



House of Representatives

File No. 633

General Assembly

February Session, 2010

(Reprint of File No. 552)

House Bill No. 5530
As Amended by House Amendment
Schedule "A"

Approved by the Legislative Commissioner
April 23, 2010

AN ACT CONCERNING THE CONNECTICUT BUSINESS CORPORATION ACT.

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

1 Section 1. Subsection (d) of section 33-603 of the general statutes is
2 repealed and the following is substituted in lieu thereof (*Effective*
3 *October 1, 2010*):

4 (d) Written notice to a domestic or foreign corporation authorized to
5 transact business in this state may be addressed to its registered agent
6 at its registered office or to the secretary of the corporation [or its
7 secretary] at its principal office shown in its most recent annual report
8 or, in the case of a foreign corporation that has not yet delivered an
9 annual report, in its application for a certificate of authority.

10 Sec. 2. Section 33-865 of the general statutes is repealed and the
11 following is substituted in lieu thereof (*Effective October 1, 2010*):

12 (a) Except as provided in section 33-867, within thirty days after the
13 form required by subparagraph (B) of subdivision (2) of subsection (b)

14 of section 33-862 is due, the corporation shall pay in cash to those
15 shareholders who complied with subsection (a) of section 33-863 the
16 amount the corporation estimates to be the fair value of their shares,
17 plus interest.

18 (b) The payment to each shareholder pursuant to subsection (a) of
19 this section shall be accompanied by:

20 (1) [Financial] (A) The annual financial statements specified in
21 subsection (a) of section 33-951 of the corporation that issued the
22 shares to be appraised, [consisting of a balance sheet as of the end of a
23 fiscal year] which shall be as of a date ending not more than sixteen
24 months before the date of payment [, an income statement for that
25 year, a statement of changes in shareholders' equity for that year and
26 the latest available interim] and shall comply with subsection (b) of
27 section 33-951, except that, if such annual financial statements are not
28 reasonably available, the corporation shall provide reasonably
29 equivalent financial information, and (B) the latest available quarterly
30 financial statements of such corporation, if any;

31 (2) A statement of the corporation's estimate of the fair value of the
32 shares which estimate must equal or exceed the corporation's estimate
33 given pursuant to subparagraph (C) of subdivision (2) of subsection (b)
34 of section 33-862; and

35 (3) A statement that shareholders described in subsection (a) of this
36 section have the right to demand further payment under section 33-868
37 and that if any such shareholder does not do so within the time period
38 specified therein, such shareholder shall be deemed to have accepted
39 such payment in full satisfaction of the corporation's obligations under
40 sections 33-855 to 33-872.

41 Sec. 3. Section 33-675 of the general statutes is repealed and the
42 following is substituted in lieu thereof (*Effective October 1, 2010*):

43 (a) A corporation may issue rights, options or warrants for the
44 purchase of shares or other securities of the corporation. The board of

45 directors shall determine (1) the terms upon which the rights, options
46 or warrants are issued, and (2) the terms upon which, including the
47 consideration for which, the shares or other securities are to be issued.
48 The authorization by the board of directors for the corporation to issue
49 such rights, options or warrants constitutes authorization of the
50 issuance of the shares or other securities for which the rights, options
51 or warrants are exercisable.

52 (b) The terms and conditions of such rights, options or warrants,
53 including those outstanding on October 1, 2003, may include, but are
54 not limited to, restrictions or conditions that: (1) Preclude or limit the
55 exercise, transfer or receipt of such rights, options or warrants by any
56 person or persons owning or offering to acquire a specified number or
57 percentage of the outstanding shares or other securities of the
58 corporation or by any transferee or transferees of any such person or
59 persons; or (2) invalidate or void such rights, options or warrants held
60 by any such person or persons or any such transferee or transferees.

61 (c) The board of directors may authorize one or more officers to (1)
62 designate the recipients of rights, options, warrants or other equity
63 compensation awards that involve the issuance of shares, and (2)
64 determine, within an amount and subject to any other limitations
65 established by the board and, if applicable, the shareholders, the
66 number of such rights, options, warrants or other equity compensation
67 awards and the terms thereof to be received by the recipients,
68 provided an officer may not use such authority to designate himself or
69 herself, or any other persons as the board of directors may specify, as a
70 recipient of such rights, options, warrants or other equity
71 compensation awards.

72 Sec. 4. Section 33-860 of the 2010 supplement to the general statutes
73 is repealed and the following is substituted in lieu thereof (*Effective*
74 *October 1, 2010*):

75 (a) Where any corporate action specified in subsection (a) of section
76 33-856 is to be submitted to a vote at a shareholders' meeting, the

77 meeting notice must state that the corporation has concluded that the
78 shareholders are, are not or may be entitled to assert appraisal rights
79 under sections 33-855 to 33-872, inclusive. If the corporation concludes
80 that appraisal rights are or may be available, a copy of sections 33-855
81 to 33-872, inclusive, must accompany the meeting notice sent to those
82 record shareholders entitled to exercise appraisal rights.

83 (b) In a merger pursuant to section 33-818, the parent corporation
84 must notify in writing all record shareholders of the subsidiary who
85 are entitled to assert appraisal rights that the corporate action became
86 effective. Such notice must be sent within ten days after the corporate
87 action became effective and include the materials described in section
88 33-862.

89 (c) Where any corporate action specified in subsection (a) of section
90 33-856 is to be approved by written consent of the shareholders
91 pursuant to section 33-698:

92 (1) Written notice that appraisal rights are, are not or may be
93 available must be given to each record shareholder from whom a
94 consent is solicited at the time consent of such shareholder is first
95 solicited and, if the corporation has concluded that appraisal rights are
96 or may be available, must be accompanied by a copy of sections 33-855
97 to 33-872, inclusive; and

98 (2) Written notice that appraisal rights are, are not or may be
99 available must be delivered together with the notice to nonvoting and
100 nonconsenting shareholders required by subsections (e) and (f) of
101 section 33-698, may include the materials described in section 33-862
102 and, if the corporation has concluded that appraisal rights are or may
103 be available, must be accompanied by a copy of sections 33-855 to 33-
104 872, inclusive.

105 (d) Where any corporate action specified in subsection (a) of section
106 33-856 is proposed, or a merger pursuant to section 33-818 is effected,
107 the notice referred to in subsection (a) or (c) of this section, if the
108 corporation concludes that appraisal rights are or may be available,

109 and in subsection (b) of this section, shall be accompanied by:

110 (1) The annual financial statements specified in subsection (a) of
111 section 33-951 of the corporation that issued the shares that may be
112 subject to appraisal, which shall be as of a date ending not more than
113 sixteen months before the date of the notice and shall comply with
114 subsection (b) of section 33-951, except that, if such annual financial
115 statements are not reasonably available, the corporation shall provide
116 reasonably equivalent financial information; and

117 (2) The latest available quarterly financial statements of such
118 corporation, if any.

119 (e) The right to receive the information described in subsection (d)
120 of this section may be waived in writing by a shareholder before or
121 after the corporate action.

122 Sec. 5. (NEW) (*Effective October 1, 2010*) A corporation may agree to
123 submit a matter to a vote of its shareholders even if, after approving
124 the matter, the board of directors determines it no longer recommends
125 the matter.

126 Sec. 6. Subsection (b) of section 33-797 of the general statutes is
127 repealed and the following is substituted in lieu thereof (*Effective*
128 *October 1, 2010*):

129 (b) Except as provided in sections 33-796, 33-801, and 33-802, after
130 adopting the proposed amendment, the board of directors must
131 submit the amendment to the shareholders for their approval. The
132 board of directors must also transmit to the shareholders a
133 recommendation that the shareholders approve the amendment,
134 unless (1) the board of directors makes a determination that because of
135 conflicts of interest or other special circumstances it should not make
136 such a recommendation, [in which case] or (2) section 5 of this act
137 applies. If subdivision (1) or (2) of this subsection applies, the board of
138 directors must transmit to the shareholders the basis for [such
139 determination] so proceeding.

140 Sec. 7. Subdivision (2) of section 33-817 of the general statutes is
141 repealed and the following is substituted in lieu thereof (*Effective*
142 *October 1, 2010*):

143 (2) Except as provided in subdivision (7) of this section and section
144 33-818, after adopting the plan of merger or share exchange, the board
145 of directors must submit the plan to the shareholders for their
146 approval. The board of directors must also transmit to the
147 shareholders a recommendation that the shareholders approve the
148 plan, unless (A) the board of directors makes a determination that
149 because of conflicts of interest or other special circumstances it should
150 not make such a recommendation, [in which case] or (B) section 5 of
151 this act applies. If subparagraph (A) or (B) of this subdivision applies,
152 the board of directors must transmit to the shareholders the basis for
153 [such determination] so proceeding.

154 Sec. 8. Subsection (b) of section 33-831 of the general statutes is
155 repealed and the following is substituted in lieu thereof (*Effective*
156 *October 1, 2010*):

157 (b) A disposition that requires approval of the shareholders under
158 subsection (a) of this section shall be initiated by a resolution of the
159 board of directors authorizing the disposition. After adoption of such a
160 resolution, the board of directors shall submit the proposed disposition
161 to the shareholders for their approval. The board of directors shall also
162 transmit to the shareholders a recommendation that the shareholders
163 approve the proposed disposition, unless (1) the board of directors
164 makes a determination that because of conflicts of interest or other
165 special circumstances it should not make such a recommendation, [in
166 which case] or (2) section 5 of this act applies. If subdivision (1) or (2)
167 of this subsection applies, the board of directors [shall] must transmit
168 to the shareholders the basis for [such determination] so proceeding.

169 Sec. 9. Subsection (b) of section 33-881 of the general statutes is
170 repealed and the following is substituted in lieu thereof (*Effective*
171 *October 1, 2010*):

172 (b) For a proposal to dissolve to be adopted:

173 (1) The board of directors must recommend dissolution to the
174 shareholders unless (A) the board of directors [determines] makes a
175 determination that because of [conflict] conflicts of interest or other
176 special circumstances it should [make no] not make such a
177 recommendation, [and communicates the basis for its determination to
178 the shareholders] or (B) section 5 of this act applies. If subparagraph
179 (A) or (B) of this subdivision applies, the board of directors must
180 transmit to the shareholders the basis for so proceeding; and

181 (2) [the] The shareholders entitled to vote must approve the
182 proposal to dissolve as provided in subsection (e) of this section.

183 Sec. 10. Subsection (d) of section 33-756 of the general statutes is
184 repealed and the following is substituted in lieu thereof (*Effective*
185 *October 1, 2010*):

186 (d) For purposes of sections 33-817, as amended by this act, 33-830,
187 33-831, as amended by this act, 33-841 and 33-844, a director of a
188 corporation which has a class of voting stock registered pursuant to
189 Section 12 of the Securities Exchange Act of 1934, as the same has been
190 or hereafter may be amended from time to time, in addition to
191 complying with the provisions of subsections (a) to (c), inclusive, of
192 this section, [shall] may consider, in determining what he reasonably
193 believes to be in the best interests of the corporation, (1) the long-term
194 as well as the short-term interests of the corporation, (2) the interests of
195 the shareholders, long-term as well as short-term, including the
196 possibility that those interests may be best served by the continued
197 independence of the corporation, (3) the interests of the corporation's
198 employees, customers, creditors and suppliers, and (4) community and
199 societal considerations including those of any community in which any
200 office or other facility of the corporation is located. A director may also
201 in his discretion consider any other factors he reasonably considers
202 appropriate in determining what he reasonably believes to be in the
203 best interests of the corporation.

This act shall take effect as follows and shall amend the following sections:

Section 1	<i>October 1, 2010</i>	33-603(d)
Sec. 2	<i>October 1, 2010</i>	33-865
Sec. 3	<i>October 1, 2010</i>	33-675
Sec. 4	<i>October 1, 2010</i>	33-860
Sec. 5	<i>October 1, 2010</i>	New section
Sec. 6	<i>October 1, 2010</i>	33-797(b)
Sec. 7	<i>October 1, 2010</i>	33-817(2)
Sec. 8	<i>October 1, 2010</i>	33-831(b)
Sec. 9	<i>October 1, 2010</i>	33-881(b)
Sec. 10	<i>October 1, 2010</i>	33-756(d)

The following Fiscal Impact Statement and Bill Analysis are prepared for the benefit of the members of the General Assembly, solely for purposes of information, summarization and explanation and do not represent the intent of the General Assembly or either chamber thereof for any purpose. In general, fiscal impacts are based upon a variety of informational sources, including the analyst's professional knowledge. Whenever applicable, agency data is consulted as part of the analysis, however final products do not necessarily reflect an assessment from any specific department.

OFA Fiscal Note***State Impact:*** None***Municipal Impact:*** None***Explanation***

The bill makes changes to the laws governing business corporations and results in no fiscal impact.

House "A" (LCO 3590) made technical changes that do not result in a fiscal impact.

The Out Years***State Impact:*** None***Municipal Impact:*** None

OLR Bill Analysis**HB 5530 (as amended by House "A")******AN ACT CONCERNING THE CONNECTICUT BUSINESS CORPORATION ACT.*****SUMMARY:**

This bill makes changes to the laws governing business corporations. It requires written notices sent to a corporation to be addressed to its secretary. The bill allows corporations to provide equivalent financial information to shareholders exercising appraisal rights when the appropriate financial statement is unavailable. It also requires financial information to be provided to shareholders before they exercise their appraisal rights (i.e., with the notices of corporate action that trigger those rights.)

It allows the board of directors to authorize one or more of its officers to make certain decisions regarding the recipients of the corporation's rights, options, or warrants for the purchase of shares or other securities. The bill also allows a corporation to agree to submit a matter to a vote of its shareholders even if the board of directors, after approving the matter, determines it no longer recommends it. It makes conforming changes to effect this change.

The bill allows, rather than requires, the director of a corporation to consider certain factors in determining what he or she reasonably believes to be in the corporation's best interests.

*House Amendment "A" makes technical changes to the bill.

EFFECTIVE DATE: October 1, 2010

FINANCIAL STATEMENTS

Accompanying Payments

By law, a corporation must pay shareholders exercising their appraisal rights the estimated fair value of their shares, plus interest. Under current law, the payment must be accompanied by a financial statement consisting of (1) a balance sheet as of the end of the fiscal year ending no more than 16 months before the date of the payment, (2) an income statement for that year, (3) a statement of changes in shareholders' equity for that year, and (4) the latest available interim financial statements, if any. The bill instead requires a corporation to provide an annual financial statement also covering the fiscal year ending within the 16-month period before payment. It must comply with the existing law on financial statements for shareholders. These requirements are generally the same, except they do not require the interim statements. However, the bill requires the latest available quarterly financial statements, if any. If the annual financial statements are not reasonably available, the bill requires corporations to provide reasonably equivalent financial information.

The bill also requires a financial statement to comply with the existing law on documents accompanying a financial statement. If a public accountant reports a statement, that report must accompany the statement. If there is no public accountant report, the statement must be accompanied by a statement of the president or the person responsible for the corporation's accounting records (1) stating his or her reasonable belief as to whether the statement was prepared on the basis of generally accepted accounting principles and, if not, describing the basis of preparation and (2) describing any ways in which the statement was not prepared on a basis of accounting consistent with the preceding year's statements.

Notices of Certain Corporate Actions

When a merger is effected or the types of mergers, share exchanges, disposition of assets, or certificate of incorporation amendments that trigger shareholder appraisal rights are proposed, the bill requires the requisite notice to be accompanied by a financial statement that

complies with the requirements for financial statements accompanying payment described above. However, the bill allows the requirements to be waived in writing by a shareholder before or after the applicable corporate action.

ISSUANCE OF RIGHTS, OPTIONS, WARRANTS, OR OTHER EQUITY COMPENSATION AWARDS

By law, a corporation may issue rights, options, or warrants for the purchase of its shares or other securities and the board of directors determines the terms of issuance. The bill allows the board to authorize one or more officers to (1) designate the recipients of rights, options, warrants, or other equity compensation awards that involve the issuance of shares, and (2) determine, within an amount and subject to any other limitations established by the board and, if applicable, the shareholders, the number and terms of such rights, options, warrants, or other equity compensation awards to be received by the recipients. However, an officer cannot use this authority to designate himself or herself, or any other people the board may specify, as a recipient.

BEST INTEREST OF THE CORPORATION

The bill allows, rather than requires as under current law, the director of a corporation with a class of voting stock registered under the Securities Exchange Act of 1934 to consider the following factors in determining what he or she reasonably believes to be in the best interests of the corporation:

1. the long- and short-term interests of the corporation,
2. the long- and short-term interests of the shareholders, including the possibility that those interests may be best served by the continued independence of the corporation,
3. the interests of the corporation's employees, customers, creditors, and suppliers, and
4. community and societal considerations, including those of any

community in which any corporate office or facility is located.

COMMITTEE ACTION

Judiciary Committee

Joint Favorable

Yea 41 Nay 0 (03/29/2010)