



# Senate

## File No. 710

General Assembly

January Session, 2003

**(Reprint of File No. 604)**

Substitute Senate Bill No. 951  
As Amended by House Amendment  
Schedule "B"

Approved by the Legislative Commissioner  
May 16, 2003

**AN ACT CONCERNING PROFESSIONAL CORPORATIONS OF  
PHYSICIAN ASSISTANTS AND ADVANCED PRACTICE REGISTERED  
NURSES, BUSINESS CORPORATION SHARES AND REFERENCES IN  
DOCUMENTS TO EXTRINSIC FACTS.**

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

1 Section 1. Section 33-182a of the general statutes is repealed and the  
2 following is substituted in lieu thereof (*Effective October 1, 2003*):

3 As used in this chapter: [the following words shall have the  
4 meaning indicated:]

5 (1) "Professional service" means any type of service to the public  
6 that requires that members of a profession rendering such service  
7 obtain a license or other legal authorization as a condition precedent to  
8 the rendition thereof, limited to the professional services rendered by  
9 dentists, natureopaths, chiropractors, physicians and surgeons,  
10 physician assistants, doctors of dentistry, physical therapists,  
11 occupational therapists, podiatrists, optometrists, nurses,  
12 nurse-midwives, veterinarians, pharmacists, architects, professional

13 engineers, or jointly by architects and professional engineers,  
14 landscape architects, real estate brokers, insurance producers, certified  
15 public accountants and public accountants, land surveyors,  
16 psychologists, attorneys-at-law, licensed marital and family therapists,  
17 licensed professional counselors and licensed clinical social workers.

18 (2) "Professional corporation" means (A) a corporation which is  
19 organized under this chapter for the sole and specific purpose of  
20 rendering professional service and which has as its shareholders only  
21 individuals who themselves are licensed or otherwise legally  
22 authorized to render the same professional service as the corporation,  
23 (B) a corporation which is organized under this chapter for the sole  
24 and specific purpose of rendering professional services rendered by  
25 members of two or more of the following professions: Psychology,  
26 marital and family therapy, social work, nursing, professional  
27 counseling and psychiatry and that has as its shareholders only  
28 individuals who themselves are licensed or otherwise legally  
29 authorized to render one of the professional services for which the  
30 corporation was specifically incorporated, [or] (C) a corporation which  
31 is organized under this chapter for the sole and specific purpose of  
32 rendering professional services by physicians specializing in  
33 ophthalmology and optometrists and that has as its shareholders only  
34 individuals who themselves are licensed or otherwise legally  
35 authorized to render one of the professional services for which the  
36 corporation was specifically incorporated, or (D) a corporation which  
37 is organized under this chapter for the sole and specific purpose of  
38 rendering professional services by (i) physicians, and (ii) physician  
39 assistants or advanced practice registered nurses, or both, and that has  
40 as its shareholders only individuals who themselves are licensed or  
41 otherwise legally authorized to render one of the professional services  
42 for which the corporation was specifically incorporated.

43 (3) "Shareholder" means the holder of any shares of the capital stock  
44 of a professional corporation. The shareholders of a professional  
45 corporation may be designated as "members" in its certificate of  
46 incorporation, bylaws and other corporate documents and may be

47 referred to, for all purposes, as "members", whether or not so  
48 designated; and [,] the term "shareholder" or "shareholders", when  
49 used in the general statutes in reference to the shareholders of a  
50 professional corporation, shall include such "members".

51 Sec. 2. Subsection (b) of section 33-182c of the general statutes is  
52 repealed and the following is substituted in lieu thereof (*Effective*  
53 *October 1, 2003*):

54 (b) Any group of persons, each member of which is licensed or  
55 otherwise legally authorized to render any of the professional services  
56 specified in subparagraph (B), [or] (C) or (D) of subdivision (2) of  
57 section 33-182a, as amended by this act, may organize and become  
58 shareholders of a professional corporation for profit under the  
59 provisions of chapter 601, for the sole and specific purpose of  
60 rendering two or more of the professional services specified in said  
61 subparagraph (B), [or] (C) or (D), respectively.

62 Sec. 3. Section 33-602 of the general statutes is repealed and the  
63 following is substituted in lieu thereof (*Effective October 1, 2003*):

64 As used in sections 33-600 to 33-998, inclusive:

65 (1) "Address" means location as described by the full street number,  
66 if any, street, city or town, state or country and not a mailing address  
67 such as a post office box.

68 (2) "Authorized shares" means the shares of all classes a domestic or  
69 foreign corporation is authorized to issue.

70 (3) "Certificate of incorporation" means the original certificate of  
71 incorporation or restated certificate of incorporation, and all  
72 amendments thereto, and all certificates of merger or consolidation. In  
73 the case of a specially chartered corporation, "certificate of  
74 incorporation" means the special charter of the corporation, including  
75 any portions of the charters of its predecessor companies which have  
76 continuing effect, and any amendments to the charter made by special

77 act or pursuant to general law. In the case of a corporation formed  
78 before January 1, 1961, or of a specially chartered corporation,  
79 "certificate of incorporation" includes those portions of any other  
80 corporate instruments or resolutions of current application in which  
81 are set out provisions of the sort which either (A) are required by  
82 sections 33-600 to 33-998, inclusive, to be embodied in the certificate of  
83 incorporation, or (B) are expressly permitted by sections 33-600 to 33-  
84 998, inclusive, to be operative only if included in the certificate of  
85 incorporation. It also includes what were, prior to January 1, 1961,  
86 designated at law as agreements of association, articles of  
87 incorporation, charters and other such terms.

88 (4) "Conspicuous" means so written that a reasonable person against  
89 whom the writing is to operate should have noticed it. For example,  
90 printing in italics or boldface or contrasting color, or typing in capitals  
91 or underlined, is conspicuous.

92 (5) "Corporation" or "domestic corporation" means a corporation  
93 with capital stock, which is not a foreign corporation, incorporated  
94 under the laws of this state, whether general law or special act and  
95 whether before or after January 1, 1997.

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

99 (7) "Distribution" means a direct or indirect transfer of money or  
100 other property, except its own shares, or incurrence of indebtedness by  
101 a corporation to or for the benefit of its shareholders in respect of any  
102 of its shares. A distribution may be in the form of a declaration or  
103 payment of a dividend; a purchase, redemption or other acquisition of  
104 shares; a distribution of indebtedness; or otherwise.

105 (8) "Document" includes anything delivered to the office of the  
106 Secretary of the State for filing under sections 33-600 to 33-998,  
107 inclusive.

108 (9) "Effective date of notice" is defined in section 33-603.

109 (10) "Electronic transmission" or "electronically transmitted" means  
110 any process of communication not directly involving the physical  
111 transfer of paper that is suitable for the retention, retrieval and  
112 reproduction of information by the recipient.

113 (11) "Employee" includes an officer but not a director. A director  
114 may accept duties that make him also an employee.

115 (12) "Entity" includes a corporation and foreign corporation;  
116 nonprofit corporation; profit and nonprofit unincorporated  
117 association; business trust, estate, partnership, limited liability  
118 company, trust and two or more persons having a joint or common  
119 economic interest; and state, United States or foreign government.

120 (13) "Facts objectively ascertainable" outside of a plan or filed  
121 document is defined in subsection (1) of section 33-608, as amended by  
122 this act.

123 [(13)] (14) "Foreign corporation" means a corporation incorporated  
124 under a law other than the law of this state.

125 [(14)] (15) "Governmental subdivision" includes authority, county,  
126 district and municipality.

127 [(15)] (16) "Includes" denotes a partial definition.

128 [(16)] (17) "Individual" includes the estate of an incompetent or  
129 deceased individual.

130 [(17)] (18) "Means" denotes an exhaustive definition.

131 [(18)] (19) "Notice" is defined in section 33-603.

132 [(19)] (20) "Person" includes individual and entity.

133 [(20)] (21) "Principal office" of a domestic corporation means the  
134 address of the principal office of such corporation in this state, if any,

135 as the same appears in the last annual report, if any, filed by such  
136 corporation with the Secretary of the State. If no principal office so  
137 appears, the corporation's "principal office" means the address in this  
138 state of the corporation's registered agent for service as last shown on  
139 the records of the Secretary of the State. In the case of a domestic  
140 corporation which has not filed such an annual report or appointment  
141 of registered agent for service, the "principal office" means the address  
142 of the principal place of business of such corporation in this state, if  
143 any, and if such corporation has no place of business in this state, its  
144 "principal office" shall be the office of the Secretary of the State.

145 [(21)] (22) "Proceeding" includes civil suit and criminal,  
146 administrative and investigatory action.

147 [(22)] (23) "Record date" means the date established under sections  
148 33-665 to 33-687, inclusive, or sections 33-695 to 33-727, inclusive, on  
149 which a corporation determines the identity of its shareholders and  
150 their shareholdings for purposes of sections 33-600 to 33-998, inclusive.  
151 The determinations shall be made as of the close of business on the  
152 record date unless another time for doing so is specified when the  
153 record date is fixed.

154 [(23)] (24) "Secretary" means the corporate officer to whom under  
155 the bylaws or by the board of directors is delegated responsibility  
156 under subsection (c) of section 33-763 for custody of the minutes of the  
157 meetings of the board of directors and of the shareholders and for  
158 authenticating records of the corporation.

159 [(24)] (25) "Secretary of the State" means the Secretary of the State of  
160 Connecticut.

161 [(25)] (26) "Shares" means the units into which the proprietary  
162 interests in a corporation are divided.

163 [(26)] (27) "Shareholder" means the person in whose name shares are  
164 registered in the records of a corporation or the beneficial owner of  
165 shares to the extent of the rights granted by a nominee certificate on

166 file with a corporation.

167 [(27)] (28) "Sign" or "signature" includes any manual, facsimile,  
168 conformed or electronic signature.

169 [(28)] (29) "State", when referring to a part of the United States,  
170 includes a state and commonwealth, and their agencies and  
171 governmental subdivisions, and a territory and insular possession, and  
172 their agencies and governmental subdivisions, of the United States.

173 [(29)] (30) "Subscriber" means a person who subscribes for shares in  
174 a corporation, whether before or after incorporation.

175 [(30)] (31) "United States" includes any district, authority, bureau,  
176 commission, department and other agency of the United States.

177 [(31)] (32) "Voting group" means all shares of one or more classes or  
178 series that under the certificate of incorporation or sections 33-600 to  
179 33-998, inclusive, are entitled to vote and be counted together  
180 collectively on a matter at a meeting of shareholders. All shares  
181 entitled by the certificate of incorporation or said sections to vote  
182 generally on the matter are for that purpose a single voting group.

183 Sec. 4. Section 33-608 of the general statutes is amended by adding  
184 subsection (l) as follows (*Effective October 1, 2003*):

185 (NEW) (l) As used in this subsection, "filed document" means a  
186 document filed with the Secretary of the State under any provision of  
187 sections 33-600 to 33-998, inclusive, except sections 33-920 to 33-937,  
188 inclusive, and section 33-953, and "plan" means a plan of merger or  
189 share exchange. Whenever a provision of sections 33-600 to 33-998,  
190 inclusive, permits any of the terms of a plan or filed document to be  
191 dependent on facts objectively ascertainable outside the plan or filed  
192 document, the following provisions apply:

193 (1) The manner in which the facts will operate upon the terms of the  
194 plan or filed document shall be set forth in the plan or filed document;

195 (2) The facts may include, but are not limited to (A) any of the  
196 following that is available in a nationally recognized news or  
197 information medium either in print or electronically: Statistical or  
198 market indices, market prices of any security or group of securities,  
199 interest rates, currency exchange rates, or similar economic or financial  
200 data, (B) a determination or action by any person or body, including  
201 the corporation or any other party to a plan or filed document, or (C)  
202 the terms of, or actions taken under, an agreement to which the  
203 corporation is a party, or any other agreement or document;

204 (3) The following provisions of a plan or filed document may not be  
205 made dependent on facts outside the plan or filed document: (A) The  
206 name and address of any person required in a filed document; (B) the  
207 registered office of any entity required in a filed document; (C) the  
208 registered agent of any entity required in a filed document; (D) the  
209 number of authorized shares and designation of each class or series of  
210 shares; (E) the effective date of a filed document; and (F) any required  
211 statement in a filed document of the date on which the underlying  
212 transaction was approved or the manner in which such approval was  
213 given; and

214 (4) If a provision of a filed document is made dependent on a fact  
215 ascertainable outside of the filed document, and such fact is not  
216 ascertainable by reference to a source described in subparagraph (A) of  
217 subdivision (2) of this subsection or a document that is a matter of  
218 public record, or the affected shareholders have not received notice of  
219 the fact from the corporation, then the corporation shall file with the  
220 Secretary of the State a certificate of amendment setting forth the fact  
221 promptly after the time when the fact referred to is first ascertainable  
222 or thereafter changes. Certificates of amendment under this  
223 subdivision are deemed to be authorized by the authorization of the  
224 original plan or filed document to which they relate and may be filed  
225 by the corporation without further action by the board of directors or  
226 the shareholders.

227 Sec. 5. Section 33-636 of the general statutes is amended by adding

228 subsection (d) as follows (*Effective October 1, 2003*):

229 (NEW) (d) Provisions of the certificate of incorporation may be  
230 made dependent upon facts objectively ascertainable outside the  
231 certificate of incorporation in accordance with subsection (l) of section  
232 33-608, as amended by this act.

233 Sec. 6. Section 33-665 of the general statutes is repealed and the  
234 following is substituted in lieu thereof (*Effective October 1, 2003*):

235 (a) The certificate of incorporation shall [prescribe the] set forth any  
236 classes of shares and series of shares within a class, and the number of  
237 shares of each class and series, that the corporation is authorized to  
238 issue. If more than one class or series of shares is authorized, the  
239 certificate of incorporation shall prescribe a distinguishing designation  
240 for each class [ ] or series and must describe, prior to the issuance of  
241 shares of a class [ , the preferences, limitations and relative rights of  
242 that class shall be described in the certificate of incorporation. All  
243 shares of a class shall have preferences, limitations and relative rights  
244 identical with those of other shares of the same class except to the  
245 extent otherwise permitted by section 33-666] or series, the terms,  
246 including the preferences, rights and limitations, of such class or series.  
247 Except to the extent varied as permitted by this section, all shares of a  
248 class or series shall have terms, including preferences, rights and  
249 limitations, that are identical with those of other shares of the same  
250 class or series.

251 (b) The certificate of incorporation shall authorize (1) one or more  
252 classes or series of shares that together have unlimited voting rights,  
253 and (2) one or more classes or series of shares, which may be the same  
254 class or classes as those with voting rights, that together are entitled to  
255 receive the net assets of the corporation upon dissolution.

256 (c) The certificate of incorporation may authorize one or more  
257 classes or series of shares that: (1) Have special, conditional or limited  
258 voting rights, or no right to vote, except [to the extent prohibited] as  
259 otherwise provided by sections 33-600 to 33-998, inclusive; (2) are

260 redeemable or convertible as specified in the certificate of  
261 incorporation (A) at the option of the corporation, the shareholder or  
262 another person or upon the occurrence of a [designated] specified  
263 event, (B) for cash, indebtedness, securities or other property, and (C)  
264 [in a designated amount or in an amount determined in accordance  
265 with a designated formula or by reference to extrinsic data or events]  
266 at prices and in amounts specified or determined in accordance with a  
267 formula; (3) entitle the holders to distributions calculated in any  
268 manner, including dividends that may be cumulative, noncumulative  
269 or partially cumulative; or (4) have preference over any other class or  
270 series of shares with respect to distributions, including [dividends and]  
271 distributions upon the dissolution of the corporation.

272 (d) Terms of shares may be made dependent upon facts objectively  
273 ascertainable outside the certificate of incorporation in accordance  
274 with subsection (l) of section 33-608, as amended by this act.

275 (e) Any of the terms of shares may vary among holders of the same  
276 class or series as long as such variations are expressly set forth in the  
277 certificate of incorporation.

278 [(d)] (f) The description of the [designations,] preferences, rights and  
279 limitations [and relative rights of share] of classes or series of shares in  
280 subsection (c) of this section is not exhaustive.

281 Sec. 7. Section 33-666 of the general statutes is repealed and the  
282 following is substituted in lieu thereof (*Effective October 1, 2003*):

283 (a) If the certificate of incorporation so provides, the board of  
284 directors [may determine, in whole or part, the preferences, limitations  
285 and relative rights, within the limits set forth in section 33-665, of (1)  
286 any class of shares before the issuance of any shares of that class or (2)  
287 one or more series within a class before the issuance of any shares of  
288 that series] is authorized, without shareholder approval, to: (1) Classify  
289 any unissued shares into one or more classes or into one or more series  
290 within a class; (2) reclassify any unissued shares of any class into one  
291 or more classes or into one or more series within one or more classes;

292 or (3) reclassify any unissued shares of any series of any class into one  
293 or more classes or into one or more series within a class.

294 (b) [Each series of a class shall be given a distinguishing  
295 designation] If the board of directors acts pursuant to subsection (a) of  
296 this section, it must determine the terms, including the preferences,  
297 rights and limitations, to the same extent permitted under section 33-  
298 665, as amended by this act, of: (1) Any class of shares before the  
299 issuance of any shares of such class; or (2) any series within a class  
300 before the issuance of any shares of such series.

301 [(c) All shares of a series shall have preferences, limitations and  
302 relative rights identical with those of other shares of the same series  
303 and, except to the extent otherwise provided in the description of the  
304 series, with those of other series of the same class.]

305 [(d)] (c) Before issuing any shares of a class or series created under  
306 this section, the corporation must deliver to the Secretary of the State  
307 for filing a certificate of amendment [, which is effective without  
308 shareholder action, that sets forth: (1) The name of the corporation; (2)  
309 the text of the amendment determining the terms of the class or series  
310 of shares; (3) the date it was adopted; and (4) a statement that the  
311 amendment was duly adopted by the board of directors] setting forth  
312 the terms determined under subsection (a) of this section.

313 Sec. 8. Section 33-675 of the general statutes is repealed and the  
314 following is substituted in lieu thereof (*Effective October 1, 2003*):

315 (a) A corporation may issue rights, options or warrants for the  
316 purchase of shares or other securities of the corporation. The board of  
317 directors shall determine (1) the terms upon which the rights, options  
318 or warrants are issued, [their form and content,] and (2) the terms  
319 upon which, including the consideration for which, the shares or other  
320 securities are to be issued. The authorization by the board of directors  
321 for the corporation to issue such rights, options or warrants constitutes  
322 authorization of the issuance of the shares or other securities for which  
323 the rights, options or warrants are exercisable.

324 (b) The terms and conditions of such rights, options or warrants,  
325 including those outstanding on the effective date of this section, may  
326 include, but are not limited to, restrictions or conditions that: (1)  
327 Preclude or limit the exercise, transfer or receipt of such rights, options  
328 or warrants by any person or persons owning or offering to acquire a  
329 specified number or percentage of the outstanding shares or other  
330 securities of the corporation or by any transferee or transferees of any  
331 such person or persons; or (2) invalidate or void such rights, options or  
332 warrants held by any such person or persons or any such transferee or  
333 transferees.

334 Sec. 9. Section 33-800 of the general statutes is repealed and the  
335 following is substituted in lieu thereof (*Effective October 1, 2003*):

336 A corporation amending its certificate of incorporation shall deliver  
337 to the Secretary of the State for filing a certificate of amendment setting  
338 forth: (1) The name of the corporation; (2) the text of each amendment  
339 adopted, or the information required by subsection (l) of section 33-  
340 608, as amended by this act; (3) if an amendment provides for an  
341 exchange, reclassification or cancellation of issued shares, provisions  
342 for implementing the amendment, if not contained in the amendment  
343 itself, which may be made dependent upon facts objectively  
344 ascertainable outside the certificate of amendment in accordance with  
345 subsection (l) of section 33-608, as amended by this act; (4) the date of  
346 each amendment's adoption; (5) if an amendment was adopted by the  
347 incorporators or board of directors without shareholder action, a  
348 statement to that effect and that shareholder action was not required;  
349 (6) if an amendment was approved by the shareholders (A) the  
350 designation, number of outstanding shares, number of votes entitled to  
351 be cast by each voting group entitled to vote separately on the  
352 amendment and number of votes of each voting group indisputably  
353 represented at the meeting, (B) either the total number of votes cast for  
354 and against the amendment by each voting group entitled to vote  
355 separately on the amendment or the total number of undisputed votes  
356 cast for the amendment by each voting group and a statement that the  
357 number cast for the amendment by each voting group was sufficient

358 for approval by that voting group; (7) if an amendment is being filed  
359 pursuant to subsection (l) of section 33-608, as amended by this act, a  
360 statement to that effect.

361 Sec. 10. Section 33-815 of the general statutes is amended by adding  
362 subsection (d) as follows (*Effective October 1, 2003*):

363 (NEW) (d) Terms of a plan of merger may be made dependent on  
364 facts objectively ascertainable outside the plan in accordance with  
365 subsection (l) of section 33-608, as amended by this act.

366 Sec. 11. Section 33-816 of the general statutes is amended by adding  
367 subsection (e) as follows (*Effective October 1, 2003*):

368 (NEW) (e) Terms of a plan of share exchange may be made  
369 dependent on facts objectively ascertainable outside the plan in  
370 accordance with subsection (l) of section 33-608, as amended by this  
371 act.

372 Sec. 12. Subsection (e) of section 33-945 of the general statutes is  
373 repealed and the following is substituted in lieu thereof (*Effective*  
374 *October 1, 2003*):

375 (e) A corporation shall keep a copy of the following records at its  
376 principal office: (1) Its certificate of incorporation or restated certificate  
377 of incorporation, [and] all amendments to them currently in effect and  
378 any notices to shareholders referred to in subsection (l) of section 33-  
379 608, as amended by this act, regarding facts on which a document is  
380 dependent; (2) its bylaws or restated bylaws and all amendments to  
381 them currently in effect; (3) resolutions adopted by its board of  
382 directors creating one or more classes or series of shares and fixing  
383 their relative rights, preferences and limitations, if shares issued  
384 pursuant to those resolutions are outstanding; (4) the minutes of all  
385 shareholders' meetings and records of all action taken by shareholders  
386 without a meeting for the past three years; (5) all written  
387 communications to shareholders generally within the past three years,  
388 including the financial statements furnished for the past three years

389 under section 33-951; (6) a list of the names and business addresses of  
390 its current directors and officers; and (7) its most recent annual report  
391 delivered to the Secretary of the State under section 33-953.

392 Sec. 13. Subsection (c) of section 36a-106 of the general statutes is  
393 repealed and the following is substituted in lieu thereof (*Effective*  
394 *October 1, 2003*):

395 (c) Before the issuance of preferred shares, any provision of which is  
396 fixed or determined by the governing board in accordance with  
397 [subsection (a) of] section 33-666, as amended by this act, the  
398 governing board shall amend the certificate of incorporation of the  
399 capital stock Connecticut bank as provided in [subsection (d) of]  
400 section 33-666, as amended by this act.

This act shall take effect as follows:	
Section 1	<i>October 1, 2003</i>
Sec. 2	<i>October 1, 2003</i>
Sec. 3	<i>October 1, 2003</i>
Sec. 4	<i>October 1, 2003</i>
Sec. 5	<i>October 1, 2003</i>
Sec. 6	<i>October 1, 2003</i>
Sec. 7	<i>October 1, 2003</i>
Sec. 8	<i>October 1, 2003</i>
Sec. 9	<i>October 1, 2003</i>
Sec. 10	<i>October 1, 2003</i>
Sec. 11	<i>October 1, 2003</i>
Sec. 12	<i>October 1, 2003</i>
Sec. 13	<i>October 1, 2003</i>

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:

**OFA Fiscal Note**

**State Impact:**

Agency Affected	Fund-Type	FY 04 \$	FY 05 \$
Secretary of the State	Commercial Recording Division Account - Cost	None	None

**Municipal Impact:** None

**Explanation**

This bill makes numerous changes to the laws governing professional services corporations, certificates of incorporation, terms of shares, and terms of a merger or share exchange plan. The bill has no fiscal impact on the Secretary of the State.

House "B" adds advanced practice registered nurses to physicians and physician assistants that can form as a professional service corporation to render services. This has no fiscal impact on the state.

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**OLR Bill Analysis**

sSB 951 (as amended by House "B")\*

***AN ACT CONCERNING PROFESSIONAL CORPORATIONS OF  
PHYSICIAN ASSISTANTS, BUSINESS CORPORATION SHARES  
AND REFERENCES IN DOCUMENTS TO EXTRINSIC FACTS***

**SUMMARY:**

This bill authorizes provisions of a certificate of incorporation and the terms of a merger or share exchange plan to be made dependent upon "facts objectively ascertainable" outside of them. It authorizes terms of shares to be made dependent on facts objectively ascertainable outside the certificate of incorporation. The bill allows provisions to implement an amendment to a certificate of incorporation that provides for an exchange, reclassification, or cancellation of issued shares to be made dependent upon facts objectively ascertainable outside the certificate of amendment.

The bill establishes certain rules that apply when any term of a merger or share exchange plan or document filed with the secretary of state is to be dependent on facts objectively ascertainable outside the plan or filed documents.

The bill specifies that the term "filed document" does not refer to documents foreign corporations must file in connection with a certificate of authority to transact business in Connecticut, or with the annual reports domestic and foreign corporations authorized to transact business in Connecticut must file.

The bill authorizes a board of directors, if otherwise allowed by the certificate of incorporation, without shareholder approval, to (1) classify any unissued shares into one or more classes or into one or more series within a class; (2) reclassify any unissued shares of any class into one or more classes or into one or more series within one or more classes; or (3) reclassify any unissued shares of any series of any class into one or more classes or into one or more series within a class.

The bill specifies that certificates of incorporation may authorize one or more series of shares within a class. It requires that all shares of a class or series have the same terms, including preferences, rights, and limitations that are identical with those of other shares of the same class or series, unless the certificate of incorporation explicitly sets forth the variations.

The bill authorizes a corporation to issue rights, options, or warrants for the purchase of other securities of the corporation instead of just corporate shares. It specifies that this authorization constitutes authority to issue such shares or other securities.

The bill adds physician's assistants and advanced practice registered nurses to the list of professions that may offer their services through a professional service corporation. It also authorizes a professional service corporation to (1) be formed solely to render professional services by a physician, and a physician assistant or an advanced practice registered nurse and (2) have as its shareholders only people licensed or otherwise legally authorized to render one of the services for which it was incorporated.

\*House Amendment "B" includes advanced practice registered nurses to the provision dealing with professional services corporations.

EFFECTIVE DATE: October 1, 2003

### **FACTS OBJECTIVELY ASCERTAINABLE OUTSIDE THE PLAN OR DOCUMENT**

The bill requires that the following two conditions be met whenever the business corporation law allows any of the terms of a plan or filed document to be dependent on facts objectively ascertainable outside the plan or filed document:

1. the manner in which the facts will operate upon the terms of the plan or filed document must be specified in the plan or filed document; and
2. the facts may include, but are not limited to, (a) statistical or market indices, market prices of any security or group of securities, interest rates, currency exchange rates, or similar economic or financial data, available in a nationally

recognized news or information medium either in print or electronically; (b) a determination or action by any person or body, including the corporation or any other party to a plan or filed document; or (c) the terms of, or actions taken under, an agreement to which the corporation is a party, or any other agreement or document.

The bill prohibits the following provisions of a plan or filed document to be made dependent on facts outside the plan or filed document:

1. the registered office and agent of any entity, and the name and address of any person required in a filed document;
2. the number of authorized shares and designation of each class or series of shares;
3. the effective date of a filed document; and
4. any required statement of the date on which the underlying transaction was approved or the manner in which the approval was given.

If a provision of a filed document is made dependent on a fact ascertainable outside of the document, the bill requires the corporation to file with the secretary of the state a certificate of amendment stating the fact right after the fact referred to is first ascertainable or changes if (1) it is not ascertainable by reference to a nationally recognized print or electronic news or information medium or a public document, or (2) the affected shareholders have not received notice of the fact from the corporation.

The bill requires corporations to keep at their principal office any notices they sent to shareholders about facts on which a document depends.

Under the bill, such certificates of amendment are deemed to be authorized by the authorization of the original plan or filed document to which they relate. Thus, corporations may file them without further action by their boards of directors or shareholders.

## **AUTHORITY AND REQUIREMENTS REGARDING SERIES OF SHARES**

Current law requires that a certificate of incorporation specify the classes of shares and the number of shares of each class that the corporation is authorized to issue. The bill requires that it also specify the series of shares within a class, and the number of shares of each series, that the corporation is authorized to issue. If more than one series is authorized, the bill requires the certificate to prescribe a distinguishing designation for each series and describe, before the issuance of shares of a series, the terms, including the preferences, rights, and limitations of the series.

The bill establishes the same additional authority and limitations concerning series of shares as currently apply to classes of shares. Specifically, it permits the certificate of incorporation to authorize one or more series of shares that:

1. have special, conditional, or limited voting rights, or no right to vote, except as otherwise provided by the business corporation law;
2. entitle the holders to distributions calculated in any manner, including dividends that may be cumulative, noncumulative, or partially cumulative;
3. have preference over any other class or series of shares with respect to distributions, including distributions when the corporation dissolves; and
4. are redeemable or convertible as specified in the certificate of incorporation (a) at the option of the corporation, the shareholder, or another person or upon the occurrence of a specified event; (b) for cash, indebtedness, securities, or other property; and (c) at prices and in amounts specified or determined in accordance with a formula.

The bill specifies that these preferences, rights, and limitations of series of shares are not exhaustive.

## **RIGHTS, WARRANTS, AND OPTIONS**

Current law authorizes a corporation to issue rights, options, or warrants for the purchase of its shares and permits its directors to determine their terms and the consideration for which shares are to be

issued. The bill extends this authority to other corporation securities as well. It specifies that the authorization by the corporation's board of directors to issue such rights, options, or warrants constitutes authorization for the issuance of the shares or other securities for which the rights, options, or warrants are exercisable.

The terms and conditions of such rights, options, or warrants, including those outstanding on October 1, 2003, may include, but are not limited to, restrictions or conditions that (1) prevent or limit the exercise, transfer, or receipt of such rights, options, or warrants by anyone owning or offering to acquire a specified number or percentage of the outstanding shares or other securities of the corporation or by any transferee of such person or (2) invalidate or void such rights, options, or warrants held by any such person or transferee.

## **BACKGROUND**

### ***Related Act***

sHB 5096 (File 51) makes numerous changes to the Business Corporation Act and contains several provisions allowing certain corporation documents to be dependent on facts ascertainable outside those documents. It passed both houses.

## **COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 41    Nay 0