



General Assembly

Substitute Bill No. 1119

January Session, 2005

* SB01119JUD 030805 *

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 Section 33-602 of the general statutes is repealed and the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 arbitrative 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, ^z [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.*