



House Bill No. 5530

Public Act No. 10-35

AN ACT CONCERNING THE CONNECTICUT BUSINESS CORPORATION ACT.

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

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 Subsection (d) of section 33-603 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

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

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 Section 33-865 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2010*):

(a) Except as provided in section 33-867, within thirty days after the form required by subparagraph (B) of subdivision (2) of subsection (b) of section 33-862 is due, the corporation shall pay in cash to those shareholders who complied with subsection (a) of section 33-863 the amount the corporation estimates to be the fair value of their shares, plus interest.

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

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

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

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

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

(a) A corporation may issue rights, options or warrants for the purchase of shares or other securities of the corporation. The board of directors shall determine (1) the terms upon which the rights, options or warrants are issued, and (2) the terms upon which, including the

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consideration for which, the shares or other securities are to be issued. The authorization by the board of directors for the corporation to issue such rights, options or warrants constitutes authorization of the issuance of the shares or other securities for which the rights, options or warrants are exercisable.

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

(c) The board of directors may 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 of such rights, options, warrants or other equity compensation awards and the terms thereof to be received by the recipients, provided an officer may not use such authority to designate himself or herself, or any other persons as the board of directors may specify, as a recipient of such rights, options, warrants or other equity compensation awards.

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

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

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

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

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

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

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

(d) Where any corporate action specified in subsection (a) of section

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33-856 is proposed, or a merger pursuant to section 33-818 is effected, the notice referred to in subsection (a) or (c) of this section, if the corporation concludes that appraisal rights are or may be available, and in subsection (b) of this section, shall be accompanied by:

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

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

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

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

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

(b) Except as provided in sections 33-796, 33-801, and 33-802, after adopting the proposed amendment, the board of directors must submit the amendment to the shareholders for their approval. The board of directors must also transmit to the shareholders a recommendation that the shareholders approve the amendment, unless (1) the board of directors makes a determination that because of

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conflicts of interest or other special circumstances it should not make such a recommendation, [in which case] or (2) section 5 of this act applies. If subdivision (1) or (2) of this subsection applies, the board of directors must transmit to the shareholders the basis for [such determination] so proceeding.

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

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

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

(b) A disposition that requires approval of the shareholders under subsection (a) of this section shall be initiated by a resolution of the board of directors authorizing the disposition. After adoption of such a resolution, the board of directors shall submit the proposed disposition to the shareholders for their approval. The board of directors shall also transmit to the shareholders a recommendation that the shareholders approve the proposed disposition, unless (1) the board of directors makes a determination that because of conflicts of interest or other

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special circumstances it should not make such a recommendation, [in which case] or (2) section 5 of this act applies. If subdivision (1) or (2) of this subsection applies, the board of directors [shall] must transmit to the shareholders the basis for [such determination] so proceeding.

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

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

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

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

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

(d) For purposes of sections 33-817, as amended by this act, 33-830, 33-831, as amended by this act, 33-841 and 33-844, a director of a corporation which has a class of voting stock registered pursuant to Section 12 of the Securities Exchange Act of 1934, as the same has been or hereafter may be amended from time to time, in addition to complying with the provisions of subsections (a) to (c), inclusive, of this section, [shall] may consider, in determining what he reasonably believes to be in the best interests of the corporation, (1) the long-term

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as well as the short-term interests of the corporation, (2) the interests of the shareholders, long-term as well as short-term, 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 office or other facility of the corporation is located. A director may also in his discretion consider any other factors he reasonably considers appropriate in determining what he reasonably believes to be in the best interests of the corporation.

Approved May 10, 2010