



General Assembly

February Session, 2004

Raised Bill No. 135

LCO No. 469

* _____SB00135JUD__031104_____*

Referred to Committee on Judiciary

Introduced by:
(JUD)

**AN ACT MAKING TECHNICAL CHANGES TO CERTAIN PROVISIONS
CONCERNING CORPORATION MERGERS AND SHARE
EXCHANGES.**

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

1 Section 1. Section 33-815 of the general statutes, as amended by
2 section 18 of public act 03-18 and section 10 of public act 03-158, is
3 repealed and the following is substituted in lieu thereof (*Effective from*
4 *passage*):

5 (a) One or more domestic corporations may, in accordance with the
6 provisions of this section, merge with a domestic or foreign
7 corporation or other entity pursuant to a plan of merger.

8 (b) A foreign corporation, or a domestic or foreign other entity, may
9 be a party to a merger, or may be created by the terms of a plan of
10 merger, only if: (1) The merger is permitted by the law of the state or
11 country under which such corporation or other entity is organized or
12 by which it is governed; and (2) in effecting the merger, such
13 corporation or other entity complies with such law and with its
14 certificate of incorporation or organizational documents.

15 (c) The plan of merger must include: (1) The name of each
16 corporation or other entity that will merge and the name of the
17 corporation or other entity that will be the survivor of the merger; (2)
18 the terms and conditions of the merger; (3) the manner and basis of
19 converting the shares of each merging corporation and interests of
20 each merging other entity into shares or other securities, interests,
21 obligations, rights to acquire shares or other securities, cash or other
22 property, or any combination thereof; (4) the certificate of
23 incorporation of any corporation, or the organizational documents of
24 any other entity, to be created by the merger or, if a new corporation or
25 other entity is not to be created by the merger, any amendments to the
26 survivor's certificate of incorporation or organizational documents;
27 and (5) any other provisions required by the law of the state or country
28 under which any party to the merger is organized or by which it is
29 governed, or by the certificate of incorporation or organizational
30 documents of any such party.

31 [(d) The terms of the plan of merger described in subdivisions (2)
32 and (3) of subsection (c) of this section may be made dependent upon
33 facts ascertainable outside the plan of merger, provided such facts are
34 objectively ascertainable. For the purposes of this subsection, "facts"
35 includes, but is not limited to, the occurrence of any event, including a
36 determination or action by any person or body, including the
37 corporation.]

38 (d) Terms of a plan of merger may be made dependent on facts
39 objectively ascertainable outside the plan in accordance with
40 subsection (l) of section 33-608, as amended.

41 (e) The plan of merger may also include a provision that the plan
42 may be amended prior to filing a certificate of merger with the
43 Secretary of the State, provided, if the shareholders of a domestic
44 corporation that is a party to the merger are required or permitted to
45 vote on the plan, the plan must provide that, subsequent to approval
46 of the plan by such shareholders, the plan may not be amended to: (1)

47 Change the amount or kind of shares or other securities, interests,
48 obligations, rights to acquire shares or other securities, cash or other
49 property to be received by the shareholders of or owners of interests in
50 any party to the merger upon conversion of their shares or interests
51 under the plan; (2) change the certificate of incorporation of any
52 corporation, or the organizational documents of any other entity, that
53 will survive or be created as a result of the merger, except for changes
54 permitted by section 33-796, as amended, or by comparable provisions
55 of the law of the state or country under which the foreign corporation
56 or foreign other entity is organized or by which it is governed; or (3)
57 change any of the other terms or conditions of the plan if the change
58 would adversely affect such shareholders in any material respect.

59 [(f) Terms of a plan of merger may be made dependent on facts
60 objectively ascertainable outside the plan in accordance with
61 subsection (l) of section 33-608.]

62 Sec. 2. Section 33-816 of the general statutes, as amended by section
63 19 of public act 03-18 and section 11 of public act 03-158, is repealed
64 and the following is substituted in lieu thereof (*Effective from passage*):

65 (a) Through a share exchange: (1) A domestic corporation may
66 acquire all of the shares of one or more classes or series of shares of
67 another domestic corporation or of a foreign corporation, or all of the
68 interests of one or more classes or series of interests of a domestic or
69 foreign other entity, in exchange for shares or other securities,
70 interests, obligations, rights to acquire shares or other securities, cash
71 or other property, or any combination thereof, pursuant to a plan of
72 share exchange; or (2) all of the shares of one or more classes or series
73 of shares of a domestic corporation may be acquired by another
74 domestic corporation or by a foreign corporation or other entity, in
75 exchange for shares or other securities, interests, obligations, rights to
76 acquire shares or other securities, cash or other property, or any
77 combination thereof, pursuant to a plan of share exchange.

78 (b) A foreign corporation, or a domestic or foreign other entity, may

79 be a party to a share exchange only if: (1) The share exchange is
80 permitted by the law of the state or country under which such
81 corporation or other entity is organized or by which it is governed; and
82 (2) in effecting the share exchange, such corporation or other entity
83 complies with such law and with its certificate of incorporation or
84 organizational documents.

85 (c) The plan of share exchange must include: (1) The name of each
86 corporation or other entity whose shares or interests will be acquired
87 and the name of the corporation or other entity that will acquire such
88 shares or interests; (2) the terms and conditions of the share exchange;
89 (3) the manner and basis of exchanging shares of a corporation or
90 interests in an other entity whose shares or interests will be acquired
91 under the share exchange into shares or other securities, interests,
92 obligations, rights to acquire shares or other securities, cash or other
93 property, or any combination thereof; and (4) any other provisions
94 required by the law of the state or country under which any party to
95 the share exchange is organized or by which it is governed or by the
96 certificate of incorporation or organizational documents of any such
97 party.

98 [(d) The terms of the plan of share exchange described in
99 subdivisions (2) and (3) of subsection (c) of this section may be made
100 dependent on facts ascertainable outside the plan of share exchange,
101 provided such facts are objectively ascertainable. For the purposes of
102 this subsection, "facts" includes, but is not limited to, the occurrence of
103 any event, including a determination or action by any person or body,
104 including the corporation.]

105 (d) Terms of a plan of share exchange may be made dependent on
106 facts objectively ascertainable outside the plan in accordance with
107 subsection (l) of section 33-608, as amended.

108 (e) The plan of share exchange may also include a provision that the
109 plan may be amended prior to the filing of a certificate of share
110 exchange with the Secretary of the State, provided, if the shareholders

111 of a domestic corporation that is a party to the share exchange are
112 required or permitted to vote on the plan, the plan must provide that,
113 subsequent to approval of the plan by such shareholders, the plan may
114 not be amended to: (1) Change the amount or kind of shares or other
115 securities, interests, obligations, rights to acquire shares or other
116 securities, cash or other property to be issued by the corporation or to
117 be received by the shareholders of or owners of interests in any party
118 to the share exchange in exchange for their shares or interests under
119 the plan; or (2) change any of the terms or conditions of the plan if the
120 change would adversely affect such shareholders in any material
121 respect.

122 [(f) Terms of a plan of share exchange may be made dependent on
123 facts objectively ascertainable outside the plan in accordance with
124 subsection (l) of section 33-608.]

125 [(g)] (f) This section does not limit the power of a domestic
126 corporation to acquire shares of another corporation or interests in an
127 other entity in a transaction other than a share exchange.

This act shall take effect as follows:	
Section 1	<i>from passage</i>
Sec. 2	<i>from passage</i>

JUD *Joint Favorable*