1, 2002</i>
Sec. 64	<i>October 1, 2002</i>
Sec. 65	<i>October 1, 2002</i>
Sec. 66	<i>October 1, 2002</i>
Sec. 67	<i>October 1, 2002</i>
Sec. 68	<i>October 1, 2002</i>
Sec. 69	<i>October 1, 2002</i>
Sec. 70	<i>October 1, 2002</i>
Sec. 71	<i>from passage</i>
Sec. 72	<i>October 1, 2002</i>

**JUD**      *Joint Favorable Subst.*

The following fiscal impact statement and bill analysis are prepared for the benefit of members of the General Assembly, solely for the purpose of information, summarization, and explanation, and do not represent the intent of the General Assembly or either House thereof for any purpose:

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**OFA Fiscal Note**

**State Impact:**

<b>Fund-Type</b>	<b>Agency Affected</b>	<b>FY 03 \$</b>	<b>FY 04 \$</b>
GF - None	Secretary of the State	None	None

Note: GF=General Fund

**Municipal Impact:** None

**Explanation**

This bill makes numerous changes to the laws governing stock and non-stock corporations, limited partnerships, and limited liability companies and partnerships. None of these changes will result in a fiscal impact to the Office of the Secretary of the State.

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**OLR Bill Analysis**

sHB 5676

**AN ACT CONCERNING PROFESSIONAL SERVICE CORPORATIONS, BUSINESS CORPORATIONS, NONSTOCK CORPORATIONS, LIMITED PARTNERSHIPS, LIMITED LIABILITY COMPANIES AND PARTNERSHIPS****SUMMARY:**

This bill allows stock corporations to merge with partnerships, limited partnerships, limited liability partnerships, limited liability companies, joint ventures, joint stock companies, business trusts, statutory trusts, and real estate investment trusts. It grants similar authority to limited partnerships, limited liability companies, and partnerships.

Under current law, stock corporations, limited liability companies, and limited partnerships organized under Connecticut law may merge only with their own type of entity. Partnerships may only merge with partnerships or limited partnerships.

The bill makes the laws that currently apply to these mergers also apply to mergers with the other entities. It makes a few adjustments to these laws to reflect mergers that involve other entities.

The bill also authorizes stock corporations to do share exchange with these other business entities by allowing their shares to be exchanged for shares, cash, or other types of property.

The bill changes the conditions under which stock corporations may sell their assets, other than in the ordinary course of business, without shareholder (or member) approval. Current law requires shareholder approval if a disposition involves all, or substantially all, of the corporation's property. The bill instead requires such approval if a disposition would leave the corporation without a significant continuing business activity. It establishes a test to determine if this new standard has been met. It establishes a similar test for nonstock corporations.

The bill makes numerous changes in the laws relating to dissolved corporations, including procedures to deal with known and unknown

claims.

The bill makes numerous changes to stock corporation laws relating to corrections of filed documents, the corporation's acquisition of its own shares, distributions to shareholders, removal of directors by judicial proceeding, liability for unlawful distributions, and amendments to the certificate of incorporation and by laws. It makes similar changes for nonstock corporations with respect to correcting filed documents, liability for unlawful distributions, and amendments to the certificate of incorporation.

The bill makes numerous changes in the laws dealing with nonstock corporations relating to ex-officio directors, staggered terms for directors, and court-appointed board members.

The bill validates any certificate of amendment for stock corporations, or certificates of merger or share exchange filed between January 1, 1997, and the passage of this bill, if they were otherwise valid except for an incorrect or incomplete statement of the information required by the laws under which they were filed with respect to the approval of the shareholders.

Finally, the bill makes numerous technical changes.

EFFECTIVE DATE: October 1, 2002 except for the provision validating certificates of amendments of stock corporations or certificates of merger or share exchange filed between January 1, 1997 and the bill's effective date, which becomes effective upon passage.

## **PROFESSIONAL SERVICE CORPORATIONS**

Current law allows professional service corporations to consolidate or merge with other professional corporations organized under Connecticut law. The bill expands this authority to also allow these corporations to consolidate or merge with a Connecticut limited liability company, partnership, or limited liability partnership, if it is organized to render the same specific professional service.

## **CORRECTING FILED DOCUMENTS**

Current law allows a Connecticut or foreign corporation (incorporated under a law other than Connecticut's) to correct a document filed by

the secretary of the state if (1) it contains an inaccuracy; (2) it was defectively executed, attested, sealed, verified or acknowledged; or (3) the electronic transmission was defective. The bill allows the corporation to correct a defective document as well. It makes a similar change to the nonstock corporation law.

### **CORPORATION'S ACQUISITION OF ITS OWN SHARES**

Current law allows a corporation to acquire its own shares, and, once acquired, they constitute authorized but unissued shares. Under the bill, if the certificate of incorporation prohibits the reissue of acquired shares, the acquisition automatically reduces the number of authorized shares by the number of shares acquired. Under current law, the number of shares is reduced only when the corporation amends its certificate of incorporation.

Current law authorizes the board of directors to adopt a certificate of amendment without shareholder action and deliver it to the secretary of the state for filing. The certificate must specify the (1) the corporation's name; (2) reduction in the number of authorized shares, itemized by class and series; and (3) total number of authorized shares, itemized by class and series, remaining after reduction of the shares. The bill eliminates this authority.

### **DISTRIBUTION TO SHAREHOLDERS**

The bill specifies that the rules and requirements relating to distributions to shareholders do not apply to distributions in the course of dissolution, which are covered by dissolution rules.

### **REMOVAL OF DIRECTORS BY JUDICIAL PROCEEDING**

The bill changes the standards the court may use to remove a director from a corporation's board and expands the right of small shareholders to initiate the proceeding. Under current law, the corporation, or shareholders holding at least 10% of the outstanding shares of any class, may ask the court to do so. The bill eliminates the 10% requirement, thus allowing any shareholder to do so.

The bill eliminates the court's authority to remove a director it finds engaged in dishonest conduct or gross abuse of authority or discretion with respect to the corporation. But, it allows the court to remove a

director it finds engaged in fraudulent conduct with respect to the shareholders, grossly abused the position of director, or intentionally harmed the corporation. Further, it requires the court to consider the inadequacy of other remedies before removing a director.

The bill specifies that a shareholder who initiates such a lawsuit must comply with all the rules that apply to shareholders bringing a lawsuit in the name of the corporation except the requirement that he (1) was a shareholder at the time of the act complained of or (2) became a shareholder through transfer by operation of law from one who was a shareholder at the time. It eliminates the requirement that a shareholder make the corporation a party defendant to such a lawsuit.

Finally, the bill specifies that this authority to remove a director does not limit the court's authority to order other appropriate relief.

### **LIABILITY FOR UNLAWFUL DISTRIBUTIONS**

Under current law, a director who fails to follow statutory standards and votes for, or assents to, a distribution that violates the law governing distributions to shareholders or the certificate of incorporation is personally liable to the corporation for any amount distributed in excess of what could have been distributed without the violation. The bill also makes a director personally liable to the corporation if he votes for, or assents to, a distribution that violates the bill's requirements for setting aside security for unknown or contingent claims.

Under current law, a lawsuit to enforce this liability must be filed within two years after the date of the distribution. The bill also allows it to be within two years after the date (1) violation of the corporation law occurred as a consequence of disregarding a restriction in the certificate of incorporation or (2) on which the distribution of assets to shareholders or members was made pursuant to the bill's provisions regarding setting aside security for unknown or contingent claims.

The bill makes a similar change for nonstock corporations except that currently, the statute of limitations for lawsuits to enforce the director's liability to the corporation is three years from the date of the distribution.

Current law gives directors who are liable for improper distributions

the right to recover from certain other directors (contribution) and certain shareholders (recoupment). The bill establishes a time period for initiating such suits. It requires that the lawsuit must be filed within one year after the liability of the claimant has been finally adjudicated in the lawsuit against the director for improper distribution of assets. (The term "contribution" refers to the legal principal that when one of several people liable for the same judgment or obligation is called upon to satisfy it, the others may be required to reimburse him (make contribution) to the extent of their share of the total liability. The term "recoupment" refers to the legal proceeding to force shareholders or recipients to pay back distributions that were improperly made to them by directors.)

The bill makes a similar change for nonstock corporations.

### **AMENDMENT BY BOARD OF DIRECTORS**

Unless the certificate of incorporation provides otherwise, the bill authorizes a corporation's board of directors to adopt, without shareholder approval, amendments to the corporation's certificate of incorporation to:

1. increase the number of authorized shares of the class of stock to the extent necessary to permit the issuance of shares as a share dividend;
2. reflect a reduction in authorized shares as a result of the corporation acquiring its own shares, and its certificate of incorporation prohibits the reissuance of the acquired shares; and
3. delete a class of shares from the certificate of incorporation as a result of the corporation acquiring its own shares when there are no remaining shares of the class because the corporation has acquired all shares of that class and the certificate of incorporation prohibits the reissuance of acquired shares.

### **AMENDMENT OF CERTIFICATE OF INCORPORATION BY BOARD OF DIRECTORS AND SHAREHOLDERS**

The bill specifies that the board of directors must first adopt any amendment to the certificate of incorporation before it can present it to shareholders. It makes the same change for nonstock corporations.

### **VOTING ON AMENDMENTS BY VOTING GROUPS**

By law, holders of the outstanding shares of a class of stock are entitled to vote as a separate voting group on a proposed amendment to the certificate of incorporation if the amendment would do certain things. The bill would eliminate this right to vote as a separate group when the amendment would:

1. increase or decrease the aggregate number of authorized shares of the class;
2. change the designation of all or part of the shares of the class;
3. create a new class of shares having rights or preferences substantially equal to the shares of the class;
4. increase the rights, preferences, or the number of authorized shares of any class that, after giving effect to the amendment, have rights or preferences with the respect to distributions or dissolution that are substantially equal to the shares of the class; or
5. cancel or otherwise affect rights to dividends that have accumulated but not yet been authorized on all, or part of, the shares of the class.

Under current law, if a proposed amendment to a certificate of incorporation that entitles the holders of two or more series of shares to vote as a separate voting group would affect them in the same or substantially similar way, the holders of those shares must vote together as a single voting group on the proposed amendment. The bill specifies that they would not vote as a single voting group if the certificate of incorporation provided otherwise or the board of directors required otherwise. Also, the bill specifies that this rule about voting as a single voting group applies to the holders of two or more classes of shares in the same way that it applies to holders of two or more series of shares.

### **AMENDMENT BEFORE ISSUANCE OF SHARES**

The bill specifies that the incorporators may amend the certificate of incorporation before the corporation has issued shares, only if the corporation has no board of directors.

### **CERTIFICATE OF AMENDMENT**

By law, a corporation amending its certificate of incorporation must deliver a certificate of amendment to the secretary of the state for filing. When the shareholders approve an amendment, the bill

eliminates the requirement that the certificate include the designation, number of outstanding shares, number of votes entitled to be cast by each voting group entitled to vote separately on the amendment, and the number of votes of each voting group indisputably represented at the meeting. It also eliminates the requirement that the certificate contain either (1) the total number of votes cast for and against the amendment by each voting group entitled to vote separately or (2) the total number of undisputed votes cast for the amendment by each voting group, and a statement that the number cast for the amendment by each voting group was sufficient for approval by that voting group. The bill instead requires that if an amendment requires shareholder approval, the certificate must include a statement that it was duly approved by the shareholders, as required by law and by the certificate of incorporation.

The bill makes a similar change for nonstock corporations.

### **RESTATED CERTIFICATE OF INCORPORATION**

Current law allows a corporation's board of directors to restate a certificate of incorporation at any time, with or without shareholder action. The bill specifies that the board may also do so to consolidate all amendments into a single document. Current law requires that a restated certificate of incorporation that the corporation must deliver to the secretary of the state for filing contain certain information. The bill requires that this information include a statement specifying that the reinstated certificate consolidate all amendments into a single document. If a new amendment is included in the reinstated certificate, the statement also must include the information required when new amendments are submitted to the secretary of the state. The bill makes a similar change for nonstock corporations.

This section also makes related technical changes.

### **AMENDMENT OF BYLAWS**

The bill eliminates the authority of a corporation's board of directors to amend or repeal a corporation bylaw if, when the shareholders adopted it, they expressly provided that the board could not amend, repeal, or reinstate it.

### **MERGER OF CORPORATIONS INTO OTHER ENTITIES**

Under current law, one or more domestic or foreign corporations may merge into another domestic corporation under certain circumstances. (A domestic corporation is one formed under Connecticut law. A foreign corporation is formed under the law of another jurisdiction.) The bill broadens this authority by allowing one or more domestic corporations to merge with “other entities” pursuant to a merger plan. Under the bill, the term “other entities” means any association or legal entity, other than a corporation, organized to conduct business, including, but not limited to partnerships, limited partnerships, limited liability partnerships, limited liability companies, joint ventures, joint stock companies, business trusts, statutory trusts, and real estate investments trusts.

Existing law, unchanged by the bill, authorizes statutory trusts to merge only with other statutory trusts. Thus, the bill would authorize Connecticut corporations, to merge with statutory trusts created in some other jurisdictions, but not those created in Connecticut.

The bill allows another entity to be a party to a merger with a corporation, or to be created by the terms of a merger plan with a corporation only if (1) the law of the state or country under which it is organized or by which it is governed permits the merger and (2) in effecting the merger, the corporation or entity complies with that law and its certificate of incorporation or organizational documents.

The bill makes the laws that currently apply to corporate mergers also apply to mergers with other entities. It makes a few adjustments to these laws to reflect mergers that involve other entities.

The merger plan between a corporation and other entities must include:

1. the name of each party that will merge and the name of the survivor;
2. its terms and conditions;
3. the manner and basis of converting the shares of each merging party into shares or other property;
4. the certificate of incorporation of any corporation, or the organizational documents of any other entity, to be created by the merger or, if a new corporation or other entity is not to be created by the merger, any amendments to the survivor’s certificate of

- incorporation or organizational document; and
5. any other provisions required by the law of the state or country under which any party to the merger is organized or governed, or by the certificate of incorporation or organizational documents of any such party.

The bill allows the terms of the merger plan to be made dependent upon objectively ascertainable facts outside the plan. Under the bill “facts” include, but are not limited to, the occurrence of any event, including a determination or action by any person or body, including the corporation.

The bill also allows the plan to include a provision allowing it to be amended before a certificate of merger is filed with the secretary of the state. But, if the shareholders of a domestic corporation that is a party to the merger must, or may, vote on the plan, the plan must provide that, after the shareholders approve it, it may not be amended to (1) change the amount or kind of shares or other securities, interests, or other property to be received by the shareholders of or owners of interests in any party to the merger upon conversion of their shares or interests under the plan; (2) change the certificate of incorporation of any corporation, or the organizational documents of any other entity, that will survive or be created as a result of the merger, except for (a) changes the law explicitly permits boards to make without shareholder approval, unless the certificate of incorporation provides otherwise, or (b) changes comparable provisions of the law of the state or country under which the foreign corporation or foreign entity is organized or governed permit boards to make without shareholder approval; or (3) change any of the plan’s other terms or conditions if the change would adversely affect shareholders in any material respect.

The bill makes similar changes to the merger plans governing the merger of nonstock corporations.

## **SHARE EXCHANGE**

Current law authorizes a domestic corporation to acquire, through a share exchange, all of the shares of one or more classes or series of shares of another domestic or foreign corporation. The bill expands this authority to acquire through a share exchange all of the interests of one or more classes or series of interests of a domestic or foreign “other entity,” in exchange for shares or other property, pursuant to a share

exchange plan. Current law also allows all of the shares of one or more class or series of shares of a domestic corporation to be acquired by another domestic or foreign corporation. The bill expands this authority by allowing the shares of a domestic corporation to be acquired by another entity, in exchange for shares or other securities, interests, obligations, or rights to acquire shares or other property, pursuant to a share exchange plan.

The bill allows a foreign corporation, or a domestic or foreign other entity, to be a party to a share exchange only if (1) the law under which the corporation or other entity is organized or governed permits it and (2) in effecting the share exchange, the corporation or other entity complies with the law and its certificate of incorporation or organizational documents.

The bill requires the share exchange plan to include (1) the name of each corporation or other entity whose shares or interests will be acquired and the name of the corporation or other entity that will acquire such shares or interests; (2) the terms and conditions of the share exchange; (3) the manner and basis of exchanging shares of a corporation or interests in another entity whose shares or interests will be acquired under the share exchange into shares or other securities, interests, obligations, rights to acquire shares or other securities, cash or other property, or any combination of them; and (4) any other provisions required by the law of the state or country under which any party to the share exchange is organized or governed or by any party's certificate of incorporation or organizational documents.

The bill allows the share exchange plan's terms to be made dependent on objectively ascertainable facts outside the plan.

The bill allows the plan to also include a provision allowing it to be amended before a certificate of share exchange is filed with the secretary of the state. But, if the shareholders of a domestic corporation that is a party to the share exchange must or may vote on the plan, it must provide that after the shareholders approve the plan, it may not be amended to (1) change the amount or kind of shares or other securities, interests, obligations, rights to acquire shares or other securities, cash or other property to be issued by the corporation or to be received by the shareholders of or owners of interests in any party to the share exchange in exchange for their shares or interests under the plan or (2) change any of the plan's terms or conditions if they

would adversely affect such shareholders in any material respect.

The bill specifies that it does not limit a domestic corporation's power to acquire shares of another corporation or interests in another entity in a transaction other than a share exchange.

### **ACTION ON PLAN OF MERGER OR SHARE EXCHANGE**

Under current law, after adopting a merger or share exchange plan, the board of directors of each corporation party to the merger, and the board of directors of the corporation whose shares will be acquired in the share exchange, generally must submit the plan of merger, or share exchange for shareholder approval.

For either plan to be approved (1) the board of directors must recommend it to the shareholders, unless the board determines that because of conflict of interest or other special circumstances it should make no recommendation, in which case it must submit the plan to the shareholders and inform them of the basis for its determination and (2) the shareholders entitled to vote must approve it.

The bill requires that the board of directors of a domestic corporation that is a party to a merger or a share exchange adopt the merger plan before submitting it to its shareholders.

The bill allows the board to condition its submission of the merger or share exchange plan to the shareholders on any basis.

Under the bill, if the shareholders must approve the plan at a meeting, the corporation must notify each shareholder, including any not entitled to vote, of the meeting at which the plan is to be submitted for approval. The notice must also state that the purpose, or one of the purposes, of the meeting is to consider the plan and must contain or be accompanied by a copy or summary of the plan.

If the corporation is to be merged into an existing corporation or other entity, the notice must also include, or be accompanied by, a copy or summary of each party's certificate of incorporation or organizational documents. If it is to be merged into a corporation or other entity that is to be created pursuant to the merger, the notice must include or be accompanied by a copy or a summary of the certificate of incorporation or organizational documents of the new corporation or

other entity.

Unless the business corporation law, the certificate of incorporation, or the board of directors requires a greater vote or a vote by voting groups, the plan must be approved by each voting group entitled to vote separately on it by a majority of all the votes entitled to be cast on the plan by that voting group.

The bill requires separate voting by voting groups

1. on a merger plan by each class or series of shares that (a) are to be converted under the merger plan into shares or other securities, interests, obligations, rights to acquire shares or other securities, cash or other property, or any combination of these, or (b) would have a right to vote as a separate group on a provision in the plan that, if contained in a proposed amendment to the certificate of incorporation, would require action by separate voting groups;
2. on a share exchange plan, by each class or series of shares included in the exchange, with each class or series constituting a separate voting group; and
3. on a merger or share exchange plan, if the voting group is entitled under the certificate of incorporation to vote as a voting group to approve a plan of merger or share exchange.

Under the bill, unless the certificate of incorporation otherwise provides, the corporation's shareholders do not have to approve a merger or share exchange plan if (1) the corporation will be the survivor in the merger or is the acquiring corporation in the share exchange; (2) except for amendments the law permits boards to make without shareholder approval, its certificate of incorporation will not be changed; (3) each shareholder of the corporation whose shares were outstanding immediately before the effective date of the merger or the share exchange will hold the same number of shares, with identical preferences, limitations and relative rights, immediately after the effective date.

The bill requires that if, as a result of a merger or a share exchange, one or more shareholders of a domestic corporation would become personally liable for the obligations or liabilities of any other person or entity, approval of the plan of merger or share exchange must require each such shareholder to execute a separate written consent to become subject to such personal liability.

The bill establishes separate approval provisions for a merger or share exchange plan authorized by a corporation incorporated under Connecticut law before January 1, 1997. It requires that the plan must be approved by the affirmative vote of at least two-thirds of the voting power of each voting group entitled to vote on it, unless the certificate of incorporation expressly provides otherwise. But, if the corporation is the surviving corporation of the merger and the merger plan will not change its certificate of incorporation and the shares to be issued under the plan could have been issued by its board of directors without further shareholder authorization, then the shareholders do not have to approve the plan.

The bill also requires that the plan be approved by the affirmative vote of at least two-thirds of the voting power of each class of stock of such corporation outstanding before January 1, 1997, and not otherwise entitled to vote on it, unless the certificate of incorporation expressly provides otherwise. But, the bill does not require approval by the holders of such class or series not otherwise entitled to vote if the corporation is the surviving corporation of the merger and the merger or share exchange plan does not contain any provisions which, if contained in a proposed amendment to its certificate of incorporation, would entitle any class or series of its shareholders to vote as a class or series.

### **MERGER OF SUBSIDIARY**

Current law allows a parent corporation owning at least 90% of the outstanding shares of each class of a subsidiary corporation to merge the subsidiary into itself without approval of shareholders of the parent or the subsidiary.

The bill allows a domestic parent corporation that owns shares of a domestic or foreign subsidiary corporation that carries at least 90% of the voting power of each class and series of the outstanding shares of the subsidiary to merge with the subsidiary or with another such subsidiary. But the merger is not allowed if (1) the certificate of incorporation of any of the corporations provides otherwise and (2) in the case of a foreign subsidiary, approval by the foreign subsidiary's board of directors or shareholders is required by the law under which the subsidiary is organized or governed.

With respect to mergers with a subsidiary, the bill eliminates the special rules that apply to the merger plan, notice to shareholders, and filing the certificate of merger with the secretary of the state.

Under the bill, if the subsidiary's shareholders are not required to approve the merger, the parent corporation must, within 10 days after the merger's effective date, notify each of the subsidiary's shareholders that the merger has become effective. Otherwise the bill makes the laws that apply to any merger apply to a merger between a parent and a subsidiary.

### **CERTIFICATE OF MERGER AND SHARE EXCHANGE**

The bill requires that after a merger or share exchange plan has been adopted and approved as required by law, an officer or other representative of each party must execute a merger or share exchange certificate on behalf of each party to the merger or the share exchange. The bill requires the certificate to specify

1. the parties' names;
2. the name of the corporation or other entity that will be the survivor of the merger or that will acquire the shares or interests of the other party to the share exchange;
3. the date the merger or share exchange is to be effective;
4. the amendments to the survivor's certificate of incorporation, if any, or the certificate of incorporation of the new corporation if a new corporation is created as a result of a merger;
5. if the merger or share exchange plan required approval by the shareholders of a domestic corporation, a statement that the plan was duly approved by the shareholders and, if voting by any separate voting group was required, by each separate voting group, in the manner required by law and the certificate of incorporation;
6. if the plan did not require approval by the shareholders of a domestic corporation, a statement to that effect; and
7. as to each foreign corporation and each other entity that was a party to the merger or share exchange, a statement that the plan and the performance of its terms were duly-authorized as required by the law of the state or country under which the corporation or other entity is organized or by which it is governed, and by its certificate of incorporation or organizational documents.

The bill requires that a certificate of merger or share exchange must be

delivered to the secretary of the state for filing by the survivor of the merger or the acquiring corporation in a share exchange and makes it take effect on the effective date of the merger or the share exchange, instead of on the effective date of the certificate of merger or share exchange.

The bill makes similar changes with respect to the certificate of merger involving nonstock corporations.

## **EFFECT OF MERGER OR SHARE EXCHANGE**

Under the bill, when a merger becomes effective:

1. the corporation or other entity designated in the merger certificate as the survivor continues or comes into existence, as the case may be;
2. the separate existence of every party merged into the survivor ceases;
3. all liabilities of each party merged into the survivor are vested in the survivor;
4. all property owned by, and every contract right possessed by, each party that merges into the survivor is vested in the survivor without reversion or impairment;
5. the survivor's name may be substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger;
6. the survivor's certificate of incorporation or organizational documents are amended to the extent provided in the certificate of merger;
7. the certificate of incorporation or organizational documents of a survivor that is created by the merger become effective; and
8. the shares of each corporation that is a party to the merger, and the interests in another entity that is a party to a merger, that are to be converted under the merger plan into shares or other securities, interests, obligations, rights to acquire shares or other securities, cash or other property, or any combination of them, are converted.

The former holders of these shares or interests are entitled only to the rights provided to them in the merger plan or to any rights they may have under Connecticut's corporation laws.

Under the bill, when a share exchange becomes effective, the shares of each domestic corporation that are to be exchanged for shares or other securities, interests, obligations, rights to acquire shares or other securities, cash or other property, or any combination of them are entitled only to the rights provided to them in the share exchange plan or to any rights they may have under Connecticut law.

The bill specifies that any shareholder of a domestic corporation that is a party to a merger or a share exchange and, prior to the merger or the share exchange, was liable for the liabilities or obligations of such corporation, is not released from such liabilities or obligations because of the merger or share exchange.

Under the bill, when a merger becomes effective, a foreign corporation, or a foreign other entity, that is the survivor of the merger is deemed to (1) appoint the secretary of the state as its agent for service of process in a proceeding to enforce the rights of shareholders of each domestic corporation that is a party to the merger who exercise appraisal rights and (2) agree that it will promptly pay the amount, if any, to which such shareholders are entitled to under the laws governing appraisal rights. (Appraisal rights give shareholders the right to dissent from certain corporate actions, including such things as mergers, and consolidations, that affect their rights materially and adversely. It also gives them the right to obtain payment for the fair value of their shares following such actions.)

### **NEW MERGER AND SHARE EXCHANGE—ABANDONMENT**

The bill allows any party to the merger or share exchange involving a domestic corporation plan adopted and approved under the bill to abandon it without action by the party's shareholders or owners of interests, in accordance with any procedures included in the plan. If no such procedures are in the plan, the parties may abandon the plan in the manner determined by the board of directors of a corporation, or the managers of another entity, subject to any contractual rights of other parties to the merger or the share exchange. The bill allows this action unless the plan provides otherwise or the law of the state or country under which a foreign corporation or a domestic or foreign entity that is a party is organized or governed provides otherwise. The parties may do so at any time before the merger or the share exchange has become effective.

The bill establishes similar changes regarding the abandonment of a merger between nonstock corporations.

The bill requires that if a merger or share exchange is abandoned after a certificate of merger or share exchange has been filed with the secretary of the state, but before either becomes effective, a statement of the abandonment must be executed on behalf of a party to the merger or the share exchange by an officer or other duly authorized representative of such party. It must be delivered to the secretary of the state for filing before the merger's or the share exchange's effective date. The statement takes effect upon filing and the merger or the share exchange is deemed abandoned and does not become effective.

## **SALE OF ASSETS**

Unless a corporation's certificate of incorporation provides otherwise, the bill allows a corporation, without shareholder approval, to distribute assets pro rata to the holders of one or more classes or series of the corporation's shares.

## **SALE OF ASSETS OTHER THAN IN THE ORDINARY COURSE OF BUSINESS**

### ***Stock Corporations***

The bill changes the standard to determine whether a corporation's disposition of assets, other than in the usual or ordinary course of business, needs shareholder approval. Current law requires approval if it involves all, or substantially all of its property. The bill instead requires shareholder approval if a disposition would leave the corporation without a significant continuing business activity. The bill establishes a non-exclusive safe harbor test to make this determination. The corporation is conclusively deemed to have retained a significant continuing business activity if it retains a business activity that represented at least 25% of total assets at the end of the most recent fiscal year and 25% of either income from continuing operations before taxes or revenue from continuing operations for such fiscal year for the corporation and each of its subsidiaries on a consolidated basis.

The bill specifies that the assets of a direct or indirect consolidated subsidiary are the assets of the parent corporation for the purposes of this requirement. It specifies that these rules do not apply to disposition of assets in the course of dissolution.

The bill requires that a disposition that requires shareholder approval must be initiated by a resolution of the board of directors authorizing the disposition.

The bill specifies that the notice to shareholders of the meeting to approve the disposition must include the terms and conditions and the consideration the corporation will receive. Current law requires that the notice describe the disposition.

Current law allows the corporation to abandon the disposition after the shareholders approve it without shareholder approval subject to any contractual rights. The bill specifies that it may be abandoned at any time before it has been consummated.

### ***Nonstock Corporations***

The bill changes the standard under which a nonstock corporation may dispose of its property, not in its ordinary course of affairs, without member approval.

Under current law, the members must approve a transfer of corporate property if it is not in the corporation's ordinary course of affairs and it disposes of all or substantially all of its property. The bill instead requires member approval if a transfer would leave the corporation without a significant continuing activity. The bill also specifies that member approval is required only if its certificate of incorporation does not allow such a transfer without member approval.

The bill establishes a non-exclusive test to determine whether a corporation will be left without a significant continuing activity. The bill specifies that if a corporation retains an activity that represented at least 25% of total assets at the end of the most recently completed fiscal year, and 25% of either income from continuing operations before taxes or revenue from continuing operations for such fiscal year, for the corporation and each of its subsidiaries on a consolidated basis, the corporation will conclusively be deemed to have retained a significant continuing activity. The bill specifies that assets of a direct or indirect consolidated subsidiary are the assets of the parent corporation for this purpose.

### **CERTIFICATE OF DISSOLUTION**

The law allows corporations to dissolve by filing a certificate of dissolution with the secretary of the state that contains certain information. Under current law, if the shareholders approved it, the certificate must include (1) the number of votes entitled to be cast on the proposal to dissolve and (2) either the total number of votes cast for and against dissolution or the total number of undisputed votes cast for dissolution and a statement that the number cast for dissolution was sufficient for approval. If voting by voting groups was required, the information must be provided separately for each voting group entitled to vote separately. Instead, the bill requires it to include a statement that the proposal to dissolve was duly approved by the shareholders, as required by law and by the certificate of incorporation.

Under current law and the bill, a corporation is dissolved upon the effective date of its certificate of dissolution.

The bill defines a “dissolved corporation” as a corporation whose certificate of dissolution has become effective and includes a successor entity to which the remaining assets of the corporation are transferred subject to the corporation's liabilities for purposes of liquidation. The bill makes this definition apply to the laws governing the dissolution of a stock corporations.

The bill makes similar changes for nonstock corporations.

#### **UNKNOWN CLAIMS AGAINST DISSOLOVED CORPORATIONS**

Existing law, unchanged by the bill, allows a dissolved corporation to publish notice of its dissolution and request that people with claims against it present them in accordance with the notice. Under current law, if the dissolved corporation publishes a newspaper notice as specified by law, the claim of someone who did not receive written notice as required by law is barred unless the claimant commences a proceeding to enforce the claim within three years after the publication date of the newspaper notice. The bill eliminates the requirement that the claimant receive the notice, and instead makes it apply to those claimants who were given notice. It makes similar changes for dissolved nonstock corporations.

#### **NEW OTHER CLAIMS AGAINST DISSOLVED CORPORATION**

The bill allows a dissolved stock or nonstock corporation that has published a dissolution notice and requested that people with claims present them, to file an application with the Superior Court for a determination of the amount and form of security to be provided for payment of claims that are (1) contingent or have not been made known to the dissolved corporation or (2) based on an event occurring after the effective date of dissolution but that, based on the facts known to the dissolved corporation, are reasonably estimated to arise after the effective date of dissolution. The bill specifies that the provision does not have to be made for any claim that is or is reasonably anticipated to be barred. The application must be filed with the Superior Court for the stated judicial district where the dissolved corporation's principal office or, if there is none in this state, where its registered office, is located.

Within 10 days after it files an application, the dissolved corporation must notify each claimant holding a contingent claim shown on the corporation's records.

The court may appoint a guardian ad litem to represent all claimants whose identities are unknown in any such proceeding. The bill requires the corporation to pay the guardian's reasonable fees and expenses, including all reasonable expert witness fees.

Under the bill, a dissolved corporation that provides security in the amount and the form the court orders satisfies its obligations for claims that (1) are contingent, (2) have not been made known to the corporation or (3) are based on an event occurring after the effective date of dissolution. These claims may not be enforced against a shareholder or member who received assets in liquidation.

The bill establishes similar provisions for nonstock corporations.

## **NEW DIRECTORS' DUTIES**

The bill requires directors of a dissolved corporation to have the corporation discharge or make reasonable provision for paying claims and make distributing assets to shareholders after paying or providing for claims. Under the bill, directors of a dissolved corporation that has disposed of claims in accordance with the law and the bill are not liable for claims against the dissolved corporation that are barred or

satisfied under the law or the bill. The bill establishes the same requirements for nonstock corporations.

### **SPECIAL PROVISIONS REGARDING DIRECTORS**

The bill allows a nonstock corporation's bylaws to provide that people occupying certain positions within or outside the corporation are ex-officio directors. Current law allows the certificate of incorporation to do so. But, unless otherwise provided in the certificate of incorporation or bylaws, ex-officio directors may not be counted in determining a quorum and are not entitled to vote.

Under the bill, if the corporation has members entitled to vote on the adoption, amendment, or repeal of its bylaws, any bylaw providing for ex-officio directors must require approval, either before, on, or after October 1, 2002, by the same vote necessary to amend its bylaws.

### **STAGGARED TERMS FOR DIRECTORS**

The bill allows a nonstock corporation's bylaws to provide for staggering the terms of directors, other than ex-officio directors, in the same manner that current law allow its certificate of incorporation to do so.

Under the bill, if the corporation has members entitled to vote on the adoption, amendment, or repeal of its bylaws, any bylaw providing for staggering the terms of directors must require their approval, either before, on, or after October 1, 2002, by the same vote necessary to amend such bylaws.

### **COURT ORDER FOR NEW BOARD**

The bill authorizes any corporate officer to petition the Superior Court for the judicial district where the corporation's principal office is located for an order appointing a new board of directors, if a nonstock corporation's board ceases to exist and there are no members to elect a new board. If the corporation does not have a principal Connecticut office, the petition may be filed in the judicial district where its registered office is located. If there are no officers, the bill authorizes the attorney general, any officer of any organization holding funds or other assets of the corporation, or any other person having dealings with the corporation to do so.

The petition must specify the relevant circumstances, propose the names of three or more people willing to serve as directors under the circumstances, and contain their addresses and a brief statement of their backgrounds. The petition filer must provide a copy to the attorney general. The court may require additional information about the corporation and the people proposed as directors. It may order a hearing and notice to such people as it deems appropriate under the circumstances. It may give the notice in whatever manner it deems appropriate.

The bill authorizes the court to appoint and set the terms of office of a new board of directors. This may include some or all of the people proposed in the petition or may be composed entirely of others the court deems appropriate. The people the court appoints are the directors of the corporation for the terms of office the court specifies in the order. They have the power, authority, duties, and responsibilities, and are subject to the same standards of conduct as if they had been otherwise validly elected and serving under the provisions of the certificate of incorporation, bylaws, and applicable statutes.

### **ACTION PLAN OF MERGER**

Under current law, a domestic nonstock corporation that is a party to a merger must submit the plan to its members for approval. The law requires that the notice for the members' meeting to vote on the plan contain certain information. The bill requires that if the corporation is to be merged into an existing corporation, the notice must also include or be accompanied by a copy or summary of the existing corporation's certificate of incorporation. If the corporation is to be merged into a corporation that is to be created pursuant to the merger, it requires that the notice also include or be accompanied by a copy or a summary of the new corporation's certificate of incorporation.

The bill specifies that approval of the merger plan by members may precede or follow its adoption by the board of directors and the board's sending a recommendation to the members to approve it.

Current law requires separate voting by a class of members of a corporation on a merger plan if the plan contains a provision that, if contained in a proposed amendment to its certificate of incorporation, would require action by such class, as a separate class. The bill also requires separate voting by a class of members of a corporation on a

plan of merger if (1) such class is entitled under its certificate of incorporation to vote as a separate class to approve a merger plan or (2) the memberships of such class are to be converted, under the merger plan, into memberships of a different class of members of the corporation or into membership of any class of any other corporation.

### ***Effect of Merger***

Current law specifies what occurs when a merger between nonstock corporations becomes effective. The bill also specifies that when a merger becomes effective (1) the name of the survivor may be substituted in any pending proceeding for the name of any party to the merger whose separate existence ceased in the merger and (2) the certificate of incorporation of a survivor that is created by the merger becomes effective.

### **MERGER OF LIMITED PARTNERSHIPS**

Current law allows a domestic limited partnership (formed under Connecticut law) to merge with or into one or more limited partnerships formed under Connecticut law or the law of other states pursuant to a properly approved merger plan. The bill expands this authority to include other types of business entities and entities organized under the laws of foreign countries or other foreign jurisdiction. Specifically, it allows any domestic limited partnership to merge with or into any one or more limited partnerships or any one or more "other entities" formed or organized under the laws of this state or any other state or any foreign country or other foreign jurisdiction, or any combination of them. Under the bill, "other entity" means any association or legal entity, other than a domestic or foreign limited partnership, organized to conduct business, including, but not limited to, corporations, general partnerships, limited liability partnerships, limited liability companies, joint ventures, joint stock companies, business trusts, statutory trusts, and real estate investment trusts.

The bill requires the merger plan to name the survivor. Under the bill, "survivor" means, in a merger or consolidation, the limited partnership or other entity into which one or more other limited partnerships or other entities are merged or consolidated. A survivor of a merger may preexist the merger or be created by the merger.

The bill requires the merger plan to include:

1. the name and jurisdiction of organization of each party to the merger and the name of the limited partnership or other entity which is to be the survivor;
2. any changes in the survivor's certificate of limited partnership or the organizational documents;
3. the merger's effective date or time, if it is not to be effective when the certificate of merger is filed; and
4. the terms and conditions of the merger. This includes the manner and basis of converting the shares or interests of each party to the merger into shares or other securities, interests, obligations, rights to acquire shares or other securities, cash or other property, or any combination of these. It may include provision for the distribution by any merging party of cash, securities, or other property in lieu of, in addition to, in exchange for, or upon conversion of all or part of the interests of a party that is not the survivor in the merger.

The bill allows the plan to include other provisions regarding the merger as are deemed necessary or desirable.

The bill specifies that if the merger involves one or more other entities, a written plan of merger meets the bill's requirements, if it meets the requirements for merger under the statutes under which the other entity is organized or by which it is governed.

### **CONSOLIDATION OF LIMITED PARTNERSHIPS**

Current law allows domestic limited partnerships to consolidate with one or more limited partnerships formed under Connecticut law or the laws of some other state into a new limited partnership, pursuant to a properly approved consolidation plan. The bill expands this authority to include consolidating into Connecticut entities in addition to limited partnerships and entities formed in other countries.

The bill expands this authority by allowing any domestic limited partnerships to consolidate with any entities formed or organized under the laws of this state or any other state or any foreign country or other foreign jurisdiction, or any combination of these, into a new limited partnership or other entity.

It requires the consolidation plan to include:

1. the name and jurisdiction of organization of each party and the name and jurisdiction of organization of the new limited partnership or other entity, which name may be that of any of the consolidating limited partnerships or other entities or any other name available under the provisions of the limited partnership laws;
2. if the survivor is a limited partnership, a certificate of limited partnership complying with Connecticut's limited partnership laws;
3. the effective date or time, which shall be a date or time certain, of a consolidation if it is not to be effective when the consolidation certificate is filed; and
4. the terms and conditions of the consolidation. This includes the manner and basis of converting the shares or interests of each party into shares or other securities, interests, obligations, rights to acquire shares or other securities, cash or other property, or any combination to these. It may provide for the distribution by any consolidating limited partnership of cash, securities of any limited partnership, or other property in lieu of, in addition to, in exchange for, or upon conversion of all or part of the interests in any consolidating party or of the new limited partnership or other entity.

It also allows it to include whatever other provisions on the consolidation deemed necessary or desirable.

The bill specifies that if the consolidation involves one or more other entities, a written consolidation plan that meets the requirements for consolidation of the statutes under which such other entity is organized or meets the bill's requirements.

### **CERTIFICATE OF MERGER AND CONSOLIDATON**

The bill requires that after a merger or consolidation plan is approved, the survivor must file a certificate of merger or consolidation with the secretary of the state. With respect a merger, the survivor must file a certificate of merger properly executed by any merging limited partnership. With respect to a consolidation, it must file a consolidation certificate properly executed by any consolidating limited partnership together with an appointment of statutory agent for service of process. The bill specifies that general partners executing a certificate of merger or consolidation do not have to sign or swear as

to facts set forth in it that do not pertain to the limited partnership of which they are general partners.

The bill requires that the merger or consolidation certificate must include (1) the merger or consolidation plan and (2) as to each merging or consolidating limited partnership, a statement of the vote of limited partners required to adopt the plan and the vote for the plan.

If the survivor is a foreign limited partnership that will transact business in Connecticut, the certificate must include a statement that it will comply with the limited partnership law. It must also include a statement irrevocably appointing the secretary of the state as its attorney to accept service of process in any proceeding to enforce any obligations of any domestic merging or consolidating limited partnership for which it is liable (1) under Connecticut law, (2) the plan of merger or consolidation, or (3) the laws of its own jurisdiction that govern it.

If it does not appoint the secretary of the state, the bill allows legal process in any such proceeding to be served upon the secretary of the state as provided by existing law as attorney for the survivor.

The bill specifies that these requirements are in addition to the requirements for a certificate of merger or consolidation under the statutes under which any other entity that is a party to the merger or consolidation is organized or governed.

Under the bill, a certificate of merger or consolidation acts as a certificate of cancellation for a domestic limited partnership that is not the survivor in the merger or consolidation. A certificate of merger acts as a certificate of amendment for a domestic limited partnership that survives the merger, to the extent provided by the merger plan. In the case of a consolidation, if the new entity is a limited partnership, the certificate of limited partnership set forth in the consolidation certificate is the certificate of limited partnership of the new limited partnership.

## **EFFECT OF MERGER**

The bill specifies that in the case of a merger, the survivor is that limited partnership or other entity the plan designates as the survivor. In the case of a consolidation, the survivor is the new limited

partnership or other entity provided for in the consolidation plan. The consolidation or merger acts to eliminate the separate existence of each party except the survivor.

The bill gives the survivor, to the extent consistent with its certificate of limited partnership or other organizational documents in effect when the merger or consolidation occurred, all the rights, privileges and powers of each of the limited partnerships and other entities that have merged or consolidated. It also provides that all property owned by and all debts due to any of the parties automatically vest in the survivor. The bill specifies that title to any real estate, or any other interest in it, vested in any of the parties to the merger or consolidation does not revert or is not in any way impaired, because of such merger or consolidation.

The bill also specifies that any interest contained in a will or in another instrument, made before or after the merger or consolidation, to or for the benefit of any party to the merger or the consolidation benefits the survivor.

The bill (1) makes the survivor responsible for all the liabilities, obligations, and penalties of each party to the merger or the consolidation; (2) allows any existing or proceeding civil or criminal claim, pending by or against any party to be prosecuted as if such merger or consolidation had not taken place; (3) allows the survivor to be substituted for any party; (4) allows any judgment rendered against any party to the merger or the consolidation to be enforced against the survivor; and (5) specifies that the merger or consolidation may not impair the rights of a party's creditors nor any liens upon its property.

The bill specifies that any general partner of a limited partnership or holder of an interest in any other entity that is a party to a merger or a consolidation who, before the merger or consolidation, was obligated for any of the party's liabilities or obligations is not released because of the merger or the consolidation from those liabilities or obligations.

## **MERGER OF LIMITED LIABILITY COMPANIES**

Current law allows limited liability companies (LLCs) to merge or consolidate with or into one or more LLCs. The bill expands this authority by also allowing them to merge or consolidate with or into one or more other entities formed or organized under Connecticut law

or the laws of any other state or any foreign country or other foreign jurisdiction, or any combination of them.

The bill defines “other entity” as any association or legal entity, other than a domestic or foreign limited liability company, organized to conduct business, including, but not limited to, corporations, general partnerships, limited liability partnerships, limited partnerships, joint ventures, joint stock companies, business trusts, statutory trusts and real estate investment trusts.

Current law allows an LLC organized under Connecticut law to render professional services to merge or consolidate with another LLC organized under Connecticut law to provide the same professional services. The bill expands this authority by allowing them to also merge or consolidate with a Connecticut professional service corporation, a partnership or limited liability partnership if the company, corporation, or partnership is organized to render the same professional service. Current law prohibits a merger or consolidation of a Connecticut LLC organized to render professional services with any foreign LLC. The bill expands this prohibition to include mergers or consolidations with any other entity organized under the laws of some other state, country, or jurisdiction.

Existing law, unchanged by the bill, defines “professional service” as any type of service to the public that requires that members of a profession rendering such service obtain a license or other legal authorization as a condition of rendering them, but limits the definition to the professional services rendered by dentists, naturopaths, chiropractors, physicians and surgeons, doctors of dentistry, physical therapists, occupational therapists, podiatrists, optometrists, nurses, nurse-midwives, veterinarians, pharmacists, architects, professional engineers, or jointly by architects and professional engineers, landscape architects, real estate brokers, insurance producers, certified public accountants and public accountants, land surveyors, psychologists, attorneys-at-law, licensed marital and family therapists, licensed professional counselors, and licensed clinical social workers.

## **APPROVAL OF MERGERS**

Under current law, unless the articles of organization provide otherwise, a proposed merger or consolidation plan must be

authorized and approved by each LLC that is a party to it by the affirmative vote of at least two-thirds in interest of the members. The bill applies this same requirement for mergers and consolidations the bill authorizes, but also eliminates the vote requirement if the LLC's operating agreement provides otherwise. Existing law, unchanged by the bill, defines "operating agreement" as any agreement, written or oral, for conducting the business and affairs of a limited liability company, which is binding upon all of the members.

## **PLAN OF MERGER AND CONSOLIDATION**

The bill requires each LLC and other entity that is a party to a proposed merger or consolidation to enter into a written plan of merger or consolidation.

The bill requires the plan to include (1) the name of each LLC and other entity that is a party to the merger or consolidation and the name of the survivor in a merger or the new LLC in a consolidation; (2) the terms and conditions of the proposed merger or consolidation; (3) the manner and basis of converting the interests in each LLC or other entity in the merger or consolidation into interests of the surviving or new LLC or other entity or, in whole or in part, into cash or other property; (4) in the case of a merger, such amendments to the survivor's organizational documents as are desired to be effected by the merger, or that no such changes are desired; (5) in the case of a consolidation, all of the statements required to be set forth in the survivor's organizational documents; and (6) what ever other provisions relating to the proposed merger or consolidation as are deemed necessary or desirable.

The bill defines "survivor" as the LLC or other entity into which one or more other limited liability companies or other entities are merged or consolidated. A survivor of a merger may preexist the merger or be created by the merger. The bill defines "organizational documents" as the basic document or documents that create, or determine the internal governance of, another entity.

If the merger or consolidation involves an other entity, the bill specifies that a plan meets these requirements if it meets the requirements for merger or consolidation of the statutes under which such other entity is organized or governed.

**ARTICLES OF MERGER AND CONSOLIDATION**

After a merger or consolidation plan is approved, the bill requires the survivor to deliver to the secretary of the state for filing articles of merger or consolidation duly executed by each LLC and other entity that is a party specifying (1) the name and jurisdiction of formation or organization of each LLC and other entity; (2) the effective date of the merger or consolidation if later than the filing date; (3) the survivor's name; (4) a statement that the plan of merger or consolidation was duly authorized and approved by each LLC in accordance with Connecticut's law and by each other entity in accordance with their applicable organizational documents; (5) the address of the survivor's business place where a copy of the plan is on file; and (6) that a copy of the plan of merger or consolidation will be furnished by the survivor, on request and without cost, to any one holding an interest in any LLC or other entity that is a party to the merger or consolidation.

The bill specifies that a merger or consolidation takes effect when filed or on the date specified in the plan, whichever is later.

The bill requires that each LLC or other entity that is a party to the merger or consolidation must execute the articles of merger or consolidation. It requires the survivor to file the articles with the secretary of the state in order for them to become effective.

Under the bill, these articles act as articles of dissolution for a LLC that is not the survivor.

**EFFECT OF MERGER AND CONSOLIDATION**

Under the bill, when the merger or consolidation between an LLC and another entity becomes effective:

1. the survivor, becomes a single LLC or other entity which, in the case of a merger, is the one designated in the merger plan as the survivor and, in the case of a consolidation, becomes the new one provided for in the consolidation plan;
2. the separate existence of each party, except the survivor, terminates;
3. the survivor possesses all the rights, and powers of each of the merging or consolidating parties and is subject to all the restrictions, disabilities, and duties of each one;

4. any property interest of the parties automatically vests in the survivor and does not revert or become impaired;
5. the survivor is responsible and liable for all liabilities and obligations of each of the parties and any claim existing or action or proceeding pending against any party may be prosecuted as if the merger or consolidation had not taken place, or the survivor may be substituted in the action;
6. the rights of creditors or lien holders of the parties are not impaired by the merger or consolidation; and
7. the membership or other interests in a party that are to be converted or exchanged into interests, cash, obligations, or other property under the terms of the merger or consolidation plan are so converted, and the former holders of these interests are entitled only to the rights the plan or law provides.

### **MERGER OR CONSOLIDATION WITH FOREIGN ENTITY**

If the survivor of a merger between a Connecticut LLC and a foreign entity is to be governed by the laws of any other state, the laws of the District of Columbia, or of any foreign country, then the survivor must agree (1) that it may be served with process in this state in any proceeding to enforce any obligation of a party to the merger or consolidation that was formed under Connecticut's laws, as well as for enforcement of any obligation of the survivor and (2) to irrevocably appoint the secretary of the state as its agent for service of process in any such proceeding. The survivor must specify the address to which the secretary of the state may mail a copy of the process.

The bill specifies that if the survivor is to be governed by the laws of any jurisdiction other than Connecticut, the effect of the merger or consolidation is the same as for a survivor governed by Connecticut law, except to the extent that the laws of such other jurisdiction provide otherwise.

### **MERGER OF PARTNERSHIPS**

Current law allows partnerships to merge with one or more partnerships or limited partnerships. The bill expands this authority by allowing one or more partnerships to merge with or into any one or more other entities formed or organized under the laws of this state or any other state or any foreign country or other foreign jurisdiction. The bill defines "other entity" as any association or legal entity, other than

a domestic or foreign partnership, organized to conduct business, including, but not limited to, corporations, limited partnerships, limited liability partnerships, limited liability companies, joint ventures, joint stock companies, business trusts, statutory trusts, and real estate investment trusts.

The bill requires the merger plan between a partnership and another entity to specify:

1. each party's name;
2. the name of the survivor into which the other partnerships or other entities will merge;
3. whether the survivor is a partnership or another entity and, if the survivor is a partnership or a limited partnership, the status of each partner;
4. the merger's terms and conditions;
5. the manner and basis of converting the shares or interests of each party to the merger into the survivor's shares, interests or obligations or into money or other property;
6. the street address of the survivor's chief executive office;
7. the merger's effective date or time, if it is not to be effective when the certificate of merger is filed; and
8. whatever other provisions that are necessary or desirable.

The bill requires that a merger plan be approved:

1. in the case of a partnership that is a party to the merger, by all of the partners or by a number or percentage specified for merger in the partnership agreement and
2. in the case of an other entity that is a party to the merger, by the vote required for approval of a merger by the law of the state or foreign jurisdiction in which the other entity is organized or by which it is governed. In the absence of such a specific law for a limited partnership, the merger plan must be approved by all of the partners, notwithstanding a provision to the contrary in the partnership agreement.

As under current law, after a merger plan is approved and before it takes effect, it may be amended or abandoned according to its provisions.

Under existing law, unchanged by the bill, the merger takes effect (1)

when all parties approve it; (2) when all documents required by law to be filed are filed; or (3) the effective date the plan specifies.

If the merger involves one or more other entities, the bill specifies that these requirements regarding merger plans are satisfied if it meets the requirements of the laws under which they are organized or by which they are governed.

## **EFFECT OF MERGER**

Under the bill, when a merger between a partnership and another entity takes effect:

1. the separate existence of every party other than the survivor, ceases;
2. all property owned by each party vests in the survivor;
3. all obligations of every party become the obligations of the survivor; and
4. an action or proceeding pending against a party may be continued as if the merger had not occurred, or the survivor may be substituted as a party to the action or proceeding.

Under the bill, the secretary of the state is the agent for service of process in an action or proceeding against a survivor to enforce an obligation of a party to a merger. Upon receipt of process, the secretary of the state must mail a copy of to the survivor.

The bill makes a partner of a surviving partnership or limited partnership liable for:

1. all obligations of a party to the merger for which the partner was personally liable before the merger;
2. all other obligations of the survivor incurred before the merger by a party to the merger, but those obligations may be satisfied only out of the survivor's property; and
3. all obligations the survivor incurred after the merger takes effect, but those obligations may be satisfied only out of property of the survivor if the partner is a limited partner.

Under the bill, if the obligations incurred before the merger with another entity by a party that is a partnership or limited partnership are not satisfied out of the survivor's property, those who were general

partners of that party immediately before the merger's effective date must contribute the amount necessary to satisfy that party's obligations to the survivor. They must do so immediately before the effective date of the merger in the manner provided in Connecticut law, or of the jurisdiction in which the party was organized, as the case may be, as if the merged party were dissolved.

Under the bill, any partner of a partnership or holder of an interest in another entity that is a party to a merger who, before the merger, was obligated for any of the liabilities or obligations of the partnership or other entity is not released because of the merger from such liabilities or obligations that arose before the merger's effective date.

### **STATEMENT OF MERGER**

Under the bill, after a merger between a partnership and another entity, if the survivor is a partnership, the partnership may file a statement that one or more partnerships or other entities have merged into the surviving partnership.

The bill requires the statement to contain, in addition to the statutory requirements for a certificate of merger or consolidation applicable to another entity that is a party to the merger:

1. the name of each party to the merger;
2. the name of the survivor into which the other parties were merged;
3. the street address of the survivor's chief executive office and of an office in this state, if any; and
4. the type of entity the survivor is.

The bill specifies that property of the survivor partnership or entity that before the merger was held in the name of another party to the merger is property held in the survivor's name when the merger statement is filed.

Real estate owned by the survivor that before the merger was held in the name of another party to the merger is property held in the name of the survivor when a certified copy of the statement of merger is filed in the office for recording transfers of that real property.

A filed and, if appropriate, recorded statement of merger, executed and declared to be accurate pursuant to Connecticut law, stating the

name of a partnership or other entity that is a party to the merger in whose name property was held before the merger and the name of the survivor, is effective with respect to the partnerships or other entities named to transfer property, even if it does not contain all of the other information the bill requires.

The bill requires that if the survivor is a limited liability partnership, a certificate of merger must be filed with the secretary of the state.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 41    Nay 0