



# Senate

General Assembly

**File No. 46**

*January Session, 2005*

Substitute Senate Bill No. 1119

*Senate, March 22, 2005*

The Committee on Judiciary reported through SEN. MCDONALD of the 27th Dist., Chairperson of the Committee on the part of the Senate, that the substitute bill ought to pass.

***AN ACT CONCERNING THE DUTIES AND RESPONSIBILITIES OF DIRECTORS AND OFFICERS OF BUSINESS CORPORATIONS AND NONSTOCK CORPORATIONS.***

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 Section 33-602 of the general statutes is repealed and the  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, 2005*):

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.

61 (14) "Foreign corporation" means a corporation incorporated under  
62 a law other than the law of this state.

63 (15) "Governmental subdivision" includes authority, county, district  
64 and municipality.

65 (16) "Includes" denotes a partial definition.

66 (17) "Individual" includes the estate of an incompetent or deceased  
67 individual.

68 (18) "Means" denotes an exhaustive definition.

69 (19) "Notice" is defined in section 33-603.

70 (20) "Person" includes individual and entity.

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

83 (22) "Proceeding" includes civil suit and criminal, administrative  
84 and investigatory action.

85 (23) "Public corporation" means a corporation that has shares listed  
86 on a national securities exchange or regularly traded in a market  
87 maintained by one or more members of a national or affiliated  
88 securities association.

89 (24) "Qualified director" is defined in section 2 of this act.

90 [(23)] (25) "Record date" means the date established under sections  
91 33-665 to 33-687, inclusive, or sections 33-695 to 33-727, inclusive, on  
92 which a corporation determines the identity of its shareholders and  
93 their shareholdings for purposes of sections 33-600 to 33-998, inclusive.  
94 The determinations shall be made as of the close of business on the  
95 record date unless another time for doing so is specified when the  
96 record date is fixed.

97 [(24)] (26) "Secretary" means the corporate officer to whom under  
98 the bylaws or by the board of directors is delegated responsibility  
99 under subsection (c) of section 33-763 for custody of the minutes of the  
100 meetings of the board of directors and of the shareholders and for  
101 authenticating records of the corporation.

102 [(25)] (27) "Secretary of the State" means the Secretary of the State of  
103 Connecticut.

104 [(26)] (28) "Shares" means the units into which the proprietary  
105 interests in a corporation are divided.

106 [(27)] (29) "Shareholder" means the person in whose name shares are  
107 registered in the records of a corporation or the beneficial owner of  
108 shares to the extent of the rights granted by a nominee certificate on  
109 file with a corporation.

110 [(28)] (30) "Sign" or "signature" includes any manual, facsimile,  
111 conformed or electronic signature.

112 [(29)] (31) "State", when referring to a part of the United States,  
113 includes a state and commonwealth, and their agencies and  
114 governmental subdivisions, and a territory and insular possession, and  
115 their agencies and governmental subdivisions, of the United States.

116 [(30)] (32) "Subscriber" means a person who subscribes for shares in  
117 a corporation, whether before or after incorporation.

118 [(31)] (33) "United States" includes any district, authority, bureau,  
119 commission, department and other agency of the United States.

120 [(32)] (34) "Voting group" means all shares of one or more classes or  
121 series that under the certificate of incorporation or sections 33-600 to  
122 33-998, inclusive, are entitled to vote and be counted together  
123 collectively on a matter at a meeting of shareholders. All shares  
124 entitled by the certificate of incorporation or said sections to vote  
125 generally on the matter are for that purpose a single voting group.

126 [(33)] (35) "Voting power" means the current power to vote in the  
127 election of directors.

128 Sec. 2. (NEW) (*Effective October 1, 2005*) (a) For purposes of sections  
129 33-600 to 33-998, inclusive, of the general statutes, a qualified director  
130 is a director who, at the time action is to be taken under:

131 (1) Section 33-724 of the general statutes, as amended by this act,  
132 does not have (A) a material interest in the outcome of the proceeding,  
133 or (B) a material relationship with a person who has such an interest;

134 (2) Section 33-773 or 33-775 of the general statutes, as amended by  
135 this act, (A) is not a party to the proceeding, (B) is not a director who  
136 sought approval for a director's conflicting interest transaction under  
137 section 33-783 of the general statutes, as amended by this act, or a  
138 disclaimer of the corporation's interest in a business opportunity under  
139 section 17 of this act, which approval or disclaimer is challenged in the  
140 proceeding, or (C) does not have a material relationship with a director  
141 described in either subparagraph (A) or (B) of this subdivision;

142 (3) Section 33-783 of the general statutes, as amended by this act, is  
143 not a director (A) as to whom the transaction is a director's conflicting  
144 interest transaction, or (B) who has a material relationship with  
145 another director as to whom the transaction is a director's conflicting  
146 interest transaction; or

147 (4) Section 17 of this act, would be a qualified director under  
148 subdivision (3) of this subsection if the business opportunity were a  
149 director's conflicting interest transaction.

150 (b) For purposes of this section:

151 (1) "Material relationship" means a familial, financial, professional,  
152 employment or other relationship that would reasonably be expected  
153 to impair the objectivity of the director's judgment when participating  
154 in the action to be taken; and

155 (2) "Material interest" means an actual or potential benefit or  
156 detriment, other than one which would devolve on the corporation or  
157 the shareholders generally, that would reasonably be expected to  
158 impair the objectivity of the director's judgment when participating in  
159 the action to be taken.

160 (c) The presence of one or more of the following circumstances shall  
161 not automatically prevent a director from being a qualified director:

162 (1) Nomination or election of the director to the current board by  
163 any director who is not a qualified director with respect to the matter,  
164 or by any person that has a material relationship with that director,  
165 acting alone or participating with others;

166 (2) Service as a director of another corporation of which a director  
167 who is not a qualified director with respect to the matter, or any  
168 individual who has a material relationship with that director, is also a  
169 director; or

170 (3) With respect to action to be taken under section 33-724 of the  
171 general statutes, as amended by this act, status as a named defendant,  
172 as a director against whom action is demanded or as a director who  
173 approved the conduct being challenged.

174 Sec. 3. Subsection (d) of section 33-717 of the general statutes is  
175 repealed and the following is substituted in lieu thereof (*Effective*  
176 *October 1, 2005*):

177 (d) An agreement authorized by this section shall cease to be  
178 effective when [shares of the corporation are listed on a national  
179 securities exchange or regularly traded in a market maintained by one  
180 or more members of a national or affiliated securities association] the  
181 corporation becomes a public corporation. If the agreement ceases to  
182 be effective for any reason, the board of directors may, if the  
183 agreement is contained or referred to in the corporation's certificate of  
184 incorporation or bylaws, adopt an amendment to the certificate of  
185 incorporation or bylaws, without shareholder action, to delete the  
186 agreement and any references to it.

187 Sec. 4. Section 33-724 of the general statutes is repealed and the  
188 following is substituted in lieu thereof (*Effective October 1, 2005*):

189 (a) A derivative proceeding shall be dismissed by the court on  
190 motion by the corporation if one of the groups specified in subsection  
191 (b) or [(f)] (e) of this section has determined in good faith, after  
192 conducting a reasonable inquiry upon which its conclusions are based,

193 that the maintenance of the derivative proceeding is not in the best  
194 interests of the corporation.

195 (b) Unless a panel is appointed pursuant to subsection [(f)] (e) of this  
196 section, the determination in subsection (a) of this section shall be  
197 made by:

198 (1) A majority vote of [independent] qualified directors present at a  
199 meeting of the board of directors if the [independent] qualified  
200 directors constitute a quorum; or

201 (2) [a] A majority vote of a committee consisting of two or more  
202 [independent] qualified directors appointed by [a] majority vote of  
203 [independent] qualified directors present at a meeting of the board of  
204 directors, regardless of whether [or not] such [independent] qualified  
205 directors [constituted] constitute a quorum.

206 [(c) None of the following shall by itself cause a director to be  
207 considered not independent for purposes of this section: (1) The  
208 nomination or election of the director by persons who are defendants  
209 in the derivative proceeding or against whom action is demanded; (2)  
210 the naming of the director as a defendant in the derivative proceeding  
211 or as a person against whom action is demanded; or (3) the approval  
212 by the director of the act being challenged in the derivative proceeding  
213 or demand if the act resulted in no personal benefit to the director.]

214 [(d)] (c) If a derivative proceeding is commenced after a  
215 determination has been made rejecting a demand by a shareholder, the  
216 complaint shall allege with particularity facts establishing either (1)  
217 that a majority of the board of directors did not consist of  
218 [independent] qualified directors at the time the determination was  
219 made, or (2) that the requirements of subsection (a) of this section have  
220 not been met.

221 [(e)] (d) If a majority of the board of directors [does not consist of  
222 independent directors at the time the determination is made, the  
223 corporation shall have the burden of proving that the requirements of

224 subsection (a) of this section have been met. If a majority of the board  
225 of directors consists of independent directors at the time the  
226 determination is] consisted of qualified directors at the time the  
227 determination was made, the plaintiff shall have the burden of proving  
228 that the requirements of subsection (a) of this section have not been  
229 met. If a majority of the board of directors did not consist of qualified  
230 directors at the time the determination was made, the corporation shall  
231 have the burden of proving that the requirements of subsection (a) of  
232 this section have been met.

233 [(f) The] (e) Upon motion by the corporation, the court may appoint  
234 a panel of one or more [independent persons upon motion by the  
235 corporation] individuals to make a determination whether the  
236 maintenance of the derivative proceeding is in the best interests of the  
237 corporation. In such case, the plaintiff shall have the burden of proving  
238 that the requirements of subsection (a) of this section have not been  
239 met.

240 Sec. 5. Section 33-756 of the general statutes is repealed and the  
241 following is substituted in lieu thereof (*Effective October 1, 2005*):

242 [(a) A director shall discharge his duties as a director, including his  
243 duties as a member of a committee: (1) In good faith; (2) with the care  
244 an ordinarily prudent person in a like position would exercise under  
245 similar circumstances; and (3) in a manner he]

246 (a) Each member of the board of directors, when discharging the  
247 duties of a director, shall act (1) in good faith, and (2) in a manner the  
248 director reasonably believes to be in the best interests of the  
249 corporation.

250 (b) The members of the board of directors or a committee of the  
251 board, when becoming informed in connection with their decision-  
252 making function or devoting attention to their oversight function, shall  
253 discharge their duties with the care that a person in a like position  
254 would reasonably believe appropriate under similar circumstances.

255 (c) In discharging board or committee duties, a director shall  
256 disclose, or cause to be disclosed, to the other board or committee  
257 members information not already known by them but known by the  
258 director to be material to the discharge of their decision-making or  
259 oversight functions, except that disclosure is not required to the extent  
260 that the director reasonably believes that doing so would violate a  
261 duty imposed under law, a legally enforceable obligation of  
262 confidentiality or a professional ethics rule.

263 (d) In discharging board or committee duties, a director who does  
264 not have knowledge that makes reliance unwarranted is entitled to  
265 rely on the performance by any of the persons specified in subdivision  
266 (1) or (3) of subsection (f) of this section to whom the board may have  
267 delegated, formally or informally by course of conduct, the authority  
268 or duty to perform one or more of the board's functions that are  
269 delegable under applicable law.

270 [(b)] (e) In discharging [his] board or committee duties, a director  
271 who does not have knowledge that makes reliance unwarranted is  
272 entitled to rely on information, opinions, reports or statements,  
273 including financial statements and other financial data, [if] prepared or  
274 presented by any of the persons specified in subsection (f) of this  
275 section.

276 (f) A director is entitled to rely, in accordance with subsection (d) or  
277 (e) of this section, on:

278 (1) One or more officers or employees of the corporation whom the  
279 director reasonably believes to be reliable and competent in the  
280 [matters presented] functions performed or the information, opinions,  
281 reports or statements provided;

282 (2) [legal] Legal counsel, public accountants or other persons  
283 retained by the corporation as to matters involving skills or expertise  
284 the director reasonably believes are matters (A) within the particular  
285 person's professional or expert competence, or (B) as to which the  
286 particular person merits confidence; or

287 (3) [a] A committee of the board of directors of which [he] the  
288 director is not a member if the director reasonably believes the  
289 committee merits confidence.

290 [(c) A director is not acting in good faith if he has knowledge  
291 concerning the matter in question that makes reliance otherwise  
292 permitted by subsection (b) of this section unwarranted.]

293 [(d)] (g) For purposes of sections 33-817, 33-830, 33-831, 33-841 and  
294 33-844, a director of a public corporation, [which has a class of voting  
295 stock registered pursuant to Section 12 of the Securities Exchange Act  
296 of 1934, as the same has been or hereafter may be amended from time  
297 to time,] in addition to complying with the provisions of subsections  
298 (a) to [(c)] (f), inclusive, of this section, shall consider, in determining  
299 what he or she reasonably believes to be in the best interests of the  
300 corporation, (1) the long-term as well as the short-term interests of the  
301 corporation, (2) the interests of the shareholders, long-term as well as  
302 short-term, including the possibility that those interests may be best  
303 served by the continued independence of the corporation, (3) the  
304 interests of the corporation's employees, customers, creditors and  
305 suppliers, and (4) community and societal considerations including  
306 those of any community in which any office or other facility of the  
307 corporation is located. A director may also in his or her discretion  
308 consider any other factors [he] the director reasonably considers  
309 appropriate in determining what [he] the director reasonably believes  
310 to be in the best interests of the corporation.

311 [(e)] (h) A director is not liable for any action taken as a director, or  
312 any failure to take any action, if [he] the director performed the duties  
313 of his or her office in compliance with this section.

314 Sec. 6. Section 33-764 of the general statutes is repealed and the  
315 following is substituted in lieu thereof (*Effective October 1, 2005*):

316 Each officer has the authority and shall perform the [duties]  
317 functions set forth in the bylaws or, to the extent consistent with the  
318 bylaws, the [duties] functions prescribed by the board of directors or

319 by direction of an officer authorized by the board of directors to  
320 prescribe the [duties] functions of other officers.

321 Sec. 7. Section 33-765 of the general statutes is repealed and the  
322 following is substituted in lieu thereof (*Effective October 1, 2005*):

323 (a) An officer, [with discretionary authority shall discharge his  
324 duties under that authority] when performing in such capacity, has the  
325 duty to act:

326 (1) In good faith;

327 (2) [with] With the care [an ordinarily prudent] that a person in a  
328 like position would reasonably exercise under similar circumstances;  
329 and

330 (3) [in] In a manner [he] the officer reasonably believes to be in the  
331 best interests of the corporation.

332 (b) The duty of an officer includes the obligation:

333 (1) To inform the superior officer to whom, or the board of directors  
334 or the committee thereof to which, the officer reports of information  
335 about the affairs of the corporation known to the officer, within the  
336 scope of the officer's functions, and known to the officer to be material  
337 to such superior officer, board or committee; and

338 (2) To inform his or her superior officer, or another appropriate  
339 person within the corporation, or the board of directors or a committee  
340 thereof, of any actual or probable material violation of law involving  
341 the corporation or material breach of duty to the corporation by an  
342 officer, employee or agent of the corporation that the officer believes  
343 has occurred or is likely to occur.

344 [(b)] (c) In discharging his or her duties, an officer who does not  
345 have knowledge that makes reliance unwarranted is entitled to rely on:  
346 [information]

347 (1) The performance of properly delegated responsibilities by one or

348 more employees of the corporation whom the officer reasonably  
349 believes to be reliable and competent in performing the responsibilities  
350 delegated; or

351 (2) Information, opinions, reports or statements, including financial  
352 statements and other financial data, [if] prepared or presented by [(1)  
353 One] one or more [officers or] employees of the corporation whom the  
354 officer reasonably believes to be reliable and competent in the matters  
355 presented [;] or [(2)] by legal counsel, public accountants or other  
356 persons retained by the corporation as to matters involving skills or  
357 expertise the officer reasonably believes are matters (A) within the  
358 particular person's professional or expert competence, or (B) as to  
359 which the particular person merits confidence.

360 [(c) An officer is not acting in good faith if he has knowledge  
361 concerning the matter in question that makes reliance otherwise  
362 permitted by subsection (b) of this section unwarranted.]

363 (d) An officer [is] shall not be liable to the corporation or its  
364 shareholders for any decision to take or not to take action, [taken as an  
365 officer,] or any failure to take any action, as an officer, if [he  
366 performed] the duties of [his] the office are performed in compliance  
367 with this section.

368 Sec. 8. Section 33-770 of the general statutes is repealed and the  
369 following is substituted in lieu thereof (*Effective October 1, 2005*):

370 As used in sections 33-770 to 33-779, inclusive:

371 (1) "Corporation" includes any domestic or foreign predecessor  
372 entity of a corporation in a merger.

373 (2) "Director" or "officer" means an individual who is or was a  
374 director or officer, respectively, of a corporation or who, while a  
375 director or officer of the corporation, is or was serving at the  
376 corporation's request as a director, officer, partner, trustee, employee  
377 or agent of another domestic or foreign corporation, partnership, joint  
378 venture, trust, employee benefit plan or other entity. A director or

379 officer is considered to be serving an employee benefit plan at the  
380 corporation's request if [his] the individual's duties to the corporation  
381 also impose duties on, or otherwise involve services by, [him] the  
382 individual to the plan or to participants in or beneficiaries of the plan.  
383 "Director" or "officer" includes, unless the context requires otherwise,  
384 the estate or personal representative of a director or officer.

385 [(3) "Disinterested director" means a director who at the time of a  
386 vote referred to in subsection (c) of section 33-773 or a vote or selection  
387 referred to in subsection (b) or (c) of section 33-775, is not (A) a party to  
388 the proceeding or (B) an individual having a familial, financial,  
389 professional or employment relationship with the director whose  
390 indemnification or advance for expenses is the subject of the decision  
391 being made, which relationship would, in the circumstances,  
392 reasonably be expected to exert an influence on the director's judgment  
393 when voting on the decision being made.]

394 [(4) (3) "Expenses" include counsel fees.

395 [(5) (4) "Liability" means the obligation to pay a judgment,  
396 settlement, penalty, fine, including an excise tax assessed with respect  
397 to an employee benefit plan, or reasonable expenses incurred with  
398 respect to a proceeding.

399 [(6) (5) "Official capacity" means: (A) When used with respect to a  
400 director, the office of director in a corporation; and (B) when used with  
401 respect to an [individual other than a director] officer, as contemplated  
402 in section 33-776, the office in a corporation held by the officer, [or the  
403 employment or agency relationship undertaken by the employee or  
404 agent on behalf of the corporation.] "Official capacity" does not include  
405 service for any other domestic or foreign corporation or any  
406 partnership, joint venture, trust, employee benefit plan or other entity.

407 [(7) (6) "Party" means an individual who was, is, or is threatened to  
408 be made, a defendant or respondent in a proceeding.

409 [(8) (7) "Proceeding" means any threatened, pending or completed

410 action, suit or proceeding, whether civil, criminal, administrative,  
411 arbitratative or investigative and whether formal or informal.

412 Sec. 9. Section 33-773 of the general statutes is repealed and the  
413 following is substituted in lieu thereof (*Effective October 1, 2005*):

414 (a) A corporation may, before final disposition of a proceeding,  
415 advance funds to pay for or reimburse the reasonable expenses  
416 incurred [by a director] in connection with the proceeding by an  
417 individual who is a party to [a] the proceeding because [he is a director  
418 if he] that individual is a member of the board of directors if the  
419 director delivers to the corporation:

420 (1) A written affirmation of [his] the director's good faith belief that  
421 [he has met] the relevant standard of conduct described in section [33-  
422 771,] 33-756, as amended by this act, has been met by the director or  
423 that the proceeding involves conduct for which liability has been  
424 limited under a provision of the certificate of incorporation as  
425 authorized by subdivision (4) of subsection (b) of section 33-636, as  
426 amended by this act; and

427 (2) [his] A written undertaking to repay any funds advanced if [he]  
428 the director is not entitled to mandatory indemnification under section  
429 33-772 and it is ultimately determined under section 33-774 or 33-775,  
430 as amended by this act, that [he] the director has not met the relevant  
431 standard of conduct described in section 33-771.

432 (b) The undertaking required by subdivision (2) of subsection (a) of  
433 this section must be an unlimited general obligation of the director but  
434 need not be secured and may be accepted without reference to the  
435 financial ability of the director to make repayment.

436 (c) Authorizations under this section shall be made:

437 (1) By the board of directors: (A) If there are two or more  
438 [disinterested] qualified directors, by a majority vote of all the  
439 [disinterested] qualified directors, a majority of whom shall for such  
440 purpose constitute a quorum, or by a majority of the members of a

441 committee of two or more [disinterested] qualified directors appointed  
442 by such a vote; or (B) if there are fewer than two [disinterested]  
443 qualified directors, by the vote necessary for action by the board in  
444 accordance with subsection (c) of section 33-752, in which  
445 authorization directors who [do not qualify as disinterested] are not  
446 qualified directors may participate; or

447 (2) [by] By the shareholders, [provided] but shares owned by or  
448 voted under the control of a director who at the time [does not qualify  
449 as a disinterested] is not a qualified director may not be voted on the  
450 authorization.

451 Sec. 10. Section 33-775 of the general statutes is repealed and the  
452 following is substituted in lieu thereof (*Effective October 1, 2005*):

453 (a) A corporation may not indemnify a director under section 33-771  
454 unless authorized for a specific proceeding after a determination has  
455 been made that indemnification [of the director] is permissible because  
456 [he] the director has met the relevant standard of conduct set forth in  
457 said section.

458 (b) The determination shall be made:

459 (1) If there are two or more [disinterested] qualified directors, by the  
460 board of directors by a majority vote of all the [disinterested] qualified  
461 directors, a majority of whom shall for such purpose constitute a  
462 quorum, or by a majority of the members of a committee of two or  
463 more [disinterested] qualified directors appointed by such a vote;

464 (2) By special legal counsel (A) selected in the manner prescribed in  
465 subdivision (1) of this subsection, or (B) if there are fewer than two  
466 [disinterested] qualified directors, selected by the board of directors, in  
467 which selection directors who [do not qualify as disinterested] are not  
468 qualified directors may participate; or

469 (3) By the shareholders, but shares owned by or voted under the  
470 control of a director who at the time [does not qualify as a  
471 disinterested] is not a qualified director may not be voted on the

472 determination.

473 (c) Authorization of indemnification shall be made in the same  
474 manner as the determination that indemnification is permissible,  
475 except that if there are fewer than two [disinterested] qualified  
476 directors, or if the determination is made by special legal counsel,  
477 authorization of indemnification shall be made by those entitled to  
478 select special legal counsel under subparagraph (B) of subdivision (2)  
479 of subsection (b) of this section. [to select special legal counsel.]

480 Sec. 11. Section 33-781 of the general statutes is repealed and the  
481 following is substituted in lieu thereof (*Effective October 1, 2005*):

482 As used in sections 33-781 to 33-784, inclusive, as amended by this  
483 act:

484 [(1) "Conflicting interest" with respect to a corporation means the  
485 interest a director of the corporation has respecting a transaction  
486 effected or proposed to be effected by the corporation or by a  
487 subsidiary of the corporation or any other entity in which the  
488 corporation has a controlling interest, if:

489 (A) Whether or not the transaction is brought before the board of  
490 directors of the corporation for action, the director knows at the time of  
491 commitment that he or a related person is a party to the transaction or  
492 has a beneficial financial interest in or so closely linked to the  
493 transaction and of such financial significance to the director or a  
494 related person that the interest would reasonably be expected to exert  
495 an influence on the director's judgment if he were called upon to vote  
496 on the transaction; or

497 (B) The transaction is brought, or is of such character and  
498 significance to the corporation that it would in the normal course be  
499 brought, before the board of directors of the corporation for action, and  
500 the director knows at the time of commitment that any of the following  
501 persons is either a party to the transaction or has a beneficial financial  
502 interest in or so closely linked to the transaction and of such financial

503 significance to the person that the interest would reasonably be  
504 expected to exert an influence on the director's judgment if he were  
505 called upon to vote on the transaction: (i) An entity, other than the  
506 corporation, of which the director is a director, general partner, agent  
507 or employee; (ii) a person that controls one or more of the entities  
508 specified in subparagraph (B)(i) of this subdivision or an entity that is  
509 controlled by, or is under common control with, one or more of the  
510 entities specified in subparagraph (B)(i) of this subdivision; or (iii) an  
511 individual who is a general partner, principal or employer of the  
512 director.

513 (2) "Director's conflicting interest transaction" with respect to a  
514 corporation means a transaction effected or proposed to be effected by  
515 the corporation or by a subsidiary of the corporation or any other  
516 entity in which the corporation has a controlling interest, respecting  
517 which a director of the corporation has a conflicting interest.

518 (3) "Related person" of a director means (A) the spouse of the  
519 director, or a parent or sibling thereof, or a child, grandchild, sibling or  
520 parent of the director, or the spouse of any thereof, or an individual  
521 having the same home as the director, or a trust or estate of which an  
522 individual specified in this subparagraph is a substantial beneficiary,  
523 or (B) a trust, estate, incompetent, conservatee or minor of which the  
524 director is a fiduciary.

525 (4) "Required disclosure" means disclosure by the director who has  
526 a conflicting interest of (A) the existence and nature of his conflicting  
527 interest, and (B) all facts known to him respecting the subject matter of  
528 the transaction that an ordinarily prudent person would reasonably  
529 believe to be material to a judgment about whether or not to proceed  
530 with the transaction.

531 (5) "Time of commitment" respecting a transaction means the time  
532 when the transaction is consummated or, if made pursuant to contract,  
533 the time when the corporation, or its subsidiary or the entity in which  
534 it has a controlling interest, becomes contractually obligated so that its  
535 unilateral withdrawal from the transaction would entail significant

536 loss, liability or other damage.]

537 (1) "Director's conflicting interest transaction" means a transaction  
538 effected or proposed to be effected by the corporation, or by an entity  
539 controlled by the corporation, (A) to which, at the relevant time, the  
540 director is a party, (B) respecting which, at the relevant time, the  
541 director had knowledge and a material financial interest known to the  
542 director, or (C) respecting which, at the relevant time, the director  
543 knew that a related person was a party or had a material financial  
544 interest.

545 (2) "Control", including the term "controlled by", means (A) having  
546 the power, directly or indirectly, to elect or remove a majority of the  
547 members of the board of directors or other governing body of an  
548 entity, whether through the ownership of voting shares or interests, by  
549 contract, or otherwise, or (B) being subject to a majority of the risk of  
550 loss from the entity's activities or entitled to receive a majority of the  
551 entity's residual returns.

552 (3) "Relevant time" means (A) the time at which directors' action  
553 respecting the transaction is taken in compliance with section 33-783,  
554 as amended by this act, or (B) if the transaction is not brought before  
555 the board of directors of the corporation, or its committee, for action  
556 under section 33-783, as amended by this act, at the time the  
557 corporation, or an entity controlled by the corporation, becomes legally  
558 obligated to consummate the transaction.

559 (4) "Material financial interest" means a financial interest in a  
560 transaction that would reasonably be expected to impair the objectivity  
561 of the director when participating in action on the authorization of the  
562 transaction.

563 (5) "Related person" means: (A) The director's spouse; (B) a child,  
564 stepchild, grandchild, parent, step parent, grandparent, sibling, step  
565 sibling, half sibling, aunt, uncle, niece or nephew, or spouse of any  
566 thereof, of the director or of the director's spouse; (C) an individual  
567 living in the same home as the director; (D) an entity, other than the

568 corporation or an entity controlled by the corporation, controlled by  
569 the director or any person specified in subparagraphs (A) to (C),  
570 inclusive, of this subdivision; (E) a domestic or foreign (i) business or  
571 nonprofit corporation, other than the corporation or an entity  
572 controlled by the corporation, of which the director is a director, (ii)  
573 unincorporated entity of which the director is a general partner or a  
574 member of the governing body, or (iii) individual, trust or estate for  
575 whom or of which the director is a trustee, guardian, personal  
576 representative or like fiduciary; or (F) a person that is, or an entity that  
577 is controlled by, an employer of the director.

578 (6) "Fair to the corporation" means, for purposes of subdivision (3)  
579 of subsection (b) of section 33-782, as amended by this act, that the  
580 transaction as a whole was beneficial to the corporation, taking into  
581 appropriate account whether it was (A) fair in terms of the director's  
582 dealings with the corporation, and (B) comparable to what might have  
583 been obtainable in an arm's length transaction, given the consideration  
584 paid or received by the corporation.

585 (7) "Required disclosure" means disclosure of (A) the existence and  
586 nature of the director's conflicting interest, and (B) all facts known to  
587 the director respecting the subject matter of the transaction that a  
588 director free of such conflicting interest would reasonably believe to be  
589 material in deciding whether to proceed with the transaction.

590 Sec. 12. Section 33-782 of the general statutes is repealed and the  
591 following is substituted in lieu thereof (*Effective October 1, 2005*):

592 (a) A transaction effected or proposed to be effected by [a  
593 corporation, or by a subsidiary of the corporation or any other entity in  
594 which the corporation has a controlling interest, that is not a director's  
595 conflicting interest transaction may not be enjoined, set aside or give  
596 rise to an award of damages or other sanctions, in a proceeding by a  
597 shareholder or by or in the right of the corporation, because a director  
598 of the corporation, or any person with whom or which he has a  
599 personal, economic or other association, has an interest in the  
600 transaction] the corporation, or by an entity controlled by the

601 corporation, may not be the subject of equitable relief, or give rise to an  
602 award of damages or other sanctions against a director of the  
603 corporation, in a proceeding by a shareholder or by or in the right of  
604 the corporation, on the ground that the director has an interest  
605 respecting the transaction, if it is not a director's conflicting interest  
606 transaction.

607 (b) A director's conflicting interest transaction may not be [enjoined,  
608 set aside] the subject of equitable relief, or give rise to an award of  
609 damages or other sanctions against a director of the corporation, in a  
610 proceeding by a shareholder or by or in the right of the corporation,  
611 [because the director, or any person with whom or which he has a  
612 personal, economic or other association,] on the ground that the  
613 director has an interest [in] respecting the transaction, if: (1) Directors'  
614 action respecting the transaction was [at any time] taken in compliance  
615 with section 33-783, as amended by this act, at any time; (2)  
616 shareholders' action respecting the transaction was [at any time] taken  
617 in compliance with section 33-784, as amended by this act, at any time;  
618 or (3) the transaction, judged according to the circumstances at the  
619 relevant time, [of commitment,] is established to have been fair to the  
620 corporation.

621 Sec. 13. Section 33-783 of the general statutes is repealed and the  
622 following is substituted in lieu thereof (*Effective October 1, 2005*):

623 (a) Directors' action respecting a director's conflicting interest  
624 transaction is effective for purposes of subdivision (1) of subsection (b)  
625 of section 33-782, as amended by this act, if the transaction [received]  
626 has been authorized by the affirmative vote of a majority, but no fewer  
627 than two, of [those qualified directors on the board of directors or on a  
628 duly empowered committee of the board] the qualified directors who  
629 voted on the transaction, after [either required disclosure to them, to  
630 the extent the information was not known by them, or compliance with  
631 subsection (b) of this section; provided that action by a committee is so  
632 effective only if (1) all its members are qualified directors, and (2) its  
633 members are either all the qualified directors on the board or are]

634 required disclosure by the conflicted director of information not  
635 already known by such qualified directors, or after modified disclosure  
636 in compliance with subsection (b) of this section, provided that where  
637 the action has been taken by a committee, all members of the  
638 committee were qualified directors, and either (1) the committee was  
639 composed of all the qualified directors on the board of directors, or (2)  
640 the members of the committee were appointed by the affirmative vote  
641 of a majority of the qualified directors on the board.

642 [(b) If a director has a conflicting interest respecting a transaction,  
643 but neither he nor a related person of the director specified in  
644 subparagraph (A) of subdivision (3) of section 33-781 is a party to the  
645 transaction, and if the director has a duty under law or professional  
646 canon, or a duty of confidentiality to another person, respecting  
647 information relating to the transaction such that the director may not  
648 make the disclosure described in subparagraph (B) of subdivision (4)  
649 of section 33-781, then disclosure is sufficient for purposes of  
650 subsection (a) of this section if the director (1) discloses to the directors  
651 voting on the transaction the existence and nature of his conflicting  
652 interest and informs them of the character and limitations imposed by  
653 that duty before their vote on the transaction, and (2) plays no part,  
654 directly or indirectly, in their deliberations or vote.]

655 (b) Notwithstanding subsection (a) of this section, when a  
656 transaction is a director's conflicting interest transaction only because a  
657 related person described in subparagraph (E) or (F) of subdivision (5)  
658 of section 33-781, as amended by this act, is a party to or has a material  
659 financial interest in the transaction, the conflicted director is not  
660 obligated to make required disclosure to the extent that the director  
661 reasonably believes that doing so would violate a duty imposed under  
662 law, a legally enforceable obligation of confidentiality or a professional  
663 ethics rule, provided that the conflicted director discloses to the  
664 qualified directors voting on the transaction: (1) All information  
665 required to be disclosed that is not so violative, (2) the existence and  
666 nature of the director's conflicting interest, and (3) the nature of the  
667 conflicted director's duty not to disclose the confidential information.

668 (c) A majority, but no fewer than two, of all the qualified directors  
669 on the board of directors, or on the committee, constitutes a quorum  
670 for purposes of action that complies with this section. Directors' action  
671 that otherwise complies with this section is not affected by the  
672 presence or vote of a director who is not a qualified director.

673 [(d) For purposes of this section, "qualified director" means, with  
674 respect to a director's conflicting interest transaction, any director who  
675 does not have either (1) a conflicting interest respecting the transaction,  
676 or (2) a familial, financial, professional or employment relationship  
677 with a second director who does have a conflicting interest respecting  
678 the transaction, which relationship would, in the circumstances,  
679 reasonably be expected to exert an influence on the first director's  
680 judgment when voting on the transaction.]

681 (d) Where directors' action under this section does not satisfy a  
682 quorum or voting requirement applicable to the authorization of the  
683 transaction by reason of the certificate of incorporation, the bylaws or a  
684 provision of law, independent action to satisfy those authorization  
685 requirements must be taken by the board of directors or a committee,  
686 in which action directors who are not qualified directors may  
687 participate.

688 Sec. 14. Section 33-784 of the general statutes is repealed and the  
689 following is substituted in lieu thereof (*Effective October 1, 2005*):

690 (a) Shareholders' action respecting a director's conflicting interest  
691 transaction is effective for purposes of subdivision (2) of subsection (b)  
692 of section 33-782, as amended by this act, if a majority of the votes  
693 [entitled to be] cast by the holders of all qualified shares [were cast] are  
694 in favor of the transaction after (1) notice to shareholders describing  
695 the [director's conflicting interest] action to be taken respecting the  
696 transaction, (2) provision to the corporation of the information referred  
697 to in subsection [(d)] (b) of this section, and (3) [required disclosure]  
698 communication to the shareholders [who voted] entitled to vote on the  
699 transaction of the information that is the subject of required disclosure,  
700 to the extent the information [was] is not known by them.

701 [(b) For purposes of this section, "qualified shares" means any shares  
702 entitled to vote with respect to the director's conflicting interest  
703 transaction except shares that, to the knowledge, before the vote, of the  
704 secretary or other officer or agent of the corporation authorized to  
705 tabulate votes, are beneficially owned, or the voting of which is  
706 controlled, by a director who has a conflicting interest respecting the  
707 transaction or by a related person of the director, or both.

708 (c) A majority of the votes entitled to be cast by the holders of all  
709 qualified shares constitutes a quorum for purposes of action that  
710 complies with this section. Subject to the provisions of subsections (d)  
711 and (e) of this section, shareholders' action that otherwise complies  
712 with this section is not affected by the presence of holders, or the  
713 voting, of shares that are not qualified shares.]

714 [(d)] (b) [For purposes of compliance with subsection (a) of this  
715 section, a] A director who has a conflicting interest respecting the  
716 transaction shall, before the shareholders' vote, inform the secretary or  
717 other officer or agent of the corporation authorized to tabulate votes, in  
718 writing, of the number [, and the identity of persons holding or  
719 controlling the vote, of all] of shares that the director knows are  
720 [beneficially owned, or the voting of which is controlled, by the  
721 director or by a related person of the director, or both] not qualified  
722 shares under subsection (c) of this section, and the identity of the  
723 holders of those shares.

724 (c) For purposes of this section: (1) "Holder" means, and "held by"  
725 refers to shares held by, both a record shareholder, as defined in  
726 subdivision (7) of section 33-855, and a beneficial shareholder, as  
727 defined in subdivision (2) of section 33-855; and (2) "qualified shares"  
728 means all shares entitled to be voted with respect to the transaction  
729 except for shares that the secretary or other officer or agent of the  
730 corporation authorized to tabulate votes either knows, or under  
731 subsection (b) of this section is notified, are held by (A) a director who  
732 has a conflicting interest respecting the transaction, or (B) a related  
733 person of the director, excluding a person described in subparagraph

734 (F) of subdivision (5) of section 33-781, as amended by this act.

735 (d) A majority of the votes entitled to be cast by the holders of all  
736 qualified shares constitutes a quorum for purposes of compliance with  
737 this section. Subject to the provisions of subsection (e) of this section,  
738 shareholders' action that otherwise complies with this section is not  
739 affected by the presence of holders, or by the voting, of shares that are  
740 not qualified shares.

741 (e) If a shareholders' vote does not comply with subsection (a) of  
742 this section solely because of a director's failure [of a director] to  
743 comply with subsection [(d)] (b) of this section, and if the director  
744 establishes that [his] the failure [did not determine and] was not  
745 intended [by him] to influence and did not in fact determine the  
746 outcome of the vote, the court may [, with or without further  
747 proceedings respecting subdivision (3) of subsection (b) of section 33-  
748 782,] take such action respecting the transaction and the director, and  
749 may give such effect, if any, to the shareholders' vote, as [it] the court  
750 considers appropriate in the circumstances.

751 (f) Where shareholders' action under this section does not satisfy a  
752 quorum or voting requirement applicable to the authorization of the  
753 transaction by reason of the certificate of incorporation, the bylaws or a  
754 provision of law, independent action to satisfy those authorization  
755 requirements must be taken by the shareholders, in which action  
756 shares that are not qualified shares may participate.

757 Sec. 15. Subsection (d) of section 33-897 of the general statutes is  
758 repealed and the following is substituted in lieu thereof (*Effective*  
759 *October 1, 2005*):

760 (d) Within ten days of the commencement of a proceeding under  
761 subdivision (1) of subsection (a) [or subdivision (2) of subsection (b)] of  
762 section 33-896 to dissolve a corporation that [has no shares listed on a  
763 national securities exchange or regularly traded in a market  
764 maintained by one or more members of a national securities exchange]  
765 is not a public corporation, the corporation must send to all

766 shareholders, other than the petitioner, a notice stating that the  
767 shareholders are entitled to avoid the dissolution of the corporation by  
768 electing to purchase the petitioner's shares under section 33-900, as  
769 amended by this act, and accompanied by a copy of said section.

770 Sec. 16. Subsection (a) of section 33-900 of the general statutes is  
771 repealed and the following is substituted in lieu thereof (*Effective*  
772 *October 1, 2005*):

773 (a) In a proceeding [by a shareholder] under subdivision (1) of  
774 subsection (a) [or subdivision (2) of subsection (b)] of section 33-896 to  
775 dissolve a corporation that [has no shares listed on a national securities  
776 exchange or regularly traded in a market maintained by one or more  
777 members of a national or affiliated securities association] is not a  
778 public corporation, the corporation may elect or, if it fails to elect, one  
779 or more shareholders may elect to purchase all shares owned by the  
780 petitioning shareholder at the fair value of the shares. An election  
781 pursuant to this section shall be irrevocable unless the court  
782 determines that it is equitable to set aside or modify the election.

783 Sec. 17. (NEW) (*Effective October 1, 2005*) (a) A director's taking  
784 advantage, directly or indirectly, of a business opportunity may not be  
785 the subject of equitable relief, or give rise to an award of damages or  
786 other sanctions against the director, in a proceeding by or in the right  
787 of the corporation on the ground that such opportunity should have  
788 first been offered to the corporation, if before becoming legally  
789 obligated respecting the opportunity the director brings it to the  
790 attention of the corporation and: (1) Action by qualified directors'  
791 disclaiming the corporation's interest in the opportunity is taken in  
792 compliance with the procedures set forth in section 33-783 of the  
793 general statutes, as amended by this act, as if the decision being made  
794 concerned a director's conflicting interest transaction; or (2)  
795 shareholders' action disclaiming the corporation's interest in the  
796 opportunity is taken in compliance with the procedures set forth in  
797 section 33-784 of the general statutes, as amended by this act, as if the  
798 decision being made concerned a director's conflicting interest

799 transaction; except that, rather than making required disclosure, as  
800 defined in section 33-781 of the general statutes, as amended by this  
801 act, in each case the director shall have made prior disclosure to those  
802 acting on behalf of the corporation of all material facts concerning the  
803 business opportunity that are then known to the director.

804 (b) In any proceeding seeking equitable relief or other remedies  
805 based upon an alleged improper taking advantage of a business  
806 opportunity by a director, the fact that the director did not employ the  
807 procedure described in subsection (a) of this section before taking  
808 advantage of the opportunity shall not create an inference that the  
809 opportunity should have been first presented to the corporation or  
810 alter the burden of proof otherwise applicable to establish that the  
811 director breached a duty to the corporation in the circumstances.

812 Sec. 18. Section 33-1002 of the general statutes is repealed and the  
813 following is substituted in lieu thereof (*Effective October 1, 2005*):

814 As used in sections 33-1000 to 33-1290, inclusive:

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

818 (2) "Board" or "board of directors" means the group of persons  
819 vested with management of the affairs of the corporation irrespective  
820 of the name by which such group is designated.

821 (3) "Business corporation" means a corporation with capital stock or  
822 shares, incorporated under the laws of this state, whether general law  
823 or special act and whether before or after January 1, 1997.

824 (4) "Bylaws" means the code or codes of rules adopted for the  
825 regulation or management of the affairs of the corporation irrespective  
826 of the name or names by which such rules are designated.

827 (5) "Certificate of incorporation" means the original certificate of  
828 incorporation or restated certificate of incorporation, all amendments

829 thereto, and all certificates of merger or consolidation. In the case of a  
830 specially chartered corporation, the "certificate of incorporation" means  
831 the special charter of the corporation, including any portions of the  
832 charters of its predecessor companies which have continuing effect,  
833 and any amendments to the charter made by special act or pursuant to  
834 general law. In the case of a corporation formed before January 1, 1961,  
835 or of a specially chartered corporation, the "certificate of incorporation"  
836 includes those portions of any other corporate instruments or  
837 resolutions of current application in which are set out provisions of a  
838 sort which either (A) are required by sections 33-1000 to 33-1290,  
839 inclusive, to be embodied in the certificate of incorporation, or (B) are  
840 expressly permitted by said sections to be operative only if included in  
841 the certificate of incorporation. It also includes what were, prior to  
842 January 1, 1961, designated at law as agreements of association, articles  
843 of incorporation, charters and other such terms.

844 (6) "Class" means all members that under the certificate of  
845 incorporation or sections 33-1000 to 33-1290, inclusive, are entitled to  
846 vote and be counted together collectively on a matter at a meeting of  
847 members. All members entitled by the certificate of incorporation or  
848 said sections to vote generally on the matter are for that purpose a  
849 single class.

850 (7) "Conspicuous" means so written that a reasonable person against  
851 whom the writing is to operate should have noticed it. For example,  
852 printing in italics or boldface or contrasting color, or typing in capitals  
853 or underlined, is conspicuous.

854 (8) "Corporation" or "domestic corporation" means a corporation  
855 without capital stock or shares, which is not a foreign corporation,  
856 incorporated under the laws of this state, whether general law or  
857 special act and whether before or after January 1, 1997, but shall not  
858 include towns, cities, boroughs or any municipal corporation or  
859 department thereof.

860 (9) "Deliver" or "delivery" means any method of delivery used in  
861 conventional commercial practice including delivery by hand, mail,

862 commercial delivery and electronic transmission.

863 (10) "Distribution" means a direct or indirect transfer of money or  
864 other property, or incurrance of indebtedness by a corporation to or for  
865 the benefit of its members in respect of any of its membership interests,  
866 or to or for the benefit of its officers or directors, provided the payment  
867 of reasonable compensation for services rendered, the reimbursement  
868 of reasonable expenses, the granting of benefits to members in  
869 conformity with the corporation's nonprofit purposes and the making  
870 of distributions upon dissolution or final liquidation as provided by  
871 sections 33-1000 to 33-1290, inclusive, shall not be deemed a  
872 distribution.

873 (11) "Document" includes anything delivered to the office of the  
874 Secretary of the State for filing under sections 33-1000 to 33-1290,  
875 inclusive.

876 (12) "Effective date of notice" is defined in section 33-1003.

877 (13) "Electronic transmission" or "electronically transmitted" means  
878 any process of communication not directly involving the physical  
879 transfer of paper that is suitable for the retention, retrieval and  
880 reproduction of information by the recipient.

881 (14) "Entity" includes a corporation and foreign corporation;  
882 business corporation and foreign business corporation; profit and  
883 nonprofit unincorporated association; business trust, estate,  
884 partnership, limited liability company, trust and two or more persons  
885 having a joint or common economic interest; and state, United States,  
886 or foreign government.

887 (15) "Foreign corporation" means any nonprofit corporation with or  
888 without capital stock which is not organized under the laws of this  
889 state.

890 (16) "Governmental subdivision" includes authority, county, district  
891 and municipality.

892 (17) "Includes" denotes a partial definition.

893 (18) "Individual" includes the estate of an incompetent or deceased  
894 individual.

895 (19) "Means" denotes an exhaustive definition.

896 (20) "Member" means a person having membership rights in a  
897 corporation in accordance with the provisions of its certificate of  
898 incorporation or bylaws.

899 (21) A corporation is "nonprofit" if no distribution may be made to  
900 its members, directors or officers.

901 (22) "Notice" is defined in section 33-1003.

902 (23) "Person" includes individual and entity.

903 (24) "Principal office" of a domestic corporation means the address  
904 of the principal office of such corporation in this state, if any, as the  
905 same appears in the last annual report, if any, filed by such corporation  
906 with the Secretary of the State. If no principal office so appears, the  
907 corporation's "principal office" means the address in this state of the  
908 corporation's registered agent for service as last shown on the records  
909 of the Secretary of the State. In the case of a domestic corporation  
910 which has not filed such an annual report or appointment of registered  
911 agent for service, the "principal office" means the address of the  
912 principal place of affairs of such corporation in this state, if any, and if  
913 such corporation has no place of affairs in this state, its "principal  
914 office" shall be the office of the Secretary of the State.

915 (25) "Proceeding" includes civil suit and criminal, administrative  
916 and investigatory action.

917 (26) "Qualified director" is defined in section 19 of this act.

918 [(26)] (27) "Record date" means the date established under sections  
919 33-1055 to 33-1077, inclusive, on which a corporation determines the  
920 identity of its members and their interests for purposes of sections 33-

921 1000 to 33-1290, inclusive. The determinations shall be made as of the  
922 close of business on the record date unless another time for doing so is  
923 specified when the record date is fixed.

924 [(27)] (28) "Secretary" means the corporate officer to whom under  
925 the bylaws or by the board of directors is delegated responsibility  
926 under subsection (c) of section 33-1109 for custody of the minutes of  
927 the meetings of the board of directors and of the members and for  
928 authenticating records of the corporation.

929 [(28)] (29) "Secretary of the State" means the Secretary of the State of  
930 Connecticut.

931 [(29)] (30) "Sign" or "signature" includes any manual, facsimile,  
932 conformed or electronic signature.

933 [(30)] (31) "State", when referring to a part of the United States,  
934 includes a state and commonwealth, and their agencies and  
935 governmental subdivisions, and a territory and insular possession, and  
936 their agencies and governmental subdivisions, of the United States.

937 [(31)] (32) "United States" includes any district, authority, bureau,  
938 commission, department and other agency of the United States.

939 Sec. 19. (NEW) (*Effective October 1, 2005*) (a) For purposes of sections  
940 33-1000 to 33-1290, inclusive, of the general statutes, a qualified  
941 director is a director who, at the time action is to be taken under:

942 (1) Section 33-1119 or 33-1121 of the general statutes, as amended by  
943 this act, (A) is not a party to the proceeding, (B) is not a director who  
944 sought approval for a director's conflicting interest transaction under  
945 section 33-1129 of the general statutes, as amended by this act, or a  
946 disclaimer of the corporation's interest in a business opportunity under  
947 section 30 of this act, which approval or disclaimer is challenged in the  
948 proceeding, or (C) does not have a material relationship with a director  
949 described in either subparagraph (A) or (B) of this subdivision;

950 (2) Section 33-1129 of the general statutes, as amended by this act, is

951 not a director (A) as to whom the transaction is a director's conflicting  
952 interest transaction, or (B) who has a material relationship with  
953 another director as to whom the transaction is a director's conflicting  
954 interest transaction; or

955 (3) Section 30 of this act, would be a qualified director under  
956 subdivision (2) of this subsection if the business opportunity were a  
957 director's conflicting interest transaction.

958 (b) For purposes of this section:

959 (1) "Material relationship" means a familial, financial, professional,  
960 employment or other relationship that would reasonably be expected  
961 to impair the objectivity of the director's judgment when participating  
962 in the action to be taken; and

963 (2) "Material interest" means an actual or potential benefit or  
964 detriment, other than one which would devolve on the corporation or  
965 the members or directors generally, that would reasonably be expected  
966 to impair the objectivity of the director's judgment when participating  
967 in the action to be taken.

968 (c) The presence of one or more of the following circumstances shall  
969 not automatically prevent a director from being a qualified director:

970 (1) Nomination or election of the director to the current board by  
971 any director who is not a qualified director with respect to the matter,  
972 or by any person that has a material relationship with that director,  
973 acting alone or participating with others; or

974 (2) Service as a director of another corporation of which a director  
975 who is not a qualified director with respect to the matter, or any  
976 individual who has a material relationship with that director, is also a  
977 director.

978 Sec. 20. Section 33-1104 of the general statutes is repealed and the  
979 following is substituted in lieu thereof (*Effective October 1, 2005*):

980 [(a) A director shall discharge his duties as a director, including his  
981 duties as a member of a committee: (1) In good faith; (2) with the care  
982 an ordinarily prudent person in a like position would exercise under  
983 similar circumstances; and (3) in a manner he]

984 (a) Each member of the board of directors, when discharging the  
985 duties of a director, shall act (1) in good faith, and (2) in a manner the  
986 director reasonably believes to be in the best interests of the  
987 corporation.

988 (b) The members of the board of directors or a committee of the  
989 board, when becoming informed in connection with their decision-  
990 making function or devoting attention to their oversight function, shall  
991 discharge their duties with the care that a person in a like position  
992 would reasonably believe appropriate under similar circumstances.

993 (c) In discharging board or committee duties a director shall  
994 disclose, or cause to be disclosed, to the other board or committee  
995 members information not already known by them but known by the  
996 director to be material to the discharge of their decision-making or  
997 oversight functions, except that disclosure is not required to the extent  
998 that the director reasonably believes that doing so would violate a  
999 duty imposed under law, a legally enforceable obligation of  
1000 confidentiality or a professional ethics rule.

1001 (d) In discharging board or committee duties, a director who does  
1002 not have knowledge that makes reliance unwarranted is entitled to  
1003 rely on the performance by any of the persons specified in subdivision  
1004 (1) or (3) of subsection (f) of this section to whom the board may have  
1005 delegated, formally or informally by course of conduct, the authority  
1006 or duty to perform one or more of the board's functions that are  
1007 delegable under applicable law.

1008 [(b)] (e) In discharging [his] board or committee duties, a director  
1009 who does not have knowledge that makes reliance unwarranted is  
1010 entitled to rely on information, opinions, reports or statements,  
1011 including financial statements and other financial data, [if] prepared or

1012 presented by any of the persons specified in subsection (f) of this  
1013 section.

1014 (f) A director is entitled to rely, in accordance with subsection (d) or  
1015 (e) of this section, on:

1016 (1) One or more officers or employees of the corporation whom the  
1017 director reasonably believes to be reliable and competent in the  
1018 [matters presented] functions performed or the information, opinions,  
1019 reports or statements provided;

1020 (2) [legal] Legal counsel, public accountants or other persons  
1021 retained by the corporation as to matters involving skills or expertise  
1022 the director reasonably believes are matters (A) within the particular  
1023 person's professional or expert competence, or (B) as to which the  
1024 particular person merits confidence; or

1025 (3) [a] A committee of the board of directors of which [he] the  
1026 director is not a member if the director reasonably believes the  
1027 committee merits confidence.

1028 [(c) A director is not acting in good faith if he has knowledge  
1029 concerning the matter in question that makes reliance otherwise  
1030 permitted by subsection (b) of this section unwarranted.]

1031 [(d)] (g) A director is not liable for any action taken as a director, or  
1032 any failure to take any action, if [he] the director performed the duties  
1033 of his or her office in compliance with this section.

1034 Sec. 21. Section 33-1110 of the general statutes is repealed and the  
1035 following is substituted in lieu thereof (*Effective October 1, 2005*):

1036 Each officer has the authority and shall perform the [duties]  
1037 functions set forth in the bylaws, or to the extent consistent with the  
1038 bylaws, the [duties] functions prescribed by the board of directors or  
1039 by direction of an officer authorized by the board of directors to  
1040 prescribe the [duties] functions of other officers.

1041 Sec. 22. Section 33-1111 of the general statutes is repealed and the  
1042 following is substituted in lieu thereof (*Effective October 1, 2005*):

1043 (a) An officer, [with discretionary authority shall discharge his  
1044 duties under that authority] when performing in such capacity, has the  
1045 duty to act:

1046 (1) In good faith;

1047 (2) [with] With the care [an ordinarily prudent] that a person in a  
1048 like position would reasonably exercise under similar circumstances;  
1049 and

1050 (3) [in] In a manner [he] the officer reasonably believes to be in the  
1051 best interests of the corporation.

1052 (b) The duty of an officer includes the obligation:

1053 (1) To inform the superior officer to whom, or the board of directors  
1054 or the committee thereof to which, the officer reports of information  
1055 about the affairs of the corporation known to the officer, within the  
1056 scope of the officer's functions, and known to the officer to be material  
1057 to such superior officer, board or committee; and

1058 (2) To inform his or her superior officer, or another appropriate  
1059 person within the corporation, or the board of directors or a committee  
1060 thereof, of any actual or probable material violation of law involving  
1061 the corporation or material breach of duty to the corporation by an  
1062 officer, employee or agent of the corporation that the officer believes  
1063 has occurred or is likely to occur.

1064 [(b)] (c) In discharging his or her duties, an officer who does not  
1065 have knowledge that makes reliance unwarranted is entitled to rely on:  
1066 [information]

1067 (1) The performance of properly delegated responsibilities by one or  
1068 more employees of the corporation whom the officer reasonably  
1069 believes to be reliable and competent in performing the responsibilities

1070 delegated; or

1071 (2) Information, opinions, reports or statements, including financial  
1072 statements and other financial data, [if] prepared or presented by [: (1)  
1073 One] one or more [officers or] employees of the corporation whom the  
1074 officer reasonably believes to be reliable and competent in the matters  
1075 presented [;] or [(2)] by legal counsel, public accountants or other  
1076 persons retained by the corporation as to matters involving skills or  
1077 expertise the officer reasonably believes are matters (A) within the  
1078 person's professional or expert competence, or (B) as to which the  
1079 particular person merits confidence.

1080 [(c) An officer is not acting in good faith if he has knowledge  
1081 concerning the matter in question that makes reliance otherwise  
1082 permitted by subsection (b) of this section unwarranted.]

1083 (d) An officer [is] shall not be liable to the corporation or its  
1084 members for any decision to take or not to take action, [taken as an  
1085 officer,] or any failure to take any action, as an officer, if [he  
1086 performed] the duties of [his] the office are performed in compliance  
1087 with this section.

1088 Sec. 23. Section 33-1116 of the general statutes is repealed and the  
1089 following is substituted in lieu thereof (*Effective October 1, 2005*):

1090 As used in sections 33-1116 to 33-1125, inclusive:

1091 (1) "Corporation" includes any domestic or foreign predecessor  
1092 entity of a corporation in a merger.

1093 (2) "Director" or "officer" means an individual who is or was a  
1094 director or officer, respectively, of a corporation or who, while a  
1095 director or officer of the corporation, is or was serving at the  
1096 corporation's request as a director, officer, partner, trustee, employee  
1097 or agent of another domestic or foreign corporation, partnership, joint  
1098 venture, trust, employee benefit plan or other entity. A director or  
1099 officer is considered to be serving an employee benefit plan at the  
1100 corporation's request if [his] the individual's duties to the corporation

1101 also impose duties on, or otherwise involve services by, [him] the  
1102 individual to the plan or to participants in or beneficiaries of the plan.  
1103 "Director" or "officer" includes, unless the context requires otherwise,  
1104 the estate or personal representative of a director or officer.

1105 [(3) "Disinterested director" means a director who at the time of a  
1106 vote referred to in subsection (c) of section 33-1119 or a vote or  
1107 selection referred to in subsection (b) or (c) of section 33-1121, is not  
1108 (A) a party to the proceeding or (B) an individual having a familial,  
1109 financial, professional or employment relationship with the director  
1110 whose indemnification or advance for expenses is the subject of the  
1111 decision being made, which relationship would, in the circumstances,  
1112 reasonably be expected to exert an influence on the director's judgment  
1113 when voting on the decision being made.]

1114 [(4) (3) "Expenses" include counsel fees.

1115 [(5) (4) "Liability" means the obligation to pay a judgment,  
1116 settlement, penalty, fine, including an excise tax assessed with respect  
1117 to an employee benefit plan, or reasonable expenses incurred with  
1118 respect to a proceeding.

1119 [(6) (5) "Official capacity" means: (A) When used with respect to a  
1120 director, the office of director in a corporation; and (B) when used with  
1121 respect to an [individual other than a director] officer, as contemplated  
1122 in section 33-1122, the office in a corporation held by the officer, [or the  
1123 employment or agency relationship undertaken by the employee or  
1124 agent on behalf of the corporation.] "Official capacity" does not include  
1125 service for any other domestic or foreign corporation or any  
1126 partnership, joint venture, trust, employee benefit plan or other entity.

1127 [(7) (6) "Party" means an individual who was, is, or is threatened to  
1128 be made, a defendant or respondent in a proceeding.

1129 [(8) (7) "Proceeding" means any threatened, pending or completed  
1130 action, suit or proceeding, whether civil, criminal, administrative,  
1131 arbitratative or investigative and whether formal or informal.

1132 Sec. 24. Section 33-1119 of the general statutes is repealed and the  
1133 following is substituted in lieu thereof (*Effective October 1, 2005*):

1134 (a) A corporation may, before final disposition of a proceeding,  
1135 advance funds to pay for or reimburse the reasonable expenses  
1136 incurred [by a director] in connection with the proceeding by an  
1137 individual who is a party to [a] the proceeding because [he is a director  
1138 if he] that individual is a member of the board of directors if the  
1139 director delivers to the corporation:

1140 (1) A written affirmation of [his] the director's good faith belief that  
1141 [he has met] the relevant standard of conduct described in section [33-  
1142 1117,] 33-1104, as amended by this act, has been met by the director or  
1143 that the proceeding involves conduct for which liability has been  
1144 limited under a provision of the certificate of incorporation as  
1145 authorized by subdivision (4) of subsection (b) of section 33-1026, as  
1146 amended by this act; and

1147 (2) [his] A written undertaking to repay any funds advanced if [he]  
1148 the director is not entitled to mandatory indemnification under section  
1149 33-1118 and it is ultimately determined under section 33-1120 or 33-  
1150 1121, as amended by this act, that [he] the director has not met the  
1151 relevant standard of conduct described in section 33-1117.

1152 (b) The undertaking required by subdivision (2) of subsection (a) of  
1153 this section must be an unlimited general obligation of the director but  
1154 need not be secured and may be accepted without reference to the  
1155 financial ability of the director to make repayment.

1156 (c) Authorizations under this section shall be made:

1157 (1) By the board of directors: (A) If there are two or more  
1158 [disinterested] qualified directors, by a majority vote of all the  
1159 [disinterested] qualified directors, a majority of whom shall for such  
1160 purpose constitute a quorum, or by a majority of the members of a  
1161 committee of two or more [disinterested] qualified directors appointed  
1162 by such a vote; or (B) if there are fewer than two [disinterested]

1163 qualified directors, by the vote necessary for action by the board in  
1164 accordance with subsection (c) of section 33-1100, in which  
1165 authorization directors who [do not qualify as disinterested] are not  
1166 qualified directors may participate; or

1167 (2) [by] By the members, but a member who is also a director who at  
1168 the time [does not qualify as a disinterested] is not a qualified director  
1169 may not vote on the authorization.

1170 Sec. 25. Section 33-1121 of the general statutes is repealed and the  
1171 following is substituted in lieu thereof (*Effective October 1, 2005*):

1172 (a) A corporation may not indemnify a director under section 33-  
1173 1117 unless authorized for a specific proceeding after a determination  
1174 has been made that indemnification [of the director] is permissible  
1175 because [he] the director has met the relevant standard of conduct set  
1176 forth in said section.

1177 (b) The determination shall be made:

1178 (1) If there are two or more [disinterested] qualified directors, by the  
1179 board of directors by a majority vote of all the [disinterested] qualified  
1180 directors, a majority of whom shall for such purpose constitute a  
1181 quorum, or by a majority of the members of a committee of two or  
1182 more [disinterested] qualified directors appointed by such a vote;

1183 (2) By special legal counsel (A) selected in the manner prescribed in  
1184 subdivision (1) of this subsection, or (B) if there are fewer than two  
1185 [disinterested] qualified directors, selected by the board of directors, in  
1186 which selection directors who [do not qualify as disinterested] are not  
1187 qualified directors may participate; or

1188 (3) By the members entitled to vote to elect directors, but any such  
1189 member who is also a director who at the time [does not qualify as a  
1190 disinterested] is not a qualified director may not vote on the  
1191 determination.

1192 (c) Authorization of indemnification shall be made in the same

1193 manner as the determination that indemnification is permissible,  
1194 except that if there are fewer than two [disinterested] qualified  
1195 directors, or if the determination is made by special legal counsel,  
1196 authorization of indemnification shall be made by those entitled to  
1197 select special legal counsel under subparagraph (B) of subdivision (2)  
1198 of subsection (b) of this section. [to select special legal counsel.]

1199 Sec. 26. Section 33-1127 of the general statutes is repealed and the  
1200 following is substituted in lieu thereof (*Effective October 1, 2005*):

1201 As used in sections 33-1127 to 33-1130, inclusive, as amended by this  
1202 act:

1203 [(1) "Conflicting interest" with respect to a corporation means the  
1204 interest a director of the corporation has respecting a transaction  
1205 effected or proposed to be effected by the corporation, or by a  
1206 subsidiary of the corporation or any other entity in which the  
1207 corporation has a controlling interest, if:

1208 (A) Whether or not the transaction is brought before the board of  
1209 directors of the corporation for action, the director knows at the time of  
1210 commitment that he or a related person is a party to the transaction or  
1211 has a beneficial financial interest in or so closely linked to the  
1212 transaction and of such financial significance to the director or a  
1213 related person that the interest would reasonably be expected to exert  
1214 an influence on the director's judgment if he were called upon to vote  
1215 on the transaction; or

1216 (B) The transaction is brought, or is of such character and  
1217 significance to the corporation that it would in the normal course be  
1218 brought, before the board of directors of the corporation for action, and  
1219 the director knows at the time of commitment that any of the following  
1220 persons is either a party to the transaction or has a beneficial financial  
1221 interest in or so closely linked to the transaction and of such financial  
1222 significance to the person that the interest would reasonably be  
1223 expected to exert an influence on the director's judgment if he were  
1224 called upon to vote on the transaction: (i) An entity, other than the

1225 corporation, of which the director is a director, general partner, agent  
1226 or employee; (ii) a person that controls one or more of the entities  
1227 specified in subparagraph (B)(i) of this subdivision or an entity that is  
1228 controlled by, or is under common control with, one or more of the  
1229 entities specified in subparagraph (B)(i) of this subdivision; or (iii) an  
1230 individual who is a general partner, principal or employer of the  
1231 director.

1232 (2) "Director's conflicting interest transaction" with respect to a  
1233 corporation means a transaction effected or proposed to be effected by  
1234 the corporation, or by a subsidiary of the corporation or any other  
1235 entity in which the corporation has a controlling interest, respecting  
1236 which a director of the corporation has a conflicting interest.

1237 (3) "Related person" of a director means (A) the spouse of the  
1238 director, or a parent or sibling thereof, or a child, grandchild, sibling or  
1239 parent of the director, or the spouse of any thereof, or an individual  
1240 having the same home as the director, or a trust or estate of which an  
1241 individual specified in this subparagraph is a substantial beneficiary,  
1242 or (B) a trust, estate, incompetent, conservatee or minor of which the  
1243 director is a fiduciary.

1244 (4) "Required disclosure" means disclosure by the director who has  
1245 a conflicting interest of (A) the existence and nature of his conflicting  
1246 interest, and (B) all facts known to him respecting the subject matter of  
1247 the transaction that an ordinarily prudent person would reasonably  
1248 believe to be material to a judgment about whether or not to proceed  
1249 with the transaction.

1250 (5) "Time of commitment" respecting a transaction means the time  
1251 when the transaction is consummated or, if made pursuant to contract,  
1252 the time when the corporation, or its subsidiary or the entity in which  
1253 it has a controlling interest, becomes contractually obligated so that its  
1254 unilateral withdrawal from the transaction would entail significant  
1255 loss, liability or other damage.]

1256 (1) "Director's conflicting interest transaction" means a transaction

1257 effected or proposed to be effected by the corporation, or by an entity  
1258 controlled by the corporation, (A) to which, at the relevant time, the  
1259 director is a party, (B) respecting which, at the relevant time, the  
1260 director had knowledge and a material financial interest known to the  
1261 director, or (C) respecting which, at the relevant time, the director  
1262 knew that a related person was a party or had a material financial  
1263 interest.

1264 (2) "Control", including the term "controlled by", means (A) having  
1265 the power, directly or indirectly, to elect or remove a majority of the  
1266 members of the board of directors or other governing body of an  
1267 entity, whether through the ownership of membership interests or  
1268 other voting shares or interests, by contract, or otherwise, or (B) being  
1269 subject to a majority of the risk of loss from the entity's activities or  
1270 entitled to receive a majority of the entity's residual returns.

1271 (3) "Relevant time" means (A) the time at which directors' action  
1272 respecting the transaction is taken in compliance with section 33-1129,  
1273 as amended by this act, or (B) if the transaction is not brought before  
1274 the board of directors of the corporation, or its committee, for action  
1275 under section 33-1129, as amended by this act, at the time the  
1276 corporation, or an entity controlled by the corporation, becomes legally  
1277 obligated to consummate the transaction.

1278 (4) "Material financial interest" means a financial interest in a  
1279 transaction that would reasonably be expected to impair the objectivity  
1280 of the director when participating in action on the authorization of the  
1281 transaction.

1282 (5) "Related person" means: (A) The director's spouse; (B) a child,  
1283 stepchild, grandchild, parent, step parent, grandparent, sibling, step  
1284 sibling, half sibling, aunt, uncle, niece or nephew, or spouse of any  
1285 thereof, of the director or of the director's spouse; (C) an individual  
1286 living in the same home as the director; (D) an entity, other than the  
1287 corporation or an entity controlled by the corporation, controlled by  
1288 the director or any person specified in subparagraphs (A) to (C),  
1289 inclusive, of this subdivision; (E) a domestic or foreign (i) business or

1290 nonprofit corporation, other than the corporation or an entity  
1291 controlled by the corporation, of which the director is a director, (ii)  
1292 unincorporated entity of which the director is a general partner or a  
1293 member of the governing body, or (iii) individual, trust or estate for  
1294 whom or of which the director is a trustee, guardian, personal  
1295 representative or like fiduciary; or (F) a person that is, or an entity that  
1296 is controlled by, an employer of the director.

1297 (6) "Fair to the corporation" means, for purposes of subdivision (3)  
1298 of subsection (b) of section 33-1128, as amended by this act, that the  
1299 transaction as a whole was beneficial to the corporation, taking into  
1300 appropriate account whether it was (A) fair in terms of the director's  
1301 dealings with the corporation, and (B) comparable to what might have  
1302 been obtainable in an arm's length transaction, given the consideration  
1303 paid or received by the corporation.

1304 (7) "Required disclosure" means disclosure of (A) the existence and  
1305 nature of the director's conflicting interest, and (B) all facts known to  
1306 the director respecting the subject matter of the transaction that a  
1307 director free of such conflicting interest would reasonably believe to be  
1308 material in deciding whether to proceed with the transaction.

1309 Sec. 27. Section 33-1128 of the general statutes is repealed and the  
1310 following is substituted in lieu thereof (*Effective October 1, 2005*):

1311 (a) A transaction effected or proposed to be effected by [a  
1312 corporation, or by a subsidiary of the corporation or any other entity in  
1313 which the corporation has a controlling interest, that is not a director's  
1314 conflicting interest transaction may not be enjoined, set aside or give  
1315 rise to an award of damages or other sanctions, in a proceeding by a  
1316 member or director or by or in the right of the corporation, because a  
1317 director of the corporation, or any person with whom or which he has  
1318 a personal, economic or other association, has an interest in the  
1319 transaction] the corporation, or by an entity controlled by the  
1320 corporation, may not be the subject of equitable relief, or give rise to an  
1321 award of damages or other sanctions against a director of the  
1322 corporation, in a proceeding by a member or director or by or in the

1323 right of the corporation, on the ground that the director has an interest  
1324 respecting the transaction, if it is not a director's conflicting interest  
1325 transaction.

1326 (b) A director's conflicting interest transaction may not be [enjoined,  
1327 set aside] the subject of equitable relief, or give rise to an award of  
1328 damages or other sanctions against a director of the corporation, in a  
1329 proceeding by a member or director or by or in the right of the  
1330 corporation, [because the director, or any person with whom or which  
1331 he has a personal, economic or other association,] on the ground that  
1332 the director has an interest [in] respecting the transaction, if: (1)  
1333 Directors' action respecting the transaction was [at any time] taken in  
1334 compliance with section 33-1129, as amended by this act, at any time;  
1335 (2) members' action respecting the transaction was [at any time] taken  
1336 in compliance with section 33-1130, as amended by this act, at any  
1337 time; or (3) the transaction, judged according to the circumstances at  
1338 the relevant time, [of commitment,] is established to have been fair to  
1339 the corporation.

1340 Sec. 28. Section 33-1129 of the general statutes is repealed and the  
1341 following is substituted in lieu thereof (*Effective October 1, 2005*):

1342 (a) Directors' action respecting a director's conflicting interest  
1343 transaction is effective for purposes of subdivision (1) of subsection (b)  
1344 of section 33-1128, as amended by this act, if the transaction [received]  
1345 has been authorized by the affirmative vote of a majority, but no fewer  
1346 than two, of [those qualified directors on the board of directors or on a  
1347 duly empowered committee of the board] the qualified directors who  
1348 voted on the transaction, after [either required disclosure to them, to  
1349 the extent the information was not known by them, or compliance with  
1350 subsection (b) of this section; provided that action by a committee is so  
1351 effective only if (1) all committee members are qualified directors, and  
1352 (2) committee members are either all the qualified directors on the  
1353 board or are] required disclosure by the conflicted director of  
1354 information not already known by such qualified directors, or after  
1355 modified disclosure in compliance with subsection (b) of this section,

1356 provided that where the action has been taken by a committee, all  
1357 members of the committee were qualified directors, and either (1) the  
1358 committee was composed of all the qualified directors on the board of  
1359 directors, or (2) the members of the committee were appointed by the  
1360 affirmative vote of a majority of the qualified directors on the board.

1361 [(b) If a director has a conflicting interest respecting a transaction,  
1362 but neither he nor a related person of the director specified in  
1363 subparagraph (A) of subdivision (3) of section 33-1127 is a party to the  
1364 transaction, and if the director has a duty under law or professional  
1365 canon, or a duty of confidentiality to another person, respecting  
1366 information relating to the transaction such that the director may not  
1367 make the disclosure described in subparagraph (B) of subdivision (4)  
1368 of section 33-1127, then disclosure is sufficient for purposes of  
1369 subsection (a) of this section if the director (1) discloses to the directors  
1370 voting on the transaction the existence and nature of his conflicting  
1371 interest and informs them of the character and limitations imposed by  
1372 that duty before their vote on the transaction, and (2) plays no part,  
1373 directly or indirectly, in their deliberations or vote.]

1374 (b) Notwithstanding subsection (a) of this section, when a  
1375 transaction is a director's conflicting interest transaction only because a  
1376 related person described in subparagraph (E) or (F) of subdivision (5)  
1377 of section 33-1127, as amended by this act, is a party to or has a  
1378 material financial interest in the transaction, the conflicted director is  
1379 not obligated to make required disclosure to the extent that the  
1380 director reasonably believes that doing so would violate a duty  
1381 imposed under law, a legally enforceable obligation of confidentiality  
1382 or a professional ethics rule, provided that the conflicted director  
1383 discloses to the qualified directors voting on the transaction: (1) All  
1384 information required to be disclosed that is not so violative, (2) the  
1385 existence and nature of the director's conflicting interest, and (3) the  
1386 nature of the conflicted director's duty not to disclose the confidential  
1387 information.

1388 (c) A majority, but no fewer than two, of all the qualified directors

1389 on the board of directors, or on the committee, constitutes a quorum  
1390 for purposes of action that complies with this section. Directors' action  
1391 that otherwise complies with this section is not affected by the  
1392 presence or vote of a director who is not a qualified director.

1393 [(d) For purposes of this section, "qualified director" means, with  
1394 respect to a director's conflicting interest transaction, any director who  
1395 does not have either (1) a conflicting interest respecting the transaction,  
1396 or (2) a familial, financial, professional or employment relationship  
1397 with a second director who does have a conflicting interest respecting  
1398 the transaction, which relationship would, in the circumstances,  
1399 reasonably be expected to exert an influence on the first director's  
1400 judgment when voting on the transaction.]

1401 (d) Where directors' action under this section does not satisfy a  
1402 quorum or voting requirement applicable to the authorization of the  
1403 transaction by reason of the certificate of incorporation, the bylaws or a  
1404 provision of law, independent action to satisfy those authorization  
1405 requirements must be taken by the board of directors or a committee,  
1406 in which action directors who are not qualified directors may  
1407 participate.

1408 Sec. 29. Section 33-1130 of the general statutes is repealed and the  
1409 following is substituted in lieu thereof (*Effective October 1, 2005*):

1410 (a) Members' action respecting a director's conflicting interest  
1411 transaction is effective for purposes of subdivision (2) of subsection (b)  
1412 of section 33-1128, as amended by this act, if a majority of the votes  
1413 cast by the members entitled to vote [were cast] are in favor of the  
1414 transaction after (1) notice to members entitled to vote describing the  
1415 [director's conflicting interest] action to be taken respecting the  
1416 transaction, (2) provision to the corporation of the information referred  
1417 to in subsection [(d)] (b) of this section, and (3) [required disclosure]  
1418 communication to the members [who voted] entitled to vote on the  
1419 transaction of the information that is the subject of required disclosure,  
1420 to the extent the information [was] is not known by them.

1421 (b) A director who has a conflicting interest respecting the  
1422 transaction shall, before the members' vote, inform the secretary or  
1423 other officer or agent of the corporation authorized to tabulate votes, in  
1424 writing, of any members entitled to vote who, to the knowledge of  
1425 such director, are (1) a director who has a conflicting interest  
1426 respecting the transaction, or (2) a related person of any such director,  
1427 excluding a person described in subparagraph (F) of subdivision (5) of  
1428 section 33-1127, as amended by this act.

1429 [(b)] (c) For purposes of this section, the members entitled to vote  
1430 with respect to a director's conflicting interest transaction [means] are  
1431 any members entitled to vote, except members entitled to vote who [,  
1432 to the knowledge, before the vote, of] the secretary or other officer or  
1433 agent of the corporation authorized to tabulate votes [, are (1) directors  
1434 who have a conflicting interest respecting the transaction, or (2)  
1435 controlled by directors who have] either knows, or under subsection  
1436 (b) of this section is notified, are either (1) a director who has a  
1437 conflicting interest respecting the transaction, or [by] (2) a related  
1438 person of [any such director, or both] the director, excluding a person  
1439 described in subparagraph (F) of subdivision (5) of section 33-1127, as  
1440 amended by this act.

1441 [(c) The members entitled to vote present in person, or by proxy if  
1442 voting by proxy is permitted, or voting by ballot if voting by ballot is  
1443 permitted, constitute a quorum for purposes of action that complies  
1444 with this section, unless the certificate of incorporation or bylaws  
1445 require a greater number. Subject to the provisions of subsections (d)  
1446 and (e) of this section, members' action that otherwise complies with  
1447 this section is not affected by the presence of members, or the vote of  
1448 members, that are not members entitled to vote.

1449 (d) For purposes of compliance with subsection (a) of this section, a  
1450 director who has a conflicting interest respecting the transaction shall,  
1451 before the members' vote, inform the secretary or other officer or agent  
1452 of the corporation authorized to tabulate votes, of the number, and the  
1453 identity of persons holding or controlling the vote, of all members that

1454 the director knows are controlled by the director or by a related person  
1455 of the director, or both.]

1456 (d) A majority of the votes entitled to be cast by the members  
1457 entitled to vote with respect to the transaction constitutes a quorum for  
1458 purposes of compliance with this section. Subject to the provisions of  
1459 subsection (e) of this section, members' action that otherwise complies  
1460 with this section is not affected by the presence, or by the voting, of  
1461 members that are not entitled to vote with respect to the transaction.

1462 (e) If a members' vote does not comply with subsection (a) of this  
1463 section solely because of a director's failure [of a director] to comply  
1464 with subsection [(d)] (b) of this section, and if the director establishes  
1465 that [his] the failure [did not determine and] was not intended [by  
1466 him] to influence and did not in fact determine the outcome of the  
1467 vote, the court may [, with or without further proceedings respecting  
1468 subdivision (3) of subsection (b) of section 33-1128,] take such action  
1469 respecting the transaction and the director, and may give such effect, if  
1470 any, to the members' vote, as [it] the court considers appropriate in the  
1471 circumstances.

1472 (f) Where members' action under this section does not satisfy a  
1473 quorum or voting requirement applicable to the authorization of the  
1474 transaction by reason of the certificate of incorporation, the bylaws or a  
1475 provision of law, independent action to satisfy those authorization  
1476 requirements must be taken by the members, in which action members  
1477 that are not entitled to vote on the transaction may participate.

1478 Sec. 30. (NEW) (*Effective October 1, 2005*) (a) A director's taking  
1479 advantage, directly or indirectly, of a business opportunity may not be  
1480 the subject of equitable relief, or give rise to an award of damages or  
1481 other sanctions against the director, in a proceeding by or in the right  
1482 of the corporation on the ground that such opportunity should have  
1483 first been offered to the corporation, if before becoming legally  
1484 obligated respecting the opportunity the director brings it to the  
1485 attention of the corporation and: (1) Directors' action disclaiming the  
1486 corporation's interest in the opportunity is taken in compliance with

1487 the procedures set forth in section 33-1129 of the general statutes, as  
1488 amended by this act, as if the decision being made concerned a  
1489 director's conflicting interest transaction; or (2) members' action  
1490 disclaiming the corporation's interest in the opportunity is taken in  
1491 compliance with the procedures set forth in section 33-1129 of the  
1492 general statutes, as amended by this act, as if the decision being made  
1493 concerned a director's conflicting interest transaction; except that,  
1494 rather than making required disclosure, as defined in section 33-1127  
1495 of the general statutes, as amended by this act, in each case the director  
1496 shall have made prior disclosure to those acting on behalf of the  
1497 corporation of all material facts concerning the business opportunity  
1498 that are then known to the director.

1499 (b) In any proceeding seeking equitable relief or other remedies  
1500 based upon an alleged improper taking advantage of a business  
1501 opportunity by a director, the fact that the director did not employ the  
1502 procedure described in subsection (a) of this section before taking  
1503 advantage of the opportunity shall not create an inference that the  
1504 opportunity should have been first presented to the corporation or  
1505 alter the burden of proof otherwise applicable to establish that the  
1506 director breached a duty to the corporation in the circumstances.

1507 Sec. 31. Subsection (b) of section 33-636 of the general statutes is  
1508 repealed and the following is substituted in lieu thereof (*Effective*  
1509 *October 1, 2005*):

1510 (b) The certificate of incorporation may set forth: (1) The names and  
1511 addresses of the individuals who are to serve as the initial directors; (2)  
1512 provisions not inconsistent with law regarding: (A) The purpose or  
1513 purposes for which the corporation is organized; (B) managing the  
1514 business and regulating the affairs of the corporation; (C) defining,  
1515 limiting and regulating the powers of the corporation, its board of  
1516 directors and shareholders; (D) a par value for authorized shares or  
1517 classes of shares; (E) the imposition of personal liability on  
1518 shareholders for the debts of the corporation to a specified extent and  
1519 upon specified conditions; (3) any provision that under sections 33-600

1520 to 33-998, inclusive, is required or permitted to be set forth in the  
1521 bylaws; (4) a provision limiting the personal liability of a director to  
1522 the corporation or its shareholders for monetary damages for breach of  
1523 duty as a director to an amount that is not less than the compensation  
1524 received by the director for serving the corporation during the year of  
1525 the violation if such breach did not (A) involve a knowing and  
1526 culpable violation of law by the director, (B) enable the director or an  
1527 associate, as defined in section 33-840, to receive an improper personal  
1528 economic gain, (C) show a lack of good faith and a conscious disregard  
1529 for the duty of the director to the corporation under circumstances in  
1530 which the director was aware that his conduct or omission created an  
1531 unjustifiable risk of serious injury to the corporation, (D) constitute a  
1532 sustained and unexcused pattern of inattention that amounted to an  
1533 abdication of the director's duty to the corporation, or (E) create  
1534 liability under section 33-757, provided no such provision shall limit or  
1535 preclude the liability of a director for any act or omission occurring  
1536 prior to the effective date of such provision; and (5) a provision  
1537 permitting or making obligatory indemnification of a director for  
1538 liability, as defined in [subdivision (5) of] section 33-770, as amended  
1539 by this act, to any person for any action taken, or any failure to take  
1540 any action, as a director, except liability that (A) involved a knowing  
1541 and culpable violation of law by the director, (B) enabled the director  
1542 or an associate, as defined in section 33-840, to receive an improper  
1543 personal gain, (C) showed a lack of good faith and a conscious  
1544 disregard for the duty of the director to the corporation under  
1545 circumstances in which the director was aware that his conduct or  
1546 omission created an unjustifiable risk of serious injury to the  
1547 corporation, (D) constituted a sustained and unexcused pattern of  
1548 inattention that amounted to an abdication of the director's duty to the  
1549 corporation, or (E) created liability under section 33-757, provided no  
1550 such provision shall affect the indemnification of or advance of  
1551 expenses to a director for any liability stemming from acts or  
1552 omissions occurring prior to the effective date of such provision.

1553 Sec. 32. Subsection (b) of section 33-1026 of the general statutes is  
1554 repealed and the following is substituted in lieu thereof (*Effective*

1555 *October 1, 2005*):

1556 (b) The certificate of incorporation may set forth: (1) The names and  
1557 addresses of the individuals who are to serve as the initial directors; (2)  
1558 provisions not inconsistent with law regarding: (A) Managing and  
1559 regulating the affairs of the corporation; or (B) defining, limiting and  
1560 regulating the powers of the corporation, its board of directors and  
1561 members or any class of members; (3) any provision that under  
1562 sections 33-1000 to 33-1290, inclusive, is required or permitted to be set  
1563 forth in the bylaws; (4) a provision limiting the personal liability of a  
1564 director to the corporation or its members for monetary damages for  
1565 breach of duty as a director to an amount that is not less than the  
1566 compensation received by the director for serving the corporation  
1567 during the year of the violation if such breach did not (A) involve a  
1568 knowing and culpable violation of law by the director, (B) enable the  
1569 director or an associate, as defined in section 33-840, to receive an  
1570 improper personal economic gain, (C) show a lack of good faith and a  
1571 conscious disregard for the duty of the director to the corporation  
1572 under circumstances in which the director was aware that his conduct  
1573 or omission created an unjustifiable risk of serious injury to the  
1574 corporation, or (D) constitute a sustained and unexcused pattern of  
1575 inattention that amounted to an abdication of the director's duty to the  
1576 corporation, provided no such provision shall limit or preclude the  
1577 liability of a director for any act or omission occurring prior to the  
1578 effective date of such provision; and (5) a provision permitting or  
1579 making obligatory indemnification of a director for liability, as defined  
1580 in [subdivision (5) of] section 33-1116, as amended by this act, to any  
1581 person for any action taken, or any failure to take any action, as a  
1582 director, except liability that (A) involved a knowing and culpable  
1583 violation of law by the director, (B) enabled the director or an  
1584 associate, as defined in section 33-840, to receive an improper personal  
1585 gain, (C) showed a lack of good faith and a conscious disregard for the  
1586 duty of the director to the corporation under circumstances in which  
1587 the director was aware that his conduct or omission created an  
1588 unjustifiable risk of serious injury to the corporation, or (D) constituted  
1589 a sustained and unexcused pattern of inattention that amounted to an

1590 abdication of the director's duty to the corporation, provided no such  
 1591 provision shall affect the indemnification of or advance of expenses to  
 1592 a director for any liability stemming from acts or omissions occurring  
 1593 prior to the effective date of such provision.

This act shall take effect as follows and shall amend the following sections:		
Section 1	<i>October 1, 2005</i>	33-602
Sec. 2	<i>October 1, 2005</i>	New section
Sec. 3	<i>October 1, 2005</i>	33-717(d)
Sec. 4	<i>October 1, 2005</i>	33-724
Sec. 5	<i>October 1, 2005</i>	33-756
Sec. 6	<i>October 1, 2005</i>	33-764
Sec. 7	<i>October 1, 2005</i>	33-765
Sec. 8	<i>October 1, 2005</i>	33-770
Sec. 9	<i>October 1, 2005</i>	33-773
Sec. 10	<i>October 1, 2005</i>	33-775
Sec. 11	<i>October 1, 2005</i>	33-781
Sec. 12	<i>October 1, 2005</i>	33-782
Sec. 13	<i>October 1, 2005</i>	33-783
Sec. 14	<i>October 1, 2005</i>	33-784
Sec. 15	<i>October 1, 2005</i>	33-897(d)
Sec. 16	<i>October 1, 2005</i>	33-900(a)
Sec. 17	<i>October 1, 2005</i>	New section
Sec. 18	<i>October 1, 2005</i>	33-1002
Sec. 19	<i>October 1, 2005</i>	New section
Sec. 20	<i>October 1, 2005</i>	33-1104
Sec. 21	<i>October 1, 2005</i>	33-1110
Sec. 22	<i>October 1, 2005</i>	33-1111
Sec. 23	<i>October 1, 2005</i>	33-1116
Sec. 24	<i>October 1, 2005</i>	33-1119
Sec. 25	<i>October 1, 2005</i>	33-1121
Sec. 26	<i>October 1, 2005</i>	33-1127
Sec. 27	<i>October 1, 2005</i>	33-1128
Sec. 28	<i>October 1, 2005</i>	33-1129
Sec. 29	<i>October 1, 2005</i>	33-1130
Sec. 30	<i>October 1, 2005</i>	New section
Sec. 31	<i>October 1, 2005</i>	33-636(b)
Sec. 32	<i>October 1, 2005</i>	33-1026(b)

**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:*** None

***Municipal Impact:*** None

***Explanation***

The bill, which makes numerous minor and technical changes to the statutes governing business organizations, will have no fiscal impact to the state.

**OLR Bill Analysis**

sSB 1119

***AN ACT CONCERNING THE DUTIES AND RESPONSIBILITIES OF DIRECTORS AND OFFICERS OF BUSINESS CORPORATIONS AND NONSTOCK CORPORATIONS*****SUMMARY:**

The bill makes various changes to the stock and nonstock corporation laws. It:

1. makes several changes regarding a director's conflicting interest transactions including expanding the category of persons whose interest in a transaction will be attributed to the director;
2. establishes a procedure for a director who wants to take advantage of a business opportunity that might be suitable for a corporation to first present it to the board or shareholders to obtain a disclaimer;
3. establishes a director's duty to disclose material corporate information to other board members;
4. specifies additional functions of officers, including the duty to inform others in the corporation of matters of law that they are aware of, including actual or probable material violations of law;
5. clarifies the procedure for a court to dismiss a derivative proceeding after qualified directors have made a reasonable determination that the suit is not in the corporation's best interest;
6. alters the rules pertaining to which directors are qualified to approve indemnification of directors
7. eliminates the right of non-public corporations or their shareholders, in connection with a corporate dissolution proceeding, to purchase shares to avoid the dissolution under certain circumstances; and

8. makes several technical changes; and

EFFECTIVE DATE: October 1, 2005

### **DERIVATIVE ACTIONS (§§ 2 & 4)**

By law, any stockholder may initiate a stockholder's lawsuit in his own name and on behalf of other stockholders to protect the corporation from the wrongful acts of its directors and officers. This is called a derivative action.

The law requires a court to dismiss a derivative action if independent directors determine by a majority vote at a meeting where independent directors constitute a quorum, that it is not in the corporation's best interest. The law does not define "independent director." But it specifies that none of the following by itself can cause a director not to be independent: (1) the nomination or election of the director by persons who are defendants in the derivative proceeding, or against whom action is demanded; (2) the naming of the director as a defendant in the derivative proceeding, or as a person against whom action is demanded; or (3) the approval by the director of the act being challenged in the derivative proceeding or demand if the act resulted in no personal benefit to the director.

The bill instead gives the authority to determine that a derivative action is not in the corporation's best interest to directors who do not have (1) a material interest in the outcome of the proceeding or (2) a material relationship with a person who has such an interest.

The bill defines a "material relationship" as a familial, financial, professional, employment or other relationship that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken.

It defines a "material interest" as an actual or potential benefit or detriment, other than one that would (1) devolve on the corporation or the shareholders generally and (2) reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken.

The bill specifies that the presence of one or more of the following circumstances does not automatically result in a director having a conflict of interest:

1. nomination or election of the director to the current board by any director who is not a qualified director with respect to the matter, or by any person that has a material relationship with that director, acting alone or participating with others;
2. service as a director of another corporation of which a director has a conflict of interest or any individual who has a material relationship with the director that has a conflict of interest; or
3. status as a named defendant, as a director against whom action is demanded, or as a director who approved the conduct being challenged.

#### **GENERAL STANDARDS FOR DIRECTORS (§§ 5 & 20)**

Under current law, a director must discharge his duties as a director, including his duties as a committee member (1) in good faith; (2) in a manner he reasonably believes to be in the corporation's best interests; and (3) with the care an ordinarily prudent person in a like position would exercise under similar circumstances.

The bill eliminates the last requirement. It adds the requirement that board members or committees, when becoming informed in connection with their decision-making function or devoting attention to their oversight function, must discharge their duties with the care that a person in a like position would reasonably believe appropriate under similar circumstances.

The bill also requires that in discharging board or committee duties, a director must disclose, or cause to be disclosed, to the other board or committee members information they do not already know, but which the director knows to be material to the discharge of their decision-making or oversight functions. But, the bill specifies that disclosure is not required if the director reasonably believes that doing so would violate a duty imposed under law, a legally enforceable obligation of confidentiality, or a professional ethics rule.

In discharging board or committee duties, the bill authorizes a director

to rely on the performance by any of the following people to whom the board delegated the authority or duty to perform as long as the law allows the board to delegate the function and the director is unaware of anything that makes reliance unwarranted:

1. the corporation's officers or employees whom the director reasonably believes to be reliable and competent in the functions performed or
2. a committee of the board of directors of which the director is not a member if he reasonably believes the committee merits confidence.

Under current law, a director discharging his duties is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by:

1. one or more of the corporation's officers or employees whom the director reasonably believes to be reliable and competent in the matters presented;
2. legal counsel, public accountants, or others regarding matters the director reasonably believes are within the person's professional or expert competence, or
3. a committee of the board of which the director is not a member if he reasonably believes the committee merits confidence.

The bill authorizes a director to also rely on information, opinions, reports, or statements, including financial statements and other financial data, if prepared or presented by legal counsel, public accountants, or others about matters the director reasonably believes are matters as to which the particular person merits confidence.

### **DUTIES OF OFFICERS (§§ 6 & 21)**

Under the bill, each officer has the authority and must perform the functions, instead of the duties, set forth in the bylaws or, to the extent consistent with the bylaws, the functions, instead of the duties, prescribed by the board of directors or by direction of an officer authorized by the board.

### **STANDARDS OF CONDUCT FOR OFFICERS (§§ 7 & 22)**

Current law requires an officer to act with the care an ordinarily prudent person in a like position would exercise under similar circumstances. The bill eliminates the “ordinarily prudent person” standard and instead requires an officer to act with the care that someone in a like position would reasonably exercise under similar circumstances.

### ***Duty to Inform***

The bill specifies that an officer’s duty to the corporation includes the duty to:

1. inform the superior officer, the board of directors, or the board committee he reports to of information about the corporation’s affairs that (a) he knows about, (b) are within the scope of his functions, and (c) he knows are material to the superior officer, board, or committee; and
2. inform his superior officer, or another appropriate person within the corporation, the board, or a board committee, of any actual or probable material violation of law involving the corporation or material breach of duty to the corporation by the corporation’s officers, employees, or agents that he believes has occurred or is likely to occur.

The bill also specifies that an officer is entitled to rely on the performance of properly delegated responsibilities by one or more employees of the corporation whom the officer reasonably believes to be reliable and competent in performing the responsibilities delegated, unless he knows the reliance is unwarranted.

Under current law, an officer who does not have knowledge that makes reliance unwarranted is entitled to rely on information, opinions, reports, or statements, including financial statements and other financial data, prepared or presented by

1. officers or employees of the corporation whom the officer reasonably believes to be reliable and competent in the matters presented or
2. legal counsel, public accountants, or others persons about

matters the officer reasonably believes are within the person's professional or expert competence.

The bill specifies that the legal counsel, public accountants, or others must be retained by the corporation. Also, it allows officers to rely on them if they "merit confidence."

Current law specifies that an officer is not acting in good faith if he has knowledge concerning the matter in question that makes reliance unwarranted. The bill eliminates this but specifies that the officer cannot have knowledge that makes reliance unwarranted.

### **AUTHORIZATION OF INDEMNIFICATION FOR DIRECTORS (§§ 2, 8-10, 19, 23-25)**

By law, a corporation may indemnify a director for liability he incurred in a legal proceeding if the board, a board committee, or the shareholders determine that the director met the standard of conduct the law requires. Under current law, the determination may be made by a majority vote of disinterested directors, or a majority of a committee of disinterested directors.

Current law defines "disinterested director" as one who, at the time of a vote relating to indemnification, (1) is not a party to the proceeding or (2) does not have a familial, financial, professional, or employment relationship with the director whose indemnification or advance for expenses is the subject of the decision being made that would reasonably be expected to influence his judgment.

The bill requires that "qualified directors" instead of "disinterested directors" make the decision. The main differences are (1) the additional requirement that the relationship must be material, (2) the relationship is not limited to the ones specified above but can be any other relationship, and (3) the relationship must be one that would reasonably be expected to impair the director's objectivity instead of a relationship that would reasonably be expected to influence his judgment.

The bill defines the term "qualified director" as one who, at the time action is to be taken: (1) is not a director who is a party to the proceeding or sought approval for the transaction or (2) does not have a material relationship with such a director. A "material relationship"

means a familial, financial, professional, employment or other relationship that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken. A "material interest" means an actual or potential benefit or detriment, other than one which would devolve on the corporation or the shareholders generally, that would reasonably be expected to impair the objectivity of the director's judgment when participating in the action to be taken.

The bill specifies that the presence of one or more of the following circumstances does not automatically prevent a director from being a qualified director:

1. nomination or election to the current board by any director who is not a qualified director, or by any person that has a material relationship with that director, acting alone or participating with others; or
2. service as a director of another corporation of which a director who has a conflict of interest, or any individual who has a material relationship with the director who has a conflict of interest, is also a director.

By law, a corporation may advance funds to pay for or reimburse the reasonable expenses incurred by a director in a legal proceeding against him before the proceeding is over. A corporation may do so by a vote of disinterested directors or a vote of shareholders. Just as with the indemnification process, the bill replaces the concept of disinterested director with the concept of qualified directors.

## **DIRECTOR'S CONFLICT OF INTEREST TRANSACTIONS (§§ 11-14 & 26-29)**

### **Sections 11 – 14**

By law, a court may not invalidate a transaction by a corporation or any entity it controls, award damages, or otherwise remedy conduct because a director had a conflict of interest if it:

1. does not come within the statutory definition of a director's conflicting interest transaction;
2. was disclosed to the board and approved by a majority of directors

who do not have a conflict of interest regarding the vote, or

3. was approved by a majority vote of shares not owned or controlled by a director who has a conflict of interest.

The bill retains this rule and general approach, but makes several adjustments to it.

First, it alters the definition of a director's conflicting interest transaction.

Under current law, a transaction can be a conflicting interest transaction if a director or "related person" is a party or has a beneficial financial interest in, or is so closely linked to, a transaction and it is of such financial significance that it reasonably would be expected to influence the director's judgment.

The bill is similar in that it makes a transaction conflicting if the director knew that a "related person" was a party or had a "material financial interest." But the bill eliminates the current definition and replaces it with a broader definition that specifically includes a larger class of people. Specifically, the bill adds the following classes of people to the definition of "related people": the director's or spouse's grandparents, stepchildren, stepparents, step siblings, half siblings, aunts, uncles, nieces, nephews, and any of their spouses. It also adds any entity they controlled. Finally, it adds any entity controlled by the director's spouse, or the director's or spouse's child, grandchild, parent, or sibling, or the spouse of any such person.

Current law also defines a transaction as conflicting if it is brought before the board, or it normally would be brought before the board, and the director knows that certain people or entities are either (1) a party to the transaction or (2) have such a financially significant interest in the transaction that it would reasonably be expected to exert an influence on the director's judgment. The people or entities are:

1. an entity of which the director is a director, general partner, agent, or employee, or a person that controls such an entity, or an entity that is controlled by or under common control with such an entity; or
2. a person who is the director's general partner, principal, or

employer.

The bill eliminates this provision but substitutes a similar one. The main differences are that the bill includes limited liability companies and other unincorporated entities of which the director is a member of its governing body. The bill excludes an entity for which the director acts as an agent.

The bill defines “control” as:

1. having the power, directly or indirectly, to elect or remove a majority of the members of the board or other governing body of an entity, whether through the ownership of voting shares or interests, by contract, or otherwise, or
2. being subject to a majority of the risk of loss from the entity's activities or entitled to receive a majority of the entity's residual returns.

The bill defines “material financial interest” as a financial interest in a transaction that would reasonably be expected to impair the director’s objectivity when participating in an action to authorize the transaction.

### ***Transactions that are Fair to the Corporation***

The law also prohibits a court from invalidating a conflicting interest transaction if it was fair to the corporation. The bill defines this as any transaction that as a whole benefited the corporation, taking into appropriate account whether it was:

1. fair in terms of the director's dealings with the corporation and
2. comparable to what might have been obtainable in an “arm's length transaction,” in light of what the corporation paid and received.

### ***Approval By the Board of Directors***

By law, the board or a board committee can approve a transaction involving a conflict of interest under certain circumstances, including that the vote to approve be by qualified directors (those who do not

have a conflict of interest) after certain required disclosures. The bill alters the class of directors that can vote on such approval.

**Qualified Director.** Under current law, a “qualified director” for this purpose is any director who does not have either (1) a conflicting interest respecting the transaction, or (2) a familial, financial, professional, or employment relationship with another director who has a conflicting interest respecting the transaction that, in the circumstances, would reasonably be expected to influence the first director's judgment when voting on the transaction.

The bill alters this definition of “qualified director” by requiring that the relationship reasonably be expected to impair a director’s objectivity instead of requiring that the relationship reasonably be expected to influence the director’s judgment.

**Required Disclosures.** The law also requires that the director make certain disclosures to the board in connection with the board’s decision concerning approving the transaction. Current law requires that the disclosures include all facts the director knows regarding the transaction that an ordinarily prudent person would reasonably believe to be material to a judgment about whether or not to proceed with the transaction. Instead, the bill requires that the disclosures include all facts the director knows regarding the transaction that a director free of the conflict of interest would reasonably believe to be material in deciding whether to proceed with the transaction.

**Limited Disclosures to Qualified Directors.** Under current law, a director does not have to make those disclosures if he has a duty under law or a professional cannon, or otherwise has a duty of confidentiality to another person, about information relating to the transaction. The rule applies only if the director is in a fiduciary position with respect to a trust, estate, incompetent, conservatee, or minor that is either a party to the transaction or has a financially significant beneficial interest in it. Under such circumstances, he is only required to disclose to the directors voting on the transaction the existence and nature of his conflicting interest and inform them of the character and limitations imposed by that duty before their vote on the transaction.

The bill instead allows a director to refrain from full disclosure if the transaction is a conflict because any of the following is a party or has a material financial interest: (1) a domestic or foreign business or

nonprofit corporation, of which he is a director; (2) an unincorporated entity of which he is a general partner or a member of the governing body; or (3) individual, trust, or estate for whom, or of which he is a trustee, guardian, personal representative, or similar fiduciary; or (4) a person or entity controlled by his employer. Under such circumstances, the bill requires that the disclosures to qualified directors include: (1) all information that does not violate the director's duty of confidentiality, (2) the existence and nature of his conflicting interest, and (3) the nature of his duty not to disclose the confidential information.

***Voting or Quorum Requirement.*** The bill specifies that when the directors' action to approve a transaction does not satisfy a quorum or voting requirement that applies to the authorization of the transaction under the certificate of incorporation, the bylaws, or a provision of law, the board must take independent action to satisfy those authorization requirements. The bill permits directors who are not qualified directors to participate in such action.

#### **APPROVAL BY SHAREHOLDERS (§§ 14 & 29)**

By law, a court may not invalidate a corporation's transaction, award damages, or otherwise remedy conduct because a director had a conflict of interest if a majority of the votes cast by shareholders who do not have a conflict approve it. The bill requires that approval be by a majority of the votes cast by holders of all qualified shares instead of by a majority of the votes entitled to be cast by holders of all qualified shares.

Under current law, a director who has a conflicting interest respecting the transaction must, before the shareholders' vote, inform the secretary or other corporate officer or agent authorized to tabulate votes, of the number and the identity of persons holding or controlling the vote, of all the shares that the director knows are owned by, or the voting of which is controlled by, the director or by a person related to the director. The bill requires that the director do so in writing.

***Other Voting or Quorum Requirements.*** The bill specifies that when the shareholders' action to approve a transaction does not satisfy a quorum or voting requirement that applies to the authorization of the transaction under the certificate of incorporation, the bylaws, or a provision of law, the shareholders must take independent action to

satisfy those authorization requirements. The bill permits holders of shares that are not qualified shares to participate in such action.

### **PROCEDURE FOR JUDICIAL DISSOLUTION (§§ 15 & 16)**

The bill eliminates a non-public corporation's duty to send shareholders, a notice stating that they are entitled to avoid the dissolution of the corporation by electing to purchase the shares of the person seeking dissolution when the dissolution is because based on a proceeding by a shareholder or a director in which it is established that either (1) the directors are deadlocked in the management of the corporate affairs and the shareholders are unable to break the deadlock or (2) the shareholders are deadlocked in voting power for the election of directors and have been unable at the preceding annual meeting to elect successors to directors whose term would normally have expired upon the election of their successors.

It also eliminates the right of a corporation to elect or, if it fails to elect, one or more shareholders to elect to purchase all shares owned by the petitioning shareholder at the fair value of the shares when the dissolution is for the same reason as specified above.

A non-public corporation is one that does not have shares listed on a national securities exchange or regularly traded in a market maintained by one or more members of a national or affiliated securities association.

### **CORPORATE OPPORTUNITIES (§§ 17 & 30)**

The common law doctrine of "corporate opportunity" is a part of the director's duty of loyalty to the corporation. Under this doctrine, a corporation has a right to act prior to that of its director, on certain business opportunities that come to the director's attention. In such situations, a director who acts on the opportunity for his own benefit without having first presented it to the corporation can be held to have "usurped" or "intercepted" the corporation's right. A director who has violated his duty of loyalty is subject to damages or equitable remedies, including injunction, disgorgement, or the imposition of a constructive trust in the corporation's favor.

The bill provides a safe harbor for a director considering possible involvement with a prospective business opportunity that might

constitute a “corporate opportunity.” It allows a director to present a business opportunity to the board or its shareholders for consideration. By following the bill’s procedures before pursuing the opportunity for himself, the director can receive a disclaimer of the corporation’s interest in the matter and thereby be able to pursue the opportunity himself.

The bill protects a director from damages or some other remedy in a lawsuit against him by the corporation or shareholders initiating a legal action in the corporation’s name because he directly or indirectly took advantage of a business opportunity that should have first been offered to the corporation, if he gets the board of directors or the shareholders to reject the opportunity. Before seeking such rejection, the bill requires the director to disclose all material facts that he knows about the business opportunity.

### ***Board Approval***

The bill requires that he get the approval of qualified directors in the same manner and following the same procedures that a director seeking approval of a transaction involving a conflict of interest must follow.

Specifically, the bill requires the approval to be by the affirmative vote of a majority, but at least two, of the qualified directors. It permits approval by a board committee if all committee members were qualified directors, and either (1) the committee consisted of all the qualified directors on the board of directors, or (2) the committee members were appointed by the affirmative vote of a majority of the qualified directors on the board.

The bill defines a “qualified director” for this purpose as one who (1) is not attempting to take advantage of the business opportunity, and (2) does not have a material relationship with another director who is attempting to take advantage of the business opportunity. The bill defines “material relationship” for this purpose as a familial, financial, professional, employment, or other relationship that would reasonably be expected to impair the director’s objective judgment when participating in the action to be taken.

### ***Shareholder Approval***

Under the bill, a shareholders' action to reject a business opportunity is effective if a majority of the votes cast by the holders of all qualified shares are in favor of the rejection after (1) notice to shareholders describing the business opportunity and (2) disclosure to the shareholders of all material facts that the director knows about the business opportunity.

The term "qualified shares" means all shares entitled to be voted with respect to the rejection of the business opportunity except for shares that the secretary or other officer or agent of the corporation authorized to tabulate votes either knows, or has been advised by the director seeking the vote are held by (1) a director who has a conflict of interest concerning the vote or (2) a related person of the director other than a person that is, or an entity that is controlled by, an employer of the director.

The bill defines related person as:

1. the director's spouse;
2. a child, stepchild, grandchild, parent, step parent, grandparent, sibling, step sibling, half sibling, aunt, uncle, niece or nephew, (or their spouse), of the director or of the director's spouse;
3. an individual living in the director's home;
4. an entity, other than the corporation (or an entity the corporation controls), controlled by the director or anyone specified above; and
5. a domestic or foreign (a) business or nonprofit corporation, other than the corporation or (an entity the corporation controls), of which the director is a director; (b) unincorporated entity of which the director is a general partner or a member of the governing body; or (c) individual, trust, or estate for whom or of which the director is a trustee, guardian, personal representative, or similar fiduciary.

## **BACKGROUND**

### ***Business Opportunity***

Connecticut courts recognize a corporation's right to sue a director for usurping a corporate opportunity. To prevail on a claim of usurpation of a corporate opportunity, a plaintiff bears the burden of establishing: (1) a fiduciary relationship between the corporation and the alleged wrongdoers and (2) the existence of a corporate opportunity (*Murphy v. Wakelee*, 247 Conn. 396, 404 (1998)).

A key issue is whether the corporate opportunity falls within the corporation's avowed business purpose. Courts consider whether (1) the business opportunity was one in which the complaining corporation had an interest or an expectancy growing out of an existing contractual right; (2) there was a close relationship between the opportunity and the corporation's business purposes and current activities; and (3) the business areas contemplated by the opportunity were readily adaptable to the corporation's existing business, in light of its fundamental knowledge, practical experience, facilities, equipment, and personnel (*Ostrowski v. Avery*, 243 Conn. 355(1997)).

Adequate disclosure of a corporate opportunity is an absolute defense to fiduciary liability for alleged usurpation of such a corporate opportunity. The director must fully disclose the opportunity to the board and it must be rejected by at least a disinterested vote of the board of directors.

Corporate fiduciaries bear the burden of proving, by clear and convincing evidence, that they have not usurped a corporate opportunity. If they wish to take advantage of a safe harbor, they must establish the adequacy of their disclosures to the corporation. In the absence of such disclosures, corporate fiduciaries must prove that they did not deprive the corporation of an opportunity that the corporation could have pursued. To determine this, courts consider whether:

1. the corporation was financially able to exploit the opportunity;
2. the opportunity was within the corporation's line of business;
3. the corporation had an interest or expectancy in the opportunity;  
and
4. by taking the opportunity for his own, the corporate fiduciary would be placed in a position inimicable to his duties to the corporation.

**COMMITTEE ACTION**

Judiciary Committee

Joint Favorable Substitute

Yea 36 Nay 0