



General Assembly

January Session, 2003

Raised Bill No. 951

LCO No. 3252

Referred to Committee on Judiciary

Introduced by:
(JUD)

AN ACT CONCERNING 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 Section 33-602 of the general statutes is repealed and the
2 following is substituted in lieu thereof (*Effective October 1, 2003*):

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

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

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

9 (3) "Certificate of incorporation" means the original certificate of
10 incorporation or restated certificate of incorporation, and all
11 amendments thereto, and all certificates of merger or consolidation. In
12 the case of a specially chartered corporation, "certificate of
13 incorporation" means the special charter of the corporation, including
14 any portions of the charters of its predecessor companies which have

15 continuing effect, and any amendments to the charter made by special
16 act or pursuant to general law. In the case of a corporation formed
17 before January 1, 1961, or of a specially chartered corporation,
18 "certificate of incorporation" includes those portions of any other
19 corporate instruments or resolutions of current application in which
20 are set out provisions of the sort which either (A) are required by
21 sections 33-600 to 33-998, inclusive, to be embodied in the certificate of
22 incorporation, or (B) are expressly permitted by sections 33-600 to 33-
23 998, inclusive, to be operative only if included in the certificate of
24 incorporation. It also includes what were, prior to January 1, 1961,
25 designated at law as agreements of association, articles of
26 incorporation, charters and other such terms.

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

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

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

38 (7) "Distribution" means a direct or indirect transfer of money or
39 other property, except its own shares, or incurrence of indebtedness by
40 a corporation to or for the benefit of its shareholders in respect of any
41 of its shares. A distribution may be in the form of a declaration or
42 payment of a dividend; a purchase, redemption or other acquisition of
43 shares; a distribution of indebtedness; or otherwise.

44 (8) "Document" includes anything delivered to the office of the
45 Secretary of the State for filing under sections 33-600 to 33-998,

46 inclusive.

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

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

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

54 (12) "Entity" includes a corporation and foreign corporation;
55 nonprofit corporation; profit and nonprofit unincorporated
56 association; business trust, estate, partnership, limited liability
57 company, trust and two or more persons having a joint or common
58 economic interest; and state, United States or foreign government.

59 (13) "Facts objectively ascertainable" outside of a plan or filed
60 document is defined in subsection (l) of section 33-608, as amended by
61 this act.

62 ~~[(13)]~~ ~~(14)~~ "Foreign corporation" means a corporation incorporated
63 under a law other than the law of this state.

64 ~~[(14)]~~ ~~(15)~~ "Governmental subdivision" includes authority, county,
65 district and municipality.

66 ~~[(15)]~~ ~~(16)~~ "Includes" denotes a partial definition.

67 ~~[(16)]~~ ~~(17)~~ "Individual" includes the estate of an incompetent or
68 deceased individual.

69 ~~[(17)]~~ ~~(18)~~ "Means" denotes an exhaustive definition.

70 ~~[(18)]~~ ~~(19)~~ "Notice" is defined in section 33-603.

71 ~~[(19)]~~ ~~(20)~~ "Person" includes individual and entity.

72 [(20)] (21) "Principal office" of a domestic corporation means the
73 address of the principal office of such corporation in this state, if any,
74 as the same appears in the last annual report, if any, filed by such
75 corporation with the Secretary of the State. If no principal office so
76 appears, the corporation's "principal office" means the address in this
77 state of the corporation's registered agent for service as last shown on
78 the records of the Secretary of the State. In the case of a domestic
79 corporation which has not filed such an annual report or appointment
80 of registered agent for service, the "principal office" means the address
81 of the principal place of business of such corporation in this state, if
82 any, and if such corporation has no place of business in this state, its
83 "principal office" shall be the office of the Secretary of the State.

84 [(21)] (22) "Proceeding" includes civil suit and criminal,
85 administrative and investigatory action.

86 [(22)] (23) "Record date" means the date established under sections
87 33-665 to 33-687, inclusive, or sections 33-695 to 33-727, inclusive, on
88 which a corporation determines the identity of its shareholders and
89 their shareholdings for purposes of sections 33-600 to 33-998, inclusive.
90 The determinations shall be made as of the close of business on the
91 record date unless another time for doing so is specified when the
92 record date is fixed.

93 [(23)] (24) "Secretary" means the corporate officer to whom under
94 the bylaws or by the board of directors is delegated responsibility
95 under subsection (c) of section 33-763 for custody of the minutes of the
96 meetings of the board of directors and of the shareholders and for
97 authenticating records of the corporation.

98 [(24)] (25) "Secretary of the State" means the Secretary of the State of
99 Connecticut.

100 [(25)] (26) "Shares" means the units into which the proprietary
101 interests in a corporation are divided.

102 [(26)] (27) "Shareholder" means the person in whose name shares are
103 registered in the records of a corporation or the beneficial owner of
104 shares to the extent of the rights granted by a nominee certificate on
105 file with a corporation.

106 [(27)] (28) "Sign" or "signature" includes any manual, facsimile,
107 conformed or electronic signature.

108 [(28)] (29) "State", when referring to a part of the United States,
109 includes a state and commonwealth, and their agencies and
110 governmental subdivisions, and a territory and insular possession, and
111 their agencies and governmental subdivisions, of the United States.

112 [(29)] (30) "Subscriber" means a person who subscribes for shares in
113 a corporation, whether before or after incorporation.

114 [(30)] (31) "United States" includes any district, authority, bureau,
115 commission, department and other agency of the United States.

116 [(31)] (32) "Voting group" means all shares of one or more classes or
117 series that under the certificate of incorporation or sections 33-600 to
118 33-998, inclusive, are entitled to vote and be counted together
119 collectively on a matter at a meeting of shareholders. All shares
120 entitled by the certificate of incorporation or said sections to vote
121 generally on the matter are for that purpose a single voting group.

122 Sec. 2. Section 33-608 of the general statutes is amended by adding
123 subsection (l) as follows (*Effective October 1, 2003*):

124 (NEW) (l) As used in this subsection, "filed document" means a
125 document filed with the Secretary of the State under any provision of
126 sections 33-600 to 33-998, inclusive, except sections 33-920 to 33-937,
127 inclusive, and section 33-953, and "plan" means a plan of merger or
128 share exchange. Whenever a provision of sections 33-600 to 33-998,
129 inclusive, permits any of the terms of a plan or filed document to be
130 dependent on facts objectively ascertainable outside the plan or filed
131 document, the following provisions apply:

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

134 (2) The facts may include, but are not limited to (A) any of the
135 following that is available in a nationally recognized news or
136 information medium either in print or electronically: Statistical or
137 market indices, market prices of any security or group of securities,
138 interest rates, currency exchange rates, or similar economic or financial
139 data, (B) a determination or action by any person or body, including
140 the corporation or any other party to a plan or filed document, or (C)
141 the terms of, or actions taken under, an agreement to which the
142 corporation is a party, or any other agreement or document;

143 (3) The following provisions of a plan or filed document may not be
144 made dependent on facts outside the plan or filed document: (A) The
145 name and address of any person required in a filed document; (B) the
146 registered office of any entity required in a filed document; (C) the
147 registered agent of any entity required in a filed document; (D) the
148 number of authorized shares and designation of each class or series of
149 shares; (E) the effective date of a filed document; and (F) any required
150 statement in a filed document of the date on which the underlying
151 transaction was approved or the manner in which such approval was
152 given; and

153 (4) If a provision of a filed document is made dependent on a fact
154 ascertainable outside of the filed document, and such fact is not
155 ascertainable by reference to a source described in subparagraph (A) of
156 subdivision (2) of this subsection or a document that is a matter of
157 public record, or the affected shareholders have not received notice of
158 the fact from the corporation, then the corporation shall file with the
159 Secretary of the State a certificate of amendment setting forth the fact
160 promptly after the time when the fact referred to is first ascertainable
161 or thereafter changes. Certificates of amendment under this
162 subdivision are deemed to be authorized by the authorization of the
163 original plan or filed document to which they relate and may be filed

164 by the corporation without further action by the board of directors or
165 the shareholders.

166 Sec. 3. Section 33-636 of the general statutes is amended by adding
167 subsection (d) as follows (*Effective October 1, 2003*):

168 (NEW) (d) Provisions of the certificate of incorporation may be
169 made dependent upon facts objectively ascertainable outside the
170 certificate of incorporation in accordance with subsection (l) of section
171 33-608, as amended by this act.

172 Sec. 4. Section 33-665 of the general statutes is repealed and the
173 following is substituted in lieu thereof (*Effective October 1, 2003*):

174 (a) The certificate of incorporation shall [prescribe the] set forth any
175 classes of shares and series of shares within a class, and the number of
176 shares of each class and series, that the corporation is authorized to
177 issue. If more than one class or series of shares is authorized, the
178 certificate of incorporation shall prescribe a distinguishing designation
179 for each class [,] or series and must describe, prior to the issuance of
180 shares of a class [, the preferences, limitations and relative rights of
181 that class shall be described in the certificate of incorporation. All
182 shares of a class shall have preferences, limitations and relative rights
183 identical with those of other shares of the same class except to the
184 extent otherwise permitted by section 33-666] or series, the terms,
185 including the preferences, rights and limitations, of such class or series.
186 Except to the extent varied as permitted by this section, all shares of a
187 class or series shall have terms, including preferences, rights and
188 limitations, that are identical with those of other shares of the same
189 class or series.

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

195 (c) The certificate of incorporation may authorize one or more
196 classes or series of shares that: (1) Have special, conditional or limited
197 voting rights, or no right to vote, except [to the extent prohibited] as
198 otherwise provided by sections 33-600 to 33-998, inclusive; (2) are
199 redeemable or convertible as specified in the certificate of
200 incorporation (A) at the option of the corporation, the shareholder or
201 another person or upon the occurrence of a [designated] specified
202 event, (B) for cash, indebtedness, securities or other property, and (C)
203 [in a designated amount or in an amount determined in accordance
204 with a designated formula or by reference to extrinsic data or events]
205 at prices and in amounts specified or determined in accordance with a
206 formula; (3) entitle the holders to distributions calculated in any
207 manner, including dividends that may be cumulative, noncumulative
208 or partially cumulative; or (4) have preference over any other class or
209 series of shares with respect to distributions, including dividends and
210 distributions upon the dissolution of the corporation.

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

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

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

220 Sec. 5. Section 33-666 of the general statutes is repealed and the
221 following is substituted in lieu thereof (*Effective October 1, 2003*):

222 (a) If the certificate of incorporation so provides, the board of
223 directors [may determine, in whole or part, the preferences, limitations
224 and relative rights, within the limits set forth in section 33-665, of (1)
225 any class of shares before the issuance of any shares of that class or (2)

226 one or more series within a class before the issuance of any shares of
227 that series] is authorized, without shareholder approval, to: (1) Classify
228 any unissued shares into one or more classes or into one or more series
229 within a class; (2) reclassify any unissued shares of any class into one
230 or more classes or into one or more series within one or more classes;
231 or (3) reclassify any unissued shares of any series of any class into one
232 or more classes or into one or more series within a class.

233 (b) [Each series of a class shall be given a distinguishing
234 designation] If the board of directors acts pursuant to subsection (a) of
235 this section, it must determine the terms, including the preferences,
236 rights and limitations, to the same extent permitted under section 33-
237 665, as amended by this act, of: (1) Any class of shares before the
238 issuance of any shares of such class; or (2) any series within a class
239 before the issuance of any shares of such series.

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

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

252 Sec. 6. Section 33-675 of the general statutes is repealed and the
253 following is substituted in lieu thereof (*Effective October 1, 2003*):

254 (a) A corporation may issue rights, options or warrants for the
255 purchase of shares or other securities of the corporation. The board of
256 directors shall determine (1) the terms upon which the rights, options

257 or warrants are issued, [their form and content,] and (2) the terms
258 upon which, including the consideration for which, the shares or other
259 securities are to be issued. The authorization by the board of directors
260 for the corporation to issue such rights, options or warrants constitutes
261 authorization of the issuance of the shares or other securities for which
262 the rights, options or warrants are exercisable.

263 (b) The terms and conditions of such rights, options or warrants,
264 including those outstanding on the effective date of this section, may
265 include, but are not limited to, restrictions or conditions that: (1)
266 Preclude or limit the exercise, transfer or receipt of such rights, options
267 or warrants by any person or persons owning or offering to acquire a
268 specified number or percentage of the outstanding shares or other
269 securities of the corporation or by any transferee or transferees of any
270 such person or persons; or (2) invalidate or void such rights, options or
271 warrants held by any such person or persons or any such transferee or
272 transferees.

273 Sec. 7. Section 33-800 of the general statutes is repealed and the
274 following is substituted in lieu thereof (*Effective October 1, 2003*):

275 A corporation amending its certificate of incorporation shall deliver
276 to the Secretary of the State for filing a certificate of amendment setting
277 forth: (1) The name of the corporation; (2) the text of each amendment
278 adopted, or the information required by subsection (1) of section 33-
279 608, as amended by this act; (3) if an amendment provides for an
280 exchange, reclassification or cancellation of issued shares, provisions
281 for implementing the amendment, if not contained in the amendment
282 itself, which may be made dependent upon facts objectively
283 ascertainable outside the certificate of amendment in accordance with
284 subsection (1) of section 33-608, as amended by this act; (4) the date of
285 each amendment's adoption; (5) if an amendment was adopted by the
286 incorporators or board of directors without shareholder action, a
287 statement to that effect and that shareholder action was not required;
288 (6) if an amendment was approved by the shareholders (A) the

289 designation, number of outstanding shares, number of votes entitled to
290 be cast by each voting group entitled to vote separately on the
291 amendment and number of votes of each voting group indisputably
292 represented at the meeting, (B) either the total number of votes cast for
293 and against the amendment by each voting group entitled to vote
294 separately on the amendment or the total number of undisputed votes
295 cast for the amendment by each voting group and a statement that the
296 number cast for the amendment by each voting group was sufficient
297 for approval by that voting group; (7) if an amendment is being filed
298 pursuant to subsection (l) of section 33-608, as amended by this act, a
299 statement to that effect.

300 Sec. 8. Section 33-815 of the general statutes is amended by adding
301 subsection (d) as follows (*Effective October 1, 2003*):

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

305 Sec. 9. Section 33-816 of the general statutes is amended by adding
306 subsection (e) as follows (*Effective October 1, 2003*):

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

311 Sec. 10. Subsection (e) of section 33-945 of the general statutes is
312 repealed and the following is substituted in lieu thereof (*Effective*
313 *October 1, 2003*):

314 (e) A corporation shall keep a copy of the following records at its
315 principal office: (1) Its certificate of incorporation or restated certificate
316 of incorporation, [and] all amendments to them currently in effect and
317 any notices to shareholders referred to in subsection (l) of section 33-
318 608, as amended by this act, regarding facts on which a document is

319 dependent; (2) its bylaws or restated bylaws and all amendments to
 320 them currently in effect; (3) resolutions adopted by its board of
 321 directors creating one or more classes or series of shares and fixing
 322 their relative rights, preferences and limitations, if shares issued
 323 pursuant to those resolutions are outstanding; (4) the minutes of all
 324 shareholders' meetings and records of all action taken by shareholders
 325 without a meeting for the past three years; (5) all written
 326 communications to shareholders generally within the past three years,
 327 including the financial statements furnished for the past three years
 328 under section 33-951; (6) a list of the names and business addresses of
 329 its current directors and officers; and (7) its most recent annual report
 330 delivered to the Secretary of the State under section 33-953.

331 Sec. 11. Subsection (c) of section 36a-106 of the general statutes is
 332 repealed and the following is substituted in lieu thereof (*Effective*
 333 *October 1, 2003*):

334 (c) Before the issuance of preferred shares, any provision of which is
 335 fixed or determined by the governing board in accordance with
 336 [subsection (a) of] section 33-666, as amended by this act, the
 337 governing board shall amend the certificate of incorporation of the
 338 capital stock Connecticut bank as provided in [subsection (d) of]
 339 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>

Statement of Purpose:

To adopt changes to the Connecticut Business Corporation Act pertaining to shares, options and references in documents to extrinsic facts based on recent amendments to the Model Business Corporation Act.

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